

# From Persecution to Prison:

The Health Consequences of Detention for Asylum Seekers



A Report by:  
Physicians for Human Rights  
and  
The Bellevue/NYU Program  
for Survivors of Torture

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“When I came I never expected to be put in jail. They don’t call it jail, they call it detention. But it is jail. I thought I would be free when I got to America. I came here to find peace and be able to live in peace.”

**Young African asylum seeker who had watched armed men kill his father and kidnap his sister**

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**Elizabeth Detention Center, Elizabeth, NJ.**

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Printed in the United States of America.

ISBN: 1-879707-40-3

Library of Congress Control Number: 2003109841

Cover and report design: Visual Communications, Maynard, MA

# CONTENTS

Acknowledgements	v
I. Executive Summary	1
II. Background	23
III. Methods	43
IV. Findings and Characteristics of Study Participants	49
V. Mental Health of Detained Asylum Seekers	55
VI. Physical Health, Medical Problems and Medical Care in Detention	87
VII. Treatment in Detention Facilities	105
VIII. Age Determinations by Dental Examinations for Young Asylum Seekers	129
IX. Arrival in the United States	137
X. Study Limitations	151
XI. Legal Standards	155
XII. Conclusions and Recommendations	183
XIII. Appendices	199
<b>Case Studies</b>	
Case #1(DK): <i>Loneliness and Fear in Jail</i>	58
Case #2 (JG): <i>Health Care in Chains</i>	90
Case #3 (HN): <i>Solitary Confinement</i>	110
Case #4 (LK): <i>Fifteen-Year-Old Girl Imprisoned</i>	134
Case #5 (CR): <i>Begging for Mercy</i>	146

## Physicians for Human Rights

Physicians for Human Rights (PHR) promotes health by protecting human rights. PHR believes that respect for human rights is essential for the health and well-being of all people.

Since 1986, PHR members have worked to stop torture, disappearances, and political killings by governments and opposition groups and to investigate and expose violations, including: deaths, injuries, and trauma inflicted on civilians during conflicts; suffering and deprivation, including denial of access to health care, caused by ethnic and racial discrimination; mental and physical anguish inflicted on women by abuse; exploitation of children in labor practices; loss of life or limb from landmines and other indiscriminate weapons; harsh methods of incarceration in prisons and detention centers; and poor health stemming from vast inequalities in societies. Over 400 health professionals are part of PHR's Asylum Network, providing medical evaluations for hundreds of asylum seekers over the past decade. PHR also works to protect health professionals who are victims of violations of human rights and to prevent medical complicity in torture and other abuses. As one of the original steering committee members of the International Campaign to Ban Landmines, PHR shared the 1997 Nobel Peace Prize.

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## **The Bellevue/NYU Program for Survivors of Torture**

The Bellevue/NYU Program for Survivors of Torture provides comprehensive, multidisciplinary care addressing the medical, mental health, and social service needs of torture survivors and their families residing in the New York metropolitan area. The Bellevue/NYU program brings together clinical and academic resources from Bellevue Hospital, the oldest public hospital in the United States, and New York University School of Medicine. Since its inception in 1995, the program has cared for more than 800 men, women and children from over 70 different countries.

In addition to providing direct patient services, the Bellevue/NYU Program also serves as a training and resource center for organizations, locally, nationally, and internationally, assisting refugee and immigrant populations. It is one of the largest torture treatment centers in the United States and has established an international reputation for excellence in patient care, clinician training and other educational programs, research and advocacy. The program has received numerous awards including the Jim Wright Vulnerable Populations Award from the National Association of Public Hospitals and the Roger E. Joseph Prize from Hebrew Union College.

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# ACKNOWLEDGEMENTS

This report was written by Allen S. Keller, M.D., Assistant Professor of Medicine, Department of Medicine, NYU School of Medicine, Director of the Bellevue/NYU Program for Survivors of Torture, and member of the Advisory Council of Physicians for Human Rights (PHR); Douglas Ford, J.D., Senior Research Associate, Physicians for Human Rights; Emily Sachs, Detention Center Project Coordinator, Bellevue/NYU Program for Survivors of Torture; Barry Rosenfeld, Ph.D., Associate Professor, Department of Psychology, Fordham University; Chris Meserve, M.D., Instructor, Division of Primary Care Medicine, NYU School of Medicine; Chau Thrinh Shevrin Drph, Director of Community Health Research, Institute for Urban and Global Health, NYU School of Medicine; Paul Rocklin, J.D., Program Associate, Physicians for Human Rights; Jonathan Leviss, M.D., Chief Medical Officer, New York City Health and Hospitals Corporation; Kathleen Allden, M.D., Assistant Professor of Psychiatry, Dartmouth Medical School, Medical Director, International Institute of Boston; Glen Kim, M.D., Instructor in Medicine, Harvard Medical School; Hawthorne Smith, PhD, Senior Psychologist, Bellevue/NYU Program for Survivors of Torture; John Wilkinson, MA, Social Services Coordinator, Bellevue/NYU Program for Survivors of Torture; Elizabeth Singer, M.D., Attending Physician, Department of Emergency Services, NYU School of Medicine; and Mas'ood Cajee, D.D.S., M.P.H., Scholar in Health Policy at Harvard Medical School.

The authors are grateful to Immigration and Naturalization Service (INS) staff at headquarters and at the detention facilities for their courtesy and cooperation in conducting this study.

The authors are grateful to the following organizations for their cooperation in referring individuals for participation in this study: American Friends Service Committee, Catholic Legal Immigration Network, Circle York, Hebrew Immigrant Aid Society, Lawyers Committee for Human Rights, and New York Association for New Americans.

The authors thank Eleanor Acer, Anwen Hughes, Anna Mecagni and Jennifer Turner of the Lawyers Committee for Human Rights; Lin Piwowarczyk of the Boston Center for Refugee Health and Human Rights; John Hubbard of the Center for Victims of Torture; Natalie Audage, Kerri Sherlock, Samantha Morse, and PHR's Asylum Network of health professionals for their assistance in developing this project; Suzanne Dieter, Celine Jackson, Melynda Barnhart, Teresa Frison, Kathryn Rear-

don, Miranda Ip, and Meriam Alrashid for background research; Melanie Jay, Alyssa Finlay, Amina Chaudry and Joshua Lee for helping with interviews; Caroline Lai and Angela Lee for data entry; Dechen Lhewa for assistance in formatting tables, the staff of the Bellevue/NYU Program for Survivors of Torture for their encouragement and support; and Linda Federico-O'Murchu for transcribing narrative information. Matt Wilch, Director of Asylum and Immigration Concerns, Lutheran Immigration and Refugee Service, and Christopher Nugent, formerly of the American Bar Association Commission on Immigration Policy, Practice and Pro Bono, Washington, DC, provided assistance with policy and legal issues. The authors thank Budd Heyman, M.D., Director of Prison Health Services, Bellevue Hospital, for sharing his expertise in prison health issues.

Leonard Rubenstein, PHR Executive Director; Vincent Iacopino, MD, PhD, PHR Director of Research; Frank Davidoff MD, PHR board member; Eleanor Acer, Director of the Asylum Program, Lawyers Committee for Human Rights; and Barbara Ayotte, PHR Director of Communications, reviewed the manuscript.

Zachary Steele, MPsychol, and Derrick Silove, M.D. of the University of New South Wales, Sydney Australia; and Richard Mollica, M.D., of the Harvard Program in Refugee Trauma also provided invaluable insight into issues concerning the health of detained asylum seekers. Ingrid Tamm and Laurie Vollen, M.D., MPH, assisted in editing the report. Ms. Ayotte prepared the manuscript for publication.

Support for this research was provided by the JEHT Foundation, the New York Community Trust, the Morton K. and Jane Blaustein Foundation and the NYU School of Medicine Institute for Urban and Global Health. Dr. Keller was supported by a Soros Advocacy Fellowship from the Medicine as a Profession Program of the Open Society Institute.

# I. EXECUTIVE SUMMARY

The practice of imprisoning asylum seekers who flee to America to escape torture, abuse, and persecution in their own countries has damaging effects on the well-being of these individuals. Detention can induce fear, isolation and hopelessness, and exacerbate the severe psychological distress frequently exhibited by asylum seekers who are already traumatized.

Historically, the United States has opened its doors and provided refuge to those fleeing persecution, as echoed in the words of Emma Lazarus inscribed on the Statue of Liberty, “Give me your tired, your poor, your huddled masses yearning to breathe free the wretched refuse of your teeming shore. Send these, the homeless, tempest-tossed to me, I lift my lamp beside the golden door!<sup>1</sup>...” Since the enactment of a restrictive 1996 immigration law and new restrictions after September 11, 2001, asylum seekers arriving without proper documentation are imprisoned without any opportunity for judicial review and with increased frequency, some remaining in detention for months or even years. The Department of Homeland Security’s recent “Operation Liberty Shield” which called for mandatory detention of asylum seekers from more than 30 countries, is the most recent example of this trend toward expanding detention of asylum seekers.

In the first systematic and comprehensive study examining the health status of detained asylum seekers,<sup>2</sup> the Bellevue/NYU Program for Survivors of Torture (Bellevue/NYU) and Physicians for Human Rights (PHR) found that the mental health of asylum seekers interviewed for this study was extremely poor and worsened the longer that individuals were in detention. The study also raises concerns about the manner in which asylum seekers are treated upon arrival in the US and then while in detention. These findings support assertions that detention has a harmful impact on the health and well-being of asylum seekers.

Study physicians, experienced in evaluating and caring for asylum seekers, found extremely high symptom levels of anxiety, depression and post-traumatic stress disorder (PTSD) among detained asylum seekers.

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<sup>1</sup> Emma Lazarus, New York City, 1883. *The New Colossus*. Available at: <http://xroads.virginia.edu/~CAP/LIBERTY/lazaruspoem.html>.

<sup>2</sup> This study was conducted with asylum seekers detained by the Immigration and Naturalization Service (INS). In March 2003, the Department of Homeland Security assumed most of the functions of the INS.

Significant symptoms of depression were present in 86% of the 70 detained asylum seekers, anxiety was present in 77% and PTSD in 50%. These already high rates of poor psychological health worsened the longer that asylum seekers were in detention. Most individuals attributed these symptoms largely to their detention, and many also believed their physical health worsened while in detention. Access to mental health services was limited. Those who ultimately received asylum spent on average 10 months in jail.

The asylum seekers in this study, many of whom were victims of torture in their countries of origin, described numerous disturbing encounters with immigration officials. Such grievances began upon arrival at US airports, where they frequently reported enduring verbal abuse and other indignities, and complained that their right to apply for asylum was often not adequately explained to them. Many interview subjects reported that they were verbally abused during their detention. Reports of physical abuse were infrequent, but not absent. Solitary confinement, or the threat of solitary confinement, was frequently used as a means of punishment or intimidation.

Case after case in this study illustrated that the US government's practice of imprisoning asylum seekers inflicts further harm on an already traumatized population. Asylum seekers voiced dismay about their treatment. For example, a young African asylum seeker who had helplessly watched armed men kill his father and kidnap his sister, said the following:

*When I came I never expected to be put in jail. They don't call it jail, they call it detention. But it is jail. I thought I would be free when I got to America. I came here to find peace and be able to live in peace.*

After six months in detention, he was granted asylum and released.

Imprisonment, and as such being treated like criminals, exacerbated the psychological symptoms of most asylum seekers studied, often individuals who had already experienced traumatic events. One woman, beaten and raped in prison in her country of origin, reported,

*I have great fear, I feel like I'm reliving it at times. When I think about what happened to me-I feel the pain in my body again-like it's happening to me... to experience what I experienced before arriving to this country and then being put in prison, that added to my suffering.*

## **Background and Purpose of Study**

The criminalization of immigrants seeking political asylum reflects a trend by governments of industrialized nations. These nations are increasingly demanding that asylum seekers have complete documents from their home governments – who are often the persecutors – in order to enter without being imprisoned. It occurs at a time when there is a growing

number of refugees and asylum seekers fleeing torture and other human right abuses.

Throughout the United States, approximately 5,000 asylum seekers are estimated to be held in detention, although reliable statistics are unavailable. One of the largest concentrations of detained asylum seekers in the US is in the New York metropolitan area where, at any given time, approximately 500 individuals are detained in two INS contract facilities, and an unknown number of individuals are detained in county jails. Parole rates and length of detention among asylum seekers arriving without proper documentation in the US appear to vary widely across the country, with the New York and New Jersey districts reportedly having much lower rates of parole. Furthermore, since September 11, 2001, concerns have been raised that parole rates nationally have likely decreased.<sup>3</sup>

The practice of detaining asylum seekers in the US and other nations has greatly concerned health professionals and human rights advocates, in part because of the potential detrimental effects of detention on the mental health of asylum seekers. Many asylum seekers have suffered trauma, such as torture, prior to immigration, which contributes to high rates of psychiatric morbidity in this population. Detention may exacerbate prior symptoms or even foster development of new problems. Systematic research on the health of detained asylum seekers has been extremely limited, chiefly due to difficulties gaining access to detention centers.

## **Summary of Methods<sup>4</sup>**

For this study, the INS permitted access to detention facilities and jails in New York, New Jersey and Pennsylvania. However, citing confidentiality reasons, the INS denied Bellevue/NYU-PHR researchers' request for the access necessary to conduct a random sampling of detained asylum seekers. Instead, six local organizations<sup>5</sup> that provide pro-bono legal representation to detained asylum seekers were asked to contact all of their detained asylum-seeking clients and inquire about their willingness to participate in the study. Those who consented were interviewed. Detainees were informed of the voluntary nature of the study and that participation (or refusal) would not affect their asylum applications.

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<sup>3</sup> See Chapter II for a more complete review of detention of asylum seekers. The INS has failed to provide statistics relating to detained asylum seekers, even though a federal statute required it to provide this information. ( See: Acer , E. "Living up to America's Values: Reforming the US Detention System for Asylum Seekers." *Refuge* Vol. 20, #3, 44-57. Centre for Refugee Studies, York University, Canada, 2003.)

<sup>4</sup> For a detailed description of methods, see Chapter III.

<sup>5</sup> Organizations which provided referrals for this study included the Lawyers Committee for Human Rights, the Hebrew Immigrant Aid Society, New York Association for New Americans, Catholic Legal Immigration Network, American Friends Service Committee, and Circle York.

Detained asylum seekers participating in the study were interviewed by physicians experienced in evaluating and caring for refugees and asylum seekers, with the assistance of experienced translators when necessary. Interviews were conducted in private areas, using a standardized questionnaire that included questions about detainees' experiences before and during detention. Assessment of psychological symptoms was conducted using standardized psychological questionnaires (the Hopkins Symptom Checklist-25 (HSCL-25) and the PTSD portion of the Harvard Trauma Questionnaire (HTQ)). Study participants were asked to provide additional narrative information about their experiences in detention, which was transcribed by the interviewer.

This study was a survey of individuals' experiences and it was not within the scope of the study to corroborate accounts of events described by study participants. In evaluating the narrative information, investigators made general determinations regarding the credibility of information provided by study participants, including detail, consistency, affect, and clarity. It was not, however, part of this study design to make independent determinations (such as interviewing detention center staff) regarding the accuracy of what the participants reported. Accordingly, the information in this report that comes from study participants should be understood as the participants' recollection and perceptions of their experience, and not necessarily as a full and complete accounting of each event.

## **Characteristics of Study Participants**

A total of 70 asylum seekers (56 men and 14 women) detained in two INS detention centers and 3 county jails in New York, New Jersey and Pennsylvania were interviewed for this study. The average age of study participants was 28 years (range 15-52). The majority of participants were from Africa (n=54, 77%) and included 16 African countries. Seven were from Eastern Europe, 4 from Asia, 3 from Latin America and 2 from the Middle East.

Participants reported numerous traumatic experiences before immigration. Seventy-four percent described experiences consistent with international definitions of torture.<sup>6</sup> Sixty-seven percent reported having been

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<sup>6</sup> Torture is defined in the UN Convention Against Torture as: "Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." United Nations: Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. June 26, 1987. In: Center for the Study of Human Rights, Columbia University. *Twenty-Five Human Rights Documents*. New York: Columbia University. 1994

imprisoned in their country of origin, 59% reported that a family member or friend had been murdered, and 26% reported having been sexually assaulted.

The median length of detention at the time of interview was 5 months (range 1 month to 4½ years). As of April 2003, 40 individuals (57%) have been granted asylum in the United States. Four other individuals were given relief (i.e., granted protection under the UN Convention Against Torture or allowed to travel to another country where they were granted asylum). Final asylum decisions are still pending for 12 individuals, and fourteen individuals' cases (20%) have been denied, including appeals. Among the 40 individuals granted asylum in the US, the median length of detention was 7 months (mean: 10 months; range: 2 months to 3½ years).

## **Summary of Findings**

### **1. Poor and Worsening Mental Health**

The findings of this study indicate that the psychological health of detained asylum seekers is extremely poor and worsens the longer asylum seekers remain in detention. Detention appears to be a substantial contributing factor to this psychological distress. Rates of anxiety, depression and PTSD symptoms were extremely high among detained asylum seekers. Clinically significant symptoms of depression were present in 86% of detainees, anxiety was present in 77%, and PTSD in 50%. Further, study doctors documented that these levels of psychological distress worsened as the length of detention increased. While more than half (58%) of the asylum seekers interviewed reported having poor psychological health at the time that they fled their country, 70% stated that overall their mental health had worsened substantially while in detention.

The testimonies of the detained asylum seekers in this study powerfully articulate how detention harmed their mental health and highlight several dimensions of this harm. Confinement and the loss of liberty profoundly disturbed asylum seekers and triggered feelings of isolation, powerlessness and disturbing memories of persecution that asylum seekers suffered in their countries of origin. Asylum seekers were treated as criminals, a demeaning status, even though they were not convicted of any crime. The length of time in jail and uncertainty of its duration contributed to the deterioration of mental health. Even when conditions were relatively good, the experience haunted them. Approximately one quarter of the study participants reported suicidal thoughts while in detention. Two individuals reported having attempted suicide. Even those who won release were burdened with continued symptoms from their INS imprisonment.

Asylum seekers poignantly described symptoms of depression, anxiety and PTSD that they were experiencing while in detention. Many recalled the onset of mental health conditions in their homeland after torture or

persecution, yet most emphasized how detention had aggravated these symptoms. A 27-year-old man who was arrested and beaten in his country of origin because of his political associations, and witnessed his father's murder, reported the following:

*This place makes me think a lot about what happened to me in my country. I am not free and this reminds me of when I was in prison in my country... I think too much about whether I am going to be sent back to my country and there I face death... I try not to think a lot about what happened, but I can't control it. When I think about what happened, I feel weak and hopeless... I'm depressed in here and I feel everything is getting worse.*

One detainee was a young woman from West Africa whose husband was tortured in prison as a result of his political beliefs. After he fled to the US, she was raped on three occasions by soldiers who were searching for her husband. When she came to the US to join him, she was placed in detention.

*Since being in detention, I think more and more about the rape. I think about being with my husband and having freedom. Here I am locked up, and every day is the same. And I'm thinking about what happened to me...I keep seeing those people and what happened to me.*

She was held in detention for 9 months, before being released and allowed to apply to share her husband's asylee status.

Detained asylum seekers found their prison environment and being treated as a criminal extremely stressful. Many detainees attributed their poor mental health to this criminalization. For example, one detained asylum seeker said:

*It was a big surprise to come here and be put in jail even though I never killed anyone or did anything bad.... I had high hopes when I came here but my first experience at the airport was to be handcuffed, made to wear a prisoner's uniform and I became shocked... since that time, my health has worsened.*

This detainee lamented his complete disconnection from the outside world.

*Since I am in detention – till now I never see the sky – only when I had to go out one time to see a dentist. Not outside- Everything is inside- no windows. Since coming here, I never see the moon, I never see the sun. I never saw outside. Even outdoor recreation is inside. It makes you crazy and gives you too much trouble.*

Another asylum seeker was a young woman who was persecuted in her country of origin because of her religion. Forced to flee her village, she witnessed the murders of family members, and experienced beatings and

sexual assault. Upon arrival in the US, she was held in detention for approximately 5 months before winning asylum. She reported that while in detention she experienced significant feelings of nervousness and sadness, which had started before she arrived in this country, but had markedly worsened. She reported frequently experiencing nightmares in which soldiers are coming after her.

*In the night I wake up really shaking and my heart is pounding. Sometimes I don't sleep. Sometimes when the door opens I jump. I feel like the soldiers are coming at me. If I wasn't in detention, I could go for a walk, but here you are shut in with nowhere to go.*

The uncertainty about the length of detention was another significant stressor for many subjects. After six months in detention, one subject said:

*The main problem is that we don't know what is going to happen. At least with a prison sentence you know you are lessening your time. But here, even after three years they may still send you back... In my country I was in prison for five days and there were beatings, but then they release you after five days. But you get here to a democratic country, and it goes on and on with no release. It's another kind of torture – mental torture... No one knows we're here.*

Invariably, even those that acknowledged respectful treatment by detention center staff were deeply troubled by their experience, and felt that imprisonment was unavoidably prejudicial to their mental health, regardless of the quality of the jail. One asylum seeker, who reported being raped in an underground cell where he was held by kidnappers in his country, said:

*I feel a relief that it is well-lit and safe here, compared to my country. But this is a jail, nevertheless... you've replaced one disease with another.*

The trauma of imprisonment pushed some to their limit. Twenty-five percent reported suicidal thoughts, and two actually attempted suicide, but survived. One woman, who was forced to flee her country because of her family's political affiliations, attempted to hang herself but was stopped by friends in her detention center dormitory.

*Before detention, I had never thought of killing myself. I had never had such an idea, my goal was to save my life. It was when I got into detention, that I started losing hope and thought that it is useless to live. In my mind, I just kept thinking there is no reason to live and I thought about what would happen to me if I was sent back to my country- I thought I would be killed if I was sent back. So I thought it would be better to just get it over with now rather than to be sent back.*

In many facilities, the response to a suicidal detainee is to put them in segregation or solitary confinement. This woman and a number of other detainees interviewed cited this practice as a reason for not telling health staff about suicidal thoughts. Commented this woman:

*They would have put me in a room that was much worse...  
Where I would have been alone and that would have been much worse.*

After 11 months in detention, she was granted asylum and released. Since release, she denies having any suicidal thoughts.

### *Limited Mental Health Services*

Despite the high level of psychological symptoms and a large proportion of individuals who reported interest in receiving counseling (69%), such services were either not available or limited and not sustained. Individuals often did not request counseling because they were unaware of its availability or told there were no such services. Only 6 individuals (13%) who wanted counseling received this service from the detention center. An additional 7 detainees reported receiving support which they considered counseling from non-INS sources, such as religious or volunteer visitors. Although medications were provided to several detainees, approximately 40% of individuals wanting medications did not receive them. Again, this was in part due to detainees not knowing whether such medications were available. Another subject reported a positive reaction to counseling she received from a volunteer visitor, and expressed a desire for more.

*If there was someone to talk to about my problems, I would be interested in talking to them. It's good because it comforts you and you feel you are not alone.*

Despite improvement of symptoms after release, INS detention, like many of the traumas experienced by asylum seekers in their countries or origin, was often a source of persistent chronic suffering. One woman who was reinterviewed after being granted asylum and released reflected on the impact of detention.

*Being in detention was like being dead. I didn't have a life or hope for life, I just felt dead. There were times I couldn't even imagine that one day I would be free. I'm very happy because I have my liberty, but I feel that the detention adds to my problems now of fear. What I experienced there is very difficult to forget. Every day I think about my life in prison.*

## **2. Physical Health and Dissatisfaction with Health Services**

The detained asylum seekers interviewed for this study were relatively young (mean age 28) and, prior to experiencing the persecution which caused them to flee from their countries of origin, almost all reported having been in good health. However, 34% described their physical health as

poor at the time that they were interviewed. Detained asylum seekers reported numerous health problems. Nearly 90% reported having at least one physical health problem they considered serious. Musculoskeletal pain, headaches and gastrointestinal problems were the most common complaints. Nearly half the individuals interviewed reported that their physical health had worsened during the time they were in detention. It is likely, given the high level of psychological distress found in this population, that somatization<sup>7</sup> is a significant problem.

One woman, who was raped in her country of origin commented:

*When I think about what happened to me, I feel the pain in my body again-like it's happening to me... I feel like if I could have contact with family and friends they could console or comfort me. But to experience what I experienced before arriving to this country and then being put in prison, that added to my suffering."*

One individual linked severe headaches he was experiencing with symptoms of depression.

*Here, when I feel upset or sad, I get very bad headaches, and this happens a lot. I also get shaky when I feel nervous.*

While medical services are available on-site in all detention centers, many detainees reported difficulty with access to medical care, particularly specialized services, including dental care. Fifty-six percent of the individuals with serious health problems reported having at least one serious condition for which they had a lot of or extreme difficulty accessing care.

One detainee reported that, while attending a peaceful demonstration in his country of origin, he suffered a gunshot wound to the groin when police fired into the crowd, and that the bullet had remained lodged there. While he was in detention, the pain in his groin worsened. He reports being told that he would have to wait until he was released to have the bullet removed. He remained in detention for more than 2½ years.

Another subject, who reported that after being subjected to tear gas at a demonstration in her country, she subsequently had chronic tearing and eye pain, which improved with eyeglasses. After fleeing her country, the subject lost her glasses. At the detention center, she repeatedly complained about needing glasses, but was told that they were "no longer provided."

*I like reading. It's the only way I keep myself busy here. And when I read, I strain my eyes, and so this makes it difficult for me. When I force myself to read, I get headaches. This is stressful for me, since I can't read. I like to read to get my mind off things, but I can't.*

On follow-up interview, the detainee reported that after more than two

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<sup>7</sup> Somatization refers to physical symptoms without a detectable or known organic basis, that are likely psychological in nature, (i.e. related to mental health problems such as anxiety or depression).

years in detention, she finally got glasses.

Among the subjects who obtained medical services in detention, dissatisfaction with the quality of care was common. Approximately fifty percent of the asylum seekers interviewed felt the overall quality of the medical care they received while in INS detention was poor. Reasons cited included repeatedly being given the same medication with little or no effect and dissatisfaction with interactions with health staff. Much of their dissatisfaction with the health services may have to do with the fact that many of the complaints may have been manifestations of the psychological stress, not adequately being addressed and exacerbated by prolonged detention.

The recurring sense of sadness and frustration with being treated as criminals was reflected in their views of health care in detention as well. For example, one detainee had been hit on the head before fleeing her country. She subsequently had headaches and dizziness. The detention center doctor referred her to a local hospital to see an eye doctor. She reports the eye doctor did not talk with her but just gave a report to the guards.

*It's very bad. You are brought to the doctor in chains. You're at a big hospital and everyone is looking. You're in chains and in pain. They chain you both at your feet and hands, and it's very uncomfortable.*

### 3. Conditions and Treatment in Detention

Once transported to detention facilities, study participants frequently reported feeling degraded and being treated like criminals. One man, who had been tortured in his country of origin because of his political associations, stated:

*If someone had told me that such a place existed in America when I was in my country, I would never believe that, because America is supposed to have human rights. In my country even though I became nervous, it wouldn't show, I could handle it. Because in my country, when I got nervous, I could take a walk, go somewhere else or breathe different air. But here it is the same routine day and night. 22 hours a day I'm in bed just lying in [my] bunk.*

Another detainee who was imprisoned and severely beaten in his country of origin because of participating in peaceful demonstrations commented: "It's like I fled one prison only to be placed in another."

One detainee said his fears of being perceived and treated as a criminal were reinforced when he witnessed an officer telling another asylum seeker: "You have no rights. See the orange clothes you're wearing? Those are for criminals with no rights."

Overall impressions of treatment by detention center staff varied.

Forty-three percent of individuals described their general treatment by detention staff as neutral, 33% reported generally being treated well, and 24% reported generally being treated poorly. Even asylum seekers who spoke favorably of how they were treated by detention staff, nevertheless regarded their confinement as debilitating. For example, one detainee noted:

*They never do anything to harm me. They are only here to do their duties. Some of them are very nice and talk to you... Even though the guards treat me ok, my situation here – being in prison and treated like a criminal – is very bad.*

Fifty-four percent reported experiencing verbal abuse while in INS detention, including being called criminals and liars and being yelled and sworn at, often in circumstances they did not understand. One asylum seeker said:

*They talk very badly. They often say, ‘Shut up,’ and ‘Fuck you,’ When I was in the segregation dorm, the guard said to me, ‘Why did you leave your country and come here to the United States, just to make problems for us?’... I felt very scared when he said that to me. I came here seeking protection, but the guards’ behavior forced me to realize that this is not a safe place.... Sometimes, when I have been crying in my dorm, the guard bangs on the window and yells at me to ‘Stop crying!’*

Some detainees remember being most offended by guards making light of their situation. For example, many reported being told to ‘Go back to your country’ if they had a complaint.

One young West African man had been repeatedly arrested for his peaceful political activities and endured torture and severe malnourishment in prison. He recounted:

*Sometimes if we ask for soap or other things the guards will take a long time to get it and they sometimes say if you don’t like the way things are here you can go back to your country. Everyone here has witnessed that.*

A female detainee who had been beaten by soldiers in her country of origin reflected on what she saw as consistent bullying of detainees by detention center staff:

*The guards are always yelling. They always want us to fear them. They don’t communicate. They shout...I don’t think they understand what we have been through. They shout at us. They curse. Someone will tell you, ‘Do you think this is a hotel?’ But you are a helpless person. I don’t know whether they are trained to deal with asylum seekers.*

Several asylum seekers interviewed (9%) reported incidents of physical

abuse For example, while being taken back to detention after visiting an outside dentist, one detainee asked that painfully tight ankle shackles be loosened.

*[The guards] started laughing at me and humiliating me.... It was very painful.... The guards pulled me on my elbows and on my knees. This was on the cement and it was very painful for my knees. I was in shock after this and very nervous—shaking and trembling.*

Another detainee reported several incidents of physical mistreatment subsequent to his high-profile involvement in a hunger strike. After complaining about a guard's behavior, he claims that he was falsely accused of threatening the guard, and reported the following attack.

*They told me to follow them to segregation and I did. When we got to segregation, I said to the supervisor, 'You are a liar, you know I didn't do anything.' Then the supervisor said, 'Somebody needs to shut your mouth for you,' and he hit me in the chest with his fist. When he hit me in the chest, I fell back and hit my head on the wall. I hit my head hard.*

At that point, the subject reported that several other detention staff ran into the cell and held him, including one who held his neck in a choke hold.

*"I was yelling but not resisting. I was saying, 'You people are lying, I didn't do nothing, I was just complaining about what happened.' That was when one of the officers started kicking me..."*

Detainees also classified as abuse what they often perceived as threatening and arbitrary use of solitary confinement, generally referred to as "segregation." In one facility, the segregation unit was commonly referred to as "the hole." Forty percent of detainees interviewed reported having been threatened with segregation while in detention, and 26% were actually placed in segregation at some time during their detention. Nearly all individuals (approximately 90%) had witnessed individuals being placed in segregation or threatened with segregation.

For a person who is affected by post-traumatic stress, the prospect of solitary confinement can be especially fearsome. Detainees argued that the frequent use of segregation in response to minor offenses was cruelly disproportionate. One asylum seeker, who was placed in segregation for three weeks after resisting deportation, described the experience:

*I was sick in my mind, had nightmares, stomach pain, couldn't sleep, always I was thinking someone's going to kill me. I don't know why they kept me to a small room with no people there. I felt like I was dying. I cannot breathe there."*

He was subsequently granted asylum.

Another asylum seeker complained about the constant threat of segregation,

*If they ask you to do something and you refuse they will take you to segregation. For example, last week, we were walking down the hallway for religious service, my friend and myself we all were talking. So one of the officers said: 'If you don't shut up we will take you to segregation.' They threaten you with segregation for anything. For example if they come into the dorm and you haven't made your bed, they'll threaten you with segregation.*

The INS frequently incarcerates asylum seekers in county jails, even though this contravenes international standards. Approximately 20% of asylum seekers in this study were held in county jails at some point during their detention. In county jails, asylum seekers are often held in the same cells with convicted criminals, including violent offenders.<sup>8</sup> These jails subject asylum seekers to the same policies as the general criminal population.

Asylum seekers described increased fear after being transferred from INS detention centers to county jails:

*Here, I'm scared. In [the detention center], you're among people of your own kind, people who have gone through troubles in their own countries and fled from persecution. They could understand your plight... I don't think the guards here know I'm an asylum seeker. They just think I'm a criminal. Or they don't care.*

The INS moves detainees to other facilities without notice and often in the middle of the night. Several asylum seekers mentioned these surprise transfers as a source of distress, and a reminder of their profoundly disempowered status. Aspects of this practice echo techniques used in the countries of origin of many of these asylum seekers to break the will of political prisoners by instilling them with fear and uncertainty about their fate. An asylum seeker who said she was tortured in prison in her country of origin described her own experience being moved to a county jail.

*They woke me up at 4 a.m. and told me to pack my stuff. They didn't tell me where I was being taken. They took me to Processing and made me change into the clothes I was wearing when I came to this country. They put shackles on my legs and handcuffs on me, and a chain around my waist. And they gave me my bags and took me to the van. I wasn't sure if I was being taken to the airport to be deported. They didn't tell me anything. I was very frightened.*

She reported that her lawyer was not informed.

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<sup>8</sup> York County Prison has a separate area where asylum seekers are held, however, on occasion, asylum seekers may be kept with the general population.

*They didn't let me use the phone to call anyone, which meant they didn't want anyone to know. Something like this frightens me a lot.*

Twelve individuals (17%) reported experiencing difficulty practicing their religion while in INS detention. For example, one detainee commented:

*I'm fasting now and can't keep food until evening – it gets thrown out. When I went to speak to an officer I was told that I and other Muslims should not be fasting now anyway. Why were we fasting?*

Several subjects spoke of unfair limits imposed by the INS on spiritual leaders, who many detainees welcome as a source of faith and comfort. For example, one detainee reported,

*There is an Anglican minister who comes every Thursday evening. The service ran over by 1 minute. He wanted to say one more prayer - the guard, and INS officers came and said he had to stop right then. He told them he wanted to say one more prayer and when they said no, he got annoyed. They said he wouldn't be allowed to come back. Last week he came and an INS officer interrupted the service about 15 minutes early and said it is over. We did not take communion and I didn't see him have time to say the last prayer. I don't know if he is being allowed back.*

Sixty percent of individuals reported that they did not feel that they had adequate access to recreational activities. Commented one detainee:

*They have 'outdoor' for 1 hour but it is very small... to call it outdoor is misleading, it's a covered roof, with a little opening... Even in my country when I was in prison there was at least time when I could go outside.*

A woman from Africa who was granted asylum remembered her confinement:

*In detention there were not enough activities. The #1 activity was thinking and being sad. Outside, I think a lot but I am free now.*

This asylee said one of the most important changes for her since release was “to breathe fresh air again.”

#### **4. Harsh Treatment Upon Arrival in the United States**

Asylum seekers come to the United States seeking safe haven from persecution but, as this study documents, instead of being welcomed they are commonly treated like criminals. Many of the individuals interviewed for this study reported significant difficulties upon arrival in the United States. Half the individuals interviewed for this study reported inadequate privacy for interviews conducted at airports-often at open counters- during

which asylum seekers discussed intimate and traumatic details of their past. Of even greater concern, most (66%) of the asylum seekers interviewed for this study reported that they felt their right to asylum was not adequately explained to them at the airport. These findings support concerns previously raised by human rights organizations that asylum seekers are being denied entry without due process.

Many asylum seekers reported being shouted at, called liars or generally treated poorly by the INS officers interviewing or handling them. Twenty-seven (39%) reported experiencing verbal abuse while at the airport. Six individuals (9%) reported experiencing physical abuse while at the airport.

Several asylum seekers interviewed for this study reported that officials tried to deport them by forcing them back onto airplanes. One individual, a 30-year-old man, was repeatedly tortured in his country of origin as a result of his democracy activism. Upon arrival in the United States, he described the following:

*I made a statement which they wrote down, and they asked me to sign it. I said I could not. What I said was not what interpreter said... A big man came in while I was handcuffed from behind and told me to sign. He physically forced me to make fingerprints from behind... When they forced my hand, my head knocked on the door handle and cut my head. It was bleeding a lot... When I saw the plane, I cry to the INS officer, if they send me back they will kill me... I held on to the steps near the entrance of the terminal of the plane, so they took me on top of them. There were 4. I moved and I fell down and hurt my shoulder. So then they took me back."*

After two and a half years in INS detention he was granted asylum and released.

Those fortunate enough to articulate fear of persecution or a desire for asylum and not to be deported immediately, often ended up in chains, strip-searched or otherwise being treated like a criminal. Nearly 70% of individuals reported being handcuffed/shackled upon arrival in the United States. This further heightened their anxiety and confusion, especially because for some it was reminiscent of the persecution they suffered in their homelands.

One asylum seeker reported he was strip-searched, shackled to a chair for 10 hours and not told where he was going when taken to an INS detention center in New York City.

*In my country what we hear about America is that it's number one in human rights...But to my surprise I found myself in handcuffs, going to prison.*

Despite the fact that most individuals were asked about traumatic,

intensely personal events they had experienced in their countries of origin, privacy was woefully lacking at airports. One woman, who was arrested for attending peaceful pro-democracy demonstrations in her country of origin, and who was beaten and sexually assaulted during her imprisonment in Africa, reported the following after her arrival in the US:

*They asked me at the counter with lots of people around, why I couldn't go back I told him that I am afraid of the police in my country. Then the other INS officer started laughing and said, 'Most of you when you are caught, you say you are afraid to go back.'*

Another asylum seeker described his encounter at an airport as follows:

*I was at a counter. There was no privacy. I was afraid that others might hear what I was saying and tell my government. There was no privacy at all... After they interviewed me they started yelling at me, 'You have to tell the truth! You have to tell the truth!' I was scared that maybe they would tell my government. They didn't explain, they just shouted at me.*

Asylum seekers frequently reported that they felt their right to asylum was not adequately explained to them. One young man who had been tortured for his peaceful political activities reported being told upon arrival in the US: "There is no political asylum here. No asylum! No asylum!" "After, I was trembling, I became very frightened."

Inadequate interpreter services were also a matter of concern for several asylum seekers. Twenty percent of individuals who felt they needed an interpreter reported that they were not provided with one. For example, one individual who spoke little English described the following:

*No interpreter was provided. No one explained my rights. If I did not say something, I think they would have sent me back.*

Besides several reports of dissatisfaction with translation, some asylum seekers complained that the INS compromised their safety and caused danger to their families by using translators linked to the governments that they were fleeing from. One of these subjects reported that immigration enlisted an airline employee from his country's national airline to translate.

*The interpreter was [from my country]) and she would be afraid to translate things. [She] said to me don't apply for asylum here in the US. The woman called the Consulate [from my country] and put me on the phone and I was asked why are you applying for asylum. I slammed the phone down. This woman sent a fax to my country telling them my name – this made me very afraid. If I didn't have this problem I wouldn't have fled. – I wouldn't have left my family.*

When transported from place of entry to the detention facility, most indi-

viduals (77%) reported that officials did not tell them where they were being taken. For many asylum seekers, similarly secretive trips to detention facilities in the hands of government officials were the prelude to torture and incognito detention in their home countries. Reported one asylum seeker:

*Being led from the airport, I was shackled on my hands, stomach and legs. I had no idea where I was being taken. At that time, I was really afraid.*

### **Inappropriate Use of Dental Examinations for Age Determination**

Despite questionable accuracy, dental examinations (in some cases coupled with bone X-rays) are often used by the INS to evaluate the actual age of individuals claiming to be under 18. Upon arrival, three individuals in this study who reported that they were under 18 years of age underwent dental examinations. According to the results of these exams, they were older than 18 years and were sent to adult detention facilities. One young girl, who claimed to be 15 years old, said she was challenged and berated by the INS officers.

*At the airport, they asked me where I was going? I said ‘to my mother’ who was in Canada. They asked me who the passport belonged to and I said I didn’t know. They asked me how old I was. I told them I was 15 – a woman in uniform said I was lying. They told me ‘We’re going to see if you’re 15.’ Then they brought me to the dentist.*

The INS detained her in an adult detention center for nearly six months. Subsequently, the INS released her and she was reunited with her mother in Canada, who corroborated her daughter’s age. Canadian authorities accepted the family’s claim that the girl was a minor.

### **Implications of the Study Findings**

The findings of this study suggest that detention is a significant stressor for asylum seekers, resulting in worsening of psychological symptoms. Asylum seekers in detention do not appear to be receiving adequate mental health services. Furthermore, this study raises concerns about the manner in which asylum seekers are treated both at the time of arrival in this country and while in detention. Safeguards at points of entry for informing asylum seekers of their right to asylum may not be adequate.

This study supports assertions that detention has a harmful impact on the health of asylum seekers and that in order to promote the health and well-being of asylum seekers, they should not be imprisoned. Rather, alternatives to detention should be adopted and implemented in order to secure their release through parole or other such supervised release programs. Furthermore, when it is necessary to detain, there is a need for improved access to mental health services for detainees.

Limitations of this study include the following: 1)small, non-random sample; 2)reliance on self-report data with the potential for under or over reporting of symptoms and events, 3)use of symptom checklists rather than formal psychiatric interviews; 4)physical examinations were not conducted nor were medical records reviewed.<sup>9</sup>

## **RECOMMENDATIONS**

### **I. Ensure Parole for Asylum Seekers**

Asylum seekers, generally, should not be detained. Nationwide, the US should use alternatives to imprisoning asylum seekers, as such alternatives can ensure humane treatment of this vulnerable population, without sacrificing national security. Long-term detention does not identify security threats and contravenes due process, international law, and human rights standards. Parole to community-based sponsors, after appropriate government security and identity checks has proven successful in at least four projects before September 11, 2001.<sup>10</sup>

A uniform, national policy should be implemented where parole and supervised release of asylum seekers is the norm. Adequate funding for alternatives to detention should be ensured. Detention should occur only in cases where the Department of Homeland Security (DHS) makes an individualized determination of the need to hold a specific asylum seeker and should deliver the decision to each asylum seeker specifying the security concern or other reason for detention. When detention is deemed necessary, regular six-month reviews of the necessity of their continued detention should be required.

### **II. Ensure Adequate Safeguards at Points of Entry to Protect the Rights of Asylum Seekers**

The expedited removal process has led to mistreatment of asylum seekers in a significant number of cases, as this study and others have demonstrated. Reform is necessary to ensure that, consistent with international law, all those who articulate past persecution, need for safe haven, or fear of persecution or return, are able to have their claims heard. Asylum seekers should not only be heard by an enforcement officer at the port of entry. Ideally, all asylum seekers should have a hearing with an immigration judge; alternatively, asylum officers or DHS officials with similar training should conduct these interviews.

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<sup>9</sup> See Chapter X: Study Limitations for a more complete discussion of study limitations.

<sup>10</sup> See Chapter II: Background for more on the Vera Institute of Justice's Appearance Assistance Project, Lutheran Immigration and Refugee Services' Project in Ullin, Illinois, Refugee Immigration Ministry's Asylum Assistance Program and Catholic Charities of the Archdiocese of New Orleans Asylum Assistance Project.

At a minimum, adequate safeguards should include insuring that asylum seekers can communicate in their own languages when speaking with DHS officials and that non-citizens are adequately informed of their right to asylum. Individuals interacting with potential asylum seekers at points of entry, especially officers who conduct the interviews, should receive appropriate training. DHS should ensure that all potential asylum seekers are adequately informed of their right to apply for asylum. Privacy should be ensured during any interviews and asylum seekers should not be shackled during interviews or waiting periods. Given the findings, outside monitoring of these procedures at points of entry, such as airports, is urgently needed and should be permitted.

### **III. Unaccompanied Minors Should Not Be in Detention and Dental and X-Ray Examinations Should Not Be Used to Determine a Young Person's Age**

Unaccompanied children asylum seekers lack legal representation and are often subjected to detention in adult facilities. The INS had regularly subjected individuals who said they were under 18 to dental and X-ray exams to determine age, although medical experts have routinely discredited the accuracy of such tests. Dental tests should not be relied on to determine age; in the absence of evidence, asylum seekers who claim to be under 18 should begin their legal processing through the mechanisms designated for minors.

Whenever possible, juvenile detention facilities should release unaccompanied minors to foster care. Minors should also be provided with guardians ad litem and legal representation to ensure that their protection, through Congressional allocation of funding and/or linkage with pro-bono legal groups.

### **IV. Treatment and Conditions Must Improve for Those Asylum Seekers who are Detained**

Conditions under which asylum seekers are confined must be consistent with established international human rights and confinement standards. The former INS' development of Detention Standards was an important step and DHS should ensure that facilities adhere to the Detention Standards. However, further efforts must be made to insure humane conditions. Segregation/solitary confinement should be restricted to cases where it is absolutely necessary for the safety of the asylum seeker or the facility. Asylum seekers should not be confined with those incarcerated through the criminal justice system. Officers and staff working in facilities where asylum seekers are detained should be made aware of the non-criminal nature of their incarceration, and receive specialized training in working with this unique population. Detention centers should be less restrictive, allowing greater freedom of movement, access to visitation, access to personal belongings, and freedom for religious practice.

Non-governmental organizations serving immigrant and refugee populations should be allowed to regularly visit detainees and provide services. These organizations, along with families and friends of asylum seekers, should be allowed increased access.

## **V. Improve Access to and Quality of Health Services, Including Mental Health Services, to Detained Asylum Seekers**

Adequate mental health services should be made available to detained asylum seekers. This includes individual and group counseling as well as appropriate evaluation and prescription of medications. Detained asylum seekers should be made aware of the availability of such services. Additionally, non-governmental organizations willing to provide psychosocial support for detained asylum seekers should be allowed appropriate access to detention facilities.

Detainees should have improved access to specialized medical services, including adequate dental care. Medical personnel should receive specialized training in caring for asylum seekers, which includes identifying and responding to survivors of torture and persecution and addressing their psychosocial needs. DHS should ensure adequate outside review of its health care including expertise for the special health care needs of asylum seekers. In making decisions about parole, DHS should give increased consideration to the mental health of detained asylum seekers. Furthermore, inadequate access to needed specialized medical services, as well as mental health services, should constitute grounds for parole.

It must be acknowledged that the circumstances of detention can significantly impede a detained asylum seeker's recovery from mental distress and/or mental disorders such as PTSD and major depression that they may be suffering due to traumatic experiences in their country of origin. Likewise, it must be acknowledged, that the circumstances of detention may precipitate PTSD and major depression among individuals who were previously coping with traumatic events experienced in their countries of origin. Indeed, because the conditions of detention may be so deleterious to the mental health of asylum seekers, significant changes in the detention system should be undertaken as soon as possible. If the US government continues to insist that asylum seekers be detained, all detained asylum seekers should be provided with humane surroundings, psychosocial support, on-going information about their status, and contact with families and the outside world (including legal counsel).

## **VI. Other Recommendations**

Based on the findings of this study, Bellevue/NYU and Physicians for Human Rights also recommend that the following measures be implemented to insure a humane immigration process:

- Stop the expansion of immigration detention (such as measures like Operation Liberty Shield)
- Improve access to legal services for asylum seekers, including legal rights presentations
- Fund “Know Your Rights” presentations sufficiently so they reach all detainees
- Give asylum seekers greater access to benefits accorded refugees
- Ensure that programs exist with adequate funding to meet the needs of torture victims, including those in detention as well as those released from detention
- Roll back the agreement with Canada restricting asylum seeker movement
- Implement, and not overrule Immigration Judge decisions releasing asylum seekers and other immigrants on bond or parole<sup>11</sup>
- Grant work authorization to asylum seekers paroled or otherwise released

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<sup>11</sup> This recommendation also applies to the Department of Justice.



# II. BACKGROUND

## Introduction<sup>12</sup>

There is a growing trend toward detaining asylum seekers arriving in industrialized countries.<sup>13</sup> Since the enactment of a 1996 immigration law, the Illegal Immigration Reform and Immigration Responsibility Act (1996 Act) in the United States, the Immigration and Naturalization Service (INS) has increasingly detained asylum seekers, who arrive without proper documentation, for months or even years pending adjudication of their asylum claims.<sup>14</sup> Detention in the INS system is more like jail or prison than the safe haven sought by people fleeing persecution.

Nationwide, up to 5,000 asylum seekers are estimated to be held in detention, although reliable government statistics on the number of detained asylum seekers are unavailable. Rates of parole for asylum seekers arriving without documentation are also uncertain with estimates in

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<sup>12</sup> This study was conducted with asylum seekers detained by the Immigration and Naturalization Service (INS). In March 2003, the Department of Homeland Security (DHS) assumed most of the functions of the INS.

<sup>13</sup> Silove D, Steel Z, Mollica R. Detention of asylum seekers: assault on health, human rights, and social development. *Lancet*. 2001;357:1436-1437;2. Amnesty International. *Lost in the Labyrinth: Detention of Asylum Seekers*. New York: Amnesty International. September, 1999 [Amnesty International, *Lost in the Labyrinth*]; Llorente, E. Immigration detention: a rapidly growing business. *The Record*. April 11, 1999; Lyall, S. Alien gate-crashers becoming a British hamlet's nightmare. *The New York Times*. June 27, 2002.

<sup>14</sup> Amnesty International, *Lost in the Labyrinth*; Llorente E, 1999; Lawyers Committee for Human Rights. *Refugees Behind Bars. The Imprisonment of Asylum Seekers in the Wake of the 1996 Immigration Act*. New York: Lawyers Committee for Human Rights. [LCHR: *Refugees Behind Bars*], 1999; Human Rights Watch. *Locked away: immigration detainees in jails in the United States*. New York: Human Rights Watch. September 1998 [HRW: *Locked Away*]

<sup>15</sup> Llorente E 1999; Silove D, Steel Z, Mollica R, 2001; *A Review of the Department of Justice Immigration Detention Policies: Hearing before the House Committee on the Judiciary*. (Written Testimony submitted by the Detention Watch Network). United States House of Representatives, December 19, 2001; LCHR, *Refugees Behind Bars*, p. 25; US General Accounting Office. *Illegal Aliens. Opportunities Exist to Improve the Expedited Removal Process*. Sept. 2000 Report to Congressional Committees, GAO/GGD-00-176, p. 5 and 62. LCHR. *Imbalance of Powers. How Changes to US Law & Policy Since 9/11 Erode Human Rights and Civil Liberties*. New York: Lawyers Committee for Human Rights. 2003.

the late 1990s ranging from 10 to 78%. Since September 11, 2001, however, there are concerns that parole rates are significantly lower.<sup>15</sup> The New York metropolitan area has the largest concentrations of detained asylum seekers in the US, where, at any given time, approximately 500 individuals are detained in two INS contract facilities, and an unknown number of individuals are detained in county jails where, in some instances, they share cells with convicted criminals. Parole rates are also thought to be considerably lower than elsewhere in the country<sup>16</sup>.

The practice of imprisoning asylum seekers in the US and other nations greatly concerns health professionals and human rights advocates, in part because of the potential detrimental effects of detention on the mental health of asylum seekers.<sup>17</sup> Many asylum seekers have experienced trauma prior to immigration, such as torture, which contributes to high rates of psychiatric morbidity in this population.<sup>18</sup> Detention may exacerbate prior symptoms or even foster development of new health problems.<sup>19</sup>

Around the world torture continues to be prevalent<sup>20</sup> and the number of

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<sup>16</sup> US National Council of Churches. People fleeing persecution held in worse than prison conditions in US (Press Release). April 20, 2001. Available at: <http://www.nccusa.org/news/01news38.html>. Accessed February 20, 2002; *INS Reform: Detention Issues Before the Subcomm. on Immigration of the Senate Comm. on the US Judiciary*, 105th Cong., 2d Sess. (1998). (Testimony of Doris Meissner, Commissioner, INS), 9/16/98 Cong. Testimony 1998 WL 180895353; LCHR, *Refugees Behind Bars*.

<sup>17</sup> Silove D, Steel Z, Mollica R, 2001; Lawyers Committee for Human Rights, *Refugees Behind Bars*; Human Rights Watch, *Locked Away*; Bunce C. Doctors complain about treatment of asylum seekers in Britain. *British Medical Journal (BMJ)*. 1997;314:393; Silove D, Steel Z, Watters C. Policies of Deterrence and the Mental Health of Asylum Seekers. *Journal of American Medical Association (JAMA)*. 2000;284: 604-611; Pourgouides C, Sashidharan S, Bracken P. *A Second Exile: The Mental Health Implications of Detention of Asylum Seekers in the United Kingdom*. Birmingham, UK: The University of Birmingham. 1996. Keller A, Caring and advocating for victims of torture. *Lancet*. Dec 21, 2002;360 Suppl:S55-6

<sup>18</sup> Silove D, Steel Z, Mollica R, *JAMA* 2001; Silove D, Steel Z, Watters C. *JAMA*. 2000; Silove D, Sinnerbrink I, Field A, Manicavasagar V, Steel Z. *Br J Psychiatry*. 1997; Watters C. 1998; Lawson MH. Seeking asylum in the UK after torture in Sierra Leone. *Lancet*. 1999;353:1365-1366. Begley M, Garavan C, Condon M, Kelly I, Holland K, Staines A. *Asylum in Ireland: A Public Health Perspective*. Dublin, Ireland: Dept of Public Health Medicine and Epidemiology, University College Dublin; 1999. Steel Z, Silove D, Bird K, McGorry P, Mohan P. Pathways from war trauma to posttraumatic stress symptoms among Tamil asylum seekers, refugees and immigrants. *J Trauma Stress*. 1999;12:421-435.

<sup>19</sup> Silove D, Steel Z, Mollica R, *JAMA* 2001; 11. Bunce C. *BMJ*. 1997; Silove D, Steel Z, Watters C. *JAMA*. 2000; Pourgouides C, Sashidharan S, Bracken P. 1996. Medical Foundation for the Care of Victims of Torture. *A Betrayal of Hope and Trust: Detention in the UK of Survivors of Torture*. London: Medical Foundation for the Care of Victims of Torture. October, 1994; Sultan A, O'Sullivan K. Psychological disturbances in asylum seekers held in long term detention: a participant-observer account. *MJA*. 2001;175:593-596; Steel Z, Silove DM. The mental health implications of detaining asylum seekers. *MJA* 2001; 175: 596-599.

<sup>20</sup> Amnesty International, "Take a Step to Stamp Out Torture," Amnesty Library, 18 October 2000, 4, June 2003 accessed at [web.amnesty.org/library/index/ENGACT400132000](http://web.amnesty.org/library/index/ENGACT400132000).

refugees and displaced persons is high. The 1996 Act set up a legal paradox. Asylum is a legal status designed to protect those fleeing persecution usually performed by governments or other official actors.<sup>21</sup> The governments that persecute asylum seekers are the same ones that either grant or deny passports and other official travel documents to these asylum seekers. For this reason, international law provides that asylum seekers should not be penalized for lack of documentation. (See Legal Standards chapter for more details.) Nonetheless, many people coming to the US who are deserving of asylum are imprisoned because of inadequate travel documents.

In the wake of the 1996 Act, health professionals, including several associated with Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, reported seeing detained asylum seekers in INS custody in a fragile state of health. These reports included clinical observations that detention appeared to worsen the physical and mental health of asylum seekers, especially those who had been subjected to torture and trauma.

Systematic research on the health of detained asylum seekers has been extremely limited by difficulties gaining access to detention centers. In Australia, for example, where a policy of mandatory detention of asylum seekers has been in operation for over ten years, repeated requests by independent researchers to access asylum seekers have been denied.<sup>22</sup> Despite these restrictions, a few reports in Britain and Australia have identified high levels of psychological distress among selected groups of detained asylum seekers.<sup>23</sup> These reports, however, were based on small samples and did not use standardized instruments. There are no prior studies concerning detained asylum seekers in the US.

This study provides the first systematic, quantitative examination of the health of detained asylum seekers: their access to health care, their treatment upon arrival in the United States and while in detention, and the impact of post-migration detention on their physical and mental health.

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<sup>21</sup> Those seeking asylum in the US are reviewed under the criteria for establishing refugee status; see, 8 U.S.C. 1158. Those granted asylum, “asylees” are a subset of refugees. In the US, refugees are those people who have fled persecution and are determined by the US or other competent authority to be refugees, while still overseas. Asylum seekers are those arriving at the US border who say they have fled persecution, but who have not yet received official recognition of refugee status.

<sup>22</sup>Personal communication with Derrick Silove, July 2002.

<sup>23</sup>Pourgouides C, Sashidharan S, Bracken P, 1996; Medical Foundation for the Care of Victims of Torture, October, 1994. 20. Sultan A, O’Sullivan K. Psychological disturbances in asylum seekers held in long term detention: a participant-observer account. *MJA*. 2001;175:593-596. Steel Z, Silove DM. The mental health implications of detaining asylum seekers. *MJA* 2001; 175: 596-599.

<sup>24</sup> Charu Newhouse al-Sahli, “A Brief History of the Use of Immigration Detention” [History of Immigration Detention], Detention Watch Network News, Summer 2001, p.12

## Historical Background

For most of the 1800s there were no federal limits on immigration.<sup>24</sup> However, in the 1880s, a sharp spike in newcomers pressured the federal government to institute regulations.<sup>25</sup> Since 1889, Congress and the Executive branch have had the plenary power to establish immigration policy, largely free from judicial review. Immigration issues were deemed a matter of national sovereignty relating to a nation's right to define its borders.<sup>26</sup> In 1891, Congress passed the Immigration Act. In 1892, Ellis Island and its detention center opened.<sup>27</sup>

A second surge in immigration peaked in the years before World War I, with more than 10 million immigrants arriving on US shores, mainly from Eastern and Southeastern Europe. In reaction, the Immigration Act of 1924 established quotas that excluded Asians and limited immigration from Southern and Eastern Europe while raising quotas for persons from Western Europe. The law did not differentiate between refugees and other immigrants.<sup>28</sup>

## Changes after World War II

In the aftermath of genocidal crimes committed during World War II, the US was instrumental in creating the Universal Declaration of Human Rights, which states, "everyone has the right to seek and enjoy in other countries asylum from persecution."<sup>29</sup> However, the US has had a mixed history in its treatment of people who flee to the US to escape persecution. For example, the 1948 Displaced Persons Act discriminated against Roman Catholics and Jews, while maintaining a national origin quota system dating from 1924 that practically excluded Asians.<sup>30</sup>

The problem of massive numbers of uprooted persons following World War II led to an attempt to develop legal norms to protect refugees as a category distinct from other immigrants. The United Nations created the High Commissioner for Refugees and in 1951 adopted the Convention Relating to the Status of Refugees. The US did not formally and consistently incorporate the distinction between refugee and other immigration issues for decades.

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<sup>25</sup> History of Immigration Detention, p. 12.

<sup>26</sup> International Migration Policy Program at the Carnegie Endowment: Plenary Power Doctrine, <http://www.ceip.org/files/events/SupremeCourt.asp?6>, accessed 2 Jan., 2002.

<sup>27</sup> History of Immigration Detention, p. 12.

<sup>28</sup> State of Florida's Internet Portal, Health and Human Services, Refugee Service, Refugee Issues: Historical Perspectives [Historical Perspectives], p. 2 at [www.myflorida.com/cf\\_web/myflorida2/healthhuman/refugee/pdf/rshp.pdf](http://www.myflorida.com/cf_web/myflorida2/healthhuman/refugee/pdf/rshp.pdf), accessed 2 Jan. 2002.

<sup>29</sup> Article 14, Universal Declaration of Human Rights, Adopted and proclaimed by General Assembly resolution 217A (III) of 10 December 1948.

<sup>30</sup> Historical Perspectives, p. 2

In the US, the law regarding refugees and displaced persons amounted to a patchwork of ad hoc legislation. It included the “Displaced Persons Act” of 1948, the “Refugee Act” of 1953, the “Fair Share Refugee Act” of 1960, and the “Migration and Refugee Assistance Act of 1962,” none of which fully embraced the definition established under the Refugee Convention.<sup>31</sup> In 1965, Congress did amend the 1952 “Immigration and Nationality Act” (INA) to provide permanent protection for some “refugees.” But the law continued the US’s practice of geographic and ethnic bias and limited the meaning of the term refugee to those from communist regimes and countries in the Middle East.<sup>32</sup>

The US began to reform its immigration policies with the Immigration and Nationality Act of 1952 (also known as the McCarran-Walter bill), which retained the 1924 national origin quotas and gave preference to skilled immigrants and those fleeing communist regimes but eliminated race as a barrier. (The amendment of the Immigration and Nationality Act in 1965 finally replaced the national origins quota with hemispheric limits.) The 1952 Act broadened the grounds for deporting immigrants, but the Attorney General was given the authority to “parole” aliens into the United States for “emergent reasons” or “in the public interest.”<sup>33</sup>

Few immigrants were detained in the decades after passage of the Immigration and Nationality Act of 1952. In 1954, the US Attorney General announced a new detention policy whereby “only those deemed likely to abscond or those whose freedom of movement would be adverse to the national security will be detained.” All others would be released on parole, bond or supervision.<sup>34</sup> In addition, special programs were created for specific groups, such as the Cubans in the 1960s and the Indochinese in the 1970s and the Attorneys General during this period frequently used their authority to grant mass parole.<sup>35</sup>

## **The UN Protocol, the 1980 US Refugee Act and US Policies in the Late 20th Century**

In 1968, the United States acceded to the UN’s 1967 Protocol Relating to the Status of Refugees, which bound it to both the Protocol and the key provisions of the 1951 Convention Relating to the Status of Refugees.<sup>36</sup> In spite of joining these treaties, US law only became consistent with these

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<sup>31</sup> State of Florida’s Internet Portal, Health and Human Services, Refugee Service, Refugee Issues: Historical Perspectives [Historical Perspectives], at [www.myflorida.com/cf\\_web/myflorida2/healthhuman/refugee/pdf/rshp.pdf](http://www.myflorida.com/cf_web/myflorida2/healthhuman/refugee/pdf/rshp.pdf), accessed 2 Jan. 2002.

<sup>32</sup> Historical Perspectives

<sup>33</sup> Historical Perspectives at p.3

<sup>34</sup> History of Immigration Detention at p. 12

<sup>35</sup> History of Immigration Detention at p. 13

international standards with the 1980 Refugee Act. (See Legal Standards chapter.) The Act essentially adopted the international legal definition of a refugee as a person who is “unwilling or unable to return to his country of nationality or habitual residence because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” At the same time, the US ended its longstanding policy of detaining only those considered a danger to the community or flight risks and began detaining those who sought to enter the U.S. without valid documents.<sup>37</sup>

During the past two decades, major regional immigrant flows to the US came from the Caribbean (Cuba and Haiti), Indo-China, and Central America. Many fled brutal civil wars and related political violence still ongoing despite peace agreements, the end of the Cold War, and the end of US support for anti-communist militaries. The large numbers allowed in from Indochinese communist dictatorships contrast with the small numbers granted entry from Central American anti-communist dictatorships supported by the US, highlighting a longstanding political bias in asylum and immigration policy.

## Changes in the 1990s

Pressures generated by the immigrant flows and by activists in the 1980s and 1990s forced the government to undertake several reforms of immigration policy affecting asylum seekers. In 1985, a group of refugee advocacy and religious organizations sued the US government, alleging that the government, including the INS, discriminated against Guatemalans and El Salvadorans applying for asylum. The resulting settlement approved by a federal court in 1991, known as the ABC Settlement Agreement, gave many Central Americans a chance to file or reapply for asylum.<sup>38</sup> During the time frame of the litigation and negotiations over this case, Central Americans accounted for approximately half the asylum applications received by the INS.<sup>39</sup> In 1995, just before the restrictive 1996 law, asylum applications peaked at more than 150,000, with the largest group of asylum seekers coming from Central America.<sup>40</sup>

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<sup>36</sup> United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 UNT.S 150 (entered into force April 22, 1954) [Refugee Convention]; United Nations Protocol Relating to the Status of Refugees, January 31, 1967, 60 UNT.S. 267 (1968) (entered into force October 4, 1976) [Refugee Protocol]

<sup>37</sup> Lawyers Committee for Human Rights, *Refugees Behind Bars*

<sup>38</sup> History of the United States Asylum Officer Corps and Sources of Authority for Asylum Adjudication, Sept. 1999, prepared by the INS Asylum Program (Asylum Corps History), p. 6 at [www.ins.usdoj.gov/graphics/services/asylum](http://www.ins.usdoj.gov/graphics/services/asylum), accessed 3 Jan.2002

<sup>39</sup> 1998 Statistical Yearbook of the Immigration and Naturalization Service [1998 INS], at p. 89.

<sup>40</sup> INS 1998 at p. 90 Table E

Another reform was the establishment of the Asylum Corps in 1990, a professional group of asylum officers with special training in international human rights conditions and refugee and human rights law. However, changes such as the ABC settlement quickly led to an increase in asylum applications that exceeded the volume of cases the corps of asylum officers was expected to handle.<sup>41</sup>

Meanwhile, several high-profile crimes by asylum seekers contributed to a growing backlash against asylum seekers and other immigrants. In 1993, a foreign gunman, an asylum seeker, killed two CIA agents outside its Virginia offices. The same year, in the first terrorist attack in New York City, another asylum seeker was implicated in a car bomb explosion beneath the World Trade Center.<sup>42</sup> Other events stressed the immigration system. In 1993, a boat carrying about 300 Chinese migrants ran aground off Long Island.<sup>43</sup> In 1994, masses of Cubans and Haitians again fled their countries by boat, leading to interception at sea of about 32,000 Cubans and 12,000 Haitians. The US held them in “safe havens,” primarily at the US Navy’s Guantanamo military base on the island of Cuba, while their asylum applications and status were reviewed.<sup>44</sup>

In 1993, President Clinton ordered a major overhaul of the INS to speed up the asylum process, reduce the backlog of cases, and discourage abuse of the system. This led to new regulations in 1995 that changed the qualifications for temporary work permits, denying them to aliens filing affirmative asylum claims.<sup>45</sup>

From the mid-1990s, the US became less receptive to asylum seekers. Asylum applications filed with the INS had generally risen over the previous two decades, from fewer than 2,500 applications in 1975 to a peak in FY 1995 of 154,464.<sup>46</sup> However, since the 1995 regulatory reforms and passage of the 1996 Illegal Immigration Reform and Immigration Responsibility Act, asylum applications dropped, falling to 55,428 in 1998,<sup>47</sup> and 49,462 in FY 2000.<sup>48</sup> People who enter the US and then some time later

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<sup>41</sup> Lawyers Committee for Human Rights, *Is This America? The Denial of Due Process to Asylum Seekers in the United States*, Oct. 2000, Sec.I,B [LCHR, *Is This America*]

<sup>42</sup> Gregg Beyer, *Striking a Balance: The 1995 Asylum Reforms “A Walk Down Another Street”*, p.10.

<sup>43</sup> *Historical Perspectives*, p.12

<sup>44</sup> Schwartz, E *Practicing at Home What We Preach Abroad: Lessons on Refugee Policy from the Clinton Administration*, *Georgetown Journal of International Affairs*, Winter/Spring 2002, p. 15-17, available at <http://cfdev.georgetown.edu/publications/journal/ws02%20Refugees/ws02forum>, accessed June 9, 2003.

<sup>45</sup> LCHR, *Is This America?*, p. 14

<sup>46</sup> Beyer, Gregg A. “Reforming Affirmative Asylum Processing in the United States: Challenges and Opportunity” *The American U. J. of Int’l Law and Policy* vol. 9, No.4 Nov. 1994, p.43-78; also INS 1998, Table 27

<sup>47</sup>INS 1998, chart G at p. 89.

apply for asylum make up the majority of these applications, but a significant minority asserted an asylum claim at the port of entry, a total of about 10,000 in 2000.<sup>49</sup>

## **Illegal Immigration Reform and Immigration Responsibility Act in 1996 (1996 Act)**

The political momentum for restrictive immigration policies continued and led to the 1996 Act. The 1996 Act constricted the asylum process, especially for those asserting an asylum claim at the port of entry, in several ways:

**Expedited Removal** – This new mechanism gives an immigration inspector the power to deport any non-citizen who arrives at any port of entry with either false or no documents, a power previously entrusted only to trained immigration judges.<sup>50</sup>

**Detention** – The law includes mandatory detention of asylum seekers who are subject to expedited removal, such as those who enter without full and proper travel and identification documentation no matter the reason for their flight from persecution. The law calls for, but does not make mandatory, detention of asylum seekers after they pass out of the expedited removal mechanism.

**One-year Deadline** – after entering the US, asylum seekers must file their application within a year, with limited exceptions, or lose their chance for asylum. This is a technicality many immigrants are unaware of.

The 1996 law has faced much criticism from human rights and immigrant services groups. Amnesty International concluded the law and its implementation flouted international standards and led to the detaining of some asylum seekers in conditions amounting to cruel, inhuman or degrading treatment.<sup>51</sup> The new law also expanded the INS' deportation powers. For example, in FY 2000, the INS deported 86,000 through the

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<sup>48</sup> Asylum Applications Received, Reopened Cases & Pending at [www.ins.usdoj.gov/graphics/aboutins/statistics/msrsep00/ASYLUM.HTM](http://www.ins.usdoj.gov/graphics/aboutins/statistics/msrsep00/ASYLUM.HTM), accessed 10 Oct. 2001.

<sup>49</sup> Long-term INS Detainees, by Dan Malone and Frank Trejo, *Dallas Morning News*, 22 July 2001 (Long-term INS Detainees) at [www.dallasnews.com/ins/425076\\_asylum\\_22pro.A.html](http://www.dallasnews.com/ins/425076_asylum_22pro.A.html), accessed 3 Jan.2002; Asylum Applications Received, Reopened Cases & Pending at [www.ins.usdoj.gov/graphics/aboutins/statistics/msrsep00/ASYLUM.HTM](http://www.ins.usdoj.gov/graphics/aboutins/statistics/msrsep00/ASYLUM.HTM), accessed 10 Oct. 2001 [INS Asylum Applications Statistics]. When Asylum Requests are Overlooked (*NY Times*, Asylum Overlooked), by Eric Schmitt, *The New York Times*, 15 Aug. 2001. The INS statistics give 10,341 in FY 2000 and the *New York Times* article gave 9500 per year.

<sup>50</sup> 8 USCS § 1225 (b)(1)(B)(iii)(I)

<sup>51</sup> Amnesty International, *Lost in the Labyrinth*, p. 8,9

expedited removal process, or 47 percent of the 182,000 deported.<sup>52</sup> INS officers at the airport or other port of entry can summarily exclude or turn around foreigners not arriving with proper travel documents. Those who request asylum or say they fear return to their country are detained and given “credible fear”<sup>53</sup> interviews with asylum officers, generally within the first few weeks of detention.

But the vast majority does not reach this stage. Only about 5% of those subject to expedited removal, about 10,000, ever get beyond an on-the-spot interview at a port of entry to a credible fear interview with an asylum officer.<sup>54</sup> Immigration authorities have not generally permitted independent monitoring of the expedited removal process at points of entry.

INS data indicates that in the federal fiscal year of 1999, approximately 89,000 people were deported under the expedited removal process, with approximately 173,000 arriving foreigners entering the expedited removal process in the same year. Of these 173,000 arriving foreigners, 79,000 withdrew their applications and 6,900 were referred to an asylum officer for a credible fear interview. Of these 6,900, about 5,900 passed this interview and were taken out of the expedited removal process, leaving the other 1,000 subject to expedited removal.<sup>55</sup> The Lawyers Committee for Human Rights documented numerous cases where foreigners were wrongly turned away and/or mistreated under expedited removal. The organization called for limiting the application of expedited removal to so-called immigration emergencies.<sup>56</sup> Of those asylum seekers that do reach the credible fear interview, more than 80% have been estimated to persuade Asylum Officers they have a credible fear and obtain a hearing before an immigra-

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<sup>52</sup> *New York Times*, Asylum Overlooked; see also The Expedited Removal Study: Report on the First Three Years of Implementation of Expedited Removal [3 Years - Expedited Removal Study], 15 ND J. L. Ethics & Pub Pol’y 1, 48 (2001) where in 1999 approximately 180,000 were removed and 50% were through expedited removal.

<sup>53</sup> Credible fear and well-founded fear are distinct legal standards. Well-founded fear is both the nationally and internationally accepted standard for deciding whether to grant asylum. Credible fear is a lower standard created by the US to screen asylum seekers. An asylum seeker must first pass the credible fear interview in order to proceed with his/her asylum application.

<sup>54</sup> Long-term INS Detainees; *New York Times*, Asylum Overlooked; INS Asylum Applications Statistics.

<sup>55</sup> 1999 *Statistical Yearbook of the Immigration and Naturalization Service*, Enforcement chapter, p. 6. The fiscal year ran from October 1, 1998 to September 30, 1999. [www.immigration.gov/graphics/shared/aboutus/statistics/workload/enf99.pdf](http://www.immigration.gov/graphics/shared/aboutus/statistics/workload/enf99.pdf) accessed on May 9, 2003. Subtracting 173,000 by 79,000 and 5,900 equals 88,100 foreigners who would have been subjected to deportation under expedited removal. This is less than the 89,000 who were deported under expedited removal, presumably due to the fact that some of those arriving at the end of one year and subject to expedited removal are not actually removed until the next year.

<sup>56</sup> LCHR, *Is this America?*

tion judge.<sup>57</sup> Yet in many parts of the country, including the New York area, it appears that most of these asylum seekers remain in detention.<sup>58</sup>

## Expanded Detention

The 1996 Act greatly expanded detention for asylum seekers and other categories of immigrants. The average daily total of detained immigrants has grown from less than 6,000 in the early 1990s before the 1996 Act to more than 19,000 in 2001.<sup>59</sup> INS detainees represent one of the fastest-growing segments of the nation's exploding population of incarcerated people. While the increase in federal and state inmates actually slowed in 1997—to 5.2% from a decade average of 7%—the number in INS custody soared by 42% over the previous year.<sup>60</sup> INS estimates indicated that more than 170,000 persons passed through INS custody in 1998, and that number has been steadily increasing since the enactment of the 1996 Act.<sup>61</sup>

With the INS detainee population continuing to grow through the 1990s, the INS was seeking more bed space for the growing number of detainees. To handle the exploding detainee population, the INS contracted space from numerous local incarceration facilities, with more than 60% of all INS detainees in 1998 held in local jails around the country<sup>62</sup>. While the INS acknowledged the problems of overflow and crowding, its main response to this problem had been to request funds for more bed space in detention centers.<sup>63</sup> The INS estimated in November 2000, that at any one time, it had approximately 20,000 people in detention, with estimates over the past two years varying from 19,000-22,000.<sup>64</sup> In the FY 2002 budget request for the INS, the Justice Department requested about \$69 million to add 131 staff positions and 1,607 beds to the detention system to have a capacity of around 21,000.<sup>65</sup>

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<sup>57</sup> Long-term INS Detainees; *NY Times*, Asylum Overlooked.

<sup>58</sup> LCHR, *Refugees Behind Bars*, p.25-28.

<sup>59</sup>INS Acting Commissioner Rooney testifying before Congress in May 2001, [http://comm-docs.house.gov/committees/judiciary/hju72612.000/hju72612\\_0.HTM](http://comm-docs.house.gov/committees/judiciary/hju72612.000/hju72612_0.HTM) [INS Rooney testimony].

<sup>60</sup> Cleary, M. Sentenced to a Life in Limbo, *Los Angeles Times*, September 9, 1998

<sup>61</sup> The Roots of a Hostage Crises, by Robert Bryce and Lisa Tozzi, Salon.com, December 20, 1999.

<sup>62</sup> Human Rights Watch, *Locked Away*, p. 2.

<sup>63</sup> Federal Detention Plan 1997-2001, submitted by the Department of Justice to the US Congress in May 1997, at [www.usdoj.gov](http://www.usdoj.gov), accessed October 10, 2001 [Federal Detention Plan].

<sup>64</sup>INS Rooney testimony; Chris Nugent, The INS Detention Standards: Facilitating Legal Representation and Humane Conditions of Confinement for Immigration Detainees, *Immigration Current Awareness Newsletter*, February 3, 2003 [Nugent, INS Detention]; *ABA Attorney Guide*, Attachment B, listed 18,962 INS detainees as of November 29, 2001.

<sup>65</sup> INS Rooney testimony.

The INS's detention expenses soared. During the period from 1981-1992, when the length of detention grew dramatically, the INS detention budget skyrocketed from \$15.7 million to \$149 million.<sup>66</sup> The detention budget has continued to bulge, growing to more than \$800 million annually by 2001.<sup>67</sup>

The INS detains individuals in approximately 400 different facilities throughout the country.<sup>68</sup> It uses its own facilities, known as Service Processing Centers (SPCs); private facilities it finances, known as contract processing facilities (CPFs); other federal facilities; and, as previously mentioned, numerous state, county and municipal prisons and jails.<sup>69</sup> The INS used about 225 local jails across the country in 2001,<sup>70</sup> with the York County, Pennsylvania facility (one of the facilities where this study was conducted) holding the largest number of INS detainees; in 2000 it held a daily average of 729 detainees.<sup>71</sup> Nationwide, in its 33 districts, the INS had 18 facilities including its own SPCs and CPFs, such as the Elizabeth, NJ and Queens, NY centers, run by the Correction Corporation of America and the Wackenhut Corporation respectively.<sup>72</sup>

Of the estimated 20,000 persons detained by the INS at any given time in recent years, precise figures of how many were asylum seekers are not available. The US government has not released accurate statistics on detained asylum seekers, failing to comply with a statute which required the agency to report asylum detention statistics to Congress.<sup>73</sup> In July 2001, the *Dallas Morning News* reported that the INS said that 1,500 detainees were asylum seekers, while the same year a church group estimated that 3,000 were asylum seekers.<sup>74</sup> Another newspaper and an immigrant support network estimated as many as 5,000 were asylum seekers.<sup>75</sup>

The New York metropolitan area, including the INS districts of New

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<sup>66</sup> Eleanor Acer, Lawyers Committee for Human Rights Testimony to the US Senate's Immigration Subcommittee of the Committee on the Judiciary, September 16, 1998, p.1 [LCHR Testimony]

<sup>67</sup> Hedges, C. Suit Details the Beatings of Detainees in Louisiana, *The New York Times* (*NY Times*, Suit Details), January 2, 2001

<sup>68</sup> Nugent, INS Detention.

<sup>69</sup> Federal Detention Plan

<sup>70</sup> Hedges, C. Policy to Protect Jailed Immigrants is Adopted by U.S., *The New York Times*, January 2, 2001 [*NY Times*, Policy to Protect].

<sup>71</sup> The Immigration and Naturalization Service and the United States Marshals Service Intergovernmental Service Agreements of Detention Services with the County of York, Pennsylvania York County Prison, Office of the Inspector General, Report No. GR-70-01-005, June 25, 2001, Executive Summary [Inspector General's York Report].

<sup>72</sup> Nugent, INS Detention

<sup>73</sup> Eleanor Acer, Living Up to America's Values: Reforming the US Detention System for Asylum Seekers, *Refuge* Vol. 20 No. 3, p. 46; Tulsy, F. Asylum Seekers Face Tougher US Laws, *San Jose Mercury News*, December 10, 2000, p.A1. [*Mercury News*, Tougher US Laws]

<sup>74</sup> Long-term INS Detainees at p.2, and Church Council Statement April 2001.

York and Newark, New Jersey has had approximately 500 asylum seekers in detention at INS contract facilities at any one time.<sup>76</sup> These two INS districts house most of these detained asylum seekers in their two contract facilities (CPFs), the Elizabeth detention center in Elizabeth, New Jersey and the Wackenhut detention center in Queens, New York. The Elizabeth center has a capacity of 300 with 225 designated for asylum seekers,<sup>77</sup> and the Wackenhut center has a capacity of approximately 200.<sup>78</sup> The New England District based in Boston often sends the asylum seekers it detains to these facilities, according to numerous asylum attorneys in Boston. In addition to the Elizabeth and Wackenhut centers, the New York and New Jersey districts also use a number of local facilities, including York County Jail in Pennsylvania and Hudson County Jail in New Jersey.

### **Parole and Length of Detention**

The INS has not supplied statistics on parole rates for the release of asylum seekers, and sources report varying rates around the country, with New York's estimated at 21 and 27 percent by different sources in the late 1990s.<sup>79</sup> The New Jersey district earlier in the 1990s had a 60% parole rate that dropped to a 20% rate in 1999.<sup>80</sup> The New York and New Jersey districts have a documented history of detaining asylum seekers longer than at other ports of entry around the country.<sup>81</sup> Although the law calls for asylum seekers who arrive without proper documentation to be detained, it allows for parole. Generally, parole was a decision controlled by the INS District Director, and was supposed to be based on the Director's assessment of various criteria including flight risk, security threat and humanitarian considerations. Various sources gave nationwide parole rates in the late 1990s ranging between 10 and 78%.<sup>82</sup>

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<sup>75</sup> *The Record*, Immigration Detention, April 11, 1999; Detention Watch Network December 2001 testimony.

<sup>76</sup> Meissner, D September 2001 testimony and Church Council Statement April 2001.

<sup>77</sup> Llorente, E. Asylum Seekers Sue Elizabeth Jailers, *The Record* (Bergen County, NJ), February 25, 2000 [Llorente, Asylum Seekers Sue]; Llorente, E. Lacking Liberty, Some Detainees Attempt Death, *The Record*, May 24, 1999 [Llorente, Lacking Liberty].

<sup>78</sup> Church Council Statement April 2001.

<sup>79</sup> LCHR, *Refugees Behind Bars*, p.25-28.

<sup>80</sup> Llorente, Lacking Liberty.

<sup>81</sup> 3 Year – Expedited Removal Study at p. 68-70.

<sup>82</sup> McConnell, P. Asylum Seekers Held Long Periods Despite Clean Records. *Los Angeles Times*, September 9, 1998; Llorente E, Immigration Detention; U.S. General Accounting Office. *Illegal Aliens*. LCHR, *Refugees Behind Bars*, p.25. Note: The reliability of the 78% parole rate cited in the GAO report has been questioned. See: Musalo K, Gibson G, Knight S, Taylor E. *Evaluation of the General Accounting Office's Second Report on Expedited Removal*. San Francisco: Center for Human Rights and International Justice. University of California, Hastings College of the Law. Oct. 2000.

In 2001, one academic study reported that the average detention time for asylum seekers in its database was 57 days, with the New York/JFK airport's average length of detention 124 days.<sup>83</sup> The average amount of time in detention for asylum seekers has fluctuated. In 1981 the average stay was 4 days but by 1992 the average length of detention had risen to 54 days.<sup>84</sup> Although official statistics were unavailable in the late 1990s, sources indicated that, typically, detention periods continued to be prolonged and well above rates in the early 1980s, when widespread detention was reestablished.<sup>85</sup> In addition, there are numerous documented cases of detention periods lasting several years.<sup>86</sup>

At the same time that imprisonment of asylum seekers expanded, the INS ignored some of its own recommendations regarding the feasibility of parole. The INS conducted a pilot parole project that led, in 1992, to the establishment of the Asylum Pre-Screening Officer (APSO) Parole Program. However, the INS failed to effectively implement this parole program.<sup>87</sup> While the INS has issued guidelines and memoranda on the viability of parole, these guidelines have not been transformed into regulations or effective policies, reflecting disagreements within the INS.<sup>88</sup> For example, in December 2000, years after the issuance of parole policies, INS headquarters felt it necessary to issue a regulation to clarify that it has authority over parole decisions when some had asserted that only district officials had the mandate to make parole decisions.<sup>89</sup>

In conjunction with the INS, the Vera Institute recently conducted a three-year trial of supervised release of people paroled in INS proceedings, the Appearance Assistance Program. The program reported that in August 2001, 93% of those under intensive supervision showed up for all of their INS hearings.<sup>90</sup> Four years earlier, the INS had estimated that only about 50% of those released into the community appeared in court as required.<sup>91</sup> Other alternative to detention programs do exist in different parts of the country serving a limited number of immigrants.<sup>92</sup> Despite the results of the Vera study, the INS appears to have further restricted parole and expanded detention. After previously paroling Haitians, the Florida dis-

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<sup>83</sup> 3-Year Expedited Removal Study, p. 69-70.

<sup>84</sup> LCHR Testimony at p. 1

<sup>85</sup> 3 Year – Expedited Removal Study, p. 68-70; LCHR Refugees Behind Bars, p.25-28.

<sup>86</sup> Long-term INS Detainees

<sup>87</sup> LCHR, *Refugees Behind Bars* at p.24.

<sup>88</sup> Acer, *America's Values*, p.46.

<sup>89</sup> Acer, *America's Values*, p.46; 65 Fed. Reg. 82254-82256, "Clarification of Parole Authority" (INS No. 2004-9965) (28 December 2000).

<sup>90</sup> Testing Community Supervision for the INS, An Evaluation of the Appearance Assistance Program, Vera Institute of Justice (Vera's AAP Evaluation), August 2000.

<sup>91</sup> Vera's AAP Evaluation, Executive Summary.

strict began denying parole to them early in 2002 and a series of regulations and memoranda have expanded the INS's detention power over many types of non-citizens, including asylum seekers.<sup>93</sup> Catholic Charities of the Archdiocese of New Orleans and the Refugee Immigration Ministry (RIM) in the Boston area both had successful, though small, community-based projects for detained asylum seekers who were released by the INS and sponsored by these projects. The INS stopped referring formerly detained asylum seekers to those projects after September 11, 2001.<sup>94</sup>

## **Past Reports of Substandard Conditions and Mistreatment in INS Facilities**

A June 1995 riot at the privately-run Esmor Detention Facility in Elizabeth, New Jersey was allegedly due to abusive conditions and lengthy detention.<sup>95</sup> The INS temporarily closed the facility following this incident, subsequently reopening it in 1997 under the management of the Corrections Corporation of America. It is now known as the Elizabeth detention center (one of the facilities in this study). Two detainees complained of mistreatment at the facility in 1999. Afterward, the INS transferred one to the York County facility and the other to another local facility in Pennsylvania. The two subsequently filed a lawsuit alleging beatings and other abuse. After the allegations, the Elizabeth facility had a personnel shakeup, with the chief of security transferred and the warden resigning.<sup>96</sup>

Problems have been reported at other facilities involved in this study. An inter-faith religious group visited Wackenhut in 2001 and issued a public statement decrying the substandard conditions.<sup>97</sup> At the Hudson County (NJ) Correctional Center, in August 2000, some two dozen detainees wrote to the INS complaining they were held in cells with human waste on the floors, among other examples of mistreatment.<sup>98</sup> At York, a recent problem stemmed from an US Justice Department Inspector General report saying the facility had misstated inmate numbers and overcharged the INS.<sup>99</sup>

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<sup>92</sup> See, RIM (Refugee Immigration Ministry) in the Boston area at [www.r-i-m.net.interfaith-spiritualcare.org](http://www.r-i-m.net.interfaith-spiritualcare.org) and LIRS (Lutheran Immigration and Refugee Service) program in Ullin, Illinois mentioned in Acer, *America's Values* at p.51.

<sup>93</sup> *America's Values*, p. 47.

<sup>94</sup> Phone conversations with Susan Weishar, Director of Immigration and Refugee Services of Catholic Charities of the Archdiocese of New Orleans, May 9, 2003; and with Ruth Bersin, Director of Refugee Immigration Ministry, May 7, 2003.

<sup>95</sup> *Jama v. INS*, 22 F. Supp. 2d 353 (D.N.J. 1998). This is procedural decision in an ongoing lawsuit by some of the inmates at the facility at the time of the riot.

<sup>96</sup> Llorente, *Asylum Seekers Sue*.

<sup>97</sup> Church Council Statement April 2001.

<sup>98</sup> *NY Times*, Policy to Protect.

<sup>99</sup> Inspector General's York Report.

A host of other facilities have been the source of complaints and lawsuits involving INS detainees.<sup>100</sup> For example, the INS's New England District used the Hillsborough (NH) County facility until allegations of sexual abuse of detainees surfaced.<sup>101</sup> The Krome Detention Center in Florida has been the subject of repeated allegations of abuse, including physical and sexual abuse in a joint Physicians for Human Rights – Minnesota Lawyers report in 1991.<sup>102</sup> “Widespread sexual, physical, verbal and emotional abuse of detainees, especially women,” was found at Krome in an October 2000 human rights report.<sup>103</sup>

In the late 1990s, the INS developed detention standards in conjunction with the American Bar Association to cover the conditions in all facilities under which detained immigrants were kept in custody. However, these guidelines have not as yet been codified as regulations, and it is unclear how they will be implemented under the new Department of Homeland Security.

## Trauma, Detention and Health Care

Many of the healthcare services in facilities where asylum seekers are detained have been evaluated and accredited by organizations including National Commission on Correctional Health Care (NCCCHC), and the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). However, the lawyers and legal groups affiliated with PHR's Asylum Network<sup>104</sup> have noted complaints about medical care in detention centers. Despite winning an award for its health care unit, in 1999 health care at Krome was characterized as inadequate by a Florida legal group. The Florida legal group received more than 100 complaints concerning medical care.<sup>105</sup> The group also found substandard care at Florida county jails holding INS detainees, as did the Civil Rights Division of the US Department of Justice in its investigation of the Jackson County (FL)

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<sup>100</sup> *NY Times*, Policy to Protect.

<sup>101</sup> Dark Clouds over county jail, *Nashua Telegraph*, The Telegraph Online Archives, February 27, 2003, June 3, 2003 accessed at [www.nashuatelegraph.com](http://www.nashuatelegraph.com), p. 2.; Amnesty International USA, “New Hampshire Custodial Sexual Misconduct,” *Women in Custody*, June 4, 2003, accessed at [www.amnestyusa.org/women/custody/newhamp.pdf](http://www.amnestyusa.org/women/custody/newhamp.pdf) p. 1

<sup>102</sup> *Hidden from View: Human Rights Conditions in the Krome Detention Center*, Minnesota Lawyers International Human Rights Committee and Physicians for Human Rights, April 1991.

<sup>103</sup> *Behind Locked Doors: Abuse of Refugee Women at the Krome Detention Center*, Women's Commission for Refugee Women and Children, October 2000, p. 1.

<sup>104</sup> PHR's Asylum Network consists of over 300 health professionals. Members voluntarily evaluate asylum seekers for symptoms and signs of torture. For more information, visit [http://www.phrusa.org/campaigns/asylum\\_network/index.html](http://www.phrusa.org/campaigns/asylum_network/index.html)

<sup>105</sup> *Cries for Help: Medical Care at Krome Service Processing Center and in Florida County Jails*, Florida Immigrant Advocacy Center, Inc., December 1999, p. 2.

Correctional Facility in 2000. “[W]e conclude that certain conditions at JCCF violate the constitutional rights of convicted inmates and detainees,” the Division said of deficiencies in health care and other areas. A 1998 report by Human Rights Watch found substandard medical care and that mental health needs were not met.<sup>106</sup>

Medical researchers have also noted a link between asylum seekers, trauma, poor mental health and detention. In August 2000, psychiatrist Derrick Silove, a researcher with years of refugee experience, observed extensive trauma exposure and “prima facie evidence of substantial psychological morbidity” among asylum groups in several recipient countries.<sup>107</sup> Restrictions on access to health care and social services appear to be associated with deteriorating physical and mental health. Detention may be a powerful contributor to psychological distress in asylum seekers.<sup>108</sup> “Long-term detention under harsh prison-like conditions is the antithesis of the conditions of support and stability that trauma survivors need in order to achieve stability,” according to Silove.<sup>109</sup>

Another growing problem has been an increasing number of INS detainees in apparently indefinite detention — usually detainees who are required to be deported under the new immigration law but whose home countries, such as Cuba, Vietnam and Iraq, refuse to take them back. A US Supreme Court ruling in the summer of 2001 should have provided eventual relief for some asylum seekers. In *Zadvydas vs Davis*, the Court forbade indefinite detention for those immigrants who have entered the country and then are ordered removed or deported but have no country that will accept them.<sup>110</sup> However, the US Department of Justice has interpreted this decision as not covering asylum seekers who are detained, because, in this interpretation, the asylum seekers have not legally entered the US, although they are physically inside its borders.<sup>111</sup>

## Changes Since September 11, 2001

The US government’s response to critical security issues raised by the September 11, 2001 tragedy has caused additional hurdles for asylees facing an already restrictive system. Shortly after September 11, the government

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<sup>106</sup> Human Rights Watch, *Locked Away*, Summary and Recommendations

<sup>107</sup> “Policies of Deterrence and the Mental Health of Asylum Seekers,” Silove et al, *Journal of the American Medical Association*, Aug.2 2000, Vol 284, No.5, p. 606 (Asylum Mental Health, *JAMA*)

<sup>108</sup> Asylum Mental Health, *JAMA*, at p. 608,610

<sup>109</sup> Hargreaves, S. “A body of evidence: torture among asylum seekers to the West,” *The Lancet*, March 2, 2002, Vol. 359, p.793-794.

<sup>110</sup> *Zadvydas v. Davis*, 533 US 690 ; 121 S. Ct. 2491 (2001).

<sup>111</sup> 66 Fed. Reg. 56967, INS No. 2156-01; AG Order No. 2533-2001, “Continued Detention of Aliens Subject to Final Orders of Removal,” Nov. 14, 2001.

expanded its power to detain a variety of non-citizens through a series of new measures. The United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (Patriot) Act in October 2001 granted the US government new powers to detain non-citizens without charge.<sup>112</sup> The Patriot Act equipped Attorney General John Ashcroft with the authority to certify an individual non-citizen as a “suspected terrorist,” expanded the definition of terrorist activity, and permitted detention without charges for seven days.<sup>113</sup> Even absent a criminal charge, a certified suspected terrorist charged with an immigration violation is subject to mandatory detention.<sup>114</sup> Just as perilous to non-citizens has been the series of new regulations and rules making it harder for detainees to challenge their detention. Any non-citizen can now be detained for up to 48 hours without charges and in an unspecified “emergency” or “extraordinary” situation this detention without charges can last for an unspecified (“reasonable”) amount of time.<sup>115</sup> Another regulation essentially provides INS attorneys with the power to overrule an immigration judge’s decision to release on bond a detainee, even when there are no allegations of criminal or terrorist activities.<sup>116</sup> Several of these regulations are currently facing legal challenges, but these rules have basically remained in effect.

Expanded immigrant detention policies have recently been the focus of increased criticism even from within the federal government, itself. In a recent report, the Inspector General of the Department of Justice said that the federal government, in its investigation of the attacks, imprisoned immigrants for excessive lengths of time, with the presumption of innocence inverted to a presumption of guilt.<sup>117</sup>

These wider detention powers can be applied to asylum seekers, although in practice they have affected greater numbers of other classes of immigrants (such as those with non-valid student visas). After September 11, the government arrested approximately 1,200 Arab and South Asian

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<sup>112</sup> Pub.L. No. 107-56, 115 Stat. 272 (2001) [Patriot Act].

<sup>113</sup> Patriot Act.

<sup>114</sup> Patriot Act.

<sup>115</sup> America’s Values, p.47, 66 Fed. Reg. 48334, INS No. 2171-01, “Custody Procedures,” Sept.20, 2001.

<sup>116</sup> America’s Values, p.47.

<sup>117</sup> Office of the Inspector General, US Department of Justice. *The September 11 Detainees: A review of the Treatment of Aliens Held on Immigration Charges In Connection With the Investigation of the September 11 Attacks*. Office of the Inspector General, US Department of Justice. April 2003. Available at <http://www.justice.gov/oig/special/0603/full.pdf>. Accessed on June 7, 2003.

<sup>118</sup> Sachs, S. “U.S. Deports Most of Those Arrested in Sweeps After 9/11”, *New York Times*, 11 July 2002, [www.nytimes.com/2002/07/11/national](http://www.nytimes.com/2002/07/11/national), accessed 15 July, 2002 (U.S. Deports Most, *NY Times*)

men of which 750 were detained on immigration violations.<sup>118</sup> By June 2002, all but 74 of the 750 had been deported.<sup>119</sup> In addition, under the “Special Registration Program,” the Department of Justice has issued notices during the last months of 2002 requiring all males over the age of 16 who are temporarily in this country from 20 countries (mostly Muslim as well as North Korea and Eritrea) to register in person at INS offices before certain deadlines.<sup>120</sup> These men are required to check in regularly with the government every year thereafter. This has led to hundreds of arrests and detentions; according to Justice Department officials more than one in 10 of these people face possible deportation. As of January 2003, the program has led to the detention of 1,169 foreign nationals.<sup>121</sup>

Not surprisingly, the federal government’s use of parole has been even more limited since September 11. In November 2001, the INS determined that parole should be granted only in limited circumstances, such as where there are technical paperwork flaws, compelling humanitarian circumstances or it is in the national interest.<sup>122</sup> Allegations of discrimination in parole determinations have arisen involving Iraqis, others from the Middle East as well as asylum seekers from other regions.<sup>123</sup> For example, in 2002, the INS admitted detaining Haitians that had arrived in Florida to deter others from coming to the US, even though the INS had typically paroled them in the past.<sup>124</sup> Late in 2002, the government issued a policy expanding expedited removal to all sea arrivals, including Haitians but excepting Cubans, which also called for detention of such persons through all immigration proceedings.<sup>125</sup>

## Department of Homeland Security

The other major legislative initiative affecting security and immigrants since September 11, 2001 was the creation of the federal Department of Homeland Security (DHS). DHS took over the responsibilities of many existing federal agencies and formally assumed the functions and authori-

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<sup>119</sup> US Deports Most, *NY Times*.

<sup>120</sup> Broder, J. US Starts Freeing Foreigners Detained in Antiterror Dragnet, *New York Times*, December 20, 2002.

<sup>121</sup> McDonnell, P. “Nearly 24,000 Foreign Men Register in U.S.” *Los Angeles Times*, January 19, 2003, p. 22.

<sup>122</sup> *America’s Values*, p.47; .

<sup>123</sup> *America’s Values*, p.48; Benjamin, J. “Mideast Detainees Await Freedom,” *South Florida Sun-Sentinel*, 8 Dec., 2001.

<sup>124</sup> J. Benjamin, “INS Admits New Get-Tough Policy on Haitians Aimed at Preventing Exodus,” *South Florida Sun-Sentinel*, March 20, 2002.

<sup>125</sup> Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act, 67 Fed. Reg. 68924-26 (Nov. 13, 2002), INS No. 2243-02 [Regulation expanding Expedited Removal to sea arrivals].

ties of the INS on March 1, 2003.<sup>126</sup> INS functions are now distributed among three bureaus in the Department of Homeland Security: one services bureau, Bureau of Citizenship and Immigration Services and two enforcement bureaus, the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement. This will make for a potentially confusing array of officials who will have authority over those who seek asylum upon arrival.

Under the new policy, arriving asylum seekers will be interviewed by the Bureau of Customs and Border Protection and, if their asylum request or fear of persecution is accepted, they will be detained under the Bureau of Immigration and Customs Enforcement. Asylum Officers from the Bureau of Citizenship and Immigration Services will then conduct credible fear interviews with them at their detention sites. Immigration analysts, including former INS Commissioner James Ziglar, are concerned that not enough attention and funding will be placed on the service functions in this new department.<sup>127</sup>

The emphasis on enforcement and detention was apparent when in March 2003, on the eve of the war with Iraq, the Department of Homeland Security announced “Operation Liberty Shield” under which asylum seekers from more than 30 countries would be automatically detained during the asylum process.<sup>128</sup> Ironically, the plan targeted for detention, the very people who had stood up to, and in some cases been persecuted and tortured by, the same regimes that the US has singled out for condemnation.<sup>129</sup> In May 2003, Operation Liberty Shield was reportedly terminated, but nevertheless serves as a chilling example of the trend toward expanding detention of asylum seekers.<sup>130</sup>

In April 2003, Attorney General Ashcroft ordered continued detention of an asylum seeker, overruling the immigration appeals court which had authorized release on bond, for the purpose of deterring other refugees

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<sup>126</sup> Federal Register March 6, 2003 (Vol. 68, No.44) “Authority of the Secretary of Homeland Security; Delegations of Authority; Immigration Laws; Final Rule

<sup>127</sup> Ziglar, J. The End of the INS, Let’s not forget our immigration duties, *The Miami Herald*, 4 Mar., 2003; National Immigration Forum, Now that the INS is Dead, Will the Department of Homeland Security Improve America’s Immigration System?, 25 Feb., 2003, available at [www.immigrationforum.org/press/articles/022503\\_instodhs.htm](http://www.immigrationforum.org/press/articles/022503_instodhs.htm), accessed on 7 Mar., 2003.

<sup>128</sup> Shenon, P. Administration’s New Asylum Policy Comes Under Fire, *The New York Times*, March 19, 2003.

<sup>129</sup> Lawyers Committee for Human Rights. *Asylum Protection News* 12. March 19, 2003.

<sup>130</sup> Lawyers Committee for Human Rights Media Alert: “Operation Liberty Shield Quietly Terminated.” May 15, 2003. Available at: [http://www.lchr.org/media/2003\\_alerts/0515.htm](http://www.lchr.org/media/2003_alerts/0515.htm), accessed on 7 June 2003

<sup>131</sup> Stanley Mailman and Stephen Yale-Loehr, Detaining and Criminalizing Asylum Seekers, *New York Law Journal*, April 28, 2003 [Yale-Loehr, Detaining Asylum Seekers]; Matter of D-J-, 23 I. & N. Dec. 572 (Att’y Gen. 2003).

from that same country from seeking asylum in the US.<sup>131</sup> This decision targeted asylum seekers from Haiti, but could herald an assertion of sweeping authority for a new policy of mandatory detention of asylum seekers from any country the government designates.<sup>132</sup> The decision and such a policy undermine traditional principles of due process and violate a key provision of international law: detention may not be used “to deter future asylum seekers, or to dissuade those who have commenced their claims from pursuing them.”<sup>133</sup>

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<sup>132</sup>Yale-Loehr, *Detaining Asylum Seekers*.

<sup>133</sup> UNHCR’s *Guidelines on applicable Criteria and Standards relating to the Detention of Asylum Seekers*, Geneva, 1999.

# III. METHODS

## Subjects/Sampling

The participants in this study were asylum seekers detained by the INS. For this study, the INS permitted the Bellevue/NYU-PHR study team access to detention facilities in New York, New Jersey and Pennsylvania. Because representatives from the INS were unwilling to provide open access to INS detention facilities, it was not possible to conduct a random sample of all detained asylum seekers in the facilities surveyed. Instead, the INS recommended that Bellevue/NYU-PHR obtain a sample group of detained asylum seekers by contacting attorneys or legal representatives who could identify specific detainees that were willing to participate in the study and provide consent to be interviewed. The INS indicated that protecting the confidentiality of detainees was the basis for refusing Bellevue/NYU-PHR access to all asylum seekers in the detention centers.

Bellevue/NYU-PHR contacted six local organizations that provide pro-bono legal representation to detained asylum seekers and asked these attorneys to contact all of their clients and inquire about their willingness to participate in the study. The organizations that provided participants were the Lawyers Committee for Human Rights, the Hebrew Immigrant Aid Society, New York Association for New Americans, Catholic Legal Immigration Network, American Friends Service Committee, and Circle York. This sampling method precluded inclusion of detainees who were representing themselves or had retained a private attorney to assist in their case.

Between January 1, 2001 and June 15, 2002, 87 detainees agreed to meet with Bellevue/NYU-PHR study personnel. This sample represented 73% of the total caseload for the six agencies that provided referral information. The remaining 32 detainees represented by these agencies were either unwilling to participate in the study or were not approached by their attorneys because of concerns that participation might jeopardize their asylum claim. Of the 87 detainees referred, 17 were not included in the study because they were released prior to being interviewed (n=10), did not complete the interviews (n=3), were deported (n=1), withdrew the asylum claim (n=1), had already been granted asylum but was still detained awaiting release (n=1), or lost pro-bono legal support (n=1). The analyses included in this study are based on the remaining 70 participants (56 male, 14 female).

## **Detention Facilities in this Study**

For the purposes of this study, the INS permitted researchers access to detention facilities in New York, New Jersey and Pennsylvania. This included the Elizabeth and Wackenhut contract facilities, and county jails/prisons in New Jersey and Pennsylvania, primarily the York County Prison in York, Pennsylvania. Corrections Corporation of America and Wackenhut Corporation manage the Elizabeth and Wackenhut facilities similarly to the other jails and prisons they operate, despite the fact that the majority of the population that they are intended to hold are asylum seekers, rather than convicted criminals. For example, during the period of the study, detained asylum seekers were required to wear uniforms similar to those used for prison inmates. Handcuffs and shackles were used when transporting detainees from an airport or to a hospital. Visitation, other than for official purposes, was allowed only through glass, only on weekends and holidays, and for a maximum of one hour per day. Recreation was limited to 1-2 hours in rooms open to the outside only through mesh in the ceiling, with at least 20 hours per day spent in dormitories. Prisoner counts occurred several times per day. Lights-out was imposed at set hours. Solitary confinement and the threat of solitary confinement were frequently used as a means of behavior control. Program offerings such as ESL (English as a second language) were limited or, in some cases, prohibited entirely.

The Elizabeth and Wackenhut facilities are both converted warehouses, and are virtually windowless, high security jails. Ironically, the county jails in which asylum seekers were held sometimes had better conditions than the private contract facilities. For example, some had better recreational facilities, allowed the inmates more freedom of movement, and/or permitted contact visits with family and friends (i.e., free of the glass barrier). However, in these county jails asylum seekers often shared prison cells with convicted criminals, including violent offenders. York County Prison houses asylum seekers in a separate area, but even there asylum seekers may be housed with the general population at the discretion of the facility. In addition, the county jails that held asylum seekers typically subjected these individuals to the same policies as the criminal inmate population.

## **Survey Questionnaire**

The survey (see Appendix B) contained approximately 200 questions pertaining to demographics, traumatic events experienced prior to arriving in the US, physical health status and symptoms, mental health status including symptoms of anxiety, depression, Post-traumatic Stress Disorder (PTSD), and suicidal ideation, access to and quality of medical and mental health care; experiences upon arrival in the United States, and then while in detention; and their treatment by INS and detention center staff. The sur-

vey was developed by Bellevue/NYU-PHR staff, all of whom have extensive experience caring for survivors of torture and asylum seekers. Prior to initiating the study, the instrument was administered to two detainees and four former detainees in order to elicit feedback and suggestions regarding the clarity of questions and breadth and accuracy of content.

Assessment of psychological symptoms was conducted using two self-report inventories that were administered along with the survey instrument: the Hopkins Symptom Checklist-25 (HSCL-25)<sup>134</sup> and the PTSD portion of the Harvard Trauma Questionnaire (HTQ).<sup>135</sup> The HSCL-25 is a 25-item self-report scale comprised of two subscales measuring anxiety and depressive symptoms. Although not designed to yield a clinical diagnosis, cut-off scores (a mean score of 1.75) for the HSCL-25 have been established for identifying individuals who are highly symptomatic.<sup>136</sup> The HTQ includes a trauma event inventory and a 16-item scale developed to quantify severity of PTSD symptoms. Mean scores over 2.5 on the HTQ are associated with a clinical diagnosis of PTSD.<sup>137</sup> The HSCL-25 and HTQ have been extensively used in studies of diverse refugee populations<sup>138</sup> and validated against clinical diagnoses,<sup>139</sup> and have demonstrated

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<sup>134</sup> Mollica RF, Wyshak G, de Marneffe D, Khoun F, Lavelle J. Indochinese versions of the Hopkins Symptom Checklist-25: a screening instrument for the psychiatric care of refugees. *Am J Psychiatry*. 1987; 144:497-500.

<sup>135</sup> Mollica RF, Caspi-Yavin Y, Bollini P, Truong T, Tor S, Lavelle J. The Harvard Trauma Questionnaire: validating a cross-cultural instrument for measuring torture, trauma, and post traumatic stress disorder in refugees. *J Nerv Ment Dis*. 1992; 180:111-116.

<sup>136</sup> Mollica RF, Wyshak G, de Marneffe D, Khoun F, Lavelle J, 1987.

<sup>137</sup> Mollica RF, Caspi-Yavin Y, Bollini P, Truong T, Tor S, Lavelle J. 1992. Smith Faawzi MC, Murphy E, Pham T, Lin L, Poole C, Mollica RF. The validity of screening for post-traumatic stress disorder and major depression among Vietnamese former political prisoners. *Acta Psychiatr Scand*. 1997; 95:87-93.

<sup>138</sup> Smith Faawzi MC, Murphy E, Pham T, Lin L, Poole C, Mollica RF. 1997; Cardozo BL, Vergara A, Agnai F, Gotway CA. Mental health, social functioning, and attitudes of Kosovar Albanians following the war in Kosovo. *Journal of American Medical Association* 2000; 284:569-577; Mollica RF, Donelan K, Tor S, et al. The effect of trauma and confinement on functional health and mental health status of Cambodians living in Thailand- Cambodia border camps. *Journal of American Medical Association*. 1993; 270:581-586; Allden K, Poole C, Chantavanich S, Ohmar K, Aung NN, Mollica RF. Burmese political dissidents in Thailand: trauma and survival among young adults in exile. *Am J Pub Health*. 1996; 86:1561-1569; Mollica RF, McInnes K, Sarajlic N, Lavelle J, Sarajlic I, Massagli MP. Disability associated with psychiatric comorbidity and health status in Bosnian refugees living in Croatia. *Journal of American Medical Association* 1999; 282:433-439; Mollica RF, Sarajlic N, Chernoff M, Lavelle J, Sarajlic Vukovic I, Massagli M. Longitudinal Study of psychiatric symptoms, disability, mortality and emigration among Bosnian refugees. *Journal of American Medical Association*. 2001; 286; Shrestha NM, Sharma B, Ommeren MV, et al. Impact of torture on refugees displaced within the developing world: symptomatology among Bhutanese refugees in Nepal. *Journal of American Medical Association*. 1998; 280: 443-448.

<sup>139</sup> Smith Faawzi MC, Murphy E, Pham T, Lin L, Poole C, Mollica RF. 1997.

high reliability in numerous languages.<sup>140</sup> A recent literature review concluded that, among the numerous psychosocial instruments used in research with refugee populations, the HSCL-25 and HTQ are among the most widely accepted and well-validated.<sup>141</sup>

In addition to English, versions of the HSCL-25 and HTQ which had previously been translated and back translated in French, Arabic and Spanish were used. For participants speaking other languages, scales were translated by the interpreter.

## Interviews

Subjects were interviewed by Bellevue/NYU-PHR study team physicians<sup>142</sup> about their experiences before and during detention, as well as their physical and mental health. All of the interviewers were primary care internal medicine physicians with experience in evaluating and caring for refugees and asylum seekers. Interviews were conducted in private rooms in the detention centers, with only the interviewer and the subject present. When necessary, these evaluations were conducted with the assistance of an experienced translator. Interviews typically lasted approximately 2 hours and were conducted in a single session.

Bellevue/NYU-PHR physicians administered the survey questionnaire, which was comprised of a structured interview in which subjects were asked specific questions, most of which elicited responses using a Likert-type format (e.g., “not at all”, “a little bit”, “quite a bit”, “extremely”). When appropriate, participants were asked to provide additional narrative information for positive responses (e.g., to describe incidents they perceived as unpleasant), which was recorded by the interviewer. A semi-structured interview format was used to elicit additional information concerning the detainee’s health experiences and treatment while in detention.

The Bellevue/NYU-PHR researchers also reviewed the asylum applications for each participant, with his/her permission, in order to obtain information on the detainees’ demographic characteristics and traumatic experiences in their countries of origin. This method was used to minimize risk of re-traumatizing the participants by eliciting their trauma history through an interview with study personnel. Prior traumatic experiences

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<sup>140</sup> Kleijn WC, Hovens JE, Rodenburg JJ. Posttraumatic stress symptoms in refugees: assessments with the Harvard Trauma Questionnaire and the Hopkins Symptom Checklist-25 in different languages. *Psychol Rep.* 2001;88:527-532.

<sup>141</sup> Hollifield M, Warner TD, Lian N, Krakow B, Jenkins JH, Kesler J, Stevenson J, Westermeyer J. Measuring Trauma and Health Status in Refugees: A Critical Review. *Journal of American Medical Association.* 2002; 288:611-621.

<sup>142</sup> Interviews were conducted by Allen Keller, M.D., Chris Meserve, M.D., Jonathan Leviss, M.D., Elizabeth Singer, M.D., Melanie Jay, M.D., Alyssa Finlay, M.D., Amina Chaudry, M.D., and Joshua Lee, M.D.

such as a history of torture, sexual assault, and other traumatic events were coded using the trauma portion of the HTQ.

## **Human Subject Protections**

All prospective study participants were informed of the voluntary nature of the study and that participation (or refusal) would not affect their asylum applications in any way. After they were informed of the nature of the study, all participants provided written consent. This study was approved by the Institutional Review Board of New York University School of Medicine, and a review committee from Physicians for Human Rights. In order to maintain confidentiality, names of individuals, countries of origin, and the names of the detention facilities are omitted from the sections of this report containing narrative information. Participants did not receive any compensation or other incentive for study participation.

## **Statistical Analysis**

Frequency analyses were used to describe the sample characteristics and responses to the individual questionnaire items. The relationship between experiences in detention and psychological distress was analyzed using non-parametric analyses including Spearman's Rho for continuous variables (e.g., the relationship between psychological distress and length of time incarcerated), the Chi-Square test of association (e.g., the relationship between suicidal ideation and experiences in detention) and the Mann-Whitney U-test (for group comparisons along the psychological distress variables). Non-parametric analyses were utilized because many of the continuous variables were skewed (e.g., length of time incarcerated).



# IV. FINDINGS AND CHARACTERISTICS OF STUDY PARTICIPANTS

This study provides the first systematic assessment of detained asylum seekers. The findings support assertions that detention has a harmful impact on the health and well-being of asylum seekers. Nearly all of the detainees interviewed in this study had clinically significant symptoms of anxiety, depression, or PTSD, according to standardized and widely accepted measures of symptom distress. Moreover, those symptoms were greater among those detainees who had been incarcerated longer. The vast majority of individuals interviewed for this study perceived detention as substantially worsening their mental health. This study also raises concerns about the manner in which asylum seekers are being treated upon arrival in the US and then while in detention.

The next few chapters describe the findings of the Bellevue/NYU-PHR study team. The findings are presented in reverse chronological order, as the asylum seeker may have recollected his/her experience, beginning with the present situation of their mental health and looking back to physical health, medical problems and medical care in detention; treatment in detention facilities; age determination dental examinations for young asylum seekers, and ending with a look back at their arrival in the United States.

## Characteristics of Study Participants

Study participants were from 29 different countries. The majority of participants were from Africa (n=54), seven were from Eastern Europe, four from Asia, three from Latin America, and two from the Middle East (Table 1). The average age of study participants (n=70) was 28 years (range 15-52). Three individuals reported being under 18 years of age at the time that they were placed in INS detention. Fifty six (80%) of the study participants were male and 14 (20%) were female (Table 2). Of the 70 interviews, 29 were conducted in English, 17 were conducted in French, seven in Arabic, four in Somali, three in Spanish, and ten were conducted in other languages (e.g., Bosnian, Russian).

At the time of interview, the large majority of study participants (n=61, 87%) were detained in the two New York area INS contract detention facilities described above — the Elizabeth Detention Center in Elizabeth, New Jersey and the Wackenhut Detention Center in Queens, New York. An additional nine detainees (13%) were interviewed in three county jails:

York County Prison in York Pennsylvania, Hudson County Jail, in New Jersey, and Carbon County Jail in Pennsylvania. The median length of detention prior to interview was 5 months (range 1 month to 4½ years). (Table 3).

### **Update on Asylum/Detention Status**

As of April 2003, 40 individuals (57%) had been granted political asylum in the United States. One individual was granted relief under the UN Convention against Torture and released (his asylum application is on appeal), and three individuals were allowed to travel to other countries where they were granted political asylum (two to Canada and one to Italy). Twelve individuals (17%) are still pending final decision on their asylum applications (7 remain in detention and 5 were paroled pending final asylum decision). The asylum applications, including appeal, for fourteen individuals (20%) have been denied. Ten of these individuals already have been deported (Table 3).

Among the 40 individuals granted political asylum and released as of April 2003, the average length of detention was 10 months (median: 7 months; range: 2 months to 3½ years).

### **Traumatic Events Experienced Prior to Arrival in US**

Detainees reported numerous traumatic experiences while living in their country of origin (i.e., before immigration), including 52 (74%) who described experiences consistent with international definitions of torture<sup>143</sup> (Table 4). Forty-seven (67%) detainees reported having been imprisoned in their native country, 41 (59%) reported that a family member or friend had been murdered, and 18 (26%) reported having been sexually assaulted. Almost all study participants (68; 97%) believed that their lives would be in danger if forced to return to their native countries. Other traumatic events reported by this sample group are detailed in Table 4.

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<sup>143</sup> United Nations: Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. June 26, 1987. In: Center for the Study of Human Rights, Columbia University. *Twenty Five Human Rights Documents*. New York: Columbia University. 1994

**TABLE 1:  
Country/Region of Origin of Survey Respondents (N=70)**

	Number	%
<b>Country of Origin</b>		
Algeria	4	(6)
Bangladesh	1	(1)
Bosnia	1	(1)
Burundi	1	(1)
Cameroon	6	(9)
Colombia	3	(4)
Congo	9	(13)
Eritrea	1	(1)
Ghana	3	(4)
Guinea	6	(9)
India	1	(1)
Iran	1	(1)
Iraq	1	(1)
Ivory Coast	1	(1)
Liberia	1	(1)
Libya	1	(1)
Moldova	1	(1)
Morocco	1	(1)
Nigeria	5	(7)
Pakistan	1	(1)
Romania	1	(1)
Russia	2	(3)
Sierra Leone	5	(7)
Somalia	4	(6)
Sri Lanka	1	(1)
Sudan	3	(4)
Togo	1	(1)
Uganda	2	(3)
Ukraine	2	(3)
<b>Continent/Region of Origin</b>		
Africa	54	(77)
Europe	7	(10)
Asia	4	(6)
Latin America	3	(4)
Middle East	2	(3)

**TABLE 2:  
Demographic Characteristics of Survey Respondents (N=70)**

	Mean	(Range)
Age in Years (average, range)	28	(15-52)
Characteristic	Number	%
No. of minors at time of detention (under 18)	3	(4)
Gender		
Male	56	(80)
Female	14	(20)
Language Spoken in Interview		
English	29	(41)
French	17	(24)
Arabic	7	(10)
Somali	4	(6)
Spanish	3	(4)
Other	10	(14)
Race		
Black	47	(67)
Caucasian	15	(21)
Latino/Hispanic	3	(4)
Other	5	(7)
Religion		
Christian	41	(59)
Muslim	28	(40)
Hindu	1	(1)
Highest Level of Education Attained		
None	1	(1)
Primary School	18	(26)
Some high school course work	14	(20)
High School Graduate	12	(17)
Some College course work	10	(14)
College/Vocational Degree	11	(16)
Graduate/Professional Training	4	(6)
Primary Occupation		
Student	24	(34)
Health Professional	1	(1)
Lawyer	1	(1)
Government Employee	2	(3)
Police/Military	7	(10)
Farmer	18	(26)
Service Sector	16	(23)
Other	1	(1)

**TABLE 3:  
Detention/Asylum History of Survey Respondents (N=70)**

Characteristic	Response Number%	
*Seeking asylum from persecution based on:		
Race	9	(13)
Religion	8	(11)
Nationality	4	(6)
Membership in social group	37	(53)
Political Opinion	52	(74)
Other	4	(6)
Arrival location		
JFK Airport	37	(53)
Newark Airport	24	(34)
Other Airports	4	(6)
Other ports of entry	5	(7)
Detention Location at Interview		
Elizabeth	48	(69)
Wackenhut	13	(19)
County Jail/Prison	9	(13)
Length of Detention Prior to Interview (Median: 5 months; range 1 month to 4 ½ years)		
1-3 months	8	(12)
3-6 months	37	(53)
6-12 months	13	(19)
12-24 months	7	(10)
more than 24 months	5	(7)
Total # of Detention Facilities per detainee		
1	57	(81)
2	7	(10)
3	5	(7)
4	1	(1)
Held in County Jail at some time during detention		
	13	(19)
Asylum/Detention Status as of April, 2003		
Granted Asylum and Released	40	(57)
Granted relief under the UN Convention Against Torture	1	(1)
Released & allowed to travel to another country where granted asylum	3	(4)
Paroled and pending asylum decision	5	(7)
Detained pending final asylum decision	7	(10)
Denied asylum, deported/awaiting deportation	14	(20)
Total length of detention for individuals granted asylum and released	Mean: 10 months; Median: 7 months Range: 2-42 months	

\* Each applicant may have more than one basis for their asylum claim

**TABLE 4:**  
**Prevalence of Pre-Migration Traumatic Experiences of Survey Respondents\***  
**(N=70)**

Trauma Questionnaire Item	Response	
	Number	%
Torture†	52	74
Forced separation from family members	52	74
Harassment at home by authorities‡	49	70
Imprisonment	47	67
Lack of food or water	45	64
Friends/colleagues imprisoned or tortured	44	63
Murder of family or friend	41	59
Serious injury	41	59
Concern that family is in danger	39	56
Family members imprisoned or tortured	35	50
Harassment at work or school by authorities§	34	49
Uncertainty about whereabouts of family	34	48
Ill health without access to medical care	33	47
Unnatural death of family or friend	33	47
Forced isolation from others	28	40
Being close to death	27	39
Lost or kidnapped	32	36
Witnessed murder of stranger(s)	24	34
Rape or sexual abuse	18	26
Lack of shelter	14	20
Combat situation	11	16

\*Data were obtained from detainees' asylum applications.

†As defined in the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

‡Visits or threats at home, (including loss of property) by authorities, groups controlled by authorities, or groups the government is unable/unwilling to control.

§ Visits or threats at work or school (including loss of job or expulsion) by authorities, groups controlled by authorities, or groups the government is unable/unwilling to control.

# V. MENTAL HEALTH OF DETAINED ASYLUM SEEKERS

The Bellevue/NYU-PHR study team documented extremely high levels of anxiety, depression and post-traumatic stress disorder (PTSD) among the sample of detained asylum seekers interviewed. Furthermore, the level of symptom distress worsened the longer individuals were held in detention. These individuals described poignant examples of their suffering while in INS detention. Although many of the detainees had suffered substantial pre-migration trauma and reported experiencing symptoms before detention in the US, the large majority said that their symptoms grew much worse while in detention. In fact, the levels of anxiety, depression and PTSD observed in this sample of detained asylum seekers were substantially higher than those reported in several previous studies of refugees living in refugee camps and asylum seekers /refugees living in the community, further suggesting the detrimental effects of detention.<sup>144</sup>

Despite the fact that detained asylum seekers presented a strikingly high level of psychological distress, access to mental health services in INS facilities appears to be quite limited. Although the facilities included in this study had mental health professionals contracted to provide consultation

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<sup>144</sup> Silove D, Sinnerbrink I, Field A, Manicavasagar V, Steel Z. Anxiety, depression and PTSD in asylum seekers: Associations with pre-migration trauma and post-migration stressors. *Br J Psychiatry*. 1997;170:351-357; Begley M, Garavan C, Condon M, Kelly I, Holland K, Staines A. *Asylum in Ireland: A Public Health Perspective*. Dublin, Ireland: Dept of Public Health Medicine and Epidemiology, University College Dublin; 1999; Steel Z, Silove D, Bird K, McGorry P, Mohan P. Pathways from war trauma to posttraumatic stress symptoms among Tamil asylum seekers, refugees and immigrants. *J Trauma Stress*. 1999;12:421-435; Cardozo BL, Vergara A, Agnai F, Gotway CA. Mental health, social functioning, and attitudes of Kosovar Albanians following the war in Kosovo. *JAMA* 2000;284:569-577; Mollica RF, Donelan K, Tor S, et al. The effect of trauma and confinement on functional health and mental health status of Cambodians living in Thailand- Cambodia border camps. *JAMA*.1993;270:581-586; Allden K, Poole C, Chantavanich S, Ohmar K, Aung NN, Mollica RF. Burmese political dissidents in Thailand: trauma and survival among young adults in exile. *Am J Pub Health*. 1996;86:1561-1569; Shrestha NM, Sharma B, Ommeren MV, et al. Impact of torture on refugees displaced within the developing world: symptomatology among Bhutanese refugees in Nepal. *JAMA*. 1998; 280: 443-448; Basoglu M, Paker M, Ozmen E, Tasdemir O, Sahin D. Factors related to long-term traumatic stress responses in survivors of Torture in Turkey. *JAMA*. 1994; 272: 357-363. Holtz T. Refugee trauma versus torture trauma: a retrospective controlled cohort study of Tibetan refugees. *J Nerv Men Dis*. 1998; 186: 24-34; Van Ommeren M, de Jong J, Sharma B, Komproe I, Thapa S, Cardena E. Psychiatric disorders among tortured Bhutanese refugees in Nepal. *Arch Gen Psych*. 2001; 58: 475-482.

on a part time basis, researchers were unaware of any of the facilities offering ongoing counseling. Medications for depression, anxiety, or difficulty sleeping were apparently more readily available, although a number of detainees reportedly were not aware of their availability either.

Several detainees described suicidal thoughts and two reported having attempted to commit suicide while in detention. Most of these individuals with suicidal thoughts, however, did not notify detention center staff of this, often apparently because of fear of possible repercussions. Many detainees expressed a concern about how suicidal individuals would be treated by detention center staff (i.e. placement in segregation) while others feared that revealing their suicidal ideation might adversely affect their asylum application (see Narratives).

The qualitative data from asylum seekers' testimonies vividly describe how being imprisoned further worsened their already fragile mental health. Many detainees cited the system's treatment of them as criminals as particularly stressful. In addition, many of the specific experiences that reportedly occurred inside the detention centers further exacerbated their psychological difficulties. Several described how a fear of being placed in segregation or the uncertainty of unannounced transfers among the facilities weighed heavily on them. Harsh treatment by detention center staff, including verbal abuse, also took an emotional toll on these individuals.

Those who eventually won asylum and were released offered examples of how their mental health improved upon release, but also described lingering effects of the detention experience. Finally, several detainees indicated that, even when conditions were relatively good, detention was nevertheless harmful to their mental health.

## **SURVEY FINDINGS**

### **Psychological Symptoms**

Only two (3%) of the 70 study participants reported having serious psychological or mental health problems prior to experiencing persecution/difficulties in their country of origin. However, 58% reported having poor psychological health at the time they left their country (i.e., before arrival into the United States), suggesting that the traumatic experiences suffered in their country had a profound impact on their mental health functioning. Fifty-two (74%) of the individuals in this study reported having experienced torture,<sup>145</sup> as well as numerous other traumatic events prior to arriving in the US (See Chapter IV: Characteristics of Study Participants).

Rates of anxiety, depression and PTSD symptoms were extremely high

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<sup>145</sup>As defined by the UN Convention Against Torture.

among detainees (Table 5).<sup>146</sup> Clinically significant anxiety symptoms were present in 54 of 70 detainees (77%). Clinically significant depression was present in 60 (86%). PTSD symptoms were somewhat less pronounced but nonetheless quite common, and were present in 35 participants (50%). Sixty-three individuals (90%) were symptomatic for at least one of these three psychiatric problems. Thirty-one individuals (44%) were symptomatic for all three. Overall, 72% of the respondents described their general psychological health at the time of the interview as poor.

**TABLE 5:  
Psychological Distress of Survey Respondents (N=70)**

	Mean (s.d.)*	Number (%) above cut-off†
Anxiety (HSCL-25)	2.41 (.74)	54 (77)
Depression (HSCL-25)	2.51 (.67)	60 (86)
PTSD (HTQ)	2.50 (.64)	35 (50)
Suicidal Ideation	N/A	18 (26)

\* Mean (s.d.) refers to group mean at time of assessment

† Refers to percentage of subjects above recommended cut-off (1.75 for HSCL-25 Depression and Anxiety subscales, 2.5 for HTQ).

Frequently reported anxiety symptoms (Table 6) included feeling fearful (64%), nervous or shaky (60%), and restless (54%). Frequently reported symptoms of depression (Table 7) included feeling lonely (79%), feeling sad (76%) and experiencing difficulty sleeping (73%). PTSD symptoms (Table 8) frequently reported included recurrent thoughts/memories of traumatic events (80%), sudden emotional or physical reactions when reminded of the most hurtful or traumatic events (70%), avoiding thoughts or feelings associated with the traumatic events (69%), and recurrent nightmares (56%).

Eighteen participants (26%) reported thoughts of suicide while in detention (Table 9). Only 3 (17%) of these individuals, however, reported that they had told detention center staff about these thoughts. Two of these eighteen individuals reported having attempted suicide while in detention but neither attempt resulted in any significant medical problems and neither detainee was hospitalized in a psychiatric facility as a result of the suicide attempt.

<sup>146</sup>Anxiety and depression symptoms were assessed by the HSCL-25. Clinically significant anxiety symptoms were based on a mean greater than 1.75 for the 10-item anxiety subscale of the HSCL-25. Clinically significant depression symptoms were based on a mean greater than 1.75 for the 15 item depression subscale. Clinically significant PTSD symptoms were based on a mean score of 2.5 or greater for the 16 item PTSD subscale of the HTQ.

## Case #1(DK): “Loneliness and Fear in Jail”

19-year-old DK sought asylum in the US after several personal tragedies. After witnessing the murder of both of his parents he was enslaved by rebel soldiers, who forced him to march at the front lines in battle and to bury the bodies of fallen soldiers. DK was badly beaten and witnessed the murder of innocent victims, including his best friend. When he finally escaped, he had nowhere to go: because he had seen combat on the rebel side, he was now wanted by his government. He fled to the US, only to spend two years in jail, including periods in cells with convicted criminals.

During his time in detention, DK was held in five facilities: one INS detention center and four county jails. He described how the behavior of some guards contributed to the stressful environment, including the perpetually looming threat of solitary confinement, a.k.a. “the hole.”

*The corrections officers yell, ‘Lock in!’... they just yell for no reason... If you go outside to the yard and you wave to someone outside the fence, the corrections officer will handcuff you and take you to the hole. For anything they can threaten to put you in the hole.*

At the time of a follow-up interview several months later, DK was sharing a cell with a convicted murderer.

*I say, ‘Why you kill people?’ He say, because we want the money, we want the drugs, we don’t care.’ And then he showed me his gunshots... He said they hurt very much, burn like fire. And then I was very scared. ... My celly says, ‘You’re too nice. You’re here with a bunch of criminals, they’ll work over you. You don’t be so nice.’ But I can’t help it, that is my heart.*

There were two other INS detainees on DK’s cellblock; the rest had been sentenced for drug-related charges or violent crimes. DK wanted to be transferred to a facility where he was housed with INS detainees.

*In [a cellblock at another facility] we are all INS detainees. We are not afraid of each other... At [the other facility] we have long toothbrush, no problem. But here, no, because they will sharpen, make knife.*

As he was leaving the visiting room, DK added,

*Nobody know me. I say, if something happened, nobody know me.*

DK subsequently was transferred back to a facility where there were solely INS detainees.

Although DK reported no serious medical problems while in detention, he described a deterioration of his mental health, referring specifically to extreme anxiety with sudden spells of terror, which he attributed largely to his imprisonment with criminals and to the constant threats of segregation and deportation.

*When you see [officers] sending someone back to his country at night, you think they might be coming to get you, too... Like last night, some of my roommates saw [one detainee] taken away in the middle of the night and when I woke up he was gone. I felt scared. I say, 'It can happen to anyone.'*

DK also reported symptoms of depression, including sadness, difficulty sleeping and low energy, and symptoms of trauma, such as recurrent nightmares. He attributes these problems to his long confinement:

*Here you are, just in the same place, nothing to do, unable to go anywhere. Sleep just don't come... In [my] dream the people die, they're killing people the way my parents died. When I have the dream about these things, I shout in the night. Or I talk. My roommates tell me I talk too much.*

DK said he received psychological counseling “maybe two times” at one detention facility before he was transferred. An experience with a counselor at another facility was positive: “[The counselor] was making me feel good. [The counselor] said, ‘You feel sad. You can come and talk to me.’ It helped because [The counselor] was the only one who made me feel good. [The counselor] was willing to listen.” When asked if he was taking medication to help him sleep he said he did not know such medication was available.

DK subsequently won protection under the Convention Against Torture, but the INS appealed. After almost two years in American jails, DK was paroled pending a retrial of his case.

DK spoke out against the policy of detaining asylum seekers.

*Sometimes INS says we are criminals. We are not criminals. We deserve the chance. If we do crime put us in jail. But we do no crime. I came to this country for freedom.*

**TABLE 6:**  
**Hopkins Symptom Checklist-25 Anxiety Symptoms (N=70)**

Symptom	Individuals experiencing symptom quite a lot or extremely in week prior to interview	
	Number	(%)
Suddenly scared for no reason	29	(41)
Feeling fearful	45	(64)
Faintness, dizziness, weakness	24	(34)
Nervousness or shakiness inside	42	(60)
Heart pounding or racing	33	(47)
Trembling	18	(26)
Feeling tense or keyed up	35	(50)
Headaches	36	(51)
Spells of terror or panic	36	(51)
Feeling restless, can't sit still	38	(54)

Among individuals scoring above cutoff score for HSCL-25 Anxiety: (n=54)		
	Number	(%)
When did symptoms begin? (n=53 respondents)		
Before beginning to experience difficulties persecution in their country	0	
Since beginning to experience persecution but before arriving in the US	45	(85)
Since being detained by the INS	8	(15)

Since being in INS detention, have symptoms: (n=52 respondents)		
Improved	0	
Stayed the same	7	(13)
Gotten worse	45	(87)

To what extent is detention contributing to the symptoms? (n=51 respondents)		
Not at all	1	(2)
A little	6	(12)
Quite a lot or extremely	44	(86)

**TABLE 7:**  
**Hopkins Symptom Checklist–25 Depression Symptoms (N=70)**

Symptom	Individuals experiencing symptom quite a lot or extremely in week prior to interview	
	Number	(%)
Feeling low in energy, slowed down	32	(46)
Blaming yourself for things	22	(31)
Crying easily	31	(44)
Loss of sexual interest or pleasure	27	(39)
Poor appetite	37	(53)
Difficulty falling, staying asleep	51	(73)
Feeling hopeless about the future	39	(56)
Feeling sad	53	(76)
Feeling lonely	55	(79)
Thoughts of ending your life	9	(13)
Feeling of being trapped or caught	47	(67)
Worrying too much about things	50	(71)
Feeling no interest in things	27	(39)
Feeling everything is an effort	37	(53)
Feelings of worthlessness	33	(47)
<b>Among individuals scoring above cutoff score for HSCL-25, Depression: (n=60)</b>		
	<b>Number</b>	<b>(%)</b>
When did symptoms begin? (n=58 respondents)		
Before beginning to experience difficulties/ persecution in their country	0	
Since beginning to experience persecution but before arriving in the US	36	(62)
Since being detained by the INS	22	(38)
Since being in INS detention, have symptoms (n=59 respondents):		
Improved	2	(3)
Stayed the same	5	(9)
Gotten worse	52	(88)
To what extent is detention contributing to the symptoms? (n=57 respondents)		
Not at all	0	
A little	3	(5)
Quite a lot or extremely	54	(95)

**TABLE 8:**  
**Harvard Trauma Questionnaire PTSD Symptoms (N=70)**

Symptom	Individuals experiencing symptom quite a lot or extremely in week prior to interview	
	Number	(%)
Recurrent thoughts or memories of the most hurtful/ terrifying events	56	(80)
Feeling as though the event is happening again	42	(60)
Recurrent nightmares	39	(56)
Feeling detached or withdrawn from people	33	(47)
Unable to feel emotions	23	(33)
Feeling jumpy, easily startled	34	(49)
Difficulty concentrating	44	(63)
Trouble sleeping	52	(74)
Feeling on guard	31	(44)
Feeling irritable or having outbursts of anger	28	(40)
Avoiding activities that remind you of the traumatic or hurtful event	38	(54)
Inability to remember parts of the most traumatic or hurtful events	16	(23)
Less interest in daily activities	31	(44)
Feeling as if you don't have a future	37	(53)
Avoiding thoughts or feelings associated with the traumatic or hurtful events	48	(69)
Sudden emotional or physical reaction when reminded of the most hurtful or traumatic events.	49	(70)
<b>Among individuals scoring above cutoff score for the HTQ (n=35):</b>		
	<b>Number</b>	<b>(%)</b>
When did symptoms begin? (n=34 respondents)		
Before beginning to experience difficulties/persecution in their country	0	
Since beginning to experience persecution but before arriving in the US	27	(79)
Since being detained by the INS	7	(21)
Since being in INS detention, have symptoms: (n=32 respondents)		
Improved	0	
Stayed the same	4	(13)
Gotten worse	28	(88)
To what extent is detention contributing to these symptoms? (n=33 respondents)		
Not at all	0	
A little	1	(3)
Quite a lot or extremely	32	(97)

Psychological distress appeared to worsen as the length of detention increased. Severity of anxiety, depression and PTSD symptoms were all significantly correlated with length of time in detention.<sup>147</sup> Forty-nine (70%) stated that overall their mental health had worsened substantially while in detention. While most of the individuals with clinically significant symptoms acknowledged that their symptoms had started after experiencing problems/persecution in their countries of origin, but before arriving in the United States, the overwhelming majority of these symptomatic individuals reported that their symptoms had worsened during their detention (88% for depression, 88% for PTSD and 87% for anxiety). When asked to estimate the extent to which their current psychological symptoms were influenced by detention, subjects overwhelmingly cited the detention experience as substantially contributing to worsening their mental health. Nearly all (97%) of the participants with significant PTSD symptoms indicated that detention was significantly worsening their symptoms, along with 95% of individuals with clinically significant depression and 86% with clinically significant anxiety.

**TABLE 9:**  
**Suicidal Thoughts While in Detention (N=70)**

	Yes Number (%)	No Number(%)
Thoughts of suicide while in detention	18 (26)	52 (74)
If had thoughts of suicide (n=18), then told detention facility staff.	3 (17)	15 (83)
While in detention, attempted suicide	2 (3)	68 (97)

## Mental Health Services

Most of the asylum seekers interviewed (69%) reported that they wanted counseling for their mental health problems although few received such services (Table 10). Among those who wanted counseling, only 6 (13%) reported receiving counseling from someone provided by the detention facility. An additional 7 detainees reported receiving support which they considered counseling from non-INS sources, such as religious or volunteer visitors. Among individuals who wanted counseling, however, very few (28%) actually requested counseling from the detention facility. The reason primarily given for not requesting counseling was that they did not

<sup>147</sup> ( $r_s=.34$ ,  $p < .05$ ) for anxiety symptoms; ( $r_s=.28$ ,  $p < .05$ ) for depressive symptoms; and ( $r_s=.28$ ,  $p < .05$ ) for PTSD symptoms.

think such services were available. Among the 12 individuals who requested counseling from the facility, half reported having received at least some counseling. Most individuals (80%) who received some counseling from either the facility or outside counselors reported that they believed the counseling was helpful.

Medications for anxiety, depression or sleep difficulties were more readily available to the detainees interviewed (Table 10). Forty seven percent of study participants reported having wanted such medications while in detention, and 58% of these individuals received medications. As with counseling, many individuals reported not requesting medications because they were not aware that they were available. Among those who requested medication, most (80%) received medication. Sixty-three percent of individuals who wanted and received medication, thought that it was helpful.

## **Narratives**

The testimonies of detained asylum seekers interviewed in this study powerfully articulate their perceptions of how the detention experience further harmed their mental health. The narratives highlight several dimensions of this harm. For example, in many ways the nature of detention recreates persecution asylum seekers suffered in their countries of origin: being trapped and helpless in the hands of authorities. Confinement and the loss of liberty can profoundly disturb asylum seekers and trigger feelings of isolation and powerlessness. Furthermore, in detention, asylum seekers are treated as criminals, a demeaning status, even though they have not been convicted of any crime.

## **Poor and Worsening Mental Health**

Asylum seekers described their prior suffering and the symptoms of depression, anxiety and PTSD that they were experiencing while in detention.

A 27-year-old man who was repeatedly arrested and beaten because of his political and ethnic associations, and witnessed the beatings and murders of his parents, reported the following:

*This place makes me think a lot about what happened to me in my country. I am not free and this reminds me of when I was in prison in my country. I think too much, especially of my responsibility. I don't know [my family's] condition. I think too much about whether I am going to be sent back to my country and there I face death... I try not to think a lot about what happened, but I can't control it. When I think about what happened, I feel weak and hopeless... I'm depressed in here and I feel everything is getting worse.*

After nearly 6 months in detention, he was granted asylum and released.

**TABLE 10:  
Mental Health Services While in INS Detention (N=70)**

Item	Yes Number (%)	No Number (%)
Wanted counseling for feelings of sadness, nervousness or difficulty sleeping while in detention	48 (69)	22(31)
Of those who wanted counseling (n=48), received counseling from mental health professional provided by the detention facility (n=45 respondents)	6 (13)	39 (87)
Of those who wanted counseling (n=48), requested counseling (n=43 respondents)	12 (29)	31 (72)
Reasons cited for not requesting counseling (n=27 respondents)		
Did not think counseling was available	22(81)	
Lacked confidence in services provided at facility	2(7)	
Did not feel comfortable talking with detention facility staff	3(11)	
Of those who requested counseling (n=12) received counseling provided by the facility	6(50)	6(50)
Wanted medication for feelings of sadness, (n=67 respondents)	33(49)	34(51)
Of those who wanted medication (n=33), received medication	19(58)	14(42)
Of those who wanted medication (n=33), requested medication	20(61)	13(39)
Of those who requested medication, (n=20) received medication	16(80)	4(20)

Another detainee reported that since being in INS detention, his trauma symptoms have “become much worse.” He feels that being in detention is contributing significantly to his anxiety.

*I have difficulty falling asleep. I lie on my bed with my eyes open, thinking about my life, my future. Finally, I fall asleep at about 2:00 a.m., and often I have bad dreams. I dream I’m being arrested, beaten, tortured. I get up from my bed sweating. I have nightmares almost every night.*

Another asylum seeker vividly described his depression and anxiety symptoms:

*When I am talking to you now it is as if you are shaking, (he said while waving his hand back and forth to express the motion he sees). When I'm nervous, I shiver from the inside and sweat... When I'm doing something and then it comes to my mind that I'm in prison and I don't know what will happen to me, I feel as if my heart... it starts pumping very fast. I feel like someone who just received a message that his relative died... When I think of all these things I'm going through, I feel so restless I don't want anyone to come near me.*

Extreme agitation was a common symptom, echoed by an asylum seeker, who believed her psychological health had “become much worse” during her time in detention:

*Too much anger, I talk a lot now, [I am] agitated, nightmares are worse. I can't remember things anymore; it's becoming a blur. [I am] always frightened.*

A victim of torture described how the feeling of being trapped left him with trouble sleeping, headaches, restlessness and recurrent nightmares. He now trembles frequently. “I never had this problem before,” he said.

Many candidly described the onset of symptoms in their homeland after torture or persecution. Yet most emphasized how detention had aggravated the symptoms. For example, one detainee was a young woman from West Africa whose husband was tortured in prison as a result of his political beliefs. After he fled to the US, she was raped on three occasions by soldiers who were searching for her husband. When she came to the US to join him, she was placed in detention.

*Since being in detention, I think more and more about the rape. I think about being with my husband and having freedom. Here I am locked up, and every day is the same. And I'm thinking about what happened to me... I keep seeing those people and what happened to me.*

After 9 months in detention she was released and allowed to apply to share her husband's asylee status.

One subject came to the US after having been brutally raped in a makeshift cell, where he was being held by politically motivated kidnappers. After 3 months of detention, he said,

*I feel a relief that it's well-lit and safe here, compared to my country. But this is a jail, nevertheless... [I am] worried about the term of my detention... You've replaced one disease with another one.*

Three months later, this detainee reported his mental state had significantly worsened.

*It is terrible. I can't explain why I'm detained. You are a victim [in this situation]... when I first came here I thought it's where they protect people,*

*but that's not what it's like. Six months I'm here. I'm worried about my mental health... I cannot cry in here. My feelings are dead... I'm a victim and put in prison, and I cannot accept this.*

The uncertainty about the length of detention was a significant stressor for many. After 6 months in detention, one subject said:

*The main problem is that we don't know what is going to happen. At least with a prison sentence you know you are lessening your time. But here, even after three years they may still send you back... In my country I was in prison for 5 days and there were beatings, but then they release you after five days. But you get here to a democratic country, and it goes on and on with no release. It's another kind of torture – mental torture. I write my mother to prepare my grave next to my grandfather... No one knows we're here.*

One detainee was tearful:

*Because of being detained, not knowing when I will be allowed to get out, or whether I will get out... If I were not in detention, these stresses would be decreased because I would be free and I would be able to occupy myself...I never expected this was what was going to happen to me. I thought I was going to a place where things would get better, but life is even more difficult [now] because I am here. I am not free. I feel powerless and I don't know what is going to happen to me.*

Another female detainee blamed much of her mental distress on detention.

*I was very sad when I left my country because of what happened to me. I was forced to leave, but then here I feel sad because I am treated like a criminal. Yes, I used someone's passport, but if I wasn't having problems, I don't need to come to this country...In my country they touched my body. Here they don't touch my body, but they touch my brain.*

## **Criminalization of Asylum Seekers**

Asylum seekers considered their detention tantamount to treating them like criminals. They consistently cited this criminalization as deepening their sense of confinement and hopelessness, and as a factor in their poor mental health.

For many individuals this was the first time they had been incarcerated. Noted one detainee:

*It's a terrible experience. I never was in prison before. I never thought I would be in a prison. The officers speak to me like I'm a prisoner.*

After being granted asylum and released following 6 months in detention, one African woman said,

*I will always remember being detained and handcuffed. It was a prison – I had never been in prison. I will never forget that.*

Said another detainee:

*When I came here, I thought I would be free. I could study and start to forget about what happened to me. That is why I ran away from my country and came to the US to begin a new life. But here I am in prison. If I wasn't in detention, I would feel much better. Detention is the biggest problem for me. I have never been in prison in my whole life. This is the first time.*

An asylum seeker detained at a county prison described how INS detainees receive the same treatment there as the criminal inmates.

*You cannot complain. If you complain about anything you can be put in the hole [solitary confinement]. They mix us with criminals. I think asylum seekers should be kept separate. The officers say, 'INS put you in prison. Anyone in prison is a criminal.' So they treat us like criminals.*

An asylum seeker detained in a county jail explained the impact of being treated as a criminal this way:

*You are caught here and under people's mercy. You feel extremely worthless. You can do nothing [to improve your situation]. You are not a criminal, and being shackled to go anywhere makes you regret yourself.*

Another asylum seeker in county prison commented:

*I never imagined myself incarcerated like this. I'm here with criminals. I can't sleep. I don't know what my future is.*

Said one detainee:

*I had high hopes when I came here but my first experience at the airport was to be handcuffed, made to wear prisoner's uniform and I became shocked; I thought I would be returned to my country, and so since that time, my health has worsened. I have a lot of time to think about my past and my family.*

Reported another detainee:

*You lose hope in detention. You are treated like a criminal. You're constantly escorted, there are cameras. There's no freedom.*

## **Retraumatization**

Having fled their homelands for their lives, detained asylum seekers find themselves locked up in a foreign system that can be reminiscent of the

persecution they fled. As in their homeland, their fate hangs in the balance of forces they do not understand or control. Commented one detainee:

*I came to this country to save my life, and when I see myself in this condition, it makes me worried too much that I stay in prison.*

One asylum seeker from Eastern Europe, who was brutally beaten there said, “My hands shake when I think of what happened to me.” Seeing the guards in the INS detention center, he says, brings back these disturbing memories. “When some guard[s are] on duty—they remind me of the militia in my town—always yelling at you. I go to my bunk and try to avoid them.”

A survivor of sexual abuse expressed dismay and confusion over her detention.

*After surviving torture and rape, I feel like I need time to relax and recover. It was a terrible surprise and disappointment to be put in prison. My feelings of tension have gotten much more serious. Instead of being consoled for what happened I feel I’m being resented. And it’s very bad.*

She went on to elaborate certain post-traumatic stress symptoms, and their connection to her confinement.

*I have great fear, I feel like I’m reliving it at times. When I think about what happened to me-I feel the pain in my body again-like it’s happening to me... I feel like if I could have contact with family and friends they could console or comfort me. But to experience what I experienced before arriving to this country and then being put in prison, that added to my suffering.*

Several detainees noted that being yelled at by guards often provoked memories of prior abuse. One man, who was imprisoned for a year in his country of origin due to his political affiliations, was subjected to beatings, and severe burning. He spent nearly 5 years in US detention centers and prisons before being paroled to Canada, where he was granted asylum.

*When I see the guards and the way they are yelling at us, it makes me remember how I was tortured in my country.*

One detainee who reported being tortured in captivity in his country of origin described how being detained again was increasing his prior symptoms. “I can’t tolerate a closed space, it makes me very nervous.” Although he had begun to experience insomnia before fleeing his country he noted that, in detention, “Every day I feel like it’s getting worse... I almost feel afraid to fall asleep.”

A woman, who said she was imprisoned and tortured in her country of origin, has an overriding sensation that connects her more than two years in INS detention with her prior persecution. She said her trauma symptoms began “in my country, but I feel more panicked here.” She went on,

“Being here is like going through another stage of torture and persecution. Because, like, the nervousness, the fear, the heart pounding, it happens like that often.”

Many detainees reported difficulty sleeping and recurrent nightmares. Subjects described these nightmares as evoking the traumatic events that caused them to flee their home countries, and said they sometimes confuse the nightmare images with reality. For example, one detainee said:

*In my nightmares – around 4 times a week – it’s like I’m back in home, I dream I’m in prison. Sometimes I think I am back in my country in jail.*

“I dream I’m in my country again being tortured,” reported another detainee. “I wake up and I’m covered in sweat,”

Detention brought on recurrent nightmares of being pursued for another asylum seeker.

*I feel hopeless. I have no hope for the future.... I have nightmares about three times a week. This has increased since I’ve been in detention. I dream about people chasing me and trying to kill me. I see fire, and people running and screaming.*

This detainee also describes how boredom had taken a toll on him.

*I think being inactive and not having anything to occupy myself-so I think a lot about those things that happened to me and I think that makes me more likely to have nightmares. I feel this environment also contributes to the nightmares. I am not free. I am always being watched and told what to do.*

Although his trauma symptoms began in his country of origin, an asylum seeker said his fear and isolation had intensified in detention leading to extreme anxiety and depression. An example of his heightened anxiety were recurrent nightmares:

*In the dream the people die, they’re killing people the way my parents died...When I have the dream about these things, I shout in the night. Or I talk. My roommates tell me I talk too much.*

An asylum seeker whose previous torture took place in prison reported recurrence of past symptoms while incarcerated here in the United States.

*I have nightmares every night. I think about things that happened to me—I’m in prison again, or I imagine that I can’t find my children. I think a lot about what happened there in my country. I try not to think about what happened but I do. In my country I had a lot of nightmares and difficulty sleeping. [Now] I fear even sleeping because I get nightmares.*

One detainee described a recurring dream of being sent home.

*In the bad dream I fear if I go home to my country I will be killed. Sometimes in my dreams I see the people from my country come here to kill me. I dream that too much... the government people, the police – they have guns. I wake up and just sit up in my bed and can't fall asleep. This happens 2-3 times a week since I come here this never stopped and in fact has gotten worse... I know I might still have the problems [if I were released] but they would be much better. This place is like a prison – makes them worse.*

Said another detainee:

*In my dreams I feel like someone is hitting me. Last time I dream I am being brainwashed... I feel I don't have a future because of my situation here. This is the same ordeal I had in my country. The only difference is the beating.*

One asylum seeker reported that while in detention she experienced significant feelings of nervousness and sadness, which had started before she arrived in this country, but had markedly worsened. She reported frequently experiencing nightmares in which soldiers are coming after her.

*In the night I wake up really shaking and my heart is pounding. Sometimes I don't sleep. Sometimes when the door opens I jump. I feel like the soldiers are coming at me....If I wasn't in detention, I could go for a walk, but here you are shut in with nowhere to go.*

Certain incidents in detention brought back disturbing memories for some detainees. For example, a struggle with officers left a detainee in a prison infirmary for several days.

*After I left the medical unit, I had nightmares that the INS prison guards were questioning me about having to go back to my country and they grabbed my throat again two or three times. I woke up sweating. I started praying, 'Free me, God.' I dreamt about [my country] last year, but more recently I've had nightmares about my treatment in INS detention.*

## **Difficulty of Confinement**

Many detained asylum seekers cited their confinement and the associated isolation and powerlessness as contributing to their poor mental health.

After finally winning asylum and being released, one detainee stated,

*Since I had been locked up, the stresses were too much, with no freedom to see people and share your feelings. In INS [detention] you are locked up for 22 hours. No chance to get away from the stress.*

Many detainees bemoaned not being able to escape their thoughts as a result of this confinement.

*In my country even though I became nervous, it wouldn't show, I could handle it. Because in my country, when I got nervous, I could take a walk, go somewhere else or breathe different air. But here it is the same routine day and night. 22 hours a day I'm in bed just lying in [my] bunk.*

In his detention facility, an enclosed roof area was the only recreational facility.

*They have 'outdoor' for 1 hour but it is very small... to call it outdoor is misleading, it's a covered roof, with a little opening... Even in my country when I was in prison there was at least time when I could go outside.*

Boredom also weighed heavily on asylum seekers. One asylum seeker who was imprisoned in his country for protesting human rights abuses there, and subsequently repeatedly beaten and tortured, said:

*The days are long, there is all this time and nothing to do but think, think, think. And so I think a lot about what happened to me in my country. It upsets me a lot.*

A woman from Africa who was granted asylum remembered her confinement:

*In detention there were not enough activities. The #1 activity was thinking and being sad. Outside, I think a lot but I am free now.*

This asylee said one of the most important changes for her since release was “to breathe fresh air again.”

Another African woman described her slowly passing days: “Same thing day and night, no relief, I feel like a dead person here, no relief.”

One subject noted that since being in detention he had reversed his circadian rhythm entirely. He stated that he had to force himself to sleep during the day “because it's crazy loud [in the detention center]. Now I'm in the habit of sleeping all day, from 1 p.m. – 12 a.m. I'm up all night, but it's quiet.” The subject now sleeps more than twelve hours at a time.

Another detainee put it simply:

*We need fresh light, a view of sky, why are we treated like criminals with guards everywhere?*

One detainee discussed the growing intensity of his anxiety, and explained how detention has exacerbated his anxious thoughts.

*I see my father when he was killed; he was killed in front of me... I'm thinking a lot about my family and not knowing where they are... I think a lot about what happened to me. If I were not in detention, I could be doing normal activities. And I wouldn't think so much about what happened. I'm not saying these things would be eliminated ever, but I would feel much better because I am a free person... I've never been in jail before so I'm quite scared.*

Another detained asylum seeker described the following:

*It was a big surprise to come here and be put in jail even though I never killed anyone or did anything bad. I thought someone fleeing their country would be welcomed here. I was surprised to find this policy here in the United States. I never thought I would be jailed here.*

*Since I am in detention – till now I never see the sky – only when I had to go out one time to see a dentist. Not outside- Everything is inside- no windows. Since coming here, I never see the moon, I never see the sun. I never saw outside. Even outdoor recreation is inside. It makes you crazy and gives you too much trouble.*

## **Worsening Mental Health Over Time in Detention**

Not surprisingly, the longer the incarceration, the more impact it had on asylum seekers' mental health. For example, even though one detainee reported being generally well treated, he described suffering more as his detention dragged on. The detention brought on nightmares, anxiety and worsening feelings of despondency.

*These feelings started during the torture [in my country], but have continued here because I am in prison. The longer I stay here the worse the symptoms become, because I see other detainees leaving but I have to stay.*

He eventually won asylum.

One subject reported that his psychological health had “become much worse” during his years in detention:

*Because of thinking of my life, future, what will happen to my family, thinking about what will happen if I go back to my country, will I be killed? I can't explain my feelings. Because I am staying longer in detention I am becoming more depressed. I don't know when my outside life will start.*

Two months later, after having been in detention for more than three years, he was granted asylum. He reflected on the stress of his detention.

*A long time I was there, what's going to happen with me I don't know, I feel very bad when I was there, I think because I was there a very long time. All these problems, I had it, I had chest pains, I went to see a doctor many times. I missed my family and what's happening with them, that made me old there.*

For another asylum seeker, simply the realization that he likely faced months of detention made him despondent. He described how, when he first arrived at the INS Detention Center, “Some inmates started telling me

how long they were there – six months, eight months or a year – I started to cry.”

One young detainee described how feelings of depression and anxiety began in his country of origin, but became worse after he ended up in INS detention and further deteriorated as his detention dragged on. He said he was 16 years old, although INS thought him to be at least 18.

*I thought the US is a democratic country, and it respects human rights. I never thought they would detain me... After all the problems I had in my country, I came here [and was put] in prison.*

At a follow-up interview, several months later, he reported worsening symptoms. Reactions by detention center guards did not help.

*Sometimes, when I have been crying in my dorm, the guard bangs on the window and yells at me to ‘Stop crying!’ When he banged on the window, I was very scared.*

The often slow process of applying for asylum with frequent delays took its toll on detainees.

*I am here so long, my court dates change and get postponed, and my colleagues are getting freed, I’m getting left behind. I never expected this. I am feeling things I never felt before: being so jumpy, scared, nightmares. My basic mood is angry. I don’t want to associate with people. I feel worthless. This is not me.*

The long and uncertain time in detention contributed to feelings of hopelessness for one detainee who had been held in a county prison for almost a year.

*At times, when I meet people that have been detained longer than I have, I say, ‘Where will this end?’ I know I can’t go back [to my country]. And then I tell myself that I’m a failure, that I’m wasting my life in prison. This is psychological torture.*

One asylum seeker, who had been raped while in prison in her country, described steadily feeling worse while in INS detention. At the time of the interview, she had been in detention for a number of years.

*Always I have fear. Where am I going? What are they going to do to me? My head becomes hot. Sometimes I hold my stomach because it’s shaking. All my body is shaking... Being in prison is the same as torture, torture of the brain. Because I don’t think I’m the same as I was before. I can feel so much fear... that I’m shaking so much I can’t even hold the cup. I don’t know what’s going on with my life. I am so afraid.*

This detainee had spent much of her time in county jails.

*I have seen people who have killed people and I see them walk out. They say when they finished their time they are released. But they don't release me.*

## **Worsening Mental Health Because of Segregation**

As noted elsewhere in this report segregation (i.e. solitary confinement) and the threat of segregation are used as a means of punishment and intimidation (See Treatment in Detention Facilities chapter). For a person who is affected by post-traumatic stress, the prospect of solitary confinement can be especially fearsome. One detainee explained:

*Segregation makes me afraid. Being with friends helps to reduce my depression. The possibility of being placed in segregation makes me more afraid.*

Another detainee said,

*I would be very afraid, being in a room just by myself – no television, no books to read, cold – I would be very afraid. Being lonely, by myself, just myself and my thoughts, would be very scary.*

This detainee was subsequently placed in segregation for two days for arguing with another detainee. In a follow-up interview, he recounted his experience there.

*It was very bad. The room was very dirty and it smelled bad. Segregation made me feel sad.*

This individual described a conflict that ensued with a guard after his release from segregation.

*I went to religious service after being released from segregation. On the way back to the dorm after the service, I was standing outside the door of the dorm. I was distracted, thinking about the segregation and how difficult it was. And the guard came over and pushed me into the dorm room. He raised his hand like he was going to hit me, and said, 'I will slap your face.' And I just said, 'OK, slap me.' [At this point in the interview the subject began to cry.] When I remember this action, it makes me very nervous. I can't stop crying. It's bad for me. I've done nothing wrong, and I think I'm being oppressed here.*

Another detainee who was put in segregation reported:

*I was very scared while I was in segregation. The place was very small. They didn't let me go out. They gave me food through the window. Since being in segregation, I have felt even more nervous.*

## Thoughts of Suicide

Several asylum seekers reported that the trauma of detention pushed them toward their limits. Approximately 25% reported that they had experienced suicidal thoughts while in detention. Among those with suicidal thoughts, only 3 individuals (17%) told detention center staff about these thoughts. Many of the individuals with suicidal thoughts believed that the stress of being in detention was responsible. Two individuals interviewed for this study reported attempting suicide.

One of the individuals who attempted suicide reported that she tried to hang herself, but had been stopped by a friend. Later she was granted asylum. Her description of the events surrounding her suicide attempt is as follows:

*Before detention, I had never thought of killing myself. I had never had such an idea. My goal was to save my life. It was when I got into detention, that I started losing hope and thought that it is useless to live. In my mind, I just kept thinking there is no reason to live and I thought about what would happen to me if I was sent back to my country- I thought I would be killed if I was sent back. So I thought it would be better to just get it over with now rather than to be sent back.*

*It was after 7 months. I had never been in prison before in my life. I came to the US to save my life. When I left my country I was already suffering emotionally. I thought the US was a country of human rights that would protect me. I never thought about being detained here.*

*I grabbed a bed sheet and tied it to a piece of metal between the television and the wall, there was a base of about 3 and a half meters using the toilet I was able to tie the sheet and it was easy to do. This way of committing suicide, in fact, we learned in detention. I had heard a about a male who had killed himself this way.*

*I was in a dormitory of 6 people. Fortunately, one of my friends, a roommate saw what I was about to do. She came and calmed me down and said 'No you have to stop that.' She also let the others in the dorm know and they said the same thing, not to do this.*

*They calmed me down and sat with me and advised me to take it easy and they calmed me down. They said, they can't go back to sleep because they were afraid to go back to sleep because of what I might do. One of my friends brought out a bible, and we did some praying together. I became very relieved with all of the advice I was getting, and they also pointed out other detainees who had spent even longer periods and had still won their cases.*

*After that I never tried to kill myself again. I did nothing again, also because a woman who came every Sunday pointed out that God has forbidden people to kill themselves and that would be a sin.*

After 11 months in detention, she was granted asylum and released. Since release, she denies having any suicidal thoughts.

This woman reported that she did not tell detention center staff about her suicidal thoughts because of fear of being placed in segregation if she did so.

*I didn't tell the health staff, because if they had found out about it, they would have put me in a room that was much worse... Where I would have been alone and that would have been much worse. It would be a room where there is no telephone and no television and where you would be handcuffed. I knew this because I was told by other detainees who had been put there.*

*There is a book of rules of detention and it gives the different reasons to be sent into this room, and one of them is fighting, but another is trying to commit suicide. I think many detainees would not tell the medical staff if they were thinking about killing themselves; the medical staff and the guards are part of the same family. They would be afraid of being put in segregation.*

One other individual interviewed for this study also attempted suicide. After his initial asylum claim was denied, but pending appeal, he was charged with entering the country with a false passport, and was subsequently transferred to a federal prison. A follow-up interview was conducted with him at this facility. He reported that when he was transferred, he did not know where he was being taken, and remembers becoming very afraid and despondent. He described the following suicide attempt and his treatment afterwards.

*When I came here, I didn't know for what reason. I made a rope from the towel and put it around my neck and tried to kill myself, because I lost any hope. I know that killing oneself is against my religion, but I thought it is better than the way they are treating me. But the guard saw me and stopped me. After I tried to kill myself, a doctor here examined my neck and the marks. But [the doctor] did not speak my language and did not get an interpreter.*

*Then they strapped me to a bed in a room with someone to watch me. The bed was close to the wall and I tried to bang my head against the wall. They put something to protect my head. A woman, I don't know who she was, came to speak with me, but they did not let her.*

*I was strapped to the bed for two days - only when I would have to go to the bathroom, then I would be released. It was not for two days, until a doctor came and spoke to me in my language. I told [the doctor] my story. [the doctor] checked me, I was trembling a lot. [The doctor] asked me if I had a seizure, I said no. [The doctor] asked me 'Why do you want to kill yourself?', and I answered, 'Why do you bring me*

*here?’ I told the doctor, they brought me here even without the knowledge of my lawyer. During the two days, I had a shooting pain in my chest. I did not sleep. I was not given any medication. I told the doctor about the nature of my case. The doctor said, don’t try to kill yourself and we will let you speak to your lawyer. I have nobody around me. All I have is my lawyer.*

A young African woman described thoughts of ending her life while in detention. They were “mild, no plan; it’s a feeling that comes but I control it; more of a feeling that I would be better off dead.” She received asylum and was released and she said her suicidal thoughts faded.

Another subject also attributed thoughts of ending his life to being in detention. “It is torture here,” he said. He stated that he did not tell detention center staff, “Because they will put me in segregation. They did this to someone who complained of this.” This same detainee also voiced concern about such complaints endangering his asylum application. “Maybe they will report me if they think I am crazy.”

One asylum seeker said, “I had a plan to hang myself with sheets [in detention], but never prepared it, never attempted [it].” He also did not seek professional help. Because he felt he received poor medical treatment for a prior physical condition, he said he did not think he would be able to receive quality care for his suicidal thoughts.

When asked whether she had had thoughts of ending her life, another subject responded, “Yes, during the first week.” But she reported that she did not inform detention facility staff of this. “Because I didn’t think it concerned anyone.”

According to another detainee, “I told the nurse [about suicidal thoughts]. The nurse told me I was depressed and they would give me medication for depression. I asked what are the side effects – I was told I would not have emotional feelings so I didn’t want to take it.” This woman reportedly was not seen by a mental health professional nor was she offered counseling.

One asylum seeker’s poor mental health led him to contemplate suicide and he was subsequently seen by a mental health professional, but reports having only a cursory interview, in which he was asked whether or not he was suicidal and then asked to sign a document stating that he was not.

## **Limited Mental Health Services**

While many detainees voiced interest in speaking with a counselor, such services, were apparently not readily available or limited and not sustained. Many individuals who reported being interested in counseling never requested it because of a commonly held understanding that it was not available. For example, one detainee reported,

*I decided it would help to talk with someone, but the other inmates told me they had asked, but it wasn't available. So I didn't bother asking.*

This same detainee reported that she found it helpful talking to a psychiatrist that her lawyer had subsequently arranged to interview her for her asylum application.

*I told [the psychiatrist] things that I had never told anyone. It uplifted me, but it also made me very sad.*

One detainee who reported extreme symptoms of anxiety, including a fearful sense of reliving traumatizing events and somatic pain when she recalled her abuse, said of psychological counseling:

*I don't even know if it exists. No one has ever mentioned it as a possibility. If it did, I would be very interested.*

Several detainees expressed appreciation for what little counseling they received, whether from an INS-provided mental health professional or a volunteer visitor. Access from outside visitors is limited, however. One detainee, for example, who reported receiving counseling from a detainee prayer group, reflected on “the power of having others sharing my burden. Their counseling, their welcoming, makes my bad thoughts disappear.”

Another detainee cited the support of friends as well as a psychiatrist. He reports that some individuals from his village who now lived in the United States would visit him approximately once a month.

*I tell them I am sad, have low morale and am not at peace. When they tell me to be brave and that one day there will be a decision, we have to be patient – that encourages me.*

He also reported being seen several times by a psychiatrist provided by the detention center and found this to be helpful. “I found it helpful to talk to [the psychiatrist] about how I am doing.” Additionally, the psychiatrist prescribed medication, which the detainee found helpful.

One individual reported talking with a counselor at a detention facility, and found it somewhat helpful:

*I told [the counselor] I'm afraid to go back to my country, and [the counselor] says, 'Be patient, everything will be okay.' [the counselor] just says, 'Be patient, be patient.' But it is better than nothing.*

Another detainee lamented at having had counseling for a brief period which then stopped.

*A nurse was volunteering to help us with our psychological problems with 2-3 visits a week for 3 months. It was very helpful, but [the nurse] stopped and we don't know why. [The nurse] had a small group that grew to 15-16 people... it helps to talk and get feelings out, to laugh and forget about things for a bit.*

Another subject reported a positive reaction to counseling she received from a volunteer visitor, and expressed a desire for more.

*If there was someone to talk to about my problems, I would be interested in talking to them. It's good because it comforts you and you feel you are not alone.*

Others did not request mental health services because of concerns about how mental health problems would be perceived, especially by those deciding their asylum cases. "I didn't want the INS judge to think that I am defective, and not want me as a citizen," said one asylum seeker.

One detainee wanted counseling for feelings of sadness, nervousness, and difficulty sleeping but had not requested them because he did not feel comfortable talking with INS staff:

*The INS officers just pass by so fast, I didn't want to bring it up. Also, if they advertised such counseling, I would have taken it.*

Another asylum seeker reports that she never asked about counseling because, "They don't offer that. I think it would be nice if they had people to come and give counseling or just listen to you that would ease the load."

Medications for anxiety and depression appeared to be more readily available, although individuals reported often not asking for medications because they were unaware that such medicines were available. For example, when a PHR-Bellevue/NYU interviewer asked an asylum seeker with significant symptoms of depression if anyone had spoken to him about medication for depression, he said "What is that?"

Most of the individuals in this study who asked for medication received it, and many reported finding the medications helpful. For example, one detainee commented:

*Before taking the medicine, I was much more nervous. This has lightened the feeling. But even with the medication, I still feel nervous and sad. I think this is because of being in detention.*

Other individuals reported difficulty obtaining adequate medication. For example one individual reported asking a health provider at a detention facility about medicine for feeling sad, but was told there was none. Another individual commented:

*I was repeatedly given the same medications without relief. I asked for medications to help me sleep. They gave me the same medication I was taking for my allergy, but it didn't help.*

Several detainees voiced concerns about what they perceived as the negative effects of unfamiliar medications which were prescribed to other detainees who sought mental health care.

For example, one subject reported feeling sad, lonely and anxious while in detention but did not request medication because:

*I saw others who asked for medicines but they were heavily drugged. They sleep all day and are really out of it, so I didn't want it.*

## **The Benefits of Volunteer Visitors**

Many detainees noted that volunteer visitors provided significant relief, in terms of stress reduction and increased morale. For some detainees, visits represent a welcome distraction from the boredom of repetitive and uneventful days. Others were comforted by being able to voice their anxieties to people who, unlike their fellow detainees, were not burdened by the same stresses of confinement. Those who complained of feeling demeaned and/or criminalized by their incarceration also described visits from sympathetic individuals as humanizing, and said they provided what often felt like a lost connection to society. One detainee who, after being released from detention, returned to visit those he left behind, explained,

*In detention you only discuss about the cases, court, always the same thing. With the outside visitor you can forget a little bit about the inside of detention, because you can discuss other subjects. It makes you start to think your life outside will be, and maybe you will think about the future outside instead of always worrying about being sent back home. ...They come to comfort you, and even if you are sad you will try to be stronger to please [the visitor], try to forget a little about the sad life you have in detention, and that affects your morale.*

Many detainees described extreme loneliness caused at least in part by a concern that no one, besides the INS, knew where they were or that they were being detained. This fear is exacerbated by the indefinite length of time in detention that detainees face, as well as the high-security confinement of most of the centers. One young man, who was detained in a criminal facility and shared a cell with a convicted murderer, was eager for our researchers to document his whereabouts.

*Nobody knows me. I say, if something happened, nobody knows me.*

Detainees who received visits from volunteers described a profound sense of relief and renewed courage simply because an outside person knew of their situation and might also realize if they were to be transferred or deported.

For all of these reasons, detainees also expressed gratitude for visits from attorneys and doctors doing pro-bono evaluations. Several individuals in this study were transferred, at least for some period, to a facility a

substantial distance from their attorneys, thus impeding communication with their lawyers. One woman, who no longer saw her volunteer visitor and lawyer after she was transferred to a prison in another state, said of the missed visits,

*It's good because it comforts you and you feel you are not alone.*

## **Regardless of Conditions, Detention Worsens Mental Health**

While there were frequent reports of poor treatment in detention (see Chapter VII), several asylum seekers reported generally being treated well and spoke favorably of some of the guards. Others cited positive aspects of INS detention, for example, access to medical care, such as HIV treatment. Yet, invariably, even those that felt they were accorded respect and consideration during detention were deeply troubled by their experience. Many suggested that the experience of detention is traumatic, regardless of the conditions.

An African asylum seeker said he was treated well by much of the staff at one detention facility.

*Some of the guards are very cooperative and understand and treat you with respect... When I first arrived [in INS detention], I felt that things would be fine, because there would be no physical torture. But after a few months there, I felt like I was going crazy. I fled physical torture in my country and was given psychological torture in this country while I was in detention.*

Another asylum seeker was complimentary of the staff at his detention center. "If you don't do anything bad, they don't treat you bad." Still, he had significant trauma and detention symptoms while in INS detention. "I know that the symptoms started in detention," he said of his depression. This subject was ultimately granted asylum and released. "Since leaving detention, I have not had these problems," he said of his previous symptoms.

Another asylum seeker was grateful for his HIV treatment in detention, but still found his mental health deteriorating. After winning asylum and release he said his health improved markedly. For example, in detention, "I was taking sleeping pills every night; outside I don't take anything."

After winning asylum, one former detainee explained in simple terms why INS detention harmed his mental health, "One of my problems in Africa was being in detention." He had witnessed the murder of one brother and the maiming of another and was himself held hostage and repeatedly beaten. He said some guards were respectful of him and other asylum seekers. Nevertheless, he felt that the nature of detention itself exacerbated the problems which his previous abuse had started. "Too

much thinking, too much time to sleep and get nightmares and the very state of being detained together with people who have the same problem. Why did I ever leave my family for this?"

Said one former detainee who was granted asylum, "Whenever I think about detention, I become agitated and upset; nightmares and bad memories come back to me and make me depressed." He called the detention facility staff "very good," and said he appreciated that they were helpful with problems he had. However, he insisted on the detrimental effect of detention, despite the good conditions.

*When you escape from your country from persecution, then you come to America and the same things happen to you again, you become depressed. Many (detainees) are really depressed.*

Another detainee, who later won asylum, said, "In my country I was imprisoned and the conditions weren't good. But here the conditions are good, although I still can't move around or leave." Despite the comparative improvement in conditions, this detainee, who was tortured in his country of origin because he refused his commander's order to kill a prisoner, said INS detention caused nightmares and anxiety and worsened his feelings of despondency.

## **Mental Health after Detention**

Detention, like many of the traumas experienced by asylum seekers in their countries of origin, was often a source of chronic suffering that persisted after detainees' release. Nevertheless, those released were faring significantly better than their detained counterparts in terms of mental health, and attributed this improvement to their release. They gave examples of their improved psychological states, as well as the symptoms that lingered after release, such as weakness and a palpable sense of insecurity. After winning asylum and release, one former detainee reported that his "extreme" depression symptoms, such as poor appetite, crying easily, nightmares, and feeling alone had largely abated. But, "In detention I discovered that I was 'psychologically weak.'" As a consequence, although his fears had diminished with release, he reported that detention had left him with a more fragile state of mind.

A young woman explained that her time in INS Detention had left her less able to cope with her past trauma. "I still cry about memories from my country. Being in detention made me weak."

A 15-year-old detainee was eventually released and reunited with her mother. During a follow-up interview, she said. "I didn't expect to be put in prison, arrested. I thought I had been abandoned and left alone." She bitterly explained the cause of her depression during detention: "I did nothing wrong. Why was I detained? How could they detain a child!" She

reported that her experience in detention still haunted her, even though she was now free. “Sometimes at home, when I am alone, I think about my detention. Sometimes this makes me cry.”

Even though she won asylum and had begun her life in the US, an African survivor of rape said detention’s effects had endured. Her psychological health had deteriorated in detention as she was “too” angry and agitated, always frightened, and had worsening nightmares and a blurry memory. While these feelings have subsided since release, detention’s effects have left her feeling insecure and having “fear always.”

Winning asylum and release from INS detention eliminated the feelings of loneliness and being treated like a prisoner that had exacerbated another South Asian former detainee’s depression and trauma. But the effects of INS detention still linger with him. He had “some nightmares that I am in the cell. Some fear in my life, still, that I will be shouted at by officers.”

After being released and winning asylum, an African former detainee said he can do things without anxiety. Yet, the INS detention, he said, not the torture in his homeland, left him “afraid,” with nightmares, and with feelings of paranoia. Often he “looks back,” feeling that he is being followed. In addition, he described a vivid nightmare several months after release where he was back in detention playing volleyball. He woke up sweating and yelling, thinking he was locked up again. He could not fall back to sleep.

Another African former detainee subsequently granted asylum said, despite improvement in his mental health upon release, INS detention still provoked “some nightmares, like I am trapped in there, I will wake up back in jail.”

One South Asian man who had been detained for 3½ years before finally winning asylum commented on the lasting effects of his detention:

*The reason I came to this country, I had a political problem in my country, and it’s solved now that I am free. I was there (in detention) a long time and thinking, ‘Am I going to be there all my life?’ After I get out, now I am fine... I want to forget about detention here, and also what happened to me in my country, so then I try to avoid those thoughts... When I remember [detention] I feel like my body’s shaking...I cry easily when I think of where I was in detention, what I went through there, and then where I am now, I begin to cry.*

One woman, who had attempted suicide while in detention, and later was granted asylum said the following:

*Being in detention was like being dead, I didn’t have a life or hope for life. I just felt dead. There were times I couldn’t even imagine that one day I would be free. I’m very happy because I have my liberty, but I feel*

*that the detention adds to my problems now of fear. What I experienced there is very difficult to forget. Every day I think about my life in prison. Even this morning I thought about it and started crying. And I think about the people who are still there and who are suffering, and that makes me afraid. Things have improved for me because I have my liberty, but I still think about it. I have not forgotten about it. It's very hard to forget.*

Several months after being released, she reports still having dreams about her imprisonment.

*I dream a lot about a friend of mine (who was released) and I. In my dreams both she and I are still there and the guards are yelling things at us and mistreating us.*



# VI. PHYSICAL HEALTH, MEDICAL PROBLEMS AND MEDICAL CARE IN DETENTION

Detained asylum seekers reported to Bellevue/NYU-PHR researchers numerous physical health/medical complaints during their detention experience. Musculoskeletal pain, headaches and gastrointestinal symptoms were among the most commonly reported problems. Many detainees believed that in addition to worsening psychological health, as previously noted (See Chapter V: Mental Health), their physical health worsened as well while in detention.

Medical services are available on-site in all of the detention facilities visited in the course of this study, providing detained asylum seekers with access to services many did not have in their countries of origin. Nevertheless, detainees interviewed for this study were frequently dissatisfied with their level of access to medical care, particularly specialized care, including dental services. Dissatisfaction with the quality of care received was also common. Detainees frequently complained of repeatedly being given the same medication without improvement or being dissatisfied with their interactions with health staff, including what they often perceived as rude and dismissive behavior.

Information regarding detainee's medical problems and the care they received is based on interviews conducted with detainees. Physical examinations, review of detainees' medical records, or discussions with care providers were not part of the design of this study. Furthermore, the limited sample size and the subjective nature of the detainees' perceptions of their health and the care they received also must be acknowledged. Investigators were not able to determine in a particular case whether or not appropriate treatment was provided. Nevertheless, these findings suggest the need for further study and review of care provided in detention facilities housing asylum seekers. Given their non-criminal status and distinct medical history, their care must go beyond the correctional health care model and be tailored to the needs of asylum seekers, including a strong mental health component.

In understanding the physical health of detained asylum seekers, the interdependence with psychological health must be considered. Given the large proportion of detainees who reported having experienced torture in their country of origin, including frequent reports of severe beatings, it is not surprising that many participants suffered from musculoskeletal pain and headaches. However, in addition to physical problems from beatings, symptoms such as pain, headaches, and gastrointestinal complaints, may

be somatic manifestations of the psychological distress that accompanies severe trauma. Furthermore, as described previously, the stress of incarceration as well as limited mental health services may be compounding these problems. Thus detainees may frequently present to medical staff with physical manifestations of their stressful conditions. Such somatic complaints are frequently described by health care providers in multiple settings, not just clinics for incarcerated persons, as difficult to adequately identify (i.e., distinguish from symptoms with an organic etiology) and treat. This can lead to frustration on the part of both the doctor and patient. The patient is actually describing mental health problems, while the doctor is focusing on a physical health problem.

Improved access to mental health services would perhaps result in decreased need for medical services to address psychological symptoms. At the same time, improved access to certain medical services, such as dental and other specialized care, might also improve the physical and emotional well-being of detainees. Furthermore, medical staff may be unfamiliar with the impact of trauma on the health of asylum seekers. Additional training in effective communication skills to better address the psychosocial needs of these individuals would be beneficial.<sup>148</sup>

## **Health Services Available in Detention**

Health services are available on-site at all of the detention facilities where interviews were conducted by the Bellevue/NYU-PHR team. At the INS's Elizabeth and Wackenhut contract detention facilities, health services are provided by staff employed by the US Public Health Services, which is part of the US Dept. of Health and Human Services. Health services in county jail facilities visited are provided by private contractors. For specialized services, including dental care, individuals are taken to outside practitioners/local hospitals.<sup>149</sup>

Clinics in contract detention facilities and county jails generally operate Monday through Friday during the daytime, although on-call services are also available. Costs for health services are covered by the INS, and approval for a number of off-site procedures, such as dental or other specialized care, is required. The Wackenhut, Elizabeth and York facilities have all been accredited by the National Commission on Correctional Health Care (NCCHC), and the Wackenhut and Elizabeth facilities have been accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

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<sup>148</sup>The INS and health staff responsible for detention facilities have shown willingness to have such trainings, and local NGO's have previously been invited and permitted to conduct trainings at several INS detention facilities.

<sup>149</sup> Basic information concerning available health services came from general discussions with health providers at several different facilities, non-profit organizations working with detainees, and discussions with detainees themselves.

Health care professionals on staff at these facilities include primary care physicians, physician assistants, nurses, and nurse practitioners. One social worker is responsible for coordinating discharge planning at both the Wackenhut and Elizabeth facilities. There is also a social worker at York County Prison.

## **General Health of Detainees**

Almost all of the detained asylum seekers interviewed for this study reported having good physical health prior to experiencing persecution/mistreatment which caused them to flee their native countries. Eighty-six percent denied having any serious physical problems prior to the mistreatment/abuse they experienced. However, 30 % described their physical health as poor at the time that they fled their countries. At the time the interviews were conducted, 34% described their physical health as poor. Forty-six percent reported that they believed their physical health had worsened during the time they were in detention (Table 11).

## **Reported Health Problems**

Sixty-two of the seventy study participants (89%) reported having at least one physical health problem they considered serious during the time they were in detention. These 62 individuals reported a total of 137 serious health problems. The most common types of health problems reported are shown in Figure 1. These include musculoskeletal pain (reported by 39% of the 70 detainees interviewed), headaches (reported by 34%), gastrointestinal complaints (24%), ear, nose and throat complaints (19%), dental (16%), dermatologic (10%) and ophthalmologic (10%). Eleven of 14 women interviewed (79%) reported having experienced a gynecological problem which they considered to be serious while in detention.

Detained asylum seekers reported that 33% of these health problems improved while in detention, whereas 42% of the problems remained the same and 25% of the health problems reported worsened while the subjects were in detention. Twenty-five (40%) of the 62 individuals who reported having serious health problems indicated that at least one serious health problem worsened during their detention (Table 12).

## **Access to Care and Quality of Care**

Nearly all of the detainees interviewed (95%) reported needing or wanting to see a doctor during the time they were in detention. Detainees reported being seen by a health professional for 90% of the total serious health problems they reported. Most treatment was provided in the detention facilities, while 19% of the health problems were reportedly treated at health facilities outside of the detention center. Detainees felt that treat-

## Case #2 (JG): “Health Care in Chains”

JG’s Christianity led to persecution in her predominantly Muslim homeland. She was forced to flee her village, and suffered sexual assault and beatings, including a blow to the head by a soldier’s gun, resulting in a broken tooth. Several family members were killed. JG fled to the US with a false passport and found herself in an INS detention center for 5 months. JG described her interview by INS officials at the airport.

*There was no privacy. I was interviewed and they said, ‘We are taking you back right now to your country.’ I told them I’m not safe in my country. They said ‘go wait.’ They didn’t explain anything to me about asylum.*

JG wasn’t sent back; instead she was transported in shackles to a detention center. When interviewed, she reported episodes of nervousness and sadness. These symptoms started before fleeing, but markedly worsened during detention.

*In the night I wake up really shaking and my heart is pounding. Sometimes I don’t sleep. Sometimes when the door opens I jump. I feel like the soldiers are coming at me. If I wasn’t in detention, I could go for a walk, but here you are shut in with nowhere to go.*

She didn’t ask about counseling because:

*They don’t offer that. I think it would be nice if they had people to come and give counseling or just listen to you. That would ease the load.*

She didn’t, however, want medications for her symptoms.

*I’ve seen when women in my dorm are put on strong doses to sleep. Some of them just look like they’re constantly sleeping.*

JG also suffered physical ailments: headaches, dizziness and pain in her broken tooth. She was seen by an eye doctor outside of the detention facility, but found the process humiliating.

*The doctor tested my eyes. [The doctor] didn’t talk to me, just wrote a report. I found it very scary because I was in chains. You’re at a big hospital and everyone is looking. You’re in chains and in pain; It’s very uncomfortable. They chain you both your*

*feet and hands.... That reminds me of how they treat women in my country.*

She described discomfort and frustration from not being referred to a dentist:

*It's really bad. They gave me some pain medicine, the same as for my head, but it hasn't helped.*

JG was disturbed by what she considered generally poor treatment of detainees, specifically verbal abuse by guards. For example:

*It was time for mass. When the officers come, they shout and you don't always know what they're saying. Sometimes their English is too fast. [One woman] didn't realize it was time to go to mass. Later she knocked at the window and asked the guards if she could go. The guard yelled at her and said, 'I already told you [the priest] was here. Now fuck you,' and she put her middle finger in the air and said, 'You are not going.' When they do that, you just go in your shell.*

*I don't think they understand what we have been through. They shout at us. They curse. Someone will tell you, 'Do you think this is a hotel?' But you are a helpless person. I don't know whether they are trained to deal with asylum seekers.*

*If the officer is rude, I walk away because it reminds me of how I was mistreated in my country. The look they give you sometimes is so full of hate. Here you are not supposed to express your feelings. If I do, I'm afraid they will send me to segregation...I wish they would not cage people, or that I would be somewhere where I could see the grass.*

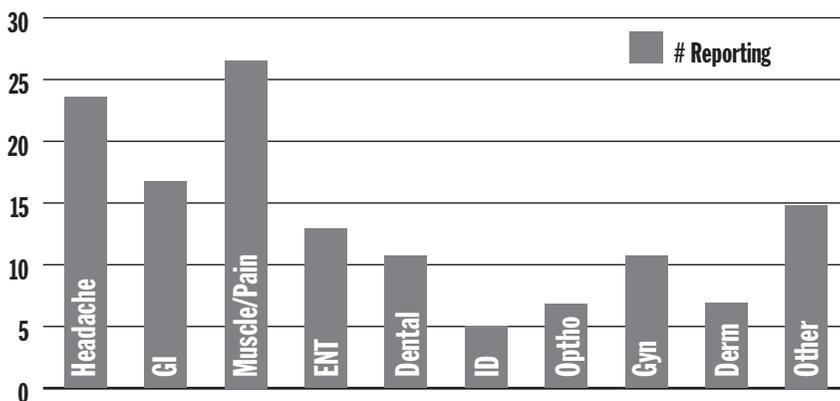
Support from her lawyer and her religious faith helped her cope. After five months, she was granted asylum and released. She still thinks about detention and experiences nightmares.

*I think the whole confinement changes your brain... It takes time for your mind to readjust... Even during the day, I walk on the street and sometimes I don't believe I'm out. I still feel detached. I get very upset when I think about it and start crying. Sometimes I wake up and for a moment I still think I am in detention. I look to see the bars and barbed wire and they are not there; I try to console myself.*

**TABLE 11:  
 Detainee Perceptions of Health and Overall Quality of Medical Care in INS  
 Detention (N=70)**

	Response Number (%)		
	Poor	Fair	Good/ Excellent
<b>Physical Health</b>			
At the time of leaving country (n=64 respondents)	19 (30)	18 (28)	27 (42)
At time of interview	24 (34)	25 (35)	21 (30)
<b>Psychological Health</b>			
at time of leaving country (n=64 respondents)	37 (58)	11 (17)	16 (25)
at time of interview (n=69 respondents)	50 (72)	12 (17)	7 (10)
Overall quality of health care (n=66 respondents)	32 (49)	22 (33)	12 (18)
	Improved	Stayed the Same	Worsened
<b>Change in health since being in detention</b>			
Physical Health	10 (14)	28 (40)	32 (45.7)
Psychological Health	8 (11)	13 (18)	49 (70)
	No Difficulty	Little Difficulty	A Lot/ Extreme
Overall difficulty accessing health care (n=66)	24 (36)	24 (36)	18 (27)

**FIGURE 1:  
 Types of Health Problems**



**TABLE 12:**  
**Health Problems and Health Care Received in INS Detention**  
**(N=137 health problems reported)**

	Number	Response (%)
Onset of health problem (n=123 health problems)		
Before experiencing difficulties in country of origin	15	(12)
Since experiencing difficulties in country, but before arriving in US	56	(46)
Since being detained by INS	52	(42)
While in INS detention has this health problem (n=127 health problems)		
Improved	42	(33)
Stayed the same	53	(42)
Gotten worse	32	(25)
While in INS detention were you seen by a health professional for this health problem? (n=131 health problems)		
Yes	118	(90)
No	13	(10)
Have you received treatment for this problem? (n=121 health problems)		
Yes	106	(88)
No	15	(12)
Did the treatment you received help? (n=92 health problems)		
Yes	47	(51)
No	45	(49)
Were you evaluated or treated for this health problem outside of the detention center? (n=117 health problems)		
Yes	22	(19)
No	95	(81)

ment helped approximately half of the time (i.e., half of the serious health problems reported were perceived as improving as a result of the treatment they received).

Overall, 73% of the study participants reported little or no difficulty accessing care for their health problems (including those individuals who did not report any significant health problems) and 27% reported “a lot” or “extreme” difficulty accessing care. However, when analyzing each problem individually (rather than each subject), researchers found that participants described “a lot” or “extreme” difficulty accessing health care services for 38% of the serious health problems they reported. Fur-

**TABLE 13:**  
**Availability and Quality of Health Care (N=137 health problems reported)**

	Number	(%)
Difficulty accessing health care (n=133 health problems)		
No difficulty	51	(38)
A little difficulty	20	(15)
A lot or extreme difficulty	50	(38)
Did not request health care	12	(9)
Reason(s) cited for having a lot of difficulty accessing health care (n=50 health problems)		
Difficulty receiving specialized care (including dental care)	22	(44)
Difficulty/delay in receiving follow up care	14	(28)
Seen by nurse but difficulty getting to see doctor	14	(28)
Difficulty in receiving medications, when needed	9	(18)
Difficulty/delay in receiving initial care	9	(18)
Difficulty with getting an interpreter	6	(12)
Reason(s) cited for not requesting health care (n=12 health problems)		
Discouraged by own prior experience	6	(50)
Discouraged by prior experience of other detainees	4	(33)
Did not think health services were available	3	(25)
Did not think needed health care for this problem	2	(17)
Discouraged by health staff from seeking care	1	(8)
Opinion of quality of health care received (n=129 health problems)		
Poor	64	(50)
Fair	35	(27)
Good or Excellent	20	(16)
Did not receive health care services	10	(8)
Reason(s) for thinking care was poor (n=64 health problems)		
Inadequate Evaluation	33	(52)
Inadequate Treatment	53	(83)
Dissatisfied with interaction with health staff	28	(43)
Given same medication repeatedly with little effect	21	(33)

**TABLE 14:**  
**Health-Related Interpreter Services (N=70)**

	Number	Response (%)
Did you ever need interpreter services while in detention? (n=70 responses)		
Yes	39	(56)
No	31	(44)
If you needed an interpreter, (n=39) did you ever utilize an interpreter while in INS detention?		
Yes	28	(72)
No	11	(28)
If you needed an interpreter, (n=39) was there difficulty in obtaining one? (n=35 responses)		
No difficulty	18	(51)
A little difficulty	4	(11)
A lot of difficulty	5	(14)
Never provided with interpreter when needed one	8	(23)
Quality of interpreter services when provided (n=28 responses)		
Poor	3	(11)
Fair	6	(21)
Good/Excellent	19	(68)

thermore, 35 (56%) of the 62 individuals having serious health problems reported having at least one serious problem for which they reported a lot or extreme difficulty accessing care. Frequently cited difficulties with accessing care included difficulty obtaining specialized care (including dental care), difficulty receiving follow up care, and difficulty getting care from a doctor in addition to a nurse (Table 13).

Forty-nine percent of detainees reported that they characterized the overall quality of the medical care they received while in INS detention as “poor.” Similarly, for 50% of all serious health problems noted, detainees felt the quality of the care they received was poor. The primary reasons cited for this perception included inadequate evaluation, inadequate treatment (including repeatedly being given the same medication with little or no effect), and dissatisfaction with interactions with health staff (Table 13).

Unlike the large discrepancy between those who wanted mental health counseling and those who requested it, only ten participants, for a total of 12 health problems, reported having serious health problems for which they did not request health care. Reasons cited by these individuals for not requesting health care for a serious health problem included being discouraged either by their own prior experiences or the experiences of other

detainees, or because they did not think health services would be available for the particular health problem.

Most of the individuals (62%) who reported needing interpreter services reported little or no difficulty in obtaining such services. (Table 14). However, thirteen (37%) of the individuals who said that they needed an interpreter for health service reported either having a lot of difficulty or never being provided with an interpreter when they needed one. Detainees were generally satisfied with the quality of interpreters when provided (most commonly telephonically) as 68% of individuals who needed interpreters characterized the quality of these interpreters as “good” or “excellent.”

## **NARRATIVES**

### **General Health**

As noted above, detainees often felt that their health had deteriorated while in detention.

“Since I’m in detention, I’m getting more health problems,” noted one detainee, who complained of back and chest pain. Another detainee reported;

*I think my physical health is getting worse. Because here I’m thinking a lot about the stuff that happened to me and it is affecting my body.*

Many of the symptoms were likely manifestations of depression. For example, one detained asylum seeker commented:

*Because I don’t have any exercise. I just sit. I have no interest. I always feel very tired.*

Many individuals linked their physical and psychological symptoms. For example, one asylum seeker reported frequently experiencing headaches after waking up from nightmares of being imprisoned in his country.

*The headaches are usually at nighttime. Here it is hard to tell what is night and what is day. I don’t know what the sky looks like.*

One individual linked severe headaches he was experiencing with symptoms of depression.

*Here, when I feel upset or sad, I get very bad headaches, and this happens a lot. I also get shaky when I feel nervous.*

### **Positive Aspects of Care Available in INS Detention**

Several detainees appreciated that they had access to a wide range of services, including services they might not have received in their countries of

origin. For example, one individual, who was HIV positive, received anti-retroviral medications and regular blood testing while in detention. “I could not get these services in my country,” he remarked. Individuals with chronic health problems, including hypertension reported being diagnosed and treated while in detention.

A number of individuals with acute medical problems, such as colds or other infections, also spoke favorably of the care they received. For example: One subject reported that he did not experience difficulty obtaining medical services when he developed sinus problems during his detention. On three occasions he saw a physician for this, who prescribed pain pills. He reports that the medication was effective, and that he still takes the pain medication periodically, but that the pain is “basically gone.” While in detention, the subject reported a problem with loose stools, which he saw a physician for twice. He was placed on a non-dairy diet and “the problem stopped.”

A pregnant detainee reported that she was satisfied with the pre-natal care she received while in detention, including referral to a local hospital. She felt that the health care providers she interacted with were very respectful. She was paroled after being in detention only a few weeks.

One individual who complained of constipation and hemorrhoids reported that he had no difficulties getting medical care and that his problems improved a great deal with treatment. He commented:

*I was very satisfied with the treatment. Anytime I want to see a doctor here, I can see a doctor.*

## **Difficulties Reported Obtaining Care**

Although individuals generally reported beings seen fairly quickly for initial medical complaints, many detainees reported difficulties with obtaining follow-up care. For example, one individual reported delays for follow up evaluation of a foot injury suffered while in INS detention.

*I was playing basketball and fell. My foot was very swollen. When I went to medical, they gave me ice to put on my foot. I was only seen by the nurse and no X- ray was done. The next day I saw the doctor, and [the doctor] told me, the X- ray man will come and we will see.*

The detainee reported that an X- ray of his foot was taken approximately four days later. “The X- ray man told me my foot was broken and they gave me crutches,” he said. Several weeks later, he reports that his foot was still hurting and swollen. He reports subsequently being taken to an outside to a clinic and put in a cast.

A detainee who repeatedly sought follow-up care for general body pains said, “Sometimes I write 2-3 times before they call me.”

## Difficulty Obtaining Specialized Care

While general medical care is readily accessible at the facilities where asylum seekers are detained, many detainees complained of difficulty obtaining specialized care, including for chronic conditions. This raises questions about what care is appropriate and what care can be reasonably delayed. For example, one detainee reported that in his country of origin, while attending a peaceful demonstration, he suffered a gunshot wound to the groin when police fired into the crowd. The bullet remained lodged in his groin. He reported that while in detention, the pain in his groin and leg worsened. He reports being seen on a number of occasions by health staff who gave him pain medication, which he reports did not relieve his symptoms. He reports being told that he would have to wait until he was released to have the bullet removed. He remained in detention for 2 ½ years.

Another detainee reported a painful testicular lump. While apparently an ultrasound was performed, he stated he was never told the results.

*They only said if I ever get out from this facility, that I could treat it myself.*

At the time of the interview the individual had been experiencing discomfort for approximately three months.

A lump on the wrist was a source of pain and frustration for one detainee for several months. In his country of origin, he reported that soldiers had tied his hands with rope and beaten him. Subsequently, a growth appeared on his wrist from where the rope had been pulled on his skin and bone. He previously had “small surgery” in his country of origin to remove the growth but it had gradually returned. While in INS detention, the subject reported that the growth had grown faster and become more painful. He reported being given pain medication but was told he would have to wait until he was released from INS detention to receive surgery for this condition. After five months in detention, he was subsequently granted asylum and released.

One detained asylum seeker, a 28-year-old man, had developed a leg infection because of severe beatings in his country of origin, subsequently requiring amputation. When he arrived in the US, he had a poorly fitting prosthesis. The subject reported that his leg pain worsened during his detention, and he consulted with medical staff many times, but was not seen by a rehabilitative medicine specialist nor provided with a better fitting prosthesis. The pain was particularly intense when the detainee was lying down.

The subject reported that he was given pain medication for this problem, but the pain kept returning. After seven months, the subject was granted asylum and released. Subsequently, he was fitted with a new prosthesis at an outside clinic.

## Difficulty Obtaining Dental Care

Dental care was another area where there were frequent reports of great difficulty accessing services. For example, one detainee reported that he began experiencing a toothache in August, and filled out a request to see a doctor. He was finally taken to a dentist in November, for a temporary filling. The pain went away for a short period but then returned. The detainee reports being told that he could have the tooth pulled, or wait until he was free to have restorative treatment. When interviewed, this detained asylum seeker had been in detention for two years and nine months. He explained:

*For little problems, it's quick. For bigger problems, they need permission from Washington. The doctor is very good here, but is limited in what [the doctor] can do, and the doctor says, 'I am very sorry, but I can not help you'. For many problems, the doctors were good but the INS system was not.*

Other detained asylum seekers reported a similar understanding of the process of obtaining dental care. One detainee had two teeth extracted in detention and subsequently had gum bleeding. He reported being told that if he stayed for more than six months, they would look into it. At the time of the interview he was using salt and water to rinse, but said it was not helping him.

Another detainee complained of tooth problems, such as cavities. The subject reported that he was told he couldn't see a dentist unless he had been in detention more than six months. But he never did see a dentist, even after six months; he still had the problem.

One detainee reported that he complained every day for three months before receiving care for a painful tooth. He reports that when the tooth was finally pulled, it was before the anesthetic set in. He reports being handcuffed during the "very painful" procedure.

Another subject stated that while in detention she experienced a severe toothache. She "had it for a while, and it got worse." She reports that she saw a nurse who said she would be allowed to see an outside specialist, but eight months later she still had not. Instead she was given a generic pain pill, which didn't help, and the pain worsened.

One female detainee had suffered a broken tooth when she was hit with the butt of a gun by a soldier in her country of origin. She reports that while in detention, she still suffered a great deal of pain from this.

*They gave me some pain medicine,- the same as for my headache, but it hasn't helped. The tooth is broken in half where I was hit.*

After five months in detention, she was granted asylum and released and subsequently received dental care at an outside clinic.

Another detained asylum seeker reported the following:

*After one week in detention, I started having a problem with my tooth. I complained to them. They gave me toothpaste and said put it there. I asked many times to see a dentist, but they said it was not a serious problem. The tooth hurt every day. It was only after five months, a new doctor arranged for me to go outside to see a dentist. I went outside and [the dentist] removed it and it felt much better, I have had two teeth removed.*

Another subject stated he had tooth pain that started in his country of origin, when he was hit on the head. He felt that the care he received in detention for the pain was poor and inadequate.

*I asked every time – they say ok go back – not until four months do they say ok, take an appointment to see a (dentist). I don't know why it took so long. And then when I finally saw him he only took out 1 tooth – I have six teeth hurting me. The dentist said the report from the doctor in the detention center was to take out only one. Since then I haven't seen the dentist again. I ask to see the dentist again many times. But they tell me they don't have any appointments with him.*

One detainee reported a painful wisdom tooth, for which he was repeatedly given pain medicine which gave little relief. After five months, the detainee reports that he finally saw a dentist who recommended extraction. The detainee reports being told there was delay in having the tooth removed while they awaited approval for surgery from Washington.

*The doctor gave me Naproxen (an aspirin-like analgesic). [the doctor] said 'I'm sorry for the delay, because there are too many chiefs over me.' It was very painful and I put a request in every week for sick call.*

He reports being told that a second request was sent to Washington which was approved. Finally, approximately 1 year after the individual first complained about his tooth, he reports it was removed, and after the surgery, it felt much better.

## **Difficulty Obtaining Eye Care**

Obtaining adequate eye care was another area several detainees reported significant difficulties with. For example, one detainee with visual difficulties who was initially evaluated by health staff at an INS facility reported that it was several months before he was finally seen by an eye doctor.

*The doctor at the detention center told me there was no money left because it was going toward the end of the year, but that maybe in the new year they could help.*

Finally, after several months, he was seen by an eye doctor who prescribed glasses. But before he got the glasses, he was transferred to a

county jail. At the county jail, he reported that when the doctor there learned he wanted glasses, the doctor responded that the INS would not pay for glasses.

Another subject, who reported that after being subjected to tear gas at a demonstration in her country, she subsequently had chronic tearing and eye pain, which improved with eyeglasses. After fleeing her country, the subject reported she lost her glasses. At the detention center, she repeatedly complained about needing glasses, but was told that they were “no longer provided.”

Not getting glasses affected her mental health:

*I like reading. It's the only way I keep myself busy here. And when I read, I strain my eyes, and so this makes it difficult for me. When I force myself to read, I get headaches. This is stressful for me, since I can't read. I like to read to get my mind off things, but I can't.*

On follow up interview, the detainee reported that after more than 2 years in detention, she finally got glasses.

*After complaining a long time, they saw that my sight was worse. So they finally took me to see an eye doctor outside (the detention facility).*

## **Translation Services for Medical Care**

While most individuals who needed an interpreter for their medical care reported little or no difficulty obtaining one, approximately one third of individuals needing an interpreter for medical care reported significant difficulty with obtaining such services. Those who received interpreter services were generally satisfied with the quality of the interpreters. Inadequate translation services can exacerbate poor communication, leaving detainees with the perception that their problems have not been adequately addressed.

For example, a French-speaking female African detainee who reported vaginal injury from multiple rapes reported that she was not offered an interpreter for her medical exam.

*I did not know having an interpreter was an option. I would have used one if I knew.*

Another detainee who frequently requested medical attention for severe headaches (reportedly the result of beatings to the head) complained of inadequate interpretation.

*Most of the time the doctor doesn't get an interpreter – the nurse never uses an interpreter... Not even the first time. For every ten visits maybe one time I'll have an interpreter. Often times there is no interpreter only body language.*

One detainee who speaks French and Fulani reports that he asked for an interpreter several times but none was given, and instead the doctors would use sign language/gestures.

### **Detained Asylum Seeker's Perceptions Regarding Quality of Care**

Approximately half the individuals interviewed for this study felt the quality of the medical care they received while in detention was fair to excellent, and half considered their care poor. Similarly, approximately half of the time individuals felt that the treatment they received for a particular health problem helped and half of the time it did not. Many detainees appreciated that medical care was readily available on-site, and voiced satisfaction with the care they received for a number of acute complaints, including infections and injuries/accidents suffered in detention.

In many instances, however, Bellevue/NYU-PHR researchers were told by study participants about dissatisfaction with repeatedly being given the same medication (such as Tylenol) for a variety of problems, without significant improvement of symptoms. This included chronic problems, including musculoskeletal complaints reportedly related to prior abuse from torture in their countries of origin. Many individuals voiced frustration with what they perceived as inadequate evaluations of their health problems, including X-rays not being done, or not being informed of test results. Given the design of the study, and reliance on self-report data, the investigators were not able to determine on a case by case basis whether or not appropriate evaluation and treatment was provided. But the number of times that complaints were raised suggests the need for further study and review.

A number of the detained asylum seekers interviewed also reported dissatisfaction in their interactions with health providers. On a number of occasions detainees reported that they felt their problems were not being taken seriously, or that they were not being believed. Several complained of what they perceived as rude and dismissive behavior on the part of health care providers. Given the design of this study and the reliance on self-reports from detainees, the quality of the interactions is difficult to assess, but the number of people who raised them suggests the need for further evaluation of the nature of the interactions between health staff and detainees and additional training for health care providers working with detained asylum seekers.

### **Treated Like a Criminal**

While being transported outside the detention center for medical care often meant getting specialized medical services, for many it was also a humiliating experience of being treated like a criminal. As a matter of pol-

icy, detainees are transported in handcuffs and/or leg shackles, which are often left on for the duration of the doctor's examination/treatment.

One female detainee who reported that she had been raped four days before arrival in the US and had abdominal discomfort, was brought to a local hospital for evaluation.

*When I arrived here I was sick, I was feeling pain in my stomach, and I couldn't stand erect. So they took me to the hospital. But they handcuffed my hands and legs. They used a rope to tie me. I felt very frightened.*

One detainee, a woman, had been hit on the head before fleeing her country. She subsequently had headaches and dizziness. The detention center doctor referred her to a local hospital to see an eye doctor. She reports the eye doctor did not talk with her but just gave a report to the guards.

*It's very bad, you are brought to the doctor in chains. You're at a big hospital and everyone is looking. You're in chains and in pain. They chain you both at your feet and hands, and it's very uncomfortable.*

## **Medical Parole Requests Frequently Denied**

According to legal representatives of detained asylum seekers, medical parole is only given in rare instances. Detention facility medical staff are apparently involved in the process of making recommendations for medical parole. One detainee who had experienced torture in his country of origin, including severe beatings, suffered from severe pain all over his body and significant symptoms of anxiety and depression. Nevertheless, his request for medical parole was denied.

*My lawyer applied for medical parole for me. He gave the application to my deportation officer. After the parole application came to my deportation officer the doctor called me. [The doctor] said 'how about your health?' I said the same thing – general pain. [The doctor] said 'but you don't have Tuberculosis (TB).' I say I don't know. He says 'OK, you don't have TB, go back to your dorm.' I asked him for pain medicine and he gave me some pain medicine.*

*After three days my lawyer came and saw me here – he said, 'the deportation officer told me you don't have TB, so they deny your parole.' That's it. I think just because I don't have TB doesn't mean I'm healthy – I have a lot of problems. I know I don't have good health. The doctor saw my parole officer and told him I don't have TB. Only someone who has TB needs to be paroled. Here in the detention center if the lawyer make a parole application for you – only if the doctor said you don't have good health will you make parole.*



# VII. TREATMENT IN DETENTION FACILITIES

As evident from this study, asylum seekers—individuals fleeing persecution, including torture in their countries of origin—arriving in the United States are often treated as criminals. They are held in prison-like facilities for months or even years awaiting final decisions on their asylum applications. Detained asylum seekers found the prison environment of INS detention extremely stressful and often reminiscent of the persecution/imprisonment they had experienced in their countries of origin.

While most asylum seekers described their overall treatment by detention staff as neutral or good, approximately one quarter of study participants reported generally being treated poorly. However, even individuals who reported generally being treated well, nevertheless found detention, and being treated as a criminal, to be demeaning and disturbing. Moreover, many individuals reported experiencing at some time while in detention a variety of specific indignities, notably verbal abuse as well as the seemingly arbitrary use of segregation (i.e. solitary confinement) as both punishment and threat. Reports of physical abuse, though much less frequent, were not altogether absent.

The frequent use of segregation and the threat of segregation is a matter of particular concern. Such treatment is a common form of abuse for political prisoners in many parts of the world. In fact, 40% of the individuals interviewed for this study reported having experienced forced isolation as part of their persecution in the countries from which they fled (See Chapter IV: Characteristics of Study Participants). Thus, solitary confinement in immigration detention facilities is potentially retraumatizing.

Asylum seekers repeatedly voiced shock and dismay that upon arriving in the United States, a country which they thought embraced democracy and human rights, they were imprisoned. As noted in the narratives, detained asylum seekers believe, and are likely correct, that detention facilities staff do not necessarily understand that asylum seekers come to the United States fleeing persecution. Reported comments frequently made by detention center staff, such as “If you don’t like the way things are here, you can go back to your country,” are evidence of this. Such behavior speaks to the need for adequate training of detention center staff with regard to who these detainees are, and policies for preventing and addressing such problems.

## **Detention Facilities in this Study**

Subjects interviewed for this study were detained in one of two types of facilities: private corporate-run detention centers (the Elizabeth Detention Center, in Elizabeth New Jersey, and the Wackenhut Detention Center in Queens New York) and county jails/prisons (York County Prison in Pennsylvania, Carbon County Jail in Pennsylvania and Hudson County Jail in New Jersey) In both types of facilities, asylum seekers were typically subjected to the same policies as criminal populations, including being required to wear prison uniforms, and being handcuffed and or shackled when transported outside of facilities.

The private facilities where surveys were conducted were high-security, virtually windowless converted warehouses, managed similarly to the jails operated by the same contractors. Visitation was allowed only on weekends and holidays through a glass barrier and recreation was limited to 1-2 hours per day in rooms open to the outside only through mesh in the ceiling.

Ironically, the county jails which held asylum seekers sometimes had better conditions than the private detention centers in terms of freedom of movement, recreation and visitation access. However, in these jails asylum seekers often shared prison cells with convicted criminals, including violent offenders. York County prison does have a unit where asylum seekers are often, but not always separately housed.

## **Survey Findings**

Treatment while in INS detention, including the frequency of reported abuses are presented in Table 15. Most study participant described their treatment, in general, by detention facility staff as either being neutral (43%) or being treated well (33%). However, 24% of the study participants characterized their overall treatment while in detention as poor. Moreover, detained asylum seekers frequently reported having experienced specific incidents of mistreatment while in detention. As evident from the detainees' narratives (see below), such treatment resulted in additional suffering to individuals already traumatized in their countries of origin as well as by being incarcerated upon arrival in the US. Fifty four percent of the detainees reported experiencing verbal abuse and 66% reported witnessing verbal abuse of others while they were in detention. Six of the 70 study participants (9%) reported experiencing at least one incident of physical abuse inflicted by detention center staff.

Segregation and the threat of segregation were also frequently reported by detainees. Forty percent reported having been threatened with segregation and 26% were actually placed in segregation at some time during their detention. Furthermore, almost all individuals had either witnessed other individuals being placed in segregation (87%) or being threatened with segregation.

**TABLE 15:**  
**Treatment/Abuses Reported by Survey Respondents in Detention Facilities**  
**(N=70)**

	Experienced Number (%)	Witnessed Number(%)
Verbal Abuse	38(54)	46 (66)
Physical Abuse	6 (9)	7 (10)
Placed in segregation (median length of segregation: 6 days)	18 (26)	61 (87)
Threatened with segregation	28 (40)	59 (84)
Difficulties practicing religion	12(17)	7(10)
	Yes Number (%)	No Number(%)
Adequate access to recreation	28(40)	42(60)
Adequate access to communicate with lawyer	63(90)	7(10)
Treated, in general, by detention center staff	Number (%)	
Well	23(33)	
Neutral	30(43)	
Poorly	17(24)	

Sixty percent of the study participants reported believing that they did not have adequate access to recreational activities. Eighty percent considered boredom to be a serious problem for them in detention. The large majority of subjects (90%) reported having adequate access to communicate with their lawyers. Twelve individuals (17%) reported experiencing difficulties practicing their religion while in detention.

In conducting this study, the designation of physical/verbal abuse was determined by the detainee and thus is subjective. For example, what in some instances may be perceived by detention facility staff as necessary physical force rather than physical abuse, may be viewed by a detainee as unnecessarily excessive. The narratives, however, provide important context and support the claim that some asylum seekers are experiencing mistreatment in INS detention.

Also, as mentioned above, it is important to note that most individuals interviewed for this study characterized their general treatment by detention center staff as either neutral or being treated well (although approximately one quarter of respondents reported overall being treated poorly)

even though many reported having experienced a variety of indignities, notably verbal abuse, segregation or the threat of segregation.

This may be because in between incidents reported, detainees felt generally like they were treated well. Alternatively this may be a result of a minority of detention center staff being responsible for such behaviors. Another possibility is that this may reflect the fact that many individuals interviewed for this study reported having been subjected, before fleeing their countries of origin, to extreme brutality, including torture, and thus may have a greater tolerance for what constitutes good or neutral behavior (i.e. as long as they are not being physically mistreated).

## **NARRATIVES**

### **Prison-Like Environment**

Detainees found the prison environment of INS detention extremely stressful. One man, who had been tortured in his country of origin because of his family's political associations, stated,

*If I had known that I would be trapped in such unbelievable circumstances, I would never have come here. If someone had told me that such a place existed in America when I was in my country, I would never believe that, because America is supposed to have human rights.*

An asylum seeker, who had seen his father killed in front of him, said the following:

*When I came I never expected to be put in jail. They don't call it jail, they call it detention. But it is jail. I thought I would be free when I got to America. I came here to find peace and be able to live in peace.*

Another detainee described feeling like a prisoner: "It's like I fled one prison only to be placed in another." Watching television one day he saw criminals "wearing the same thing I wear: prison garb. It would be much better if at least on our backs there was something that said, 'Asylum seekers.'"

After being detained for over three years and transferred four times among three different facilities, one frustrated detainee described himself as "a tourist of American prisons."

The distinction between jails and detention centers seems unclear not only for asylum seekers, but also for airport officers and other officials. One detainee who was taken from the airport to an INS detention center reported: "They told me they were taking me to jail. They did not say why." Discussions with guards by PHR-Bellevue/NYU researchers at several detention facilities and county jails also revealed that many did not know the detained asylum seekers were not criminals.

One detainee said his fears of being perceived and treated as a criminal were reinforced when he witnessed an officer telling another asylum seeker: “You have no rights. See the orange clothes you’re wearing? Those are for criminals with no rights.”

The two detention centers in the New York City area, (Elizabeth and Wackenhut) are windowless, converted warehouses near Newark and JFK airports. The isolation and disconnect from the outside world is chilling. One detainee described her sense of confinement as follows:

*I miss the fresh air, light and outside activity. We are so isolated, and we see no fresh air or light. When the priest visited for Palm Sunday with palms, we all ran to get a piece of green vegetation. It was the first natural thing we saw in months.*

Others complain of constant noise.

*All day long it’s very noisy from the TV – from 5 a.m. to 12 midnight. All day long and night. Too small room for too many people – noise, noise, noise. You have no escape from the noise.*

One detainee, who admitted that when he was initially detained, “I was relieved to be away from my country’s troubles,” nevertheless attributed “100%” of his trauma symptoms and a substantial amount of his anxiety symptoms to detention and the degrading treatment. He explained “They treat us like animals. Being contained like an animal is bad for you.”

Many detainees expressed shock in reaction to this treatment. A freed asylee said in retrospect:

*Most of those people in detention are there fleeing horrors and persecution to come to America for liberty, and then you are treated like this in detention and you ask ‘why did I come here?’*

## **Detention in County Jails**

The INS frequently incarcerates asylum seekers in county jails, even though this contravenes international standards (see Legal Standards chapter). In county jails, asylum seekers are often held in the same cells with convicted criminals, including violent offenders. The York County prison does have a separate unit for housing asylum seekers. Nevertheless, asylum seekers may still be housed with the general population at the discretion of the facility. These jails subject asylum seekers to the same policies as the general inmate population.

Many detainees reported increased fear at county jails. One detained asylum seeker who had fled his country of origin because his life was in danger as a result of his peaceful pro-democracy activities described the following after being transferred from an INS detention center to a county jail:

### **CASE #3 (HN): “SOLITARY CONFINEMENT”**

In his South Asian country, HN was forced into hiding to avoid arrest for political organizing. HN heard that members of his party were being jailed and tortured. While he hid with friends, authorities searching for him harassed and beat his family. Fearing he couldn't protect himself and that his presence was endangering his family, HN fled to the US to seek freedom. There, he endured 3 ½ years of INS detention, with extended periods of solitary confinement.

To escape his country, HN obtained a visa by falsely claiming he was a consultant for an American company. At the airport, the INS questioned his visa's validity. HN was unaware of his right to seek asylum and believed maintaining his story was his only hope of finding protection. He was told to sign papers he could not read, unaware that they authorized withdrawal of his application for admission.

When HN realized he was being deported, he revealed that he had fled to escape persecution. The INS officers accused him of lying, handcuffed him and put him on a plane to England (his last layover). British immigration returned HN to the US, instructing him to seek asylum. This time, with an interpreter's assistance, he was able to tell an INS officer his story. HN was transported to an INS jail in shackles.

HN was detained in four different facilities. At one point he was transferred to another part of the country for nine months, which obstructed communication with his lawyer, thus complicating his efforts to win asylum.

HN endured three stints of solitary confinement, the longest lasting three weeks. This occurred when HN was told to prepare to leave a facility; he realized that he was not being transferred, but deported.

*[They were] making me ready to go back to my country. I said, 'No, I cannot go.' They said, 'You have to go.' Then they called INS people and they were insulting me. They put the handcuffs on my wrist and shackles on my legs. They put me in the car, and they were taking me. Then they were buying gas and food, and then they got a message: 'Bring [HN] back.'*

When he returned to detention, HN was immediately placed in segregation for 21 days. He was told it was for refusing to return to his country.

*I was sick in my mind, had nightmares, stomach pain, couldn't sleep. Always I was thinking someone's going to kill me. I don't know why they kept me to a small room with no people there. I felt like I was dying. I cannot breathe there.*

In another incident, he was fasting for religious reasons when a hunger strike occurred. Although he was not involved in the strike, he was rounded up with the strikers and placed in segregation. After 36 hours, an officer discovered the mistake and cleared him. A third time, his cellmate stole his medication. He was accused of sharing medication and segregated for five days.

While in detention, HN's English improved, yet he preferred to use a translator when communicating with INS personnel. He was troubled by the absence of translation during exchanges with health staff.

*I felt it would be better to have [an interpreter] – I requested one, but was told by health staff that they could understand.*

HN described symptoms of anxiety and depression, including nervousness, trembling, and low energy. After repeated requests over several months, he saw a psychiatrist. No translation was provided. "I couldn't explain to him how I felt, because of the language problem." He received medication, but it didn't relieve his symptoms and left him weak and sleepy, so he stopped taking it.

Finally, HN won asylum. Since fleeing his country, HN was informed by his wife of other attacks on his home and members of his family. He has applied to have his family join him in America.

HN reported a marked reduction in symptoms since his release. However, the incarceration left scars. He reports extreme avoidance of thoughts he associates with his experiences in detention, as well as occasional attacks of panic in situations that remind him of his detention.

*When I remember [detention], I feel like my body's shaking... I felt very bad when I was there, I think because I was there a very long time... I missed my family and what's happening with them, that made me old there. .. I cry easily when I think of where I was in detention, what I went through there....*

*Here, I'm scared. In [the detention center], you're among people of your own kind, people who have gone through troubles in their own countries and fled from persecution. They could understand your plight. Here, if you try to tell someone why you're here, they say you're lying: 'They can't do something like that to you. Why would they put you in a jail cell and treat you like a criminal?' So sometimes you have to keep your mouth shut. I don't think the guards here know I'm an asylum seeker. They just think I'm a criminal. Or they don't care.*

Another detainee offered a dark description of incarceration at one county jail, where asylum seekers are integrated with the general inmate population: "Small cells, with drug users... The other prisoners threatened me."

One asylum seeker held in a county jail was a 19-year-old man who came to the US to seek asylum after witnessing the murder of both of his parents by rebel forces, and being forced into slavery at age 15. He reported sharing a cell with a convicted murderer/drug dealer:

*[My cellmate] sharpens his knife at night and they talk about killing people at night. My block mates say they can get knives, and they sharpen them on the floor, and then they come like that [he lifted his arm and put his hand to the back of his neck] and kill you. They hide them out here [he gestured to the visiting room]. Some can bring in metal because they work with the mechanics. They have to go through the metal detector, but just pass the metal on the outside... At [the detention center] we have long toothbrush, no problem. But here, no, they will sharpen them and make knife.*

This young man described a sense of constant alarm.

*I am very afraid. When I first come here, I don't leave the cell for a week... My celly says, 'You're too nice. You're here with a bunch of criminals, they'll work you over. You don't be so nice...' But I can't help it, that is my heart.*

Subsequently, after repeated requests he was transferred to a facility where he was kept with other detained asylum seekers. After almost 2 years in American detention facilities, he was "paroled," pending final decision of his asylum case.

## **Treatment of Detainees by Detention Center Staff**

As noted above, most individuals described that, in general, they felt they were treated either well or neutrally by detention center staff. For example, one detainee commented, "Some officers, if they see you cry, will talk to you, console you."

Another asylum seeker had no complaints against detention center staff, although he regarded his confinement as debilitating.

*They never do anything to harm me. They are only here to do their duties. Some of them are very nice and talk to you... Even though the guards treat me ok, my situation here - being in prison and treated like a criminal - is very bad.*

“Some of the guards are very nice. If you are crying they will come and show concern,” said another detainee.

Nevertheless, there were frequent reports of harsh treatment, particularly verbal abuse and segregation or the threat of segregation, and several reports of physical abuse.

## **Reports of Verbal Abuse**

In addition to surviving past terrorization and physical mistreatment, many asylum seekers must also recover from the grave assault on their dignity imposed by this persecution. It is therefore particularly disturbing that detained asylum seekers frequently reported having been subjected to verbal abuse while in INS detention, including being called criminals and liars and being yelled and sworn at, often in circumstances they did not understand.

One asylum seeker said:

*They talk very badly. They often say, ‘Shut up,’ and ‘Fuck you,’ said one asylum seeker. When I was in the segregation dorm, the guard said to me, ‘Why did you come here? Why did you leave your country and come here to the United States, just to make problems for us?’ The guards treat the detainees here bad. I felt very scared when he said that to me. I came here seeking protection, but the guards’ behavior forced me to realize that this is not a safe place.*

Another asylum seeker described correction center staff as often being abusive. She remembered being told, “You’re from the jungle, you don’t know how to behave.”

A female detainee remembered an incident at a detention center in which she was previously held.

*There was a lady who would ask for soap. The officer didn’t like her because she was always complaining. So he didn’t give her soap and they started arguing. The officer said, ‘You need a fuck.’ It was not right to say that.*

Another detainee objected to guards “using bad language to tell us to do the basic things.” For example, he reports being told, “Move, you fuckers,” by INS staff.

One asylum seeker told an interviewer,

*I believe they have no respect for detainees. For example, there is a television in the room for detainees. The officer in my dorm would take the*

*remote control and watch what he wanted. When we asked him to change the channel, he said, 'Sit down' or threatened some of the detainees with segregation, or with calling the supervisor.*

A detainee who claimed to be a minor told us,

*Sometimes, when I have been crying in my dorm, the guard bangs on the window and yells at me to 'Stop crying!' When he banged on the window, I was very scared.*

A female detainee said she often witnessed the verbal abuse of detainees who had difficulty communicating in English. In one example she remembered,

*It was time for mass. When the officers come, they shout and you don't always know what they are saying. Sometimes their English is too fast. [One woman] didn't realize it was time to go to mass. Later she knocked at the window and asked the guards if she could go. The guard yelled at her and said, 'I had already told you [the priest] was here. Now fuck you,' and she put her middle finger in the air and said, 'You are not going.' When they do that, you just go in your shell.*

Another detainee reported that detention staff were “shouting at me, abusing me. It was the same situation as when I was tortured in my country. They just don't beat me.” He described how “Officers laugh and scream all night long – this noise makes me crazy.” He reported that if he asked for the television volume to be turned down or for the officers to be quiet, he was refused. In addition, books that friends sent to him were not given to him.

*When I was persecuted in my country, I was treated like an animal. I associate this with when I am mistreated by officers here. It seems to me here, some orders exist to make policy at this place unbearable, so people will ask to be sent back to their home countries.*

Several detainees remember being most offended by guards making light of their situation. For example, many reported being told to ‘Go back to your country’ if they had a complaint. One detainee, was an 18-year-old man. After enduring years of harassment for his religious and political affiliations, he narrowly escaped a militia attack on his home, during which his mother was killed and his father was arrested. After seeking protection in neighboring countries, he stowed away on a ship to the US, and was placed in INS detention, where he has remained for the past 2 years pending a final ruling on his case. He described the following treatment:

*Sometimes people will complain about the food and the security will call the supervisor. The corrections supervisor will say, 'This is good food. If you want better food, you should go back to your country.'*

Other examples of such comments include:

*Sometimes if we ask for soap or other things the guards will take a long time to get it and they sometimes say if you don't like the way things are here you can go back to your country. Everyone here has witnessed that.*

*I've seen there was a girl who was sleeping – one guard got her up (a female guard) so she was crying – so the other girl said it's not good to get someone up in that manner. The guard said if you are not satisfied you should go back to your country.”*

*When I've asked for things like could you turn on the television, the response has been, 'Well you just have to go back to your country.'*

*A toilet was broken so a detainee told someone. The maintenance officer who came to repair it said 'you don't deserve to be in this country.'*

A female detainee reflected on what she saw as consistent bullying of detainees by detention facility staff:

*The guards are always yelling. They always want us to fear them. They don't communicate. They shout...I don't think they understand what we have been through. They shout at us. They curse. Someone will tell you. 'Do you think this is a hotel?' But you are a helpless person. I don't know whether they are trained to deal with asylum seekers.*

## Segregation

Solitary confinement, known by jailers and detainees as “segregation,” or in one facility where this study was conducted as “the hole,” was frequently used in the detention facilities, apparently as a means of punishment, intimidation and control. Although segregation is generally viewed by INS and corrections staff as a legitimate tool for managing these facilities, detainee reports suggest that they are threatened and punished with segregation too freely and arbitrarily. Many also argued that the frequent use of segregation in response to minor offenses was cruelly disproportionate. Statements by participants describe the use of segregation, including descriptions of arbitrariness and lack of appropriate review, which apparently violate the INS Detention Standards<sup>150</sup>

For a person who is affected by post-traumatic stress disorder, the prospect of solitary confinement can be especially fearsome. In fact, (40%) of the individuals interviewed for this study reported having experienced forced isolation as part of their persecution in the countries from which they fled. Thus solitary confinement is potentially retraumatizing.

Stated one detainee, in reference to solitary confinement in ‘the hole’:

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<sup>150</sup> See Chapter XI: Legal Standards.

*Whenever someone misbehaves, they take you to 'the hole.' That makes me afraid. I hear the hole is a horrible place.*

Several detained asylum seekers noted how the apparently arbitrary imposition of segregation resulted in a sense of general insecurity and anxiety. For example, one detainee noted:

*If you argue with a guard, or you ask them a question, they will start watching you. And any slight mistake after that – they will move you to the hole. I think once they start watching you, they look for a reason to put you in the hole... One time, they called us for lunch. They would sometimes give us seconds. But then they stopped giving us seconds. We asked them why and they took away our TV for two weeks. The officer said, 'If you continue to ask for seconds, you will go to the hole.'*

Another detainee at the same facility commented,

*Once when we were watching TV – it was at a time when we were allowed to – the officer came and shut the TV off. He said it was too loud. When we complained, he said he would put us in 'the hole.'*

Reported another individual:

*If they ask you to do something and you refuse they will take you to segregation. For example, last week, we were walking down the hallway for religious service, my friend and myself we all were talking. So one of the officers said 'If you don't shut up we will take you to segregation.' They threaten you with segregation for anything. For example if they come into the dorm and you haven't made your bed, they'll threaten you with segregation.*

One subject reported that a guard “threatened me because I was talking to a depressed friend after ‘Lights Out’.”

While many detainees felt that segregation was an inappropriate response to acknowledged incidents, others insisted that the guards' motivation for punishing them or others with segregation was often a complete mystery. For example, one asylum seeker said,

*I don't know why I was put in segregation. They said, 'Stand up,' and they put me in handcuffs and put me in segregation for the night. The next day I had court. I couldn't sleep all night. Not only me, but six guys from my dorm, too. Three days ago, a guy changed the channel and they put him in segregation.”*

In a county jail, another asylum seeker witnessed a disturbing incident:

*Once when I was relaxing in the room with other asylum seekers, several guards rushed in and dragged two people out and yelled 'Turn away, don't look' and took two people to segregation. I think they did*

*this to make an example so we would be scared. We were all so scared we couldn't move. We were in such shock."*

Several subjects explained how tensions sometimes arise among individuals who share the close quarters of detention dorms or county prison cells. These tensions, intensified by the general difficulty of confinement and uncertainty about the future, sometimes spill over into open disagreements among detainees. Many asylum seekers spoke of petty, non-violent spats, where the participants were subsequently banished, sometimes for weeks, to the "hole." The subjects felt that these incidents could have been managed more humanely, and implied that the staff's unfair imposition of segregation increased detainees' resentment and sense of victimization.

Another said:

*If you do anything, tangle with people, they throw you in 'the hole.' The room is dark and very small and no contact with any one.*

Noted another detainee:

*If the guards see people arguing they will put them in segregation, There's always people in segregation. I've never heard of the place being empty.*

One subject reported that he had been put in segregation three times and had spent a total of three months in segregation during the time he was in detention. "That is why my psychological state has gotten worse," he says. He explained the disturbing circumstances of one incident:

*I was fasting and got into an argument with another detainee over food. He pushed me. The guy was speaking English and I didn't know what he was talking about. He was a big guy and I was young. He was taking advantage of me. The guard also pushed me when I went to explain to him. I fell down on the floor. The supervisor came and put me in segregation for 40 days. I was very scared while I was in segregation. The place was very small. They didn't let me go out. They gave me food through the window.*

This young man reported being placed in segregation on another occasion, as a result of physically resisting the sexual advances of another detainee (see "Indignities and Other Abuses").

One detainee who never experienced segregation but was often witness to its use explained,

*I've seen a lot of people put into segregation. For instance, when you're playing volleyball you're not supposed to kick the ball. If you kick it they'll put you in segregation. Even sometimes if you don't do it they'll accuse you and they'll put you in segregation. And sometimes if two people have a little argument, they'll say it's a fight and they put you in segregation.*

This subject was himself threatened with segregation on one occasion, while eating. “We take dinner early, like 5 p.m., and sometimes, since we eat early, we divide the meal – eat part now and save the rest for later. The guards threatened me, if I save food they will put me in segregation.”

Perhaps most disturbing were several reports of vengeful action taken against asylum seekers who either invoked their rights or had a legitimate complaint. Said one asylum seeker:

*If you say anything about “my rights” or ask for something, they threaten segregation and often do it,*

Another asylum seeker reported that, for reasons unexplained, the staff decided to “break up” those living in one detention center dormitory. A friend of his asked why they wanted to move him. “That was all he said. He didn’t yell. For that – they took him to segregation for one week.”

Another asylum seeker said:

*I was threatened with segregation, when I wanted to see the doctor for my toothache and was being insistent.*

In another incident, several detainees voiced concern over the detention center staff’s delay in responding to a sick cellmate’s calls for help.

*We dorm-mates called six times in one day and no one came. So the sick guy took a bunch of medications, saying, ‘I want to die instead.’ So then [the guards] came and took him to segregation!...and they...took the lead guy, who complained about the tardiness, and put him in segregation. And they threatened the rest of us with segregation if we didn’t shut up.*

The same detainee reports that he was also threatened with segregation when he demanded an explanation of his medical treatment.

*The nurse tried to change my medication and I said the doctor told me to do something else. So I refused. [The nurse] insisted. I said, ‘Let me sign a document refusing medication.’ [The nurse] was screaming, and was so angry, and then [the nurse] called the guards. They came and they threatened me with segregation if I didn’t take the pill. But then, they took me back to my cell... And I was able to wait for the doctor, who explained the situation to me, and I then changed the medication. They use segregation threats to intimidate you and keep you quiet.*

Other detainees complained that, at times, individuals who could not speak English were forced into solitary confinement without being given the chance to explain themselves after an incident. One asylum seeker complained,

*There are times when people who can’t speak English well become upset; the guards come, and if the guy can’t speak English well and gets agitated he will be sent to segregation, without a translator to help.*

A female detainee reported:

*There was a woman who spoke Spanish who went to court one day. She thought she was being let out but it was just to go to court. When she realized she wasn't being let out she started yelling. They put her in segregation for five days. They use segregation very frequently – even for little things – it's not fair.*

## **Reports of Physical Mistreatment**

Asylum seekers reported several incidents of physical mistreatment. For example, while being taken back to detention after visiting an outside dentist, one detainee asked that painfully tight ankle shackles be loosened.

*[The guards] started laughing at me and humiliating me.... It was very painful.... The guards pulled me on my elbows and on my knees. This was on the cement and it was very painful for my knees. I was in shock after this and very nervous—shaking and trembling.*

During a search, “One person had been there a long time with his hands up and so the person put his hands down and turned around and one of the guards punched the man on the side of the head.” The victim did nothing but the incident “caused a ruckus” among other detainees, who told the guard that they saw what he did. “The guards warned us – he said, ‘If you persist I will take each and every one to segregation.’ This made me afraid and reminded me of things that happened to me in my country.”

Another detainee reported,

*Three detainees were verbally arguing and the guards came and hit them, hard on the head and put them in segregation.*

One subject who reported physical mistreatment stated that he was choked by INS and detention facility staff. The incident occurred when he was told that he had to be finger printed in preparation for deportation, and he resisted. The detainee refused because he told them he had a withholding order, and subsequently it was shown that this was the case. Detention Center staff interviewed about this case stated that they only used physical force after he repeatedly refused to cooperate. They did, however, acknowledge that they later learned they were mistaken about the need to fingerprint him. The detainee described the following:

*They grabbed my throat and slammed my head to the ground. After that I couldn't talk well. I had difficulty swallowing saliva. I was put in the (medical) observation unit for a week and a half.*

After one month his condition improved, but he still reports having to eat slowly, and he still can't swallow if he eats fast.

One detainee reported several incidents of physical abuse subsequent to his involvement in a hunger strike. After complaining about a guard's behavior, he claims that he was falsely accused of threatening the guard, and reported the following attack.

*They told me to follow them to segregation and I did. When we got to segregation they took me to a cell. The door was still open. I said to the supervisor, 'You are a liar, you know I didn't do anything.' Then the supervisor said, 'Somebody needs to shut your mouth for you,' and he hit me in the chest with his fist. When he hit me in the chest, I fell back and hit my head on the wall. I hit my head hard.*

At that point, the subject reported that several other detention staff ran into the cell and held him, including one who held his neck in a choke hold.

*I was yelling but not resisting. I was saying, 'You people are lying, I didn't do nothing, I was just complaining about what happened.' That was when one of the officers started kicking me.*

Several individuals reported witnessing physical mistreatment. For example, one detainee reported witnessing the following: "Three detainees were verbally arguing and the guards came and hit them, hard, and put them in segregation."

Another individual reported witnessing detention center guards beating people for "talking back to the guards."

Added another detainee,

*I saw a detainee and an officer arguing. A detainee was upset because of being locked in the recreation room for 3 hours instead of 1, and she had to use the bathroom. They started arguing and she went to go back to her room and the guard pushed her back. This made me very afraid.*

Another detainee described, "If the captain comes and says they want to remove someone, they will rush to that person and slam him to the ground."

One individual described witnessing the following:

*Shortly after arriving at [this detention center] I didn't understand anything. I saw five guards surround a man and push him and cover him from all sides and dragged him. I don't know why this happened. This is scary to see.*

## **Indignities and Other Mistreatment**

Asylum seekers described a variety of other incidents of mistreatment and disrespect that added to the oppression of detention. For example, one

individual reported unwanted touching and advances from other detainees. Staff did not adequately respond. This asylum seeker, who said he was a minor, believed his young age made him a target of sexual advances from other detainees at the detention center.

*Another detainee tried to touch me in my personal place, and it made me very uncomfortable. Even when I was sleeping or relaxing, he tried to do it, and it made me nervous. The others were making fun of me. The last time, I pushed him and told him to go. I defended myself and I was put in segregation. The guards didn't give me an opportunity to explain. They just told me it was my fault... I told one of the officers that another detainee bothered me and touched me in the night. I was ashamed to tell the officer, but I tried. The officer didn't pay attention. He said he can't do anything... Since being in segregation, I am afraid to complain because I fear I will be put in segregation.*

A variety of everyday situations led to demeaning treatment. “There’s an excessive amount of searching. If someone visits to just talk and food is placed to [the] side, they dump it,” said one subject.

One asylum seeker said, “They often threaten me – they pick up my clothes and throw them on the floor. They accuse us of stealing.” He did not see the reason for it and asked, “Why am I a suspect?”

Another asylum seeker reports that he was placed in segregation for reading after hours. He report that after initially being placed in a clean isolation room, guards moved him to one that was filthy including having feces on the walls. He believes that he was put there in retribution for having organized a hunger strike.

*When I entered the cell, I remember the cell was filthy. I remember the cell was stinking so badly. They banged the door closed and I went to the door and said why did you put me in this stinking cell. Why did you change me from a cell which was clean to this cell? One of them said through the metal door with a small window ‘Is it not one of the hunger strikers that messed it up? Then it should stay there and you should eat shit.’ It was later that I found out that a guy had smelled up this place with his feces.*

*When I took off my hands from the wall, my hands started stinking. By the side of the door everything was stinking. I could see dried feces by the wall and on the floor.*

This same individual reported being frequently harassed by the guards while in segregation.

*Another time, one of the guards said they were going to take me to a county jail if I kept calling the press and they were going to “fuck my ass.”*

## Some Process Exists to Respond to Reports of Abuse

While the testimonies collected by PHR-Bellevue/NYU indicated the unfairness and demeaning nature of the detention experience, a few testimonies indicated that processes to respond to reported abuses did exist. However, detainees' understanding of, and access to, this process seemed very limited.

For example, one detainee reported that on one occasion he witnessed another asylum seeker ask a guard about why a head count was being conducted. Because of language difficulties, this man apparently did not understand the guard's reply, and asked him again. In response, the staff handcuffed the detainee and took him to solitary confinement. Later, they held a hearing, at which two other detainees testified that the asylum seeker in question had done nothing wrong. At that point, according to the witness, the detention center realized that the detainee had done nothing wrong and released him. But by then he had already been in segregation for four days.

Another incident began with a search. "Normally we are searched, usually with hands against the wall, and searched from [the] back. This time [one of the guards] said 'turn around,'" said one asylum seeker, who said such a search had never happened before. He continued:

*I said, 'No,' and then he yelled, 'Fucking turn around!' This was witnessed by other detainees and officers. The chief officer brought a complaint form. The officer filled a form out and then I and other witnesses filled out another...Two days later, the INS officer told me, 'I know you're not a trouble maker and this incident will not happen again.' Later the head of security then brought me a paper and told me to sign. It said 'I am guilty of disobeying an officer'. I refused to sign it. They wrote on bottom – 'refused to sign', they gave me a copy and said an officer will come and question you. Another chief security officer came and interviewed me. He said, 'we have reviewed the statements by you, the statements by the officer, the statements by the other witnesses, and we are dismissing the case.' I don't know if that officer was disciplined. He is still here."*

Another asylum seeker witnessed an incident and appeal that overturned a segregation order. Even though the detainee in question was ultimately cleared and released from segregation, the witnesses to the incident remained shaken by the indignity of the experience.

*I saw someone put in segregation – the officer came and searched somebody's bag – a detainee who saw this asked the guard not to search the bag until the person came back. Then that officer called another officer and told him the detainee should be put in detention because of that. The detainee did not yell – he simply said you can't search his belongings because he is not around. All of us in the dorm then wrote a note against the officer – and then after we gave the note to the chief officer,*

*he was taken out of segregation. He was in segregation for three days. I felt very sorry of that man because they had no respect him. This is not how to treat another human being, and no reason to put him in segregation for this. It made me sad and worried for myself – how they treated him. I'm afraid that something can happen [to me].”*

One detainee relayed an instance in which guards' ongoing threats of segregation were finally curtailed by a supervisor.

*Like the TV – if you want to change the channel you have to tell, you can't just change it yourself, or the guards say they'll take you to segregation. One time the guards called the supervisor to take one of us to segregation for changing the channel. And the supervisor said, 'No, you can't put someone in segregation for that.'*

One asylum seeker described a hearing held after the sentence of solitary had already been meted out where the process appeared more intent on ratifying the sentence rather than providing an impartial hearing. The incident began with another detainee who was whistling very loudly such that it disturbed others. Detainees complained to a guard and then a supervisor to no avail. The asylum seeker reports that subsequently, when the detainee did not stop whistling,

*A friend went to tell him (the whistler) to stop. They ended up pushing each other and I went over to separate them.*

The asylum seeker reports that guards subsequently arrived and took all three of them away. He reports the guards first took him to see the doctor, who asked him what happened and if he had any injuries (which he did not.) Subsequently, he was brought to the segregation unit where he was placed in a room by himself.

He reports that on the first day, a supervisor came to the segregation room and asked him to sign papers explaining he was moved from the dormitory to segregation. He asked for an interpreter. Subsequently, using a phone interpreter he reports that he explained to the supervisor what happened and then was brought back to segregation, where he remained for five days.

He reports that he was then returned to his dormitory. One day later, he reports being called to a hearing where there was a male officer, a female officer and a supervisor.

*At the hearing I told them what happened and they said next time I should not get involved. They asked me to step out of the room. Then they said 'You have been found guilty. We sentence you to five days in segregation.' I said 'but I have already been in segregation for five days.' They said 'Those are the days.' They said 'you can appeal.' I said, 'why should I appeal I have already been in segregation for five days.'*

There were no witnesses other than the asylum seeker at the hearing. Upon returning to the dormitory, he learned that the other detainees in the dormitory had written a letter on his behalf explaining he did nothing wrong.

*I don't think this was fair. I didn't do anything bad. The normal thing is to have the hearing the first day. Where did you meet something like this? First to do the punishment and after that to have the trial.*

## **Unannounced Transfers**

The INS moves detainees to other facilities without notice and often in the middle of the night. Detainees are not allowed to call lawyers or loved ones to inform them of the transfer in progress. In fact, subjects interviewed by Bellevue/NYU-PHR reported that detention center phones are disabled at these times, so that witnesses are not able to make calls on behalf of a detainee who is being removed. Furthermore, the procedure for transferring detainees to other facilities appears identical to the procedure used for deportations. Several asylum seekers mentioned these surprise transfers as a source of distress, and a reminder of their profoundly disempowered status. From the perspective of a traumatized political refugee, aspects of this practice may echo techniques used in many countries to break the will of political prisoners by instilling them with fear and uncertainty about their fate.

The night before the interview for this study, an African asylum seeker said another detainee had been taken away. “When I woke up he was gone. I felt scared. I say, ‘It can happen to anyone.’”

An asylum seeker who said she was tortured in prison in her native country reported this type of move happens often. She described her own experience being moved to a county jail.

*They woke me up at 4 a.m. and told me to pack my stuff. They didn't tell me where I was being taken. They took me to Processing and made me change into the clothes I was wearing when I came to this country. They put shackles on my legs and handcuffs on me, and a chain around my waist. And they gave me my bags and took me to the van. I wasn't sure if I was being taken to the airport to be deported. They didn't tell me anything. I was very frightened.”*

The detention center did not inform her lawyer; “They didn't let me use the phone to call anyone, which meant they didn't want anyone to know. Something like this frightens me a lot.”

*Last week there was a hunger strike,” said an asylum seeker in a county prison. “An INS officer and a captain came and said, ‘Who organized this?’ One man spoke up. After that they told him to pack up. We don't know where they took him. Another man called up the media and told*

*them about the hunger strike. The media asked him his name and they put this in the newspaper. When the INS saw this, they told him to pack up. I don't know where they took him. This made me very scared."*

A female detainee described the upsetting circumstances of what was ultimately an aborted attempt to transfer her to another facility:

*About one month ago, the officer asked me to pack my things. I asked where I am going to – the officer spoke rudely and told me she doesn't have to tell me where I am going – I just have to pack up my things. I said even though I am a detainee, I have a right to know where I am being taken to. She just kept shouting 'Pack up, pack up.' So I refused to go... She said if I don't move I will be put in segregation and from segregation they will either deport me or send me to criminal jail.*

A supervisor subsequently arrived, and the woman was neither placed in segregation nor transferred at that time.

## **Inappropriate Attempts at Deportation**

Two detainees interviewed reported wrongful or mistaken attempts to deport them. One detainee was being transferred for the fourth time when he discovered that he was actually being deported, despite the fact that his asylum case was still in proceedings.

*They were making me ready to go back to my country. And I said, 'No, I cannot go.' And they said, 'You have to go.' Then they called INS people and they were insulting to me, and they put the handcuff on my wrist and shackles on my legs, they put me in the car, and they were taking me, and then they were buying gas and food, and then they got a message to bring me back. That time they behaved very badly.*

After 3½ years in detention he was ultimately granted asylum.

The INS attempted to forcibly extradite another subject, before she was able to appeal the immigration judge's denial of her asylum claim.

*They brought me to JFK Airport after I lost my asylum. I was crying and screaming. They were going to take me back to [my country] by force if I would not go by myself. I refused to get on the plane. So [the] Airlines refused to take me. I was on the floor crying, saying, 'please don't take me back'. I was in chains. The chains were very tight and painful. My legs were hurting. When I was crying they tried to tighten the chains even more. I didn't fight. When I shouted and screamed, the officer grabbed me on my neck so I couldn't scream. That was why I opened my mouth. She said I tried to bite her... The [INS] officer said I was fighting them but I wasn't fighting, I was trying to protect myself. So they brought me back to [the detention facility] and put me in segrega-*

tion. An INS officer said they put me there because I refused the order [to leave the country]. ‘Segregation’ was a small room with no windows. The bathroom was in the room. They locked me in there with an officer sitting outside the door watching me. The five days I was there I didn’t eat anything. My neck was paining me [because of the struggle at the airport]. You are very alone. It can make you crazy.

This same detainee, who had been transferred five times and was awaiting a final decision on her case from the Board of Appeals at the time of her interview, described the continually deepening anxiety caused by these sudden changes.

*I feel weak like somebody beat me. I don’t want to get out of bed. Whenever they call somebody, the heart be jumping. I’m thinking, ‘Maybe I be next.’ Everyday I take aspirin, every time I start thinking about things, hear people being deported without even finishing their cases, They don’t want them to appeal, that gives me headache.*

## **Poor Recreation**

Sixty percent of the individuals surveyed reported that they felt that their access to recreational activities is inadequate. In one detention facility, an enclosed roof area was the only recreational facility.

*They have ‘outdoor’ for one hour but it is very small... to call it outdoor is misleading, it’s a covered roof, with a little opening... Even in my country when I was in prison there was at least time when I could go outside.*

Another detainee complained:

*No natural light... Not enough recreation time outside our room, once a day 40-60 minutes, not really outside, it’s still inside the building and so stuffy. They follow you everywhere, as if you are a criminal.*

Another subject reported,

*There is nothing to do. You just sit there and talk. If I wasn’t in detention, I could go for a walk. But here, you are shut in with nowhere to go.*

Several detainees who were held in both INS facilities and county jails noted that sometimes the facilities in county jails, such as access to outside recreation, were better.

*I’ve been in jail and I’ve been in detention centers and in some ways I think detention centers are way worse. Noted one detainee: You don’t see anything outside. You cannot even see the sky. At least in prison you can go outside. You can see the sky, you can see the grass. You can see*

*the cars and other people walking in the street. At Elizabeth, all you see is the officers, the other detainees and the INS.*

## **Difficulties Practicing Religion**

Several individuals reported difficulties practicing their religions. At times, staff appeared to disrespect the religious practices of asylum seekers, and to obstruct rituals essential to detainees' active worship. One detainee noted,

*We have to pray in our room where the toilets are, and loud TV which the officers will not turn down—they say 'shut up' to us. Officers are rude to you, play TV loud if you want to pray.*

Another detainee explained the following,

*Muslims have to wash before prayer. They throw away the cans we use and we told them we need them to pray, and they say we are not allowed. They told us they would give us plastic cans but that was more than a month ago and nothing has happened.*

Said another asylum seeker of his mail-ordered materials from the American Bible Academy:

*They seized my religious coursework and said it wasn't allowed. We weren't allowed to pray together, we were told we had to do it individually because we were in prison.*

One individual commented, "We are not allowed to pray in a group, only individually."

"They say we cannot pray together," echoed a detainee at a different facility.

Another detainee noted, "Recently, I have not been able to obtain Catholic books from outside – we previously were able to receive books."

Reported another detainee:

*I'm fasting now and can't keep food until evening – it gets thrown out. When I went to speak to an officer I was told that I and other Muslims should not be fasting now anyway. Why were we fasting?*

Another asylum seeker complained,

*I'm an Orthodox. Nothing here is Orthodox. They have no mass for me. I requested a book in my baggage about my religion – but they refused. They brought me my request and it said "Denied." [The officer] said to me "It is not my problem. It's your problem."*

Several subjects spoke of unfair limits imposed by the INS on spiritual leaders, who many detainees welcome as a source of faith and comfort. For example, one detainee reported,

*There is an Anglican minister who comes every Thursday evening at 9:00 pm. The service ran over by 1 minute. He wanted to say one more prayer - the guard, and INS officers came and said he had to stop right then. He told them he wanted to say one more prayer and when they said no, he got annoyed. They said he wouldn't be allowed to come back. Last week he came and an INS officer interrupted the service about 15 minutes early and said it is over. We did not take communion and I didn't see him have time to say the last prayer. I don't know if he is being allowed back.*

During a follow-up interview by Bellevue/NYU-PHR researchers, several months later, the same detainee reported that the minister had not returned.

# VIII. AGE DETERMINATIONS BY DENTAL EXAMINATIONS FOR YOUNG ASYLUM SEEKERS

When asylum seekers report being under 18 years of age, the INS often utilizes dental examinations and X-rays as a means of determining their age. This practice reportedly continues under DHS despite the frequent acknowledgement by medical experts that such exams are not an accurate method of determining age and the growing consensus that the exams are ethically questionable. (See Appendix A)<sup>151</sup>

The reason typically offered for conducting these examinations is that young unaccompanied asylum seekers face a very different path through the US immigration system. Adults are subject to immediate deportation under the expedited removal provisions of immigration law (see Chapter XI) or mandatory detention in jails whereas minors are sent through a juvenile system where detention is not mandatory and they have access to educational programs and a better chance of release to family members or an outside agency.

## Study Findings

Upon arrival in the US, three asylum seekers, interviewed for this study, reported that they were under 18 years of age, and the INS conducted dental examinations on them. Subsequently, they were considered to be lying about their age and kept in detention.

One young girl, who claimed to be 15 years old, reported the following:

*At the airport, they asked me where I was going? I said to my mother who was in Canada. They asked me who the passport belonged to and I said I didn't know. They asked me how old I was. I told them I was 15. A woman in uniform said I was lying. They told me 'We're going to see if you're 15.' Then they brought me to the dentist.*

The INS detained her in an adult detention center for six months. Subsequently, the INS released her and she was reunited with her mother in Canada who corroborated her daughter's age. Canadian authorities accepted the girl's age as what the girl and her mother said it was.

Another asylum seeker, claiming to be 16 years old, also was taken to an INS dentist for age testing.

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<sup>151</sup> Nalton F. Ferraro, Public Comment on Proposed Rule at 64 FR 39759 (INS No. 1906-98), sent to Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, March 12, 2002, copy on file with PHR (Ferraro, INS Public Comment).

*The dentists didn't explain anything. The guard explained why they were doing X-rays. The officer told me I was over 18 years.*

## Medical Standards

Lawyers, journalists, and activists from different parts of the country have reported that the INS subjects young people to dental and bone exams to determine age. Yet medical experts and medical studies have demonstrated the variability and inaccuracy of these exams.

Many advocates have said that their underage clients have been incorrectly deemed adults by the INS based on these exams.<sup>152</sup> In fact, The Southern Poverty Law Center, a leading American civil rights group, has been preparing a class-action lawsuit on the age assessment issue against the INS.<sup>153</sup> Several news stories described this practice, including one published report that a single dentist examined, for the INS, an estimated 1,500 young persons in New York City alone.<sup>154</sup> In addition to New York, media reports described the cases of young people in Miami, Florida<sup>155</sup> and Harlingen, Texas.<sup>156</sup>

The dental exams look at the eruption of molars and the development of wisdom teeth and the wrist X-ray measures the fusion of bones in the wrist. From these tests, dentists offer conclusions as to whether the young person is 18 years or older.

Several medical experts have criticized the federal government's reliance on age testing and emphasized the inaccuracy of this practice. Dr. Nalton Ferraro, D.M.D., M.D., in a public comment to the INS on this practice wrote:

“A fundamental concept is being ignored in the current INS approach to ‘age testing’: chronologic age, dental age and skeletal (bone) age are not necessarily the same in a given individual. In fact, deviation among these three ‘ages’ is common and well appreciated in pediatric medical and den-

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<sup>152</sup> Personal PHR communications with the Southern Poverty Law Center, the American Bar Association and Latham & Watkins.

<sup>153</sup> Malkin, M. Just a Number: The Malvo Age Issue, *National Review*, October 31, 2002. Available at <http://www.nationalreview.com/comment/comment-malkin103102.asp>. Accessed December 2, 2002.

<sup>154</sup> Elsner, A. “New York Dentists Decides Fate of Immigrants”, *Reuters*, January 11, 2002 [Elsner, Dentists Settle Fate]; *New York Times*, US Weighs the Fate of Child Immigrants, March 28, 2002; Solomon, A. Kids in Captivity: Scared and Alone, Nearly 5000 Children Wind Up in INS Detention Each Year, *The Village Voice*, February 27-March 5, 2002; Elsner, Harsh Fate Can Await Young Refugees in U.S., *Reuters*, December 20, 2001 [Elsner, Harsh Fate]; *New York Times*, “Crucial I.N.S. Gatekeeper: The Airport Dentist,” July 22, 2000.

<sup>155</sup> The Associated Press State & Local Wire, Somalian teen granted conditional parole from INS, *Associated Press*, March 17, 2000

<sup>156</sup> Pinkerton, J. Immigrant advocates claim minors being held in adult detention camp; However, INS official insists that dental exams prove detainees' ages, *The Houston Chronicle*, September 20, 1998.

tal practice. Discrepancies among these ages can amount to as much as five years; this is substantial when one is considering a span as short as the first two decades of life.”<sup>157</sup>

The *Radiographic Atlas of Skeletal Development of the Hand and Wrist* by William Walter Greulich and S. Idell Pyle (2ed. p. 2),<sup>158</sup> the most commonly used bone age standards in the United States,<sup>159</sup> explicitly recognizes the discrepancies in chronologic, bone and dental ages:

“Because of this variability, the chronological age of a child during the early part of the second decade of life is often but little more than a measure of the length of time that he or she has lived; it bears no necessarily close relationship to the amount of progress which the child has made toward attaining [skeletal] adulthood.”<sup>160</sup>

Furthermore numerous studies of the Greulich and Pyle standards and other dental and bone age standards have found similar discrepancies and variability.

One medical study resulted in the authors questioning “whether these standards [the Greulich and Pyle standards] apply to the current assessment of bone age in children of diverse ethnicity.”<sup>161</sup> The Greulich and Pyle standards were derived from white children of the upper socioeconomic class from 1931-1942. The authors determined that using the standards of Greulich and Pyle to determine bone age must be done with reservations, particularly in black and Hispanic girls and in Asian and Hispanic boys in late childhood and adolescence.<sup>162</sup> Another study of US children of European and African descent, published in 2001, concludes that new standards are needed to make clinical decisions that require reliable bone ages and accurately represent a multiethnic pediatric population.<sup>163</sup>

A Swedish study investigated the accuracy of the development of one molar often used in to estimate chronological age in certain young foreign individuals with uncertain birth records and concluded that the difference between estimated and true chronological age was large.<sup>164</sup> The associa-

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<sup>157</sup> Ferraro, INS Public Comment. See Appendix A.

<sup>158</sup> *NY Times*, Crucial Gatekeeper.

<sup>159</sup> Ontell FK, Ivanovic M, Ablin DS, Barlow TW. Bone age in children of diverse ethnicity. *AJR Am J Roentgenol.* 1997 Aug;169(2):597-8. [Ontell, Bone age, diverse ethnicity].

<sup>160</sup> *Radiographic Atlas of Skeletal Development of the Hand and Wrist* by William Walter Greulich and S. Idell Pyle (2ed. p. 2).

<sup>161</sup> Ontell, Bone age, diverse ethnicity.

<sup>162</sup> Ontell, Bone age, diverse ethnicity.

<sup>163</sup> Mora S, Boechat MI, Pietka E, Huang HK, Gilsanz V. Skeletal age determinations in children of European and African descent: applicability of the Greulich and Pyle standards. *Pediatr Res* 2001 Nov;50(5):624-8.

<sup>164</sup> It was +/- 4.5 years in girls and +/- 2.8 years in boys with a 95 per cent confidence interval; Thorson J, Hagg U. The accuracy and precision of the third mandibular molar as an indicator of chronological age. *Swed Dent J* 1991;15(1):15-22.

tion between dental age and chronological age, expressed in correlation coefficients, was poor. The dental development of the third mandibular molar should not be used for estimation of chronological age in individual subjects, due to its very low accuracy. Other studies also found multi-year differences between chronological and dental age.<sup>165</sup> Combining a bone age measurement with dental exams still yielded significant overestimation of chronological age in another study of Swedish adolescents.<sup>166</sup>

Professor Herbert Frommer, chairman of Radiology at New York University's David B. Kriser Dental Center said that one cannot make an exact judgement about whether a young person is above or below age 18.<sup>167</sup> "There is absolutely unanimity in the scientific literature that it is impossible to exactly determine a patient's chronological age from dental radiographs."<sup>168</sup>

Ferraro emphasized that, "Every recognized authority on physical development has stressed this fact," of the discrepancy amongst chronologic, bone and dental ages.<sup>169</sup> Further, the use of averages or two different exams inaccurate for this purpose does not change the fact that, "The margin of error in correlating bone, dental and chronologic age is too great to permit reasonable conclusions and the physical development literature makes this point over and over," he said.<sup>170</sup>

## Legal Standards

The UN High Commissioner for Refugees (UNHCR) has addressed the use of dental and wrist X-rays. The UNHCR Guidelines for Unaccompanied Children Seeking Asylum emphasize the need for accuracy, safety, and dignity in the use of such exams, and recommend that authorities acknowledge inherent margins of error.<sup>171</sup>

In addition, such exams must be conducted according to accepted medical ethics with informed consent and asylum seekers must receive the

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<sup>165</sup> Solari AC, Abramovitch K. The accuracy and precision of third molar development as an indicator of chronological age in Hispanics. *J Forensic Sci* 2002 May;47(3):531-5. Hassanali J. The third permanent molar eruption in Kenyan Africans and Asians. *Ann Hum Biol* 1985 Nov-Dec;12(6):517-23. Mesotten K, Gunst K, Carbonez A, Willems G. Dental age estimation and third molars: a preliminary study. *Forensic Sci Int* 2002 Sep 26;129(2):110-5.

<sup>166</sup> Kullman, L. (1995). "Accuracy of two dental and one skeletal age estimation method in Swedish adolescents." *Forensic Sci Int* 75(2-3): 225-36.

<sup>167</sup> Elsner, Harsh Fate.

<sup>168</sup> Affidavit of Dr. Herbert F. Frommer, January 28, 2002.

<sup>169</sup> Ferraro, INS Public Comment.

<sup>170</sup> Ferraro, INS Public Comment.

<sup>171</sup> UNHCR, Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, Geneva, Feb. 1997, sec. 5.11 [UNHCR Unaccompanied Children Guidelines].

results of the exams. Nevertheless, “when the exact age is uncertain, the child should be given the benefit of the doubt.”<sup>172</sup>

In contrast, the INS defends its use of dental X-rays by invoking fears about public safety and terrorist attacks: “What if a terrorist who was 19 said he was 16 and an orphan and the story didn’t check out, but we released him and he went out and blew up a building? Would it be his attorney that would take the fall? I don’t think so.”<sup>173</sup> Yet the Bush Administration’s INS Commissioner acknowledged the controversy surrounding the exams; in early 2002, he announced that the agency was reviewing the age assessment policy.<sup>174</sup> Because of the variability of these exams, both the US State Department and the Health and Human Services Department have stopped using the exams.<sup>175</sup>

The US legal system recognizes the necessity of treating immigrant minors distinct from adults, a necessity delineated also in international law.<sup>176</sup> In fact, in the Homeland Security Act, Congress moved responsibility for unaccompanied minors to the Health and Human Services Department, instead of keeping it with the Department of Homeland Security, which has assumed other functions of the INS.<sup>177</sup> Unfortunately, most of the 5300 children in INS custody were held in secure detention facilities, often with juveniles in the criminal justice system, according to a report published in February 2003.<sup>178</sup> The Homeland Security Act encourages Office of Refugee Resettlement (ORR) to use the refugee children foster care system for the placement of unaccompanied minors,<sup>179</sup> but it is still unclear whether this will change the detention practices of the federal government.

International standards clearly prioritize the best interests of the child, and detention does not serve those interests. “Minors who are asylum seekers should not be detained,” according to the UNHCR.<sup>180</sup> “Because

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<sup>172</sup> UNHCR, *Refugee Children Guidelines*, Chapt. 8, Sec. I

<sup>173</sup> Solomon, A. Kids in Captivity: Scared and Alone, Nearly 5000 Children Wind Up in INS Detention Each Year, *The Village Voice*, February 27-March 5, 2002, quoting INS Spokesperson Karen Kraushaar.

<sup>174</sup> INS, *James W. Ziglar Speaking at National Immigration Forum*, February 1, 2002. Available at [www.ins.usdoj.gov/graphics/ziglarnif.pdf](http://www.ins.usdoj.gov/graphics/ziglarnif.pdf). Accessed December 10, 2002.

<sup>175</sup> Elsner, *Dentist Settles Fate; Elsner, Harsh Fate*.

<sup>176</sup> UNHCR’s *Guidelines on applicable Criteria and Standards relating to the Detention of Asylum Seekers*, 1999 [UNHCR Guidelines] Guideline 6: Detention of Persons under the Age of 18 years, citing the UNHCR *Refugee Children Guidelines* and the *Convention on the Rights of the Child*.

<sup>177</sup> The Homeland Security Act, 2002 (PL 107-296) [Homeland Security Act].

<sup>178</sup> Chris Nugent, *The INS Detention Standards: Facilitating Legal Representation and Humane Conditions of Confinement for Immigration Detainees*, *Immigration Current Awareness Newsletter of the National Lawyers Guild*, Feb. 3, 03 [Nugent, INS Detention]

<sup>179</sup> US Committee for Refugees, *Refugee Reports*, Volume 24, Number 1 January/February 2003

## Case #4 (LK): “Fifteen-Year-Old Girl Imprisoned”

LK was 15 years old when she arrived in the United States. Her adolescence was marred by political upheaval in her African homeland. After the political killing of her father and subsequent arrest of her guardians, she was assaulted by a man who offered her shelter. When her mother, who lived in Canada, sent a ticket and passport to join her there, LK boarded a plane to New York, where a friend was to meet her. However, her attempt to reunite with her mother was blocked by the INS, which confined her in an adult detention facility for six months.

When LK arrived in the US, she was interviewed in a busy, open area in handcuffs and shackles. LK spoke little English, and was provided with a translator whose language skills she described as “very poor.” The interviewing officers did not explain her right to apply for asylum. She described one of the interviewing INS officers as hostile:

*When the [officer] came she said I was lying. She was yelling at me and I didn't understand a lot of what she said, but I understood when she said I was lying.*

Finally, LK was subjected to a dental examination - a highly controversial, method of determining a person's age (See Chapter VIII: Age Determinations)

*[The officers] asked me where I was going. I said to my mother who was in Canada. They asked me who the passport belonged to and I said I didn't know. They asked me how old I was. I told them 15. A woman in uniform said I was lying. Then they told me, 'We're going to see if you're 15.' Then they brought me to the dentist.*

According to the examination results, LK was 23 years old: eight years older than the age ultimately accepted by Canadian officials, and old enough for detention in an adult facility. LK was taken to detention in shackles. The girl was tearful as she described her shock and fear when she realized her destination was essentially a prison:

*I didn't expect to be put in prison, arrested. I thought I had been abandoned and left alone.*

LK complained of the guard's poor treatment of detainees. She reported being yelled at by guards, and was disturbed to hear them threatening fellow inmates with segregation.

*I saw them tell one of the other women, if she didn't respect them, they would put her in segregation. This made me afraid, because I hear it is very cold in segregation.*

During the interview LK described symptoms of anxiety and depression that she first noticed in Africa, but which became “much worse” during her six months in jail. Symptoms of depression included difficulty sleeping and crying easily. More serious were LK’s symptoms of post-traumatic stress disorder, which began after her arrival in the US. These included intrusive memories of trauma, startled responses to movement and noise, and the sensation of reliving traumatic events.

After six months, LK was released and allowed to travel to Canada where she joined her mother. Immigration officials there granted her permanent resident status.

Since her release, LK’s state of mind has improved. During a follow-up interview she stated, “I have regained hope - I felt abandoned before.” She cited as helpful having “things to do” and “friends to play with when I want.”

However, the effects of her detention linger, and she exhibited a strong emotional response to reminders of her six months inside.

*Sometimes at home, when I am alone, I think about my detention. Sometimes this makes me cry. They should never put young children like me inside there. I did nothing wrong. Why was I detained? How could they detain a child?*

detention can be very harmful to refugee children, it must be ‘used only as measure of last resort and for the shortest appropriate period of time,’” state the UNHCR’s Guidelines on Refugee Children (quoting the Convention on the Rights of the Child).<sup>181</sup> Furthermore, as stated in these guidelines “The child should be given the benefit of the doubt if the exact age is uncertain.”<sup>182</sup>

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<sup>180</sup> UNHCR Guidelines, Guideline 6.

<sup>181</sup> UNHCR, Refugee Children Guidelines, Chapt. 7 Personal Liberty and Security, Sec. IV Detention.

<sup>182</sup> UNHCR Unaccompanied Children Guidelines, sec. 5.11



# IX. ARRIVAL IN THE UNITED STATES

Bellevue/NYU-PHR's findings document that some legitimate asylees reported being mistreated at the airport upon arrival. Asylum seekers come to the United States seeking safe haven because of persecution and/or fear of persecution in their countries of origin. Their initial interactions with immigration officials are a critical juncture in this process. This study raises concerns about the manner in which asylum seekers are treated upon arrival in the United States.

Study participants frequently reported that INS officials failed to explain their right to asylum. Asylum seekers often described a lack of adequate privacy during interviews conducted at airports or other points of entry, particularly when being asked to describe intimate and traumatic details of their past. Reports of poor translations and difficulty communicating during interviews upon arrival were also common. In addition, asylum seekers frequently reported feeling as if they were treated like criminals, being bound with shackles and often subjected to verbal abuse. When being transported to detention facilities, most asylum seekers reported that they did not know where they were being taken, and many feared that they were being immediately deported.

This study provides a rare glimpse into the experiences of asylum seekers at ports of entry in the US. INS officials have markedly curtailed access of independent observers to these sites. Human rights organizations have previously questioned whether asylum seekers are adequately informed of their rights, and the possibility that asylum seekers may be refused entry without due process. The findings of this study raise concerns that asylum seekers may be turned away without adequate evaluation and safeguards. Individuals fleeing persecution may not be familiar with proceedings, and the lack of adequate translation and intimidating atmosphere reported by many highlights the concern by Bellevue/NYU-PHR that asylum seekers are not being given adequate opportunity to protect themselves from unjust deportation.

## Survey Findings

Treatment/abuses reported by survey respondents upon arrival in the United States are summarized in Table 16. Most of the detained asylum seekers interviewed by Bellevue/NYU-PHR for this study (59%) reported that when they were first interviewed at the airport or other port of entry,

**TABLE 16:**  
**Treatment/Abuses Reported by Survey Respondents Upon Arrival in the United States (N=70)**

Item	Number (%)	
	Yes	No
Interview conducted in a private room at airport	35(50)	35(50)
Asylum seekers reporting that they were asked at the airport about traumatic events they experienced in their country	41(59)	29(41)
Asylum seekers reporting that they were asked at the airport about traumatic events they experienced in their country (n=41) who were interviewed in a private room	20(49)	21(51)
If asylum seeker needed an interpreter at airport (n=50) was one provided?	40(80)	10(20)
Impression that right to apply for political asylum was adequately explained at airport (n=68 respondents)	23(34)	45(66)
Shackled/handcuffed while waiting at airport	47(67)	23(33)
Strip searched or body cavity searched at airport	19(27)	51(73)
Experienced verbal abuse at airport (n= 69 respondents)	27(39)	42(61)
Experienced physical abuse at airports (n=68 respondents)	6(9)	62(91)
Given food and water at the airport (n=62 respondents)	53(85)	9(15)
Given access to the restroom at the airport (n=60 respondents)	57(95)	3(5)
Impression that treated in a respectful manner at the time of arrival in this country	26(37)	44(63)
Informed where being taken before brought to INS detention facility (n=57 respondents)	13(23)	44(77)

they were asked about traumatic events they had experienced in their country. However, privacy was found to be lacking during interviews conducted at airports/points of entry. Half of the individuals interviewed reported that they were interviewed in an open area rather than in a private room.

Although most individuals who needed an interpreter reported that they were provided with one, 20% of those who needed an interpreter reported that they were not provided with one. Additionally, two individuals reported that an airline employee from their native country served as the interpreter. This practice is potentially problematic given that many

national airlines are government-run. Thus, employees of these airlines might be perceived by asylum seekers as being loyal to the government from which they are fleeing, and therefore not to be trusted with critical information.

Most of the asylum seekers interviewed for this study (66%) reported that they felt their right to asylum was not adequately explained to them at the airport. The majority (63%) also recalled that they did not feel treated in a respectful manner at the time of arrival in the United States. Two thirds of the study participants (67%) indicated that they were not informed where they were being taken when they were being transported to the detention centers.

Although the study participants typically reported being given adequate food, water and access to restrooms while at the airport, 67% reported having been handcuffed and/or shackled upon their arrival in the United States for a median length of 12 hours (range .25 to 48 hours).

Twenty seven percent of the participants recalled having been strip and/or body cavity searched and 40% reported experiencing verbal abuse and/or foul language while at the airport. Six individuals (9%) reported experiencing physical abuse while at the airport, although some detainees indicated that they considered strip or body cavity searches to constitute physical abuse.

## **NARRATIVES**

### **Welcome to the United States**

After arriving in the US, many asylum seekers reported encountering not just an indifferent bureaucracy, but often hostile immigration officers affirmatively denying them rights. One asylum seeker who reported having been imprisoned and tortured in his country or origin, and who was subsequently granted asylum in the US, but only after being in US jails and detention centers for more than three years, described the following treatment by INS officers at the airport:

*They shouted 'Go back to your country! What do you want here? You don't belong here – mother fuckers come here - go home and die in your country.*

“You’re crazy; you will have to go back to your fucking country,” another asylum seeker reported he was told by an airport immigration official. “I was surprised to be treated like this in the USA, a country which fights for human rights.”

An INS officer reportedly told another asylum seeker, “Why come to America for asylum? I don’t care about you. I can do anything I like to you?... “I cried when she said that,” stated the asylum seeker.

“There is no political asylum here. No asylum! No asylum!” another detainee reported being told at the airport by an INS official. The asylum seeker added: “After, I was trembling, I became very frightened.” This individual was tortured in his country of origin and had several family members who were killed because of their peaceful political activities. He was later granted political asylum in the US but not before spending nine months in INS detention.

## Learning their Rights

In order to avoid immediate deportation under US expedited removal procedures, asylum seekers arriving at airports or other ports of entry without proper identification documents must explicitly indicate that they fear returning to their country or are seeking asylum. US regulations direct that asylum seekers be informed that they have an opportunity to explain any intention to seek asylum or fear of persecution they might have. Forty-five individuals (66%) reported that the INS did not adequately explain their right to asylum. For example, one asylum seeker reported that he was never informed at the airport of his right to apply for political asylum:

*They brought me a paper to sign. They said, ‘Just sign this and go back to your country.’ They told me I was going home on the next flight. I was scared. They tried to get me to sign something which was half covered up by another paper... Only the signature line was open to sight.*

Another asylum seeker who fled his homeland after arrest and torture by police said his right to asylum was not explained to him. “I never asked about asylum because I intended to go to Canada,” he explained.

According to another asylum seeker, the right to apply for political asylum “was not explained, and then when we asked if we could apply for asylum, they said, ‘Sure, it’s possible to apply. But there’s no chance for you.’”

“You Africans tell a lot of lies,” one interviewee reportedly was told by an INS officer upon arrival. Faced with this attitude, “I had to fight for an asylum application,” the asylum seeker said.

One detainee described the following:

*The immigration officer who was interviewing me told me that I was lying and said shut up you are going to prison. I want to tell him why I have a passport that is not mine, but I was not given the chance. He just said, ‘Shut up, you are going to jail.’ I wanted to explain to him why I could not go back to my country... I was put in handcuffs. I was treated like a criminal. They kept telling me that they are going to send me back and that frustrated me. I was confused, I was afraid, and when I think I*

*am going to send me back, I don't know what to do, because if they send me back, I will be killed... I wasn't told anything about asylum. They just said, 'You are going to jail.'*

*It was here at the detention center that I was told. After one week an immigration officer came to me and explained everything including my right to political asylum. I explained what happened to me and why I could not go back to my country.*

A person interviewed who only spoke a little English said he was told at the airport that the officers couldn't find an interpreter. Nothing about the asylum process was explained to him.

*No interpreter was provided. No one explained my rights. If I did not say something, I think they would have sent me back.*

## **Recounting Their Experiences**

Many of the asylum seekers interviewed reported having to describe their persecution in inappropriate and often demeaning conditions. Typically, after walking off an airplane and waiting in line, the asylum seeker presents travel documents to an immigration inspections officer. In order to avoid expedited removal, the asylum seeker is expected to communicate the fact that he/she wishes to apply for asylum. Once their fear of persecution has been articulated, if the officer has any doubts about whether to admit any foreigner, or merely suspects the documents are invalid, the person is referred to another meeting, officially called "Secondary Inspection." If the officer at the secondary inspection does not believe the asylum seekers, or the asylum seekers do not indicate that they fear returning to their country, this officer, upon approval of a supervisor, can deport these people on the spot.<sup>183</sup>

## **Lack of Privacy**

Asylum seekers, many who had seldom spoken about their torture or trauma, had to recount their horrors in front of others in line without privacy. Thirty-five individuals (50%) reported being interviewed in open areas and not having adequate privacy at the time of their initial interview. Often fearful that disclosure of the information would further endanger their family or themselves should they be deported back to their homeland or ashamed at the depravity of their victimization and retraumatized by having to revisit it, asylum seekers detailed their stories to officials filling out forms. For example, one asylum seeker said:

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<sup>183</sup>The INS airport officers making these determinations for what is known as expedited removal are not trained asylum officers.

*I was crying. I was so afraid with everyone around. I said, 'Please can we go in a private room?' The INS officer said there was no problem where we were.*

An asylum seeker described his encounter at an airport as follows:

*I was at a counter; there was no privacy. I was afraid that others might hear what I was saying and tell my government. There was no privacy at all... After they interviewed me they started yelling at me, 'You have to tell the truth! You have to tell the truth!' I was scared that maybe they would tell my government. They didn't explain, they just shouted at me.*

Another asylum seeker reported the following:

*They asked me at the counter with lots of people around, why I couldn't go back; other INS officers [were] standing by... At the counter – not in private - the officer asked me why are you afraid to go back? I told him that I am afraid of the police in my country. Then the other INS officer started laughing and said, 'Most of you when you are caught, you say you are afraid to go back.'*

A female asylum seeker reports being shackled at the airport for 13 hours, and was denied privacy during the interview. She described the experience as extremely stressful.

*They asked me why did you come here. I said I had to save my life. They asked me what happened. I told them some, but not all, because it wasn't private- I didn't tell them about the rape. I wanted privacy, I thought that would put me at ease... I asked for food and water—they said wait. I thought maybe I didn't have the right to eat.*

This asylum seeker was further agitated by what she described as verbal abuse by a female officer:

*In my presence one officer, the woman who took fingerprints, said to another officer, 'look at this fraud; that's her job to be a fraud.'*

An asylum seeker reports that he was chained to a bench in the cold near an open door, not told his rights, shouted at, and not given a translator. But worse was the "lack of privacy, I was crying in front of passers-by."

One asylum seeker, who was a victim of domestic violence, said it was very difficult for her to go through with the interview.

*I was very scared and afraid. I was asked a lot of questions about what happened to me and the problem with my husband. It was at an open counter with no privacy. It would have been better if they spoke to me in a private room. It was an open place and I needed privacy.*

## Translation and Communication Difficulties

Several asylum seekers interviewed reported problems communicating the circumstances of their flight to the INS, a critical hurdle for some. In several cases, the INS used airline employees as interpreters. But some of the airlines are government agencies and these interpreters were employees of the same governments asylum seekers were fleeing.

According to one asylum seeker, a flight attendant, who was used as an interpreter, made fun of him, while she translated for him. He was afraid and feared that he would be killed upon return. Initially, the flight attendant told him there was no such thing as asylum in America.

Without the aid of an interpreter, according to another asylum seeker, officials filled out a form, and then advised him to “just say yes or no” in response to the questions they asked. He remembers, “I didn’t know what I was saying.” When asked which language he spoke, he told them [his native language – not English] and they wrote down “English.” He states that they also wrote “a whole lot of stuff that I didn’t say, in the paperwork . . . The officers were agitated and forceful.” He was then brought to the INS detention facility. It was never explained to him where he was being taken.

A woman fleeing her country after rape and torture reported that she was unaided by any translation. Later, the INS used her failure to state her persecution against her in immigration hearings.

*I didn't speak the language and I didn't know I had to say anything... All I said in English was 'I came to visit.' After the interview I didn't know that I was arrested. I was waiting for my passport. I go to make a phone call and they didn't let me finish the phone call. They took me and put me in chains on a chair.*

Another asylum seeker said:

*I was treated like a criminal. I didn't get a chance to explain myself because of the language problem. They handcuffed me and told me they didn't want to listen to anything I had to say, that I was going home on the next flight. I said I didn't want to go home. They said, 'Then you will go to prison.' I said okay.*

One subject, who was shackled for 16 of the 20 hours that she was held at the airport, complained that “[The interpreter] never translated the conclusion of the interview to me. He just handed me the paper and told me to ‘come’,” directly before they brought her to the INS detention facility. Overall, she characterized her experience at the airport by “shouting, screaming; poor translation; no explanation of procedure,” saying she felt “humiliated” because she wanted to say that she had come to the US to

save her life, but was not able to tell her story. Instead, she said, she was handcuffed and “treated like a criminal.”

The translator, “he skipped many things,” said an asylum-seeker from the former Yugoslavia. “Some things that I said about the Serbian police he translated to ‘federal police,’” a potentially crucial error for someone from the former Yugoslavia.

“They rushed my story,” another said. He quoted the officer who interviewed him: “My shift is finishing; tell me your story.”

One French-speaking asylum seeker said he was given no choice but a mediocre translator, who was a customs employee, and he was given no translation of any of the forms. “She [the customs employee] said that without the interpreter, I would have been sent home immediately. I didn’t have a choice.”

### **Endangering Asylum Seekers by Contact with Foreign Governments**

Precisely because asylum seekers are fleeing their governments, the INS and US government should not communicate to that government about any individual asylum seeker’s case. Yet, two asylum seekers said the INS was responsible for contacts with the governments of their homeland, which put the asylum seekers and their families in danger.

One asylum seeker reported the INS endangered his family when it enlisted an airline employee from the national airline of the country he had fled to translate for him. This airline employee then reported the asylum seeker’s name to his government, the regime that had tortured him and forced him to flee.

*The interpreter was [from my country] and she would be afraid to translate things. The woman said to me don’t apply for asylum here in the US. The woman called the Consulate [from my country] and put me on the phone and I was asked ‘why are you applying for asylum?’ I slammed the phone down. This woman sent a fax to my country telling them my name – this made me very afraid. If I didn’t have this problem I wouldn’t have fled. – I wouldn’t have left my family.*

Although he otherwise described his treatment as respectful at the airport, the INS officials’ use of this employee of the government he was fleeing left him at a loss of what to do. “I was afraid they would put my family in danger. The INS said nothing. I refused to speak at the airport.”

According to another asylum seeker, the INS showed her documents to her native country’s embassy endangering her family there. “They went and showed the documents to the officials in my country – the same officials who I am running away from. This makes me feel very scared.” Previously, she believes that her government did not know she was seeking asylum, she said. Her family is now being harassed and has moved several

times, but government officials continue to find them, she said. She reports that government officials told her father to tell her she should come home, that she has betrayed her country.

## **Shackling and Being Treated Like a Criminal**

Those fortunate enough to articulate their experience of persecution or a desire for asylum, often ended up in chains or otherwise being treated like a criminal. Many reported being shouted at, called liars or generally treated poorly by the INS officers interviewing them or those handling them. One 15-year-old on her way to be reunited with her mother in Canada, walked off a plane in New York and was handcuffed and confronted by a screaming INS officer.

*When the woman came she said I was lying. She was yelling at me and I didn't understand a lot of what she was saying, but I understood when she said I was lying.*

After an airport interview with immigration officers, another participant, who later was granted asylum, was told, "You're lying. That's not a reason for staying in America and getting a green card."

The indignity and trauma continued with a strip search, which he believed was unnecessary since he was not charged with drug smuggling.

One asylum seeker, who was imprisoned in his native country because of political affiliations and who had been subjected to beatings and severe burning, reported that after arrival in the US he was strip-searched, shackled to a chair for 10 hours and not told where he was going before being taken to an INS detention facility in New York City.

In my country what we hear about America is that it's number one in human rights...But to my surprise I found myself in handcuffs, going to prison.

Another asylum seeker, who was imprisoned in his native country for peaceful political activities and had endured beatings and severe malnourishment, described his treatment upon arrival as follows:

*I was held in handcuffs and shackles which were very tight. I told him they were too tight and they said no, no, no, it's not too tight. Walking to the bathroom was difficult. For about 2 weeks afterward my wrists continued to hurt me. They treated me like a criminal – criminals are handcuffed. I'm not a criminal. I came to ask for asylum.*

At the airport, the combination of no rights explanation and being taken off in handcuffs produced a sense of futility for another asylum seeker.

*I thought I was being deported when they sent me here [to detention]. When I arrived here, I thought it wasn't worth it to apply for asylum,*

## Case #5 (CR): “Begging for Mercy”

CR’s participation in democracy protests in his country led to imprisonment, torture and gunshot wounds. In prison, CR was beaten, suspended by his arms, and held in solitary confinement in small dark cells. Members of his family were killed. At one demonstration, CR suffered two gunshot wounds when police fired into the crowd. One bullet remained in his body, untreated and painful throughout his flight and 2 ½ years in INS detention.

After fleeing to the US, CR was strip-searched at the airport and handcuffed for the entire 48 hours there. His right to apply for asylum was never explained to him.

When CR was interviewed by INS officers he didn’t trust the interpreter, who was an employee of the national airline of the country from which he was fleeing. CR was asked to sign a paper given him by the INS.

*I made a statement that they wrote down, and they asked me to sign it. I said I could not... I could read a little English and I knew what they wrote was wrong. They put handcuffs on me. A big man came in while I was handcuffed from behind and told me to sign. He physically forced me to make fingerprints from behind... When they forced my hand, my head knocked on the door handle and cut my head. It was bleeding a lot. They put a bandage on.*

INS officials then tried to carry him onto a plane back to Africa.

*When I saw the plane, I cry to the INS officer, if they send me back they will kill me. The INS officer said, ‘You have to go back!’ So I cry - I say, ‘I prefer to die here.’... I held on to the steps near the entrance of the terminal of the plane, so they took me on top of them. There were 4. I moved and fell down and hurt my shoulder. So then they took me back. After this struggle, another officer allowed CR to explain why he couldn’t return. He was subsequently transported to an INS jail.*

CR suffered from numerous psychological symptoms, including nervousness, sleeplessness and nightmares. These symptoms started in his country, but significantly worsened during detention in the US.

*When I lay down, I calm my head and try not to think about things, but I can’t help it... Every night I dream I am in the hands of the authorities in my country. Sometimes I dream they captured my girlfriend and she is tortured.*

CR requested medication for sleep and feelings of sadness, but said he was only given pain medication. He attended a support group, which he found helpful.

*A nurse called me in to be part of a group to talk about living conditions here and how to cope. People talked about what happened to them. I think it helped a lot. [The nurse even did a birthday party for me.] But then, because I work in the kitchen, they said they needed to let other people into the group.*

CR was disappointed by the termination of this counseling. “I would like more opportunity to talk with people.”

CR reported that his physical health became “much worse” during his detention. He was particularly concerned about the increasing pain he reported experiencing while in detention from the bullet in his groin. CR reported being told that he would have to wait until he was released from detention to have the bullet removed.

CR described generally poor treatment by detention facility staff, particularly the inappropriate use of segregation.

*One [detainee] tried to fight me. I did nothing. He came to fight me – it was broken up. We shook hands. They still put me in segregation. I don't like segregation. If I'm very lonely I will be more upset.*

Fortunately, CR no longer faces life behind bars, nor return and possible death. After nearly 2 ½ years in detention, the US granted CR political asylum.

*since [the officers] handcuffed me after they heard my story, so I thought I was no better off than in my country.*

## **Allegations of Physical Mistreatment at Airport**

Several individuals reported experiencing physical abuse while at the airport. INS officials interviewed an asylum seeker with an interpreter whom he did not have confidence in. After his statements were translated and written down, the interpreter left the room. The asylee was then asked to sign a paper which the INS presented to him.

*I made a statement which they wrote down, and they asked me to sign it. I said I could not. What I said was not what interpreter said. I could read a little English and I know what they wrote was wrong. They put handcuffs on me. A big man came in while I was handcuffed from*

*behind and told me to sign. He physically forced me to make fingerprints from behind (this man was not in uniform). I had the cuffs close on my hand and it was very painful. When they forced my hand, my head knocked on the door handle and cut my head. It was bleeding a lot. They put a bandage on.*

After this interview, he reported that INS officials tried to deport him and have him carried onto a plane. In the process of being forced onto the plane, he reported that he was banged against a door and dropped on his shoulder.

*They said I had to go back. At first I thought I am going to the UN... but I was taken to second terminal. They said they would put me on a plane to go back to Africa. When I saw the plane, I cry to the INS officer, if they send me back they will kill me. The INS officer said, 'You have to go back!' So I cry - I say, 'I prefer to die here.' So they took me back to the other terminal. One of the bosses saw me and said, 'No, you are going back.' So I was sent back again. I held on to the steps near the entrance of the terminal of the plane, so they took me on top of them. There were 4. I moved and I fell down and hurt my shoulder. So then they took me back.*

After this struggle, he reported that he was taken to a second officer, who asked him why he couldn't go back. "I said, 'If I tell you will you not send me back?' He said, 'If you have fear in your country, the US will protect.' So I explain to him I am campaigner for my organization [in my country]." He subsequently remained in INS detention for approximately two and a half years, after which he was ultimately granted asylum.

Several individuals reported discomfort from the shackles they were kept in at the airports and while being transferred detention centers. For example, one detainee reported.

*I was being transported to the detention center. I was placed in handcuffs with chains around my arms waist and legs. They were very tight. It was painful and hard to walk. I told the guard escorting us that they were too tight and were hurting me. He said, 'I know you can walk, don't bother me.'*

## **Strip Searches**

Several individuals found particularly disturbing the strip searches they were subjected to upon arrival. "Being strip searched and body cavity searched was like physical abuse," remarked one detainee.

One male asylum seeker described the following:

*When I was strip-searched it was so painful because there were two of*

*them and they told me to take off my clothes and bend over and they put their hand . . . I am not a drug smuggler. Since I was not charged with any drug trafficking, I see no need to strip search me. I found it very humiliating.*

After being beaten, raped and becoming pregnant as a result of the rape in prison in her home country, a woman from Africa was accused of trafficking drugs and body cavity searched at an airport. She reported that she had no connection to drug traffickers, and subsequently was not charged with any criminal conduct. Nevertheless, she reported that the INS officers were aggressive and this made her very nervous. She was told by an INS officer, “Everybody wants to come to America. You people are thieves.” She later won asylum.

## **Mystery Destination**

When transported from place of entry to the detention facility, 60% of study participants reported that US officials did not tell them where they were being taken. For many asylum seekers, similarly secretive trips to detention facilities in the hands of government officials were the prelude to torture and incognito detention in their home countries.

One asylum seeker described the following:

*Being led from the airport, I was shackled on my hands, stomach and legs. I had no idea where I was being taken. At that time, I was really afraid. I thought I was being taken to jail.*

Subsequently, he was taken to a detention facility. INS personnel, he said, joked about where he was going.

*They said, ‘We are taking you to our home, where we will feed you and give you hot meals and a bed.’ They were laughing.*

Said another asylum seeker:

*They put me in a van – I thought I would be brought to a refugee camp – a comfortable place. I shouldn’t be put in handcuffs. They didn’t tell me where I was being taken. They made me afraid.*

After shackling him for 12 hours, the INS transported another asylum seeker to what an officer told him was a “refugee camp,” and which, in fact, was a county jail.

One detainee reported.

*I was told I was going to some place like a hotel for about 1 week, where you can shower, eat, relax.*

Others were told a similar story about a hotel. Said one asylum seeker:

*I was told I was being taken to a hotel for a shower and a rest for seven*

*days and it is now 2 years and four months.*

Another asylum seeker said, “they lied and said this detention center was a hotel. If you’re going to detention, tell the truth.” Adding to the irony, “INS agents at the airport said you have to tell the truth or we’ll send you to prison.”

Said another detained asylum seeker:

*They told me they were taking me to the doctor – I didn’t believe them. They never told me they were taking me to the detention center... When they took me, I think they are taking me back to my country. I was too much afraid.*

A young African woman was threatened with expedited removal at the airport, and then taken to a detention center with little explanation, where she was subsequently strip-searched.

*They told me nothing...They just told me I was being brought to a facility to meet ‘other ladies’...They told me they were going to take me to a facility to see an immigration officer, and at most I would be there for two days. Two days took two years now.*

# X. STUDY LIMITATIONS

There are a number of limitations in the methodology used for this study. One limitation was the inability to randomly sample the entire population of detainees. As noted in the methods chapter, this was as a result of access limitations set by the INS. Instead, the Bellevue/NYU-PHR researchers recruited study participants by referral from pro-bono legal organizations. Efforts were made to interview all detained asylum seekers represented by participating organizations. Detainees who were representing themselves or had retained a private attorney to assist in their case were not included. While there is no reason to believe that detained asylum seekers represented by pro-bono legal groups differ significantly from detained asylum seekers who are not, this cannot be certain. For example, pro-bono organizations might represent clients who were more traumatized and thus more symptomatic since these organizations generally do not take on cases of individuals whom they do not believe would face persecution if returned. Alternatively, the opposite is also possible, since detainees with high quality legal representation may be less distressed than similar detainees who are representing themselves or have retained counsel themselves. Further, although no data was available on the 32 detainees who were not referred for participation, the reasons given for the decision not to participate appeared to be independent of the detainee's psychological state.

Several issues arose with regard to the assessment of the psychological functioning and psychiatric disorders present in the sample. Because of practical limitations, the Bellevue/NYU PHR team did not conduct as part of the study formal psychiatric interviews to establish psychiatric diagnoses among detainees. Instead, the researchers utilized standardized self-report instruments to identify subjects with “clinically significant” levels of depression, anxiety, and PTSD. The questionnaires administered to assess psychological symptoms, the HSCL-25 and the PTSD portion of the HTQ, have been widely used with diverse refugee populations, are well-established measures of psychiatric symptom severity, and validated against clinical diagnoses. With the HTQ, scores over 2.5 are associated with a clinical diagnosis of PTSD.<sup>184</sup> Furthermore, when individuals reported a high level of a particular symptom, such as nightmares, inter-

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<sup>184</sup> See Chapter III: (Methods) for a discussion of measures used in this study.

viewers asked for additional information, which is reflected in the narratives presented in this report.

Although symptom check-list data are not problematic, and indeed are actually preferable to diagnostic interview data for analyzing the relationship between symptom severity and time since diagnosis or treatment while in detention (and many other questions), the estimates of patients with “clinically significant” depression, anxiety and PTSD may be somewhat exaggerated by relying on self-report questionnaire data. That is, not all individuals who fell above the cut-off score would necessarily meet the criteria for a clinical diagnosis of anxiety, depression, or PTSD. It is important to note, however, that the Bellevue/NYU-PHR researchers have attempted to present this data with sufficient clarity as to acknowledge the distinction between “clinically significant” symptoms and diagnosis.

One cannot state with certainty the cause of psychological symptoms at the time of interview for this study. For example it is unclear the extent to which psychological symptoms were due to trauma prior to arrival in the US, the result of the detention process, or a combination of the two. As previously noted, many study participants had experienced significant trauma prior to arrival in the US, including frequent reports of torture. Additionally, study participants frequently noted that their psychological symptoms had started before their arrival in the US. Arguably, this bolsters the credibility of their reports.

Overwhelmingly, however, study participants noted that their symptoms had worsened substantially while in detention and many attributed their current symptoms largely to detention. The correlation with length of time in detention and increased severity of symptoms further supports the assertion that detention contributes to the psychological suffering of asylum seekers. In fact, the levels of anxiety, depression and PTSD observed in our sample were substantially higher than those reported in previous studies of refugees living in refugee camps and asylum seekers/refugees living in the community.

While, the study’s sample size precludes definitive analysis of the ways in which pre-immigration trauma and detention experiences might interact to contribute to this distress, these data nevertheless offer an important first step in understanding the impact of detention on individuals seeking political asylum. The findings of this study support concerns that detention of asylum seekers is resulting in worsening of their mental health.

Another set of issues pertains to the assessment of the medical problems experienced by detainees. It was not part of the study design to conduct formal physical examinations of the detainees, nor review their medical records in the detention facilities. Although all interviews were conducted by primary care physicians experienced in the care and treatment of refugees and asylum seekers, the inability to conduct independent examinations of the medical problems reported leaves many questions as to the

nature and severity of these problems unanswered. As noted in the health section of this report, there is the possibility that at least some, if not many of the medical problems reported by our sample may have reflected psychosomatic conditions (which are common among trauma survivors) rather than organic conditions. Thus, the “failure” to provide medical treatment perceived by some detainees may in some cases actually reflect an appropriate response, at least with regards to medical care, to the nature of the symptoms reported. The lack of availability for appropriate mental health services, however, still is a matter of concern in how such somatic symptoms could be addressed. Unfortunately, such differentiations are not necessarily possible given the data. The Bellevue/NYU-PHR researchers did attempt to distinguish “medical” problems that were overtly psychological in nature (e.g., insomnia) but many other symptoms (pain, headaches, gastrointestinal discomfort) may have reflected psychological stress rather than organic etiology. How often such complaints were somatic rather than organic in nature is not known.

The geographic region in which the study was conducted is another limitation pertaining to the study sample. This study was limited to detention centers in the northeastern United States and included only 70 detainees. Detainees in other regions of the US may be from different parts of the world, having experienced different forms of torture and abuse, and may be treated quite differently by customs and detention center staff. Nevertheless, given the absence of data on detained asylum seekers nationwide and internationally, the present study provides the first attempt to obtain systematic data on the general health, psychological functioning and experiences while in detention of this group.

Finally, the reliance on self-report data to assess symptom severity, access to medical care, and treatment by Customs and INS staff is another limitation to consider. Despite informing the study participants that survey responses (or even participation) would not influence either their asylum claims or their status in detention, and there would be no material or other gain by participating in the survey, the severity of psychological symptoms, and experiences/number of abuses reported in the study may have been over or under reported if detainees judged that it was in their interest to exaggerate or conceal symptoms or claims of mistreatment. For example, despite the fact that interviews were conducted in private and assurances of confidentiality were provided, individuals may have been fearful of reporting occurrences. Also, there is a subjective component to what constitutes verbal/physical abuse, and individuals may have under or over reported such incidents as well because of this. The narrative information presented in this study provides a useful context in which to understand the survey response data.

This study was a survey of individuals’ experiences, and it was not within the scope of the study to corroborate accounts of events described

by study participants. In evaluating the narrative information, investigators made general determinations regarding the credibility of information provided by study participants, including detail, consistency, affect, and clarity. It was not, however, part of this study design to make independent determinations (such as interviewing detention center staff) regarding the accuracy of what the participants reported. Accordingly, the information in this report that comes from study participants should be understood as the participants' recollection and perceptions of their experiences, and not necessarily as a full and complete accounting of each event.

Although the team was not able to conclusively ascertain the validity of study participants' accounts, the large proportion of study participants who were ultimately granted asylum supports their credibility. As of April 2003, 40 of the 70 had been granted asylum (and hence, deemed by the INS, after thorough investigation, to have provided credible evidence to support their claims); another four individuals were either granted relief under the UN Convention Against Torture or released and allowed to travel to another country where they were granted asylum; and 13 participants still had applications pending final resolution (only 14 participants have had their claims ultimately rejected.) Moreover, there was no difference in the reported distress at baseline or pre-migration traumatic experiences between those detainees who were granted asylum and those who remained in detention. Thus, although the possibility of some deliberate distortion exists, the team believes the available data supports the credibility of the sample.

Despite the limitations of this study, the results indicate that the level of psychological distress among detained asylum seekers is alarmingly high and that the practice of detaining asylum seekers harmed the mental health of the majority of those in this study and may exacerbate symptoms of depression, anxiety and PTSD in this vulnerable population. This study raises concerns about the manner in which asylum seekers are treated upon arrival in the United States and then while in detention. These findings suggest a need to review policies concerning detention of asylum seekers, and highlight the need for aggressive mental health intervention to address the psychological needs of these individuals.

# XI. LEGAL STANDARDS

## Introduction

The treatment of asylum seekers documented in this report violates guiding principles of international law covering the right to asylum and the detention of asylum seekers. Furthermore, the treatment documented in this report also violates international agreements and standards governing the conditions for detained asylum seekers and more broadly the conditions of prisoners, detainees and others in confinement.

This section highlights key components of two aspects of the law pertinent to this study: 1) international and US law governing the *authority* to detain asylum seekers and 2) international and US standards governing the *conditions* of such detention. Both of these fields are complex and subject to debate. However, there are some clear overarching laws and standards recognized by the US, and US policies violate some of these. The purpose of this discussion is to provide sufficient background on these principles in order to place the findings of this study in a meaningful legal context.

In general, the findings in this report demonstrate that the discrepancy between US law and standards and those established under international law has produced, and will continue to produce, substantial harm to the health of those seeking safe haven in the United States from torture and other forms of persecution.

## Grounds for Detaining Asylum Seekers

International human rights law and US policy covering the authority to detain refugees and asylum seekers have taken separate and often divergent paths over the past fifty years. By the turn of the millennium, the two bodies of law had arrived at antithetical conclusions for asylum seekers who arrive without proper documentation. Under international standards, detention of asylum seekers is “inherently undesirable,” even for those arriving at a nation’s borders without “satisfactory” documentation, and should be imposed only in narrow circumstances of “necessity.”<sup>185</sup> In con-

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<sup>185</sup> United Nations High Commissioner for Refugees’ Guidelines on applicable Criteria and Standards relating to the Detention of Asylum Seekers, 1999, Introduction, Secs. 1, 2 [UNHCR Guidelines] (citing The Geneva Convention of 28 July 1951 Relating to the Status of Refugees and UNHCR Executive Committee Conclusion, No. 44 (on Detention of Refugees and Asylum Seekers) 1986 [UNHCR ExComm 44]).

trast, under US law, detention of so-called “undocumented” asylum seekers is mandatory and routine.<sup>186</sup>

### International Law on Detention of Asylum Seekers

The United States is bound by international standards that articulate both the fundamental nature of a person’s right to asylum and the general prohibition against routine detention of asylum seekers.

The Universal Declaration of Human Rights (Universal Declaration) provides that “everyone has the right to seek and to enjoy in other countries asylum from persecution,”<sup>187</sup> and that “no one shall be subjected to arbitrary . . . detention.”<sup>188</sup> Building on these principles, the Convention Relating to the Status of Refugees and its 1967 UN Protocol (Refugee Convention),<sup>189</sup> establish special protected status for “refugees.” The US ratification in 1968 of the UN Protocol legally binds it to the aforementioned standards of the Convention and Protocol.

A “refugee” is defined as a person with a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion [known as the five grounds], is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country.”<sup>190</sup> The Convention forbids the expulsion of a refugee to a territory where his or her life or freedom is at risk due to the five grounds, listed above.<sup>191</sup> In addition, nations that are parties to the convention should accord refugees

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<sup>186</sup> The Immigration and Nationality Act (INA) sec. 235(b)(1)(B)(iii and iv)

<sup>187</sup> Universal Declaration of Human Rights, Article 14. Adopted by the UN General Assembly, 10 December 1948. GA Res. 217A, UN GAOR, 3<sup>rd</sup> Sess., Pt. I, Resolutions, at 71, UN Doc. A/810 (1948) [UDHR].

<sup>188</sup> UDHR, Art. 9.

<sup>189</sup> United Nation Convention Relating to the Status of Refugees, 28 July 1951, 189 UNT.S. 150 (entered into force 22 April 1954) [Refugee Convention]; United Nation’s Protocol Relating to the Status of Refugees, 31 January 1967, 60 UNT.S. 267 (1968) (entered into force 4 Oct. 1967) [Refugee Protocol].

<sup>190</sup> Refugee Convention, Art. 1, Sec. 2 as amended by the Refugee Protocol, art. I.

<sup>191</sup> Refugee Convention, Art. 33, Art 1, sec. B, C. The Convention provides that Contracting States may not expel or return a refugee to a territory where his/her life or freedom is at risk on account of his/her race, religion, nationality, membership of a particular social group, or political opinion. Exceptions are made for those seeking refugee status who were war criminals, committed serious non-political crimes prior to entering the country of refuge, or who are guilty of acts contrary to the purposes of the United Nations.

<sup>192</sup> Those seeking asylum in the US are reviewed under the criteria for establishing refugee status; see, 8 U.S.C. 1158. Those granted asylum, “asylees” are a subset of refugees. In the US, refugees are those people who have fled persecution and are determined by the US or other competent authority to be refugees, while still overseas. Asylum seekers are those arriving at the US border who say they have fled persecution, but who have not yet received official recognition of refugee status [Asylees are Refugees; 8 U.S.C. 1158].

(which includes “asylees,” those granted asylum<sup>192</sup>) the same treatment given other foreigners and treat them as nationals in some situations, for example, giving them the right to seek employment.<sup>193</sup>

In the specific case of asylum seekers, several authoritative instruments provide the foundation for the principle that they should not be detained as a matter of course. Recognizing that those fleeing persecution are often deprived of the opportunity to arrange for legal passage with proper immigration documents, the Refugee Convention specifically prohibits the imposition of penalties on refugees who have entered or are present in a country illegally.<sup>194</sup> This prohibition applies to refugees who have arrived “directly from a territory where their life or freedom was threatened . . . or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”<sup>195</sup> The Convention further provides that “the movements of such refugees” shall not be subject to “restrictions other than those which are necessary.”<sup>196</sup>

By acceding to the 1967 UN Protocol and relevant Refugee Convention provisions, the United States agreed to cooperate with the United Nations High Commissioner for Refugees (UNHCR) in its supervising of the application of the Refugee Convention and Protocol. The UNHCR Executive Committee, which includes the United States, regularly issues decisions that represent authoritative opinions broadly representative of the international community.<sup>197</sup> The UNHCR Executive Committee has concluded that asylum seekers and those fleeing persecution may have to resort to illegal means to successfully flee and this fact should not lead to penalties imposed on them by the country of asylum.<sup>198</sup> Furthermore, where a country has admitted an asylum seeker for a determination of her status, she must “not be penalized or exposed to any unfavorable treatment solely on the ground that their presence in the country is considered unlawful.”<sup>199</sup>

UNHCR’s Executive Committee has repeatedly stated that the detention of asylum seekers should be avoided.<sup>200</sup> Asylum seekers who arrive in a

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<sup>193</sup> Refugee Convention, Art. 17, para. 1. States should generally grant refugees the same treatment as other types of aliens, in which they should be treated as nationals, such as in opportunities to engage in wage employment.

<sup>194</sup> Refugee Convention, Art. 31.

<sup>195</sup> Refugee Convention, Art. 31 Sec.1.

<sup>196</sup> Refugee Convention, Art. 31, Sec. 2.

<sup>197</sup> Advisory Opinion, Guenet Guebre-Christos, Regional Representative, UNHCR Washington D.C., 15 April 2002 [UNHCR Advisory Opinion].

<sup>198</sup> UNHCR Executive Committee Conclusion No.58 (XL), 1989 [UNHCR ExComm No. 58].

<sup>199</sup> UNHCR Executive Committee Conclusion No. 22 (II)(B)(2)(a), 1981 [UNHCR ExComm No. 22].

nation for an asylum determination must “not be penalized or exposed to any unfavorable treatment solely on the ground that their presence in the country is considered unlawful.”<sup>201</sup> Only in a handful of exceptional situations may detention be resorted to, “if necessary:” a) to verify identity, b) to determine the basis for an asylum claim, c) when asylum seekers sought to mislead authorities in the country of refuge by destroying or used fraudulent identity documents, d) for national security or public order.<sup>202</sup>

Detention of asylum seekers violates rights to liberty and freedom from “arbitrary detention” as outlined in the Universal Declaration and the International Covenant on Civil and Political Rights (Civil Rights Covenant), a treaty that the US ratified in 1992.<sup>203</sup> The right to liberty underpins the right to asylum and the presumption against detention of asylum seekers. The Civil Rights Covenant provides that only on grounds established by law can a person’s liberty be deprived.<sup>204</sup> Further, when subjected to such a deprivation of liberty, a person has the right to have his detention reviewed by a court, which has the power to release the person, if it finds the detention to be unlawful.<sup>205</sup>

The UN Working Group on Arbitrary Detention has also noted that the detention of asylum seekers can be considered arbitrary detention.<sup>206</sup> It issued a set of ten principles containing criteria for such a determination, which included the aforementioned standards that an asylum seeker be detained only according to law and have a “prompt” review before a court or independent authority with the authority to release the asylum seeker.<sup>207</sup> The principles include guarantees against excessive or unlimited detention.<sup>208</sup>

In one case before the UN Human Rights Committee involving Australia, the four-year detention of a foreign national who sought refugee status after entering illegally was ruled to be arbitrary under Article 9 of the Civil Rights Covenant.<sup>209</sup> The Committee specified that court review must be more than administrative formality and include the power to

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<sup>200</sup> UNHCR ExComm 22; UNHCR ExComm 44.

<sup>201</sup> UNHCR ExComm 22, sec. II(B)(2)(a).

<sup>202</sup> UNHCR ExComm 44, sec.b.

<sup>203</sup> UDHR, art.9; The International Covenant on Civil and Political Rights, art. 9, adopted 19 Dec. 1966, UNG.A. Res. 2200A (XXI), UN Doc. A/6316 (1966) [Civil Rights Covenant]. The US ratified the Civil Covenant on 8 June 1992; see INS Asylum Program –HQASY, *History of the United States INS Asylum Officer Corps and Sources of Authority for Asylum Adjudication, 1999*, at <http://www.ins.usdoj.gov/graphics/services/asylum.html>, accessed on 3 Jan. 02 [INS, Asylum Officer History].

<sup>204</sup> Civil Rights Covenant, art. 9.

<sup>205</sup> Civil Rights Covenant, art. 9(1) and (4).

<sup>206</sup> UN Working Group on Arbitrary Detention, Deliberation No. 5, UN doc. E/CN.4/2000/4, 28 Dec. 1999 ([UN Arbitrary Detention, Deliberation No. 5].

<sup>207</sup> UN Arbitrary Detention, Deliberation No. 5.

<sup>208</sup> UN Arbitrary Detention, Deliberation No. 5.

release the petitioner if a violation is found.<sup>210</sup> In another case against Finland, the Committee found that seven days of detention without recourse to a court, despite an administrative review of the asylum seeker's detention, violated his right to be free from arbitrary detention.<sup>211</sup>

UNHCR has given further clarification on factors demonstrating the arbitrary nature of an asylum seeker's detention. Detention can be arbitrary when it is: disproportionately long, for an indefinite period, based on a law that permits arbitrary practices or is enforced arbitrarily, lacking an individualized analysis justifying the detention, or lacking a meaningful review by an independent body.<sup>212</sup> Detention of groups of asylum seekers on a generalized notion that they will abscond is also an indication of arbitrariness noted by UNHCR.<sup>213</sup>

To further communicate its position on detention, the UNHCR has issued the *Guidelines on applicable Criteria and Standards relating to the Detention of Asylum Seekers* (Guidelines), which expand and clarify the presumption against detention articulated in the Convention and the UNHCR Executive Committee. The Guidelines declare, "The detention of asylum seekers is . . . inherently undesirable."<sup>214</sup> The Guidelines expressly recognize that "asylum seekers are often forced to arrive at, or enter, a territory illegally."<sup>215</sup> Detention of asylum seekers who arrive in such "an irregular manner should, therefore, *not be automatic*, or unduly prolonged."<sup>216</sup> In fact, undocumented asylum seekers are not to be considered criminals solely because they lack proper papers and "should not be detained for that reason."<sup>217</sup> Nor should detention "be used as a punitive or disciplinary measure for illegal entry or presence in the country."<sup>218</sup>

The Guidelines recognize the connection between the health and human rights of refugees who seek asylum, expressing particular concern for the "traumatic experiences" of many asylum seekers,<sup>219</sup> the vulnerability of those with "special medical or psychological needs,"<sup>220</sup> and "the

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<sup>209</sup> A v. Australia, UN Human Rights Committee, Communication No. 560/1993, 3 April 1997, [A v. Australia] finding a violation of article 9(1).

<sup>210</sup> A v. Australia.

<sup>211</sup> Torres v. Finland, UN Human Rights Committee, Communication No. 291/1988, 2 April 1990, concluding that article 9(4) was violated.

<sup>212</sup> UNHCR, Note on International Protection, paras. 25, 29, UN doc. A/AC.96/643, 9 Aug. 84 [UNHCR Detention Note].

<sup>213</sup> UNHCR Detention Note.

<sup>214</sup> UNHCR Guidelines, Introduction, Section 1.

<sup>215</sup> UNHCR Guidelines, Introduction, Section 1.

<sup>216</sup> UNHCR Guidelines, Introduction, Section 1, and Section 3 (emphasis added).

<sup>217</sup> UNHCR Guidelines, Guideline 3.

<sup>218</sup> UNHCR Guidelines, Guideline 3.

<sup>219</sup> UNHCR Guidelines, Guideline 2.

very negative effects of detention on the psychological well-being of those detained.”<sup>221</sup> These factors play a key role in the presumption against detention and should be “taken into account in determining any restrictions on freedom of movement based on illegal entry.”<sup>222</sup>

Therefore “active consideration of possible alternatives should precede any order to detain . . . [t]orture or trauma victims [or p]ersons with a mental or physical disability.”<sup>223</sup> In an effort to give force to the presumption against detention of asylum seekers, the Guidelines urge the use of several alternatives, including but not limited to, various mechanisms for “monitoring” the whereabouts of released applicants; provision of “guarantors,” or sponsors, who would ensure the applicant’s appearance at official meetings and hearings; release on bail; and residence at “open centers” created specifically for the supervision of released asylum seekers.<sup>224</sup> In addition, when detained, an asylum seeker should receive an individualized determination of the reasons for the detention and automatic periodic review before an independent judicial or administrative body.<sup>225</sup>

The Guidelines’ prohibition against routine detention applies to those who already have asylum (or refugee status) and also to those seeking asylum. It applies “to asylum seekers pending determination of their status, as recognition of refugee status does not make an individual a refugee but declares him to be one.”<sup>226</sup>

According to the Guidelines, detention is not permissible as a deterrent and has raised concern among international experts and authorities.<sup>227</sup> It is prohibited “To deter future asylum seekers, or to dissuade those who have commenced their claims from pursuing them,” by detaining them.<sup>228</sup> “UNHCR has repeatedly stated that asylum seekers should not be detained for purposes of deterrence,” the agency said in 2002 in regard to the US practice of detaining Haitian asylum seekers.<sup>229</sup>

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<sup>220</sup> UNHCR Guidelines, Introduction, Section 1.

<sup>221</sup> UNHCR Guidelines, Guideline 7.

<sup>222</sup> UNHCR Guidelines, Guideline 7.

<sup>223</sup> UNHCR Guidelines, Guideline 7.

<sup>224</sup> UNHCR Guidelines, Guideline 4.

<sup>225</sup> UNHCR Guidelines, Guideline 5.

<sup>226</sup> UNHCR Guidelines, Guideline 5.

<sup>227</sup> UN Sub-Commission on Human Rights resolution 2000/21, Detention of Asylum Seekers, 18 Aug. 2000, at [www.unhcr.ch/huridoca/huridoca.n...ocument&Highlight=2,guidelines,on,seekers](http://www.unhcr.ch/huridoca/huridoca.n...ocument&Highlight=2,guidelines,on,seekers), accessed on 12 Feb. 02 [HR Sub-Commission on Detention of Asylum Seekers]; Global Consultations on International Protection, Geneva Expert Round Table, 8-9 Nov. 2001, Summary Conclusions on Article 31 of the 1951 Convention relating to the Status of Refugees—Revised, para. 11(c).

<sup>228</sup> UNHCR Guideline No.3.

<sup>229</sup> UNHCR Advisory Opinion.

## US Law on Asylum and the Detention of Asylum Seekers

Despite its accession to the 1967 Protocol and Refugee Convention,<sup>230</sup> the US only officially adopted the internationally recognized definition of refugee (or asylee) when Congress enacted the Refugee Act of 1980.<sup>231</sup> This legislation adopted the international definition of any person with a well-founded fear of future persecution and expanded it to include any person who had suffered persecution in the past.<sup>232</sup>

US authorities have recognized the significance of the international standards for US law. One tool outlining these standards is the UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status (Geneva, 1992), which the UNHCR designed to be a practitioner's guide to the Refugee Convention, the 1967 Protocol and UNHCR Executive Committee documents and decisions. The US Supreme Court has stated, "the UNHCR Handbook provides significant guidance in construing the Protocol, to which Congress sought to conform."<sup>233</sup> The INS cited the Handbook as an important reference.<sup>234</sup>

### Key Provisions of Current US Law

Under US law, asylum may be granted to individuals who demonstrate that they have suffered past persecution or have a well-founded fear of future persecution because of one or more of the five grounds used to determine refugee and asylum status.<sup>235</sup> Asylum seekers may pursue asylum in the United States in one of two ways. Those who have entered the US, even those who have entered illegally (but have not been apprehended by the federal government) may apply for asylum *affirmatively*.<sup>236</sup> Affirmative applicants present their claims to an "asylum officer," a Department of Homeland Security (DHS, formerly INS) official with the

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<sup>230</sup> Some treaties are non-self executing, that is, "they do not have the force of domestic law until separate implementing legislation is passed," i.e., a treaty is not part of the law unless and until it has been incorporated into the law by legislation. Congress informally adopted a policy "of either not ratifying human rights treaties or attaching reservations, understandings, and declarations to them" which made them non-self executing. *Bejarru v. Reno*, 183 F. Supp. 2d 584, 593-594 (E.D.N.Y. 2002).

<sup>231</sup> Eleanor Acer, *Living up to America's Values*, Refuge, Vol. 20 No. 3, 44, 45 (2002)[Acer, America's Values].

<sup>232</sup> INA, 8 U.S.C. 1157.

<sup>233</sup> *INS v. Cardoza-Fonseca*, 107 S.Ct. 1207, 1217, n. 22 (1987).

<sup>234</sup> INS, Asylum Officer History.

<sup>235</sup> See previous note: Asylees are Refugees; 8 U.S.C. 1158.

<sup>236</sup> See INA § 208(d)(5)(ii)(1997), 8 U.S.C. § 1158 (1998). See also, Michele R. Pistone, *Justice Delayed is Justice Denied: A proposal for Ending the Unnecessary Detention of Asylum Seekers*, 12 *Harv. Hum. Rts. J.* 197, Spring, 1999, [Pistone, Justice Denied]. Affirmative applications must be filed within one year of the applicant's latest arrival in the United States. Immigration and Nationality Act § 208(a)(1997), 8 U.S.C. § 1158(2)(b) (1998).

authority to grant asylum and with some training in the circumstances and country conditions generally surrounding asylum applications. Interviews with asylum officers are non-adversarial in nature. If an affirmative application is granted, the “asylee” receives work authorization and after one year, may apply for permanent residency and eventually for citizenship. If asylum is not granted, the case is referred to the immigration court for further review of the asylum claim and for the initiation of removal (deportation) proceedings.

Asylum seekers who arrive at the US border without proper documentation are subject to an entirely different regimen. Under the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA),<sup>237</sup> passed in 1996 “in a wave of anti-immigrant sentiment,”<sup>238</sup> any person who arrives at an airport or border checkpoint without travel documents — or with documents that immigration officers merely suspect to be false or fraudulent — may be deported immediately by those immigration officers without any opportunity for a hearing or judicial review, known as expedited removal.<sup>239</sup> In the same year, Congress passed The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). It creates a process by which the US government can designate organizations as “foreign terrorist organizations.”<sup>240</sup> Individuals involved in these organizations are not entitled to asylum.

Asylum seekers arriving without proper documents may avoid immediate deportation under this expedited removal process of the IIRIRA only if an immigration officer recognizes that they fear being returned to their country of origin or want to seek asylum.<sup>241</sup> During the initial encounter at the airport or port of entry, INS procedures required that immigrants subject to expedited removal be informed, in a language they understand, of the opportunity to explain such fears or intentions.<sup>242</sup> This encounter includes the initial screening by an immigration officer familiar to most any international traveler and a “secondary inspection” that follows after the officer finds problems with travel documents, and the individual indicates that s/he fears return.<sup>243</sup>

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<sup>237</sup> IIRIRA, 18 U.S.C. 611.

<sup>238</sup> Human Rights Watch, *Locked Away: Immigration Detainees in Jails in the United States*, September, Vol.10, No. 1(G), Sept. 1998, p.7[HRW, *Locked Away*].

<sup>239</sup> See INA § 212 (a) (6) (C) (1997), 8 U.S.C. § 1182 (1998); 8 C.F.R. §235.3(b)(4); Lawyers Committee for Human Rights, *Is This America? The Denial of Due Process to Asylum Seekers in the United States*, Oct. 2000, p. 19 [LCHR, *Is This America*]

<sup>240</sup> INS, Asylum Officer History.

<sup>241</sup> INS, Asylum Officer History.

<sup>242</sup> See 8 C.F.R. §235.3(b)(2)(I); INS Form I-867A & B; INS Inspections Field Manual, chapt. 17, sec. 17.15.

<sup>243</sup> 8 C.F.R. 235.3(b)(4).

Advocates have charged that this procedure for identifying asylum seekers as they arrive at the airport or other port of entry is woefully inadequate, lacking basic provisions for fairness and accuracy. They charge it risks the summary exclusion of many genuine asylum seekers and fails to meet US obligations of under international law.<sup>244</sup> Some reports have shown that mistakes have been made with legitimate asylum seekers deported or pressured.<sup>245</sup>

Under IIRIRA, detention is *mandatory* for anyone who expresses a fear of persecution or a desire for asylum. The individual is referred for an interview with a specially trained INS asylum officer to determine whether this fear is “credible.”<sup>246</sup> Credible fear is established when “there is a *significant possibility... that the alien could establish eligibility for asylum.*”<sup>247</sup> If the asylum officer does not find that this standard is met, the immigrant is again subject to immediate deportation under the expedited removal process.

Even if an asylum seeker is successful in convincing the asylum officer that s/he has a “credible fear of persecution” and thus passes out of the expedited removal process, asylum seekers regularly remain in detention and are not released. The IIRIRA called for continued detention while it also gave the federal government discretion to offer parole. This often means detention for months and even for years.<sup>248</sup>

IIRIRA granted the federal government the discretion to parole detained non-citizens, such as asylum seekers, “on a case-by-case basis for urgent humanitarian reasons or significant public benefit.”<sup>249</sup> Parole may be granted when, among other reasons, an asylum seeker’s “continued detention is not in the public interest as determined by the district director” and the detainee presents “neither a security risk nor a risk of

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<sup>244</sup> Human Rights Watch, *Detained and Deprived of Rights; Children in the Custody of the US Immigration and Naturalization Service*, Vol. 10, No. 4 (1998).

<sup>245</sup> Karen Musalo et al, *The Expedited Removal Study: Report on the First Three Years of Implementation of Expedited Removal*, 15 ND J. L. Ethics & Pub Pol’y 1, (2001) [3 Years - Expedited Removal Study]; Eric Schmitt, When Asylum Requests are Overlooked, *NY Times*, 15 Aug. 01.

<sup>246</sup> INA § 235(b)(1)(B)(iii)(IV) (1997).

<sup>247</sup> INA § 235(b)(1)(B)(v) (1997) (“taking into account the credibility of the statements made by an alien in support of the alien’s claim and such other facts as are known to the officer”)(emphasis added).

<sup>248</sup> INA § 235(b)(1)(B)(ii) (1997) provides that after an asylum officer’s determination “that an alien has a credible fear of persecution . . . the alien *shall* be detained for further consideration of the application for asylum.” (emphasis added). INA § 235(b)(2)(A) states that an applicant, which can be an asylum seeker, or any alien seeking admission, who “is not clearly and beyond a doubt entitled to be admitted *shall* be detained” for removal proceedings. INA §212(d)(5) (1997) provides for parole.

<sup>249</sup> INA § 212(d)(5) (1997).

absconding.”<sup>250</sup> Since the passage of IIRIRA, the INS repeatedly issued memoranda with parole guidelines, specifically declaring, “it is INS policy to favor release of aliens found to have credible fear of persecution provided that they do not pose a risk of flight or danger to the community.”<sup>251</sup>

But despite this authority, INS parole guidelines were neither consistently or effectively administered.<sup>252</sup> The district directors’ aversion to parole and the ineffectiveness of headquarters’ parole policies was exposed when headquarters needed to issue a regulation clarifying that headquarters officials, not just the relatively autonomous district directors, had the authority to grant parole.<sup>253</sup> In general there was limited use of parole, variation in parole practices from region to region and nearly categorical refusal to use parole in some districts.<sup>254</sup> (See Background chapter for more detail on New York area districts)

Asylum seekers have no recourse to a court or other independent authority regarding the necessity of their detention.<sup>255</sup> Even immigration judges are precluded from reviewing the detention of arriving foreigners, which includes asylum seekers, although they have the power to review other immigration custody decisions.<sup>256</sup> Despite international law protections permitting detention of asylum seekers only when “necessary” after an individualized determination, the federal government resorts to detention as a matter of course without an individualized determination of appropriate factors such as necessity or security threat and detained asylum seekers have no recourse to appeal.

In November 2002, the INS issued a notice in the Federal Register expanding detention and the expedited removal process by applying the expedited removal process to those who arrive by sea, including Haitians, and by maintaining detention for the duration of immigration proceedings.<sup>257</sup> The notice exempted Cubans.<sup>258</sup> UNHCR and Lawyers Committee

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<sup>250</sup> 8 C.F.R. § 212.5(a) (1999).

<sup>251</sup> Memorandum from INS Executive Associate Commissioner for Field Operations, Detention Guidelines Effective October 9, 1998; 75 Interpreter Releases 1523 2 Nov. 1998 [INS Detention Guidelines]; Acer, *America’s Values*, p. 46.

<sup>252</sup> Amnesty International, *United States of America: Lost in the Labyrinth: Detention of Asylum-Seekers*, AMR51/51/99, Sept. 1999, chapt.3, p.17 [Amnesty, *Lost in the Labyrinth*].

<sup>253</sup> 65 Fed. Reg. 82254-82256, “Clarification of Parole Authority,” INS No. 2004-9965 (28 Dec. 2000).

<sup>254</sup> Lawyers Committee for Human Rights, *Refugees Behind Bars: The Imprisonment of Asylum Seekers in the Wake of the 1996 Immigration Act*, August 1999 [LCHR, *Refugees Behind Bars*].

<sup>255</sup> Acer, *America’s Values*, p.46.

<sup>256</sup> 8 C.F.R. sec. 3.19 (h)(2)(i)(B); Acer, *America’s Values*, p.46.

<sup>257</sup> Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act, 67 Fed. Reg. 68924-26 (Nov. 13, 2002), INS No. 2243-02 [Regulation expanding Expedited Removal to sea arrivals].

for Human Rights, among others, objected to the notice on several grounds, including the discriminatory treatment based on nationality and the deterrence rationale given for the Notice.<sup>259</sup>

INS officials denied parole to deter asylum seekers, despite the aforementioned international standards forbidding such a practice. In 1998, the New Jersey district sought to deter arrivals and changed its policy dramatically reducing parole.<sup>260</sup> In June 1999, the New York INS office gave statistics indicating a parole rate of about 27%, but individual stories indicate that some individuals are granted parole only after months or years in jail.<sup>261</sup> In early 2002, before the aforementioned Notice covering sea arrivals, the Florida district cut back parole to Haitians fearing another wave of arrivals from there.<sup>262</sup>

Several US courts have adopted definitions of arbitrary detention consonant with the international standards discussed in the previous section. For example, the court in *Forti v. Suarez-Mason (Forti I)*, found sufficient consensus to recognize a customary international human rights norm against arbitrary detention — citing appeals court decisions in three different circuits — a norm that can give grounds for an action in US court.<sup>263</sup> Furthermore, US cases such as *Forti I*, *Xuncax v. Gramajo* and *Paul v. Avril*<sup>264</sup> do not require that arbitrary detention be prolonged to be a violation.<sup>265</sup>

As in international law, the US Constitution gives rights to individual liberty and protection against arbitrary detention chiefly through the 5<sup>th</sup> and 14<sup>th</sup> Amendments and their clauses granting rights of due process.<sup>266</sup> In 2001, advocates finally succeeded, in a case known as *Zadvydas*, in having the US Supreme Court call unconstitutional the indefinite detention of some immigrants who were deportable, but could not be returned to their home countries.<sup>267</sup> In its opinion in *Zadvydas*, the Supreme Court

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<sup>258</sup> Regulation expanding Expedited Removal to sea arrivals.

<sup>259</sup> Guenet Guebre-Christos, UNHCR Comments on Notice Designating Aliens Subject to Expedited Removal Under INA sec. 235(b)(1)(A)(iii); INS No. 2243-02, 13 Dec. 2002; Lawyers Committee for Human Rights, On INS 2243-02 Notice of Designation Expansion of Expedited Removal to Sea Arrivals, 13 Dec. 2002.

<sup>260</sup> Llorente, E. Dreams Turn to Despair, *The Bergen County Record*, 24 May 1999; Acer, America's Values, p.49.

<sup>261</sup> LCHR, *Refugees Behind Bars* at p. 28.

<sup>262</sup> Adam Elsner, "Haitian Women Asylum Seekers Complain about US Prison, *Reuters*, 14 March 2002.

<sup>263</sup> *Forti v. Suarez Mason*, 672 F. Supp. 1531, 1543 (N.D. Cal. 1987) [*Forti I*].

<sup>264</sup> *Forti I*; *Xuncax v. Gramajo*, 886 F. Supp. 184; *Paul v. Avril*, 901 F. Supp. 330.

<sup>265</sup> Beth Stephens, Michael Ratner, *International Human Rights Litigation In US Courts*, Transnational pub., New York, 1996, p. 75-76.

<sup>266</sup> *Zadvydas v. Davis*, 533 US 678, 690, 121 S. Ct. 2491 (2001).

<sup>267</sup> *Zadvydas*, 533 US 678.

said “[F]reedom from imprisonment from government custody, detention, or other forms of physical restraint lies at the heart of the liberty of the fifth amendment and the fourteenth amendment which effectuates it.”<sup>268</sup> Thus government detention violates the Constitution unless, in non-criminal proceedings, detention is ordered with rightful procedural protections, such as when harm to others “outweighs the individual’s constitutionally protected rights against physical restraint.” However, where this initial goal or purpose of detention is no longer attainable or of immediate concern, “detention no longer bears a reasonable relation to the purpose for which the individual was committed.”<sup>269</sup> The Court also gave six months as the limit for a presumption that detention is reasonable.<sup>270</sup>

Despite decisions finding that arbitrary detention violates an individual’s rights, a legal technicality has left asylum seekers unprotected from this proscription against arbitrary detention. Asylum seekers, although obviously inside US borders in these detention facilities, are deemed to have never legally entered the United States. Although the US Supreme Court created this entry fiction doctrine,<sup>271</sup> it also subsequently said, “Aliens, even aliens whose presence in this country is unlawful, have long been recognized as ‘persons’ guaranteed due process of law by the Fifth and Fourteenth Amendments.”<sup>272</sup> Nevertheless, court challenges on behalf of asylum seekers have generally not been successful.<sup>273</sup> However, in 2002 a federal appeals court ruled that the *Zadvydas* decision applied to inadmissible aliens such as the asylum seeker plaintiff who had been denied asylum by an immigration judge.<sup>274</sup> Despite the *Zadvydas* decision, the US Department of Justice has asserted the government’s policy on the detention of asylum seekers is lawful.<sup>275</sup> Moreover, through the USA Patriot Act and other recent regulations, the federal government continues to expand its use of the detention power.

### Concluding Remarks on Grounds for Detaining Asylum Seekers

In summary, the net effect of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act’s expedited removal and detention provisions is to invert international principles on the detention of asylum seekers. It has resulted in mandatory detention that in practice becomes

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<sup>268</sup> *Zadvydas*, 533 US at 690.

<sup>269</sup> *Zadvydas*, at 690 (internal citations omitted).

<sup>270</sup> *Zadvydas* at 701.

<sup>271</sup> *Shaughnessy v. US ex rel. Mezei*, 345 US 206 (1953).

<sup>272</sup> *Plyler v. Doe*, 457 US 202, 210 (1981).

<sup>273</sup> Expedited Removal Study, First 3 Years, Executive Summary, p.3.

<sup>274</sup> *Guo Xi v. INS*, 298 F.3d 832, (9<sup>th</sup> Circ, Aug. 1, 2002).

<sup>275</sup> 66 Fed. Reg. 56967, INS No. 2156-01; AG Order No. 2533-2001, “Continued Detention of Aliens Subject to Final Orders of Removal,” Nov. 14, 2001.

widespread, prolonged detention. US law, as written and enforced, supplants the international presumption against detention with a presumption in favor of it, even where US officials specially trained in asylum issues have found a “credible fear of persecution.” The US maintains this presumption and practice in the face of widespread knowledge that asylum seekers’ fears are founded on damaging, traumatic experiences.<sup>276</sup> In light of specific cases documented in this report of prolonged detention and the law discussed above, precedent exists in both international and US law for calling the US practice a violation of the right to freedom from imprisonment.

## **International and US Standards Governing Detention Conditions**

Numerous international and US standards affect the detention of asylum seekers. The provisions summarized below are some of the most relevant to the health and human rights issues raised in this study. However, no US statute specifically delineates the standards or conditions that govern the detention of asylum seekers in the US.<sup>277</sup>

### **International Standards Governing Detention Conditions for Immigrants and Asylum Seekers**

The Universal Declaration, the Torture Convention, and the Civil Covenant set the core obligations regarding detention of persons, regardless of their status. The US has ratified both the Torture Convention and the Civil Covenant.<sup>278</sup> Several other international documents specify more of the details governing the treatment and conditions of confinement for detainees and prisoners and apply with equal force to detained asylum seekers. Besides the aforementioned UNHCR Guidelines and the principles of the UN Working Group on Arbitrary Detention, The Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment (Body of Principles) and Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules)<sup>279</sup>, specify more details regarding the rights and treatment of detained persons. The Body of Principles and Standard Minimum Rules are authoritative instruments on conditions of detention.<sup>280</sup>

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<sup>276</sup> See Pistone, *Justice Denied*, 197, n.55.

<sup>277</sup> HRW, *Locked Away*, Sec. III Legal Standards.

<sup>278</sup> See, previous subsection “Grounds for Detaining Asylum Seekers.”

<sup>279</sup> Standard Minimum Rules for the Treatment of Prisoners [Standard Minimum Rules] (Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977; The Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment [Body of Principles] (Adopted by United Nations General Assembly resolution 43/173 of 9 December 1988).

Standards relevant to this study are categorized below.

## Humane Treatment

The fundamental right of detained persons to be treated in a manner that is humane and that preserves human dignity is firmly rooted in widely recognized human rights instruments. The Universal Declaration provides that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”<sup>281</sup> Moreover, the Civil Rights Covenant invokes a more sweeping principle, that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”<sup>282</sup> The Torture Convention prohibits cruel, inhuman or degrading treatment.<sup>283</sup> UNHCR’s Executive Committee has emphasized that, when detention is necessary, conditions must be humane.<sup>284</sup> These core human rights obligations are echoed in the Body of Principles, Standard Minimum Rules and the UNHCR Guidelines (which specifically refer to the Body of Principles and Standard Minimum Rules).<sup>285</sup>

The Body of Principles not only makes it clear that, “[n]o circumstance whatever” can justify torture or degrading treatment, but defines such treatment to extend the widest possible protection against abuses, whether physical or mental. It includes the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.<sup>286</sup> The UNHCR Guidelines require that the “[c]onditions of detention for asylum seekers should be humane with

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<sup>280</sup> See, HR Sub-Commission on Detention of Asylum Seekers, citing the Body of Principles and Standard Minimum Rules in the context of states international obligations regarding detention.

<sup>281</sup> UDHR, Article 5; Body of Principles, Principle 6, provides, “No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” In a footnote to Principle 6, Article 16(1) of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [Torture Convention] (Adopted Dec. 10 ,1984, G.A. Res. A/Res39/46 (1984)) similarly requires that detainees must not be subjected to any form of torture or cruel, inhuman or degrading treatment while in detention.

<sup>282</sup>Civil Rights Covenant, Art. 7.

<sup>283</sup> Torture Convention, Art. 3.

<sup>284</sup> UNHCR ExComm Conclusion 44, para. (f), stresses that “conditions of detention of refugees and asylum seekers must be humane.”

<sup>285</sup> The Body of Principles and Standard Minimum Rules are the product of UN processes and are authoritative interpretations of binding law, in a way similar to the UNHCR Guidelines (See, previous subsection, *International Law on Detention of Asylum-Seekers* and note 194). The Guidelines’ reference to the Principles and Rules further enhances their authority in the situations discussed here.

<sup>286</sup> Body of Principles, Principle 6 (emphasis added).

respect shown for the inherent dignity of the person.”<sup>287</sup> The Guidelines charge individual States with adopting laws to further this requirement.

In addition, consistent with international law’s presumption against detention of asylum seekers, UNHCR’s Guidelines mandate sensitivity to the often difficult circumstances of refugees. Special emphasis is placed on “vulnerable persons,” including survivors of torture or trauma and people with mental or physical disabilities.<sup>288</sup> This concern takes on added significance in view of the findings of this and other studies demonstrating that the majority of asylum seekers suffer from trauma or other forms of psychiatric morbidity.<sup>289</sup>

The UNHCR’s Guidelines require that these “trauma or torture victims” be identified immediately through an “initial screening of all asylum seekers at the outset of detention.”<sup>290</sup> Given “the very negative effects of detention on the psychological well being of those detained,” the Guidelines urge the general use of alternatives. In the absence of such alternatives, survivors of torture or trauma should be detained *only* “on the certification of a qualified medical practitioner that detention will not adversely affect their health and well-being.”<sup>291</sup>

### **Non-Criminal Status of Asylum Seekers**

Fundamentally, conditions of detention for asylum seekers must not be punitive or disciplinary.<sup>292</sup> The UNHCR Executive Committee stressed that “refugees and asylum seekers shall, whenever possible, not be accommodated with persons detained as common criminals.”<sup>293</sup> The UNHCR Guidelines state “there should be no co-mingling of the two groups.”<sup>294</sup> Asylum seekers should not be held in prisons or jails, even if detained separately.<sup>295</sup> The UN Working Group on Arbitrary Detention also said asylum seekers’ detention should be in “premises separate” from people in custody under criminal law.<sup>296</sup>

Just as the Guidelines insist that detained asylum seekers should neither be regarded nor treated as criminals, the Body of Principles defines a

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<sup>287</sup> UNHCR Guidelines, Guideline 10

<sup>288</sup> UNHCR Guidelines, Guideline 7.

<sup>289</sup> See Pistone, Justice Denied.

<sup>290</sup> UNHCR Guidelines, Guideline 10(i).

<sup>291</sup> UNHCR Guidelines, Guideline 7.

<sup>292</sup> Refugee Convention, Article 31; Guidelines, Guideline 3.

<sup>293</sup> UNHCR ExComm Conclusion 44, paragraph (f), stresses that “refugees and asylum seekers shall, whenever possible, not be accommodated with persons detained as common criminals and shall not be located in areas where their physical safety is endangered.”

<sup>294</sup> UNHCR Guidelines, Guideline 10(iii).

<sup>295</sup> UNHCR Guidelines, Guideline 10(iii).

<sup>296</sup> UN Arbitrary Detention, Deliberation No. 5.

“detained person” generally as anyone “deprived of personal liberty” for reasons other than “conviction for an offence.”<sup>297</sup> Like the Guidelines, the Body of Principles instructs that detainees “shall be subject to treatment appropriate to their unconvicted status” and that they should “be kept separate from imprisoned persons.”<sup>298</sup> These principles are also clearly expressed in the Civil Rights Covenant: “Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.”<sup>299</sup> The Standard Minimum Rules also mandate separation of inmates based on, among other characteristics, “the legal reason for their detention and the necessities of their treatment.”<sup>300</sup> (Because the Standard Minimum Rules cover prisoners as well as other inmates including detainees, the term “prisoners” is used in quotes from the Rules even though detained asylum seekers are not legally prisoners.) “Untried prisoners [such as detained asylum seekers],” therefore, “shall be kept separate from convicted prisoners.”<sup>301</sup>

### Medical and Mental Health Care

The Body of Principles and the Standard Minimum Rules both require adequate medical and mental health care for detainees. The Body of Principles mandate that “[a] proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.”<sup>302</sup>

The UNHCR Guidelines further call for “regular follow-up and support by a relevant skilled professional” for those detained, and “access to services, hospitalization, medication, counseling, etc., should it become necessary.”<sup>303</sup> The Guidelines emphasize that *all* detained asylum seekers must have “the opportunity to receive appropriate medical treatment and psychological counseling where appropriate.”<sup>304</sup>

The Standard Minimum Rules explicitly include mental health care among the medical needs that must be addressed: “At every institution there shall be available the services of at least one qualified medical officer

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<sup>297</sup> Body of Principles, “Use of Terms”.

<sup>298</sup> Body of Principles, Principle 8.

<sup>299</sup> Civil Rights Covenant, Article 10, § 2(a).

<sup>300</sup> Standard Minimum Rules, Rule 8.

<sup>301</sup> Standard Minimum Rules, Rule 8(b).

<sup>302</sup> Body of Principles, Principle 24.

<sup>303</sup> Body of Principles, Principle 24.

<sup>304</sup> Body of Principles, Guideline 10(v).

who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.”<sup>305</sup> The Rules also provide that “[s]ick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners [or detainees], and there shall be a staff of suitable trained officers.”<sup>306</sup>

International law also recognizes that health professionals who provide care for detainees are bound by significant ethical obligations. These professionals “have a duty” to protect detainees’ “physical and mental health” and to provide “treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.”<sup>307</sup>

## Punishment

The applicable international standards also establish two fundamental procedural safeguards regarding the punishment of detainees. First, according to the Body of Principles, the types of conduct that constitute disciplinary offenses must be specified by law or lawful regulation and must be duly published or communicated to detainees.<sup>308</sup> Second, detainees are entitled to both notice of the disciplinary offenses with

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<sup>305</sup> Standard Minimum Rules, Rule 22. (1).

<sup>306</sup> Standard Minimum Rules, Rule 22(2).

<sup>307</sup> Principles of Medical Ethics relevant to the Role of Health Personnel particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Adopted as UN General Assembly Resolution 37/194, 18 December 1982), Principle 1.

<sup>308</sup> Body of Principles, Principle 30(1), provides, “The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.” The Standard Minimum Rules, Rule 30(1) “No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence.”

<sup>309</sup> Body of Principles, Principle 30(2) provides, “A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review.” The Standard Minimum Rules, Rule 30(2) provide, “No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.” See Body of Principles, Principle 4 (“Any form of detention or imprisonment and *all measures affecting the human rights of a person under any form of detention* or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority”) (emphasis added). See also the Civil Rights Covenant and UDHR proscriptions against “arbitrary” detention.

which they are charged and a fair hearing on those charges, including an opportunity to present a defense, before disciplinary action is taken.<sup>309</sup> The UNHCR Guidelines call for “access to a complaints mechanism (grievance procedure) where complaints may be submitted either directly or confidentially to the detaining authority.”<sup>310</sup>

### **Segregation (Solitary Confinement)**

In addition to the substantive and procedural safeguards regarding punishment generally, as described above, international law also sets forth guidelines governing the specific punishment known as “segregation,” or solitary confinement. The UN Human Rights Committee has stated that “prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by Article 7” (of the Civil Rights Covenant, prohibiting torture, cruel, inhuman or degrading treatment).<sup>311</sup> The Basic Principles for the Treatment of Prisoners, for example, encourage the abolition or, at least, restriction of the use of solitary confinement as a punishment.<sup>312</sup> The Standard Minimum Rules impose procedural protection, prohibiting the use of “close confinement” (or any other punishment that may be harmful to a detainees’ physical or mental health) “unless the medical officer has examined the prisoner [or detainee] and certified in writing that he is fit to sustain it.”<sup>313</sup>

### **Shackling**

The Standard Minimum Rules provide in pertinent part, that, “Instruments of restraint, such as handcuffs, chains, irons and strait-jacket, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances: (a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner [or detainee] appears before a judicial or administrative authority; (b) On medical grounds by direction of the medical officer; (c) By order of the director, if other methods of control fail, in order to prevent a prisoner [or detainee] from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.”<sup>314</sup> Moreover, “[s]uch

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<sup>310</sup> UNHCR Guidelines, Guideline 10.

<sup>311</sup> UN Human Rights Committee, General Comment No. 20, Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Article 7), 44<sup>th</sup> Session, 3 Oct. 1992, para. 6.

<sup>312</sup> Basic Principles for the Treatment of Prisoners (Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990), art. 7 [Basic Principles].

<sup>313</sup> Standard Minimum Rules, Rules 32(1) and (2).

<sup>314</sup> Standard Minimum Rules, Rule 33.

instruments must not be applied for any longer time than is strictly necessary.”<sup>315</sup> Thus the “shackling” of asylum seekers at the airport violates the prohibition against using shackles as restraints in the Standard Minimum Rules of using shackles, and “may be said to constitute cruel and unusual practices,” according to the UN Special Rapporteur on Violence Against Women.<sup>316</sup> In her 1999 report on the US, the Special Rapporteur found asylum seekers suffered such violations.<sup>317</sup>

## Recreation

The Standard Minimum Rules require that detainees be allowed at least one hour of recreation per day and that those who are young or physically able receive “physical and recreational training” during that period.<sup>318</sup> Space, installations and equipment are to be provided for that purpose.<sup>319</sup> The UNHCR Guidelines state detainees are entitled to “some form of physical exercise through daily indoor and outdoor recreational activities;”<sup>320</sup> “access to basic necessities, i.e., beds, shower facilities, basic toiletries, etc.”<sup>321</sup>

## Interpreters

“The director, his deputy, and the majority of the other personnel of the institution shall be able to speak the language of the greatest number of prisoners, or a language understood by the greatest number of them,” according to the Standard Minimum Rules. “Whenever necessary, the services of an interpreter shall be used.”<sup>322</sup>

## US Standards for Detention of Immigrants, including Asylum Seekers

Prior to 1998, the treatment and conditions at INS detention facilities were governed by only a handful of laws and regulations.<sup>323</sup> In 1998, in

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<sup>315</sup> Standard Minimum Rules, Rule 34.

<sup>316</sup> Radhika Coomaraswamy, UN Special Rapporteur on violence against women, its causes and consequences, *Report of the mission to the United States of America on the issue of violence against women in state and*

*federal prisons*, UN Commission on Human Rights, Fifty-fifth session, Item 12 (a) of the provisional agenda, UN Doc. No. E/CN.4/1999/68/Add.2, 4 January 1999, para. 51,54 [US Report, UN Spec. Rap. Violence against Women].

<sup>317</sup> US Report, UN Spec. Rap. Violence against Women, para. 51.

<sup>318</sup> Standard Minimum Rules, Rule 21.

<sup>319</sup> Standard Minimum Rules, Rule 21.

<sup>320</sup> UNHCR Guidelines, Guideline 10(vi).

<sup>321</sup> UNHCR Guidelines, Guideline 10(ix).

<sup>322</sup> Standard Minimum Rules, Rule 51(1).

<sup>323</sup> HRW, *Locked Away*, p.4.

response to substantial public pressure, the INS, in consultation with the American Bar Association and other legal and asylum groups, developed and began to implement a comprehensive set of standards.<sup>324</sup> The INS Detention Standards set forth the treatment of immigrants detained by the INS, including asylum seekers, and the conditions in which they may be held in confinement.<sup>325</sup> The standards cover all “illegal aliens” and do not distinguish asylum seekers and their treatment from others.<sup>326</sup> The standards are not designed to handle asylum seekers’ special status and needs, such as their histories of torture and persecution and the fact they are not criminals.

The standards do not carry the force of law and do not even have the authority of federal regulations, which the ABA and others sought.<sup>327</sup> Nevertheless, they reflected the intent of the INS to have these standards implemented throughout the system with the INS having said facilities can lose contracts with the INS if they did not comply with the standards.<sup>328</sup> They constitute a floor, not a ceiling, for treatment of detained immigrants,<sup>329</sup> and given the government’s prior acceptance of them, they are thus a measure by which the federal government should be judged, even now that DHS has assumed the functions of the INS.<sup>330</sup>

In addition, the INS’s Division of Immigration Health Services (DIHS) issued the “INS Health Policy and Procedure Manual” (DIHS Manual), which set out the agency’s medical policies and procedures<sup>331</sup> and presumably still govern health care with DHS’s assumption of INS functions.<sup>332</sup> Besides providing emergency care and communicable disease treatment for long-term detainees, DIHS provided or arranged for non-emergency

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<sup>324</sup> American Bar Association, INS Issues Detention Standards: Towards a New Era in the Treatment of Detained Immigrants and Asylum-Seekers, *Refugee Reports*, February 2001, p.3 [ABA, A New Era].

<sup>325</sup> INS, Detention Operations Manual, September 20, 2000, available at [www.ins.gov/graphics/lawregs/guidance.htm](http://www.ins.gov/graphics/lawregs/guidance.htm); accessed on 2 Nov. 02 [INS Detention Standards].

<sup>326</sup> US Dept. of Justice, INS, News Release: INS to Adopt New Detention Standards, Nov. 13, 2000 [INS Adopts Standards].

<sup>327</sup> ABA, A New Era.

<sup>328</sup> ABA, A New Era, p.3; INS Adopts Standards.

<sup>329</sup> Chris Nugent, The INS Detention Standards: Facilitating Legal Representation and Humane Conditions of Confinement for Immigration Detainees, *Immigration Current Awareness Newsletter*, Feb. 3, 03 [Nugent, INS Detention].

<sup>330</sup> Nugent INS Detention; see The Homeland Security Act, 2002 (PL 107-296) [Homeland Security Act]; also Federal Register March 6, 2003 (Vol. 68, No.44), “Authority of the Secretary of Homeland Security; Delegations of Authority; Immigration Laws; Final Rule [DHS Secretary’s Immigration Authority].

<sup>331</sup> Available at: [www.inshealth.org/about/p\\_p\\_man](http://www.inshealth.org/about/p_p_man), accessed 6 Oct. 02 [DIHS Manual].

<sup>332</sup> DHS Secretary’s Immigration Authority.

<sup>333</sup> DIHS Manual, chap 1.

medical, dental and mental health care where absence of care would compromise their health or well-being.<sup>333</sup>

The INS Detention Standards and the DIHS manual both reference independent, professional organizations that set standards for treatment of incarcerated people. “Medical facilities in service processing centers and contract detention facilities will maintain current accreditation by the National Commission on Correctional Health Care (NCCHC). Each medical facility will strive for accreditation with the Joint Commission on the Accreditation of Health Care Organizations,” (JCAHO), according to the INS Detention Standards.<sup>334</sup> The DIHS manual said it adopted the standards of NCCHC, JCAHO and the American Correctional Association (ACA).<sup>335</sup> The NCCHC has a voluntary accreditation program that grew out of an initiative of the American Medical Association in the 1970s, with accreditation won after the NCCHC gives its professional judgment that the facility has met NCCHC’s standards.<sup>336</sup>

The 36 INS Detention Standards, along with mandatory operating procedures for complying with them, were to be implemented in phases at all facilities in which INS detainees are held. As of January 2001 the standards applied to all INS Service Processing Centers (“SPCs”), which are detention centers operated by the INS and Contract Detention Facilities (“CDFs”), operated by private companies under contract to the INS and include the Elizabeth and Wackenhut detention centers.<sup>337</sup>

The INS also uses hundreds of local facilities, usually county jails, governed by Inter-Governmental Service Agreements (IGSAs).<sup>338</sup> According to immigration and asylum advocates, more than 60% of all INS detainees are held in state, county or municipal jails.<sup>339</sup> The INS detention standards only apply to those IGSAs that house INS detainees for 72 hours or longer.<sup>340</sup> However, the additional operating procedures intended to ensure compliance at SPCs and CDFs will not be mandatory for IGSAs.<sup>341</sup> Rather, “IGSA facilities may adopt, adapt, or establish alternatives to the

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<sup>334</sup> INS Detention Standard: Medical Care

<sup>335</sup> DIHS Manual, chapt 1.

<sup>336</sup> Standards for Health Services in Jails, National Commission on Correctional Health Care, 1996, 2d printing, appendix O, Health Care Accreditation Information [NCCHC Standards].

<sup>337</sup> ABA, A New Era, p.1.

<sup>338</sup> INS Detention Standards.

<sup>339</sup> Testimony submitted to the Immigration and Claims Subcommittee of the House Committee on the Judiciary at the December 19, 2001 hearing: “A Review of the Department of Justice Immigration Detention Policies” by member organizations of the Detention Watch Network.

<sup>340</sup> INS Detention Standards, Introduction.

<sup>341</sup> INS Detention Standards, Introduction.

specified procedures, provided they meet or exceed the objective represented by each standard.”<sup>342</sup>

By 2002, the standards applied to the ten largest local facilities used by the INS were to have been phased in at all remaining facilities by January, 2003, with a couple of notable exceptions.<sup>343</sup> The federal Bureau of Prisons facilities, which hold INS detainees, have been governed by separate Department of Justice standards.<sup>344</sup> The some 90 facilities holding 5300 children in INS custody, including many comingled with criminally convicted juveniles, are governed by the *Flores v. Reno* class action lawsuit and settlement, which has permitted practices by the Detention Standards.<sup>345</sup> In a positive step, The Homeland Security Act of 2002 transferred the care of these children to the Department of Health and Human Services.<sup>346</sup>

The standards from the DIHS Manual and Detention Standards pertinent to this study include:

### Medical Care

The Detention Standards explicitly declares, “All detainees shall have access to medical services that promote detainee health and general well-being.”<sup>347</sup> Mandatory standards and procedures for all facilities include an “initial medical screening, cost-effective primary medical care, and emergency care.”<sup>348</sup> Specialized health care, mental health care and hospitalization “within the local community” also are to be provided when necessary.<sup>349</sup> “All facilities will employ, at a minimum, a medical staff large enough to perform basic exams and treatments for all detainees” and nearby medical facilities are to be engaged to provide required health care “not available within the [detention] facility.”<sup>350</sup>

Other mandatory standards and procedures include: availability of “request slips” for medical attention (and assistance from interpreters to complete them) and “sick call” at least once a week; delivery of medication in accordance with health care providers’ instructions; diagnosis and

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<sup>342</sup> INS Detention Standards, Introduction.

<sup>343</sup> Nugent, INS Detention; ABA, *A New Era*, p.1; The additional operating procedures intended to ensure compliance at SPCs and CDFs will not be mandatory for IGSA. Rather, “IGSA facilities may adopt, adapt, or establish alternatives to the specified procedures, provided they meet or exceed the objective represented by each standard,” according to the Introduction, INS Detention Standards, Introduction.

<sup>344</sup> Nugent, INS Detention.

<sup>345</sup> Nugent, INS Detention.

<sup>346</sup> Homeland Security Act.

<sup>347</sup> INS Detention Standard: Medical Care.

<sup>348</sup> INS Detention Standard: Medical Care.

<sup>349</sup> INS Detention Standard: Medical Care.

<sup>350</sup> INS Detention Standard: Medical Care.

medical management of HIV/AIDS; and an “informed consent” provision, stating, “As a rule, medical treatment will not be administered against the detainee’s will.”<sup>351</sup> In addition, all medical requests will be reviewed within 24 hours, although services will not necessarily be delivered in that time.<sup>352</sup> Besides basic professional, ethical standards for handling and administering drugs, the NCCHC mandates that the facility be “devoid of drugs that are outdated, discontinued or recalled.”<sup>353</sup>

## Dental Care

Dental care that goes beyond just teeth extractions is required.<sup>354</sup> Available care includes emergency treatment and necessary care without which there is significant risk of further deterioration or significant reduction of possible repair after release.<sup>355</sup> However, routine dental care is not available until a detainee has been confined at least six months.<sup>356</sup>

## Mental Health

At all facilities, the personnel will complete a mental health screening for all detainees housed more than 24 hours with any detainee suspected of mental illness referred to mental health provider.<sup>357</sup> NCCHC standards call for a mental health screening within the first 14 days and requires that, “Inmates found to be suffering from serious mental illness or developmental disability are referred immediately for care.”<sup>358</sup> A mental health provider should see as soon as possible any detainee presenting symptoms consistent with a mental health problem.<sup>359</sup>

The standard on “suicide prevention” requires that “[a]ll staff working with INS detainees in detention facilities will be trained to recognize signs and situations potentially indicating a suicide risk. Staff will act to prevent suicides with appropriate sensitivity, supervision, and referrals. Any clinically suicidal detainee will receive preventive supervision and treatment.”<sup>360</sup> Preventive supervision and treatment may include “segregating” the detainee from the general population in a special isolation room designed for evaluation” and “maintaining close supervision” over the segregated detainee.<sup>361</sup>

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<sup>351</sup> INS Detention Standard: Medical Care.

<sup>352</sup> DIHS Manual, chapt. 8.

<sup>353</sup> NCCHC Standards, J-26 Pharmaceuticals.

<sup>354</sup> NCCHC Standards, J-40 Dental Treatment.

<sup>355</sup> DIHS Manual, chapt. 9.

<sup>356</sup> INS Detention Standard: Medical Care.

<sup>357</sup> DIHS Manual, chapt. 16.

<sup>358</sup> NCCHC Standards, J-39, Mental Health Evaluation.

<sup>359</sup> DIHS Manual, chapt. 16.

<sup>360</sup> INS Detention Standard: Medical Care.

## **Punishment**

The Detention Standard on “discipline” states, “To provide a safe and orderly living environment, facility authorities will impose disciplinary sanctions on any detainee whose behavior is not in compliance with facility rules and procedures.”<sup>362</sup> Disciplinary offenses are “graded” in four categories: “Greatest,” “High,” “High Moderate” and “Low Moderate” offenses. Punishment for each offense is specified in the standard and ranges from a reprimand or warning to initiation of criminal proceedings.<sup>363</sup>

“Disciplinary action may not be capricious or retaliatory.... Staff may not impose or allow imposition of the following sanctions: corporal punishment; deviations from normal food services; deprivation of clothing, bedding, or items of personal hygiene; deprivation of correspondence privileges; or deprivation of physical exercise unless such activity creates an unsafe condition.”<sup>364</sup> No disciplinary punishment may be administered in the absence of procedural safeguards, including notice as to the offense charged and an opportunity for a hearing before detention facility staff, to respond to the charges.<sup>365</sup>

## **Segregation (Solitary Confinement)**

Disciplinary segregation, or solitary confinement, is prescribed as punishment for more serious infractions<sup>366</sup> Such segregation may not extend beyond 60 days.<sup>367</sup> Only the duly appointed “disciplinary panel” of the detention facility may order segregation.<sup>368</sup> Moreover, specific standards govern the conditions of disciplinary segregated confinement. In pertinent part, these standards require adequate ventilation and light, as well as clothing and bedding (unless these are to be deprived for medical or psychological reasons on the instructions of the medical officer).<sup>369</sup> They also include more stringent personal property control, such as restricted reading material, and limitations on television viewing, commissary/vending machine privileges, etc.<sup>370</sup> Standard living conditions shall not be modified for disciplinary reasons and conditions should maintain living levels of decency and humane treatment.<sup>371</sup>

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<sup>361</sup> INS Detention Standard: Suicide Prevention and Intervention.

<sup>362</sup> INS Detention Standard: Disciplinary Policy.

<sup>363</sup> INS Detention Standard: Disciplinary Policy.

<sup>364</sup> INS Detention Standard: Disciplinary Policy.

<sup>365</sup> INS Detention Standard: Disciplinary Policy.

<sup>366</sup> INS Detention Standard: Disciplinary Policy. .

<sup>367</sup> INS Detention Standard: Disciplinary Policy.

<sup>368</sup> INS Detention Standard: Disciplinary Policy.

<sup>369</sup> INS Detention Standard: Disciplinary Policy.

<sup>370</sup> INS Detention Standard: Special Management Unit (Disciplinary Segregation).

Administrative segregation separates a detainee from the general prison population when his presence would pose a threat to the detainee, staff, property, security or the order of the facility and is not punitive. Detainees in administrative segregation should receive the same basic privileges as the general population, which is more than those in disciplinary segregation.<sup>372</sup> In both forms of segregation a supervisor is to check daily on the detainee and a medical officer is to check on the detainee three times a week.<sup>373</sup> The DIHS specified a medical provider will evaluate a detainee in segregation once a day, from Monday to Friday.<sup>374</sup> The NCCHC also calls for a medical officer to determine the segregated detainee's health status three times a week.<sup>375</sup>

## Shackling

Shackles or “physical restraints” are to be used only in specified situations. The standard on “Use of Force” mandates that “physical restraints shall be used to gain control of an apparently dangerous detainee only under specified conditions.”<sup>376</sup> Restraints may be used “to prevent the detainee from harming self or others, or from causing serious property damage.”<sup>377</sup> Restraints may not be used in any circumstances “to punish a detainee.”<sup>378</sup> Nor shall they be used to “cause physical pain or extreme discomfort.”<sup>379</sup> When used, restraints must be applied “with the minimum-pressure-necessary.”<sup>380</sup> Restraints may not be “unnecessarily tight.”<sup>381</sup> “Hard restraints (e.g., steel handcuffs and leg irons) will be used only after soft restraints prove (or have previously proven) ineffective with this detainee.”<sup>382</sup>

The same standards apply when detainees are being transferred.<sup>383</sup> To ensure safe and humane treatment, the officers will check the fit of restraining devices immediately after application, at every relay point, and

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<sup>371</sup> INS Detention Standard: Special Management Unit (Disciplinary Segregation).

<sup>372</sup> INS Detention Standard: Special Management Unit (Administrative Segregation).

<sup>373</sup> INS Detention Standards: Special Management Unit (Disciplinary Segregation), Special Management Unit (Administrative Segregation).

<sup>374</sup> DIHS Manual, chapt. 8.

<sup>375</sup> NCCHC Standards, J-43, Health Evaluation of Inmates in Segregation.

<sup>376</sup> INS Detention Standard: Use of Force.

<sup>377</sup> INS Detention Standard: Use of Force.

<sup>378</sup> INS Detention Standard: Use of Force.

<sup>379</sup> INS Detention Standard: Use of Force.

<sup>380</sup> INS Detention Standard: Use of Force.

<sup>381</sup> INS Detention Standard: Use of Force.

<sup>382</sup> INS Detention Standard: Use of Force.

<sup>383</sup> INS Detention Standard: Transportation (Land Transportation).

any time the detainee complains.”<sup>384</sup> The transportation standards further provide that “[u]nder no circumstances will officers attach a restraining device to an immovable object, including, but not limited to, security bars, seats, steering wheel, or any other part of a vehicle.”<sup>385</sup> Approved restraints include handcuffs, leg irons and “waist” or “belly” chains.<sup>386</sup>

## Recreation

The policy underlying the standard on recreation states, “All facilities shall provide detainees with access to recreational programs and activities, under conditions of security and supervision that protect their safety and welfare.”<sup>387</sup> Procedures and standards require that every effort be made to “place a detainee in a facility that provides outdoor recreation. If a facility does not have an outdoor area, a large recreation room with exercise equipment and access to sunlight will be provided. (This does not meet the requirement for outdoor recreation).”<sup>388</sup> Detainees are entitled to at least one hour of outdoor exercise per day, five days a week, weather permitting.<sup>389</sup>

As recognized by the Detention Standards, facilities lacking access to outdoor space do not fulfill the recreation requirements. Therefore, these facilities must comply with further standards. According to the Standards, “[i]f only indoor recreation is available, detainees shall have access for at least one hour each day and shall have access to natural light.”<sup>390</sup> Detainees held in facilities lacking outdoor recreation may be eligible for transfer to one that does after six months in detention.<sup>391</sup> The NCCHC specifies that detainees be “offered exercise involving large muscle activity, for at least one hour a day, three times a week.”<sup>392</sup>

## Concluding Remarks on Detention Standards

Notably, no provision of the Detention Standards expresses the special concern conveyed in international law and standards for asylum seekers’ “non-criminal” status. The INS placed detained asylum seekers, who have not been charged or convicted of criminal offenses, in criminal justice facilities for convicted prisoners or those charged and detained pre-trial. Indeed, to ensure humane treatment, all inmates, both detained immi-

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<sup>384</sup> INS Detention Standard: Transportation (Land Transportation).

<sup>385</sup> INS Detention Standard: Transportation (Land Transportation).

<sup>386</sup> INS Detention Standard: Use of Force.

<sup>387</sup> INS Detention Standard: Recreation.

<sup>388</sup> INS Detention Standard: Recreation.

<sup>389</sup> INS Detention Standard: Recreation.

<sup>390</sup> INS Detention Standard: Recreation.

<sup>391</sup> INS Detention Standard: Recreation.

<sup>392</sup> NCCHC Standards, J-46, Exercise.

grants and convicted prisoners, at these criminal justice facilities should benefit from the Detention Standards.<sup>393</sup> However, the point of the international legal norm is that asylum seekers should not be detained in a criminal justice setting at all, absent exceptional circumstances. These standards do nothing to change the INS practice and its lack of compliance with this international norm.

Besides this major conceptual difference, specific standards in the international documents and the Detention Standards differ as well. The international documents make mental health an integral part of health care, while the Detention Standards relegate it to an adjunct by an outside provider when necessary. In addition, in contrast to the Detention Standards, international standards generally forbid the use of chains and irons. Moreover, the international standard requiring medical review before ordering segregation is not mentioned in the Detention Standards.

Finally, and significantly for the purposes of this study, the Detention Standards do not reflect the recognition in international laws and standards of asylum seekers' vulnerability and likelihood of having experienced torture, and that detention can be harmful to the mental health and well being of those detained. In fact, the Detention Standards frequently reference or incorporate standards and procedures developed for the punitive setting of criminal justice institutions. While the use of such standards is better than none at all, it reflects the agency's failure to recognize or appreciate the non-criminal status and traumatic history of asylum seekers.

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<sup>393</sup> The INS Detention Standards do have standards on classification of inmates (Classification System Standard) that classify those with more seriously criminal convictions differently than others, such as asylum seekers. But they do not change the fact many asylum seekers are detained side by side with convicted criminals.



# **XII. CONCLUSIONS AND RECOMMENDATIONS**

The findings of the Bellevue/NYU-PHR study suggest that the psychological and emotional health of detained asylum seekers is poor and that detention and treating asylum seekers as criminals is having a harmful impact on their health and well-being. This PHR-Bellevue/NYU report demonstrates the need for the US to change its policy regarding the widespread, long-term detention of asylum seekers. The findings also raise concerns about the manner in which asylum seekers are treated upon arrival in the US and then while in detention, and suggest that detention may be causing further harm to mental health and well-being of this already traumatized population. Congress should consider shifting responsibility for all asylum seekers to a government agency specializing in asylum or refugees, such as the Office of Refugee Resettlement, or even the Bureau of Citizenship and Immigration Services (BCIS) (a shift within the Department of Homeland Security from the Bureau of Immigration and Customs Enforcement (BICE) to BCIS.)

The establishment of the Department of Homeland Security (DHS) and the reorganization of the INS into three bureaus within this department creates a potentially even more confusing bureaucracy for asylum seekers to navigate. Yet this new beginning provides the government the opportunity to give this vulnerable population the treatment they deserve while also fulfilling the security mission of the new department. Physicians for Human Rights and Bellevue/NYU Program for Survivors of Torture recommend that DHS:

## **I. Ensure Parole For Asylum Seekers**

Asylum seekers generally should not be detained. The US should change its practice of automatic, long-term detention of asylum seekers arriving at US borders. As the Bellevue/NYU-PHR study illustrates, an already traumatized population is spending months and even years in detention. Long-term detention does not identify security threats and contravenes due process, international law, and human rights standards. This criminalization and imprisonment of asylum seekers can have a detrimental impact on the psychological health of asylum seekers which appears to worsen the longer asylum seekers are detained. Furthermore, many of the asylum seekers participating in this study described incidents of mistreatment

while in detention, thus adding to their suffering and further weakening their mental health.

Once credible fear of persecution has been recognized by trained asylum officers in interviews conducted shortly after arrival, most asylum seekers can and should be paroled. The government has existing criteria for the parole of asylum seekers – such as establishing community ties and not presenting a security risk. Each asylum seeker should receive an individualized determination on parole and detention by a specially trained officer, with parole denials reviewed before an immigration judge. Parole can be accomplished through supervised release or other alternatives to detention that meet both the government’s security needs and the asylum seekers’ needs for community contacts and services.

The government itself establishes an asylum seeker’s credible fear. Unless the government then makes an individualized determination that the applicant poses a threat to national security or public order, respect for its own judgment, for international law, and for the health concerns of this population, obliges the government to parole asylum seekers.

### **DHS Should Promote and Implement Existing Models of Parole and Alternatives to Detention for Asylum Seekers, Including Programs of Community-Based Organizations**

Parole to community-based organizations and supervised release programs have existed in a few regions and been demonstrated to be successful. The Vera Institute of Justice in New York, Catholic Charities in New Orleans, Lutheran Immigration and Refugee Services and other Detention Watch Network agencies in Illinois and Refugee Immigration Ministry (RIM) in Boston all had programs to which the INS released formerly detained asylum seekers. All the programs had high compliance rates and worked in conjunction with local INS offices.<sup>394</sup>

For example, the INS funded the Vera Institute of Justice to develop the Appearance Assistance Program (AAP) in New York. Some immigrants were referred to the AAP instead of remaining in detention. The AAP actively attempted to find social ties, through community-based organizations, family members and friends already in the US, who were willing to “sponsor” or house the immigrant until the time of the hearing. The AAP also employed “intensive supervision,” requiring the immigrant to frequently meet with AAP workers. During visits, workers informed immigrants of their rights, their duties to appear, and offer necessary referrals. In the event that an immigrant failed to comply with the program, AAP

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<sup>394</sup> Detention Watch Network, Comment Letter on “Intensive Supervision Appearance Program” (ACB-3-0033) to DHS, 29 May, 2003; Personal communication with Ruth Bersin, Director of Refugee Immigration Ministry, May 7, 2003.

informed the INS and recommended detention. According to Vera's assessment of the AAP program, community supervision was effective, with 93% of asylum seekers in the program appearing for their removal hearing. Other programs have had similar success, Catholic Charities' alternatives to detention program in New Orleans had a 96% appearance rate for its participants.

These programs help minimize the risk of flight by making asylum seekers accountable to a community agency. Regular appointments and counseling or other programs maximize the likelihood that an asylum seeker will appear for hearings and understand and accept the overall process. Moreover, by providing a less traumatic environment and meeting some of the social needs of asylum seekers, these programs can promote the mental health of asylum seekers.

In the past, Congress has appropriated money specifically for alternatives to detention the past two years and a Congressional conference committee this year has again appropriated \$3 million for alternatives to detention. The INS spent about \$800 million in 2001 on detention of non-citizens. Yet, the INS interpreted past appropriations for "alternatives to detention,"<sup>395</sup> to permit spending on improving conditions in detention facilities instead of funding true alternatives to detention such as release programs similar to the aforementioned program of the Vera Institute.<sup>396</sup>

Programs such as that of Vera and Catholic Charities cost thousands of dollars less than the cost of detention, yet do not compromise compliance.

### **Ensure Adequate Funding for Programs, Including Community-Based Organizations, Providing Alternatives to Detention**

Working with community-based organizations, the DHS can achieve the twin goals of ensuring security and substantial cost savings, while more humanely handling asylum seekers. In funding community-based organizations that establish parole programs, the federal government should include funding for housing and other costs the organization bears in supporting the asylum seekers. The government will have saved money by decreasing the numbers in detention and its detention costs, which can run 12.5 million for 600 asylum seekers detained for one year.<sup>397</sup>

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<sup>395</sup> P.L. 107-77, the Fiscal Year 2002 Commerce, Justice, State Appropriations.

<sup>396</sup> Instead of using the funds for supervised release and other alternatives to detention, the INS has used funds to improve conditions in facilities known as "non-secure detention centers." These facilities still maintain asylum seekers under custody restricting their liberty and movement.

<sup>397</sup> US Department of Homeland Security, Office of the Press Secretary, Fact Sheet, Detaining Certain Asylum Seekers, March 18, 2003

## **Establish a Uniform National Parole Policy with Defined Standards and Immigration Judge Review**

The current law does not require detention after the credible fear interview. DHS should implement a nationwide policy of parole for asylum seekers. Parole had been allowed for asylum seekers after they passed the credible fear interview, generally at the discretion of INS District Directors. The INS had issued the aforementioned guidelines, but there was no evidence of nationwide application, and in fact some districts ignored the guidelines. The result has been widely varied and inconsistent parole standards and practices within one federal agency.

A national policy could include appropriate security checks, e.g., fingerprinting and minimum standards for parole denial (outlined below). This would allow the agency to develop a humane policy consistent with its security needs as well as due process principles and international legal standards.

DHS should institute the following:

- Individualized decisions regarding parole for each asylum seeker, preferably through a hearing with an Asylum Officer or other designated officer, who has received appropriate training.
- Decisions denying parole based only on established international standards, such as when the asylum seeker is a threat to national security or public order.
- Clear definition of key terms such as “threat to national security” and “threat to public order” and establish the evidentiary burden necessary to find a threat to national security or public order.
- Permission for the asylum seeker to appeal a decision denying parole to an Immigration Judge.
- Oversight and monitoring of the parole process by asylum experts within DHS, such as the asylum legal experts at BCIS.

## **Institute Regular 6-Month Reviews of Any Asylum Seeker in Prolonged Detention**

As this study documents, it is currently not uncommon for asylum seekers to remain in detention for months and even years, as their claims are processed. While Bellevue/NYU and Physicians for Human Rights believe this scenario should be avoided whenever possible through the appropriate use of parole, there may be instances when certain individuals, deemed ineligible for parole, are held for extended periods of time. In such cases, DHS should in regular intervals of a maximum of six months review each asylum seeker in custody for parole and the necessity of continued detention.<sup>398</sup> Parole denials should be reviewed by an immigration judge.

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<sup>398</sup> The Zadvydas decision: “*Building on the US Supreme Court’s reasoning in the Zadvydas decision recommending six months as presumptively reasonable*” (see legal section).

## **II. Ensure Adequate Safeguards At Points Of Entry To Protect The Rights Of Asylum Seekers**

As evidenced by the findings of this study, asylum seekers may not be receiving adequate information and explanation of their right to asylum upon arrival in the US, and may not be treated in a humane and respectful manner. Many asylum seekers have fled persecution at the hands of government officials in their homelands and it is not surprising that they often do not have proper documentation. Yet, under the expedited removal process, asylum seekers face disbelieving and even hostile immigration officials, the threat of immediate deportation, shackling for hours, and if not deportation, then imprisonment. Expedited removal permits immigration enforcement officials to be judge and jury of an asylum seeker's initial articulation of her case. They can order deportation, a power previously entrusted to immigration judges. Expedited removal diminishes accountability and is inconsistent with due process standards.

Initial interviews at airports, during which asylum seekers are expected to recount highly personal and traumatic matters, are often conducted at open counters without privacy. Asylum seekers sometimes cannot communicate with immigration officers, as adequate interpreter services are not always provided. Regardless of language, many asylum seekers are either not informed or do not understand their right to asylum. Finally, many do not understand what is happening to them when they are shackled at the airport, or when they are taken to detention. For survivors of torture and other survivors of trauma already victimized by government agents, this initial encounter with US government officials can be retraumatizing.

### **Reform Expedited Removal and Restore Due Process Standards**

Deportation decisions should be entrusted to immigration judges or at least to a corps of specially trained officers, such as asylum officers, and not the enforcement officials who currently make these decisions. Finally, DHS should allow regular, systematic monitoring of immigration procedures at points of entry to the US by independent, non-governmental agencies. Preferably, Expedited Removal should be applied only in the event of immigration emergencies.

### **Require Interviews with Potential Asylum Seekers to be Conducted by Specially Trained Officers**

DHS should have a corps of specially trained officers stationed at ports of entry to conduct interviews with potential asylum seekers. If not Asylum Officers, then the interviews should be conducted by other officers trained in skills approximating those of Asylum Officers. Fundamentally, DHS needs to acknowledge that these specially trained officers' function is one of refugee protection and monitoring, not enforcement, and educate officers to

that effect. These officers should have a clear job description with certain skills required for interviewing non-citizens arriving without proper documentation. For example, they should be educated in country conditions, types of conflict and forms of persecution and why individuals fleeing persecution might not have proper documentation.

Airport immigration staff should be educated about traumatic events asylum seekers may have experienced, such as torture, and how such trauma can affect individuals, including the manner in which they may respond to government officials. Officers should be taught effective and empathic communication techniques for eliciting information from asylum seekers, given the impact that trauma may have on a victim's ability to effectively narrate their experience. Effective models for such trainings have been developed and are utilized by the Asylum Officers Training Program as part of the basic training that all asylum officers now receive.<sup>399</sup>

### **Ensure that Asylum Seekers can Communicate in Their Own Languages When Speaking with Immigration Officials**

Without the ability to communicate in the languages spoken by asylum seekers, the DHS cannot treat these individuals fairly and humanely. While the telephone translation service is often utilized, it apparently is not uniformly used or available. In at least two cases documented in this study, asylum seekers reported that employees of national airlines from the countries asylum seekers fled from were used as interpreters. Study participants reported that these interpreters either mistranslated or told the asylum seeker not to seek asylum. DHS must not rely on airline employees or other translators of convenience who could have connections to the government the asylum seeker is fleeing, or are otherwise inappropriate.<sup>400</sup> Immigration officials need to ensure that appropriate translation services are available at all times, with the translator instructed, in the presence of the asylum seeker, to maintain the confidentiality of the interview and to translate only what is said without interjecting commentary.

### **Conduct Interviews with Appropriate Privacy**

Many study participants recounted the painful and disturbing process of speaking of rape, torture, and other abuses in a line or at a public counter. When it is established that someone is describing events related to persecution or the quest for asylum, the DHS officer should conduct the inter-

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<sup>399</sup> Schmitt, E. "INS Agents Being Taught How to Assess Torture Pleas." *The New York Times*. December 21, 1997 p. 1.

<sup>400</sup> Persons who potentially have biases, such as airline employees are prohibited by the International Religious Freedom Act from translating in such situations. See Annual Report of the US Commission on International Religious Freedom, May 2002, p.38, available at [www.uscirf.gov/reports/02AnnualRpt/2002report.pdf](http://www.uscirf.gov/reports/02AnnualRpt/2002report.pdf), accessed on 12 June 03.

view in a separate room or other appropriate place where the conversation is private and confidential.

### **Inform Arriving non-Citizens of Their Right to Asylum**

Those fleeing persecution may not understand or be aware of the legal concept of asylum. Their lack of understanding may cause them to be denied this fundamental right. In the first encounter, before being told that they are being returned, immigration officials should underscore the fact that applying for asylum, even when an immigrant arrives in the US without documentation, is a fundamental human right and is not a crime. Written materials in a variety of languages concerning asylum should be available and distributed.

### **Stop Shackling Arriving Asylum Seekers**

Study participants repeatedly commented about the humiliation and mistreatment they suffered as a result of being shackled, often in public view, upon arrival. DHS officials should be able to monitor the room or location where arriving asylum seekers are held without needing to have individuals shackled. Some form of security may be needed during transport. However, shackling with leg irons, chains and other metal restraints is inappropriate for such a traumatized population and a violation of international standards.

### **Improve Interview Process at the Airport or Other Port of Entry**

DHS should revise the process for handling non-citizens who arrive without proper documentation. Immigration officials should have a reasonable space for the people to sit, the equivalent of a waiting room. Furthermore, asylum seekers should be fully informed of the asylum process, the potential for detention, the upcoming credible fear interview, the desirability of having a lawyer and their eligibility for parole.

## **III. Dental and X-Ray Examinations Should Not Be Used To Determine A Young Person's Age**

Medical experts have routinely discredited the accuracy of dental and X-ray exams to determine age. Yet the INS regularly subjected individuals who said they were under 18 years of age to such tests. Three study participants reported being subjected to these exams, and based on their results, were placed in adult facilities. In one case, study doctors documented the poor mental health of a girl who said she was 15, but was detained for six months in an adult facility. After approximately six months, the INS released her and she was reunited with her mother in Canada where their testimonies and other evidence led Canada to grant the girl asylum and accept her age at that time as 16.

Besides their inaccuracy, these exams raise ethical concerns about issues of consent and medical information communicated to those subjected to these exams. Furthermore, the UNHCR reflecting international human rights standards, states that in the absence of information verifying age, due process places the burden of proof on immigration officials. According to UNHCR guidelines, “The child should be given the benefit of the doubt if the exact age is uncertain.”<sup>401</sup> There is seldom a legitimate reason why a young unaccompanied asylum seeker’s stated age cannot be accepted for initial processing into the Office of Refugee Resettlement, instead of adult detention, until further information can be obtained.

### **Unaccompanied Minors Should Not be in Detention**

Unaccompanied children asylum seekers lack legal representation and are often subject to detention. As with adults, minors should be paroled, placed in special programs such as with foster families or other appropriate settings. In the past, the INS has held unaccompanied children in juvenile detention facilities. Programs should be implemented that ensure that these children are not detained.

## **IV. Treatment and Conditions Must Improve For Those Who Are Detained**

Many asylum seekers feel a profound physical and emotional vulnerability as a result of experiencing persecution in their home countries, and this must be factored into their treatment. Their arrival without proper documentation is not a crime, either under US or international law, and therefore it is inappropriate for asylum seekers to be treated as if they are criminals.

A majority of asylum seekers in this study described some sort of mistreatment. This mistreatment frequently violate established standards, and contributed to the poor psychological health of asylum seekers.

### **Formally Adopt the Former INS Detention Standards, Preferably as Regulations, and Ensure That Conditions in all Facilities Should Comply with These Standards**

The conditions of detention for asylum seekers should be consistent with established international human rights and confinement standards. To that end, the INS’s development and implementation of uniform detention standards has been a significant positive step, even if they do not fully comply with international standards in all their details. DHS should maintain and adhere to these standards, at a minimum. Optimally, DHS should codify the standards as regulations.

However, these standards are designed for all immigration detainees,

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<sup>401</sup> UNHCR, Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, Geneva, Feb. 1997, sec. 5.11.

including non-asylum seekers. These Detention Standards thus lack some specific protections and standards appropriate to asylum seekers including the international standard against detention of asylum seekers with individuals held through the criminal justice system. (See Legal Standards chapter).

### **Limit Segregation (Solitary Confinement)**

Since the purpose of detention of asylum seekers is not punitive to begin with, solitary confinement should be restricted to only situations of absolute necessity for the safety of the asylum seeker or the facility. Despite the detention standards, detained asylum seekers suffered or witnessed many instances of solitary confinement that did not comply with standards, and as reported, amounted to abuse. When solitary confinement is proposed for any detainee, for any reason, a health professional should first conduct an assessment to make sure that it will not cause undue harm. Such confinement should not last more than one day before a formal hearing with a higher level official who hears both sides of the incident. Solitary confinement should never be implemented as a discretionary decision of an individual guard or officer.

### **Permit Personal Clothing**

It is important that detained asylum seekers be able to identify themselves as individuals and not as criminals. Clothing is a simple, yet important, way to do so. Given the non-punitive nature of asylum seeker detention, security concerns should not prevent detainees from wearing street clothing or culturally-relevant clothing such as a turban, shawl or other such dress.

### **Provide Greater Religious Practice Opportunities**

A number of detained asylum seekers described to Bellevue/NYU-PHR researchers interference with their religious practices. Many emphasized the importance of their faith in coping with their imprisonment. DHS should avoid obstruction of religious practice, and accommodate detainees' needs wherever possible. For example, detainees should be free to receive outside written religious study materials, provisions should be made to accommodate religious fasting, and detainees should be allowed to form internal groups for collective worship. DHS should also ensure that outside faith-based organizations have access to offer detainees their services.

### **Permit Greater Outside Visitation and Programming**

Generally, in addition to spiritual services, counselors, cultural leaders and non-governmental organizations that serve immigrant and refugee populations should be allowed to regularly visit detainees and provide programs. Facilities should maintain liberal visitation policies for families and

friends so asylum seekers can maintain community ties during detention. This includes extended visitation hours on several days of the week with adequate space. Furthermore, contact visits should be allowed rather than requiring detainees and visitors to speak through a divider. Such visitation limitations for detained asylum seekers are more restrictive than in many prison or jail facilities for criminals.

Independent agencies, including ethnic groups with the same origins as the detained asylum seekers, should be encouraged and given access to offer a variety of programs for detained asylum seekers.

### **In Establishing or Selecting Facilities where Asylum Seekers are Detained, Use Minimal Security Facilities with a Maximum of Services**

Two of the facilities in this study, the Elizabeth and Wackenhut facilities, are windowless high security structures in warehouse districts. Visitation is extremely limited. Outdoor facilities are essentially concrete pens with a mesh cover. Detainees frequently cited such an environment as extremely stressful. In some cases, there were better physical environments in county jails. Greater time should be allotted for recreation, and “outdoor recreation” should truly be outdoors. Means for improving natural light in these facilities, including installing windows, should be considered.

### **Asylum Seekers Should Not be Detained With Criminals**

When detention is necessary, the punitive conditions found in prisons and jails and forced cohabitation with convicted criminals (including violent offenders) is not appropriate for this often traumatized population, nor consistent with international law. Lack of adequate bed space, budgetary limitations and administrative constraints are insufficient justifications for using jails and similar facilities.

### **Officers Overseeing Detained Asylum Seekers Need Specialized Training**

Detained asylum seekers in the Bellevue/NYU-PHR study reported correctional officers using a certain level of force, intimidation and hostility. These approaches are inappropriate for asylum seekers and can further traumatize them. The monitoring of detained asylum seekers fundamentally differs from the punitive nature of correctional settings. Officers that oversee asylum seekers should receive training particular to this population. At a minimum, training should include: background on torture, trauma and various forms of abuse asylum seekers have endured; cultural/language issues in interacting with asylum seekers from a variety of different countries; an understanding of the health consequences of trauma, including PTSD; and an understanding of how detention can affect mental health.

## **V. Improve Access To And Quality Of Health Services (Including Mental Health Services) Available To Detained Asylum Seekers**

Detained asylum seekers, given their prior trauma, and non-criminal status, are a particularly vulnerable population. Refugees and asylum seekers are at increased risk for depression, anxiety and PTSD. DHS should give increased consideration as grounds for parole the mental health of asylum seekers and lack of access to specialized services for physical and mental health. It must be acknowledged that the circumstances of detention can significantly impede a detained asylum seeker's recovery from mental distress and/or mental disorders such as PTSD and Major Depression that they may be suffering due to traumatic experiences in their country of origin. Likewise, it must be acknowledged, that the circumstances of detention may precipitate PTSD and Major Depression among individuals who were previously coping with traumatic events experienced in their countries of origin. Indeed, because the conditions of detention are so potentially deleterious to the mental health of asylum seekers, significant changes in the detention system should be undertaken as soon as possible. If the US government continues to insist that asylum seekers be detained, all detained asylum seekers should be provided with humane surroundings, psychosocial support, on-going information about their status, and contact with families and the outside world (including legal counsel). Given the new Homeland Security measures calling for increased detention of asylum seekers, one cannot expect anything but deteriorating psychological morbidity among those detained if conditions are not changed.

### **Adequate Mental Health Services Should be Made Available to Detained Asylum Seekers**

Adequate mental health services should be provided including individual and group counseling as well as appropriate evaluation and prescription of medications. Adequate funding for such services must be ensured. Detained asylum seekers should be regularly screened for significant psychological symptoms, including anxiety, depression and PTSD, and referred for appropriate mental health services based on the findings of these evaluations. Detained asylum seekers should be made aware of the availability of such services. Additionally, nongovernmental organizations willing to provide psychosocial support for detained asylum seekers should be allowed appropriate access to detention facilities.

Group therapy can be an effective means for providing psychosocial support.<sup>402</sup> Issues concerning privacy/safety can be addressed through

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<sup>402</sup> Smith, H (2003) "Despair, Resilience, and Meaning of Family. Group Therapy with French Speaking Survivors of Torture from Africa." In R. Carter, B. Wallace (eds). *Understanding and Dealing with Violence: Multicultural Perspectives* 291-319. Thousand Oaks, California: Sage Press 2003.

appropriate staffing of such groups with trained mental health professionals, adequate screening of potential group members and ongoing monitoring and evaluation.

As noted in this report, many detainees reported their perception that policy regarding segregation for suicidal patients, was a disincentive for informing staff about suicidal thoughts. Such isolation, in fact can exacerbate feelings of depression and hopelessness. Isolation should only be used as a last resort, and if needed, only for very limited times.

Increased mental health services and greater awareness of the availability of adequate and humane mental health services may decrease suicidality. For suicidal patients, thorough psychiatric evaluation, including risk of suicide, need for counseling/medication, and hospitalization should be conducted. A multidisciplinary mental health team treatment approach including psychiatry, psychology, social work and nursing is indicated.

### **Detainees Should Have Improved Access to Specialized Health Services**

Appropriate dental care should be provided to all detainees. Other specialized services including eye care, (including eye glasses) and rehabilitative medicine services should also be available as needed. If specialized services cannot be provided, including necessary mental health services, individuals should be paroled so that they can seek needed services at outside facilities.

### **Medical Personnel Should Receive Specialized Training in Caring for Asylum Seekers**

Such training should include identifying and responding to survivors of torture and persecution, cross-cultural issues including language, and addressing their psychosocial needs.

### **Access to Medical Records Should be Improved**

DHS should ensure that complete medical records are transferred with the detainee when a detainee is sent to a different facility. When asylum seekers are released from detention, they should be provided with copies of their medical records, including any evaluation/treatment the asylum seeker received, to facilitate improved care following release.

### **Ensure Adequate Outside Review of DHS Health Care System**

In addition to review by national certification associations, the review of detained asylum seeker health care should include experts in refugee health, trauma and related issues.

## **VI. Other Recommendations**

Based on the findings of this study, Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture also recommend the following measures be implemented to insure a humane immigration process:

### **Stop the Expansion of Immigration Detention**

During the past several years, the number of immigrants in detention has grown from approximately 5,500 detainees in 1993 to estimates running over 20,000 today. Likewise, the budget has skyrocketed from \$149 million in 1992 to approximately \$800 million in 2001. At the same time it has been difficult to secure \$3 million for supervised release or other alternatives to detention. In contrast to imprisonment, parole programs, such as the aforementioned Vera Institute program, more economically and humanely monitor asylum seekers. Further funding should be allocated to supervised release programs and other alternatives to detention.

### **Improve Access to Legal Services for Asylum Seekers, Including Legal Rights Presentations**

Ideally, the DHS should fund government-appointed counsel for asylum seekers. A majority of participants in this study ultimately were awarded asylum and all benefited from legal counsel. But most asylum seekers are not able to secure counsel. Given the complex legal issues in asylum and the fact that trauma can make it difficult for asylum seekers to discuss their victimization, legal counsel is often crucial to a fair presentation of an asylum seeker's case.

### **Fund “Know Your Rights” Presentations Sufficiently So That They Reach All Detainees**

Some asylum seekers are unaware of their rights, as this study demonstrated, and are therefore unable to make informed decisions about their futures. In the absence of government-appointed counsel, Congress should appropriate and DHS should facilitate a nationwide program of pre-hearing legal orientation presentations to all immigration detainees by non-governmental organizations. A number of these programs have existed in cooperation with local offices of the former INS. Congress has appropriated \$1 million for such legal presentations, and the government has a plan for presentations at 6 locations. Adequate funding should be provided so that these programs can reach a greater number of asylum seekers and other detainees.

### **Give Asylum Seekers Greater Access to Benefits Accorded Refugees**

The ORR (Office of Refugee Resettlement) has funding to support

refugees and asylum seekers who win asylum. A referral mechanism should be established to ORR for detained asylum seekers who win asylum. The federal government should fund community-based organizations that organize parole programs and fund them to cover housing and other costs associated with assisting an asylum seeker. Congress should ensure adequate funding for these benefits so refugees and asylum seekers can obtain some minimum standard of housing and gain access to health care.

### **Ensure That Programs Exist with Adequate Funding to meet the Needs of Torture Victims, Including Those in Detention as Well as Those Released from Detention**

Many detained asylum seekers are victims of torture. In the United States, there are now more than 25 specialized centers caring for torture victims. Formerly detained asylum seekers frequently seek out or are referred to these centers to address their health needs. In many parts of the country where there are large immigrant and refugee populations, there are no treatment centers. Where those exist, waiting periods are significant. Adequate funding for torture treatment centers is essential in meeting the needs of asylum seekers and others who have suffered similar trauma. Moreover, federal immigration officials should be provided with special training regarding the effects of torture.

### **Roll back the Agreement with Canada Restricting Asylum Seeker Movement**

The so-called Safe Third Country Agreement, signed with Canada in December 2002, forces asylum seekers on their way to Canada to apply for asylum in the US and vice versa. Nearly 15,000 asylum claims filed in Canada last year, approximately a third of the country's total came from people who transited through the US. Only about 200 asylum seekers a year are estimated to transit Canada to then apply for asylum in the US. A fifteen-year-old girl's story of being detained in an INS adult facility before release and transit to Canada and reunification with her mother, illustrates the injustice this agreement could bring. Asylum seekers on their way to Canada should be allowed to travel there.

### **Implement and not Overrule Immigration Judge Decisions Releasing Asylum Seekers and other Immigrants on Bond or Parole<sup>403</sup>**

DHS can suspend an immigration judge's decision to release a detainee on bond, even though there is no allegation of terrorism, if a detainee was originally held on more than \$10,000 bond while removal procedures were pending.<sup>404</sup> Originally announced as an anti-terrorism measure, in

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<sup>403</sup> This recommendation also applies to the Department of Justice.

<sup>404</sup> 66 Fed. Reg. 54909 (2001).

November 2002 the INS invoked this rule to continue the detention of the Haitian asylum seekers who came ashore after their boat foundered near Miami. In April 2003, Attorney General Ashcroft issued a decision overruling an immigration judge who had ordered the release of a Haitian asylum seeker on bond.<sup>405</sup> The Ashcroft decision required detention and forbid release on bond or parole for nationals of a designated country, Haiti in this case. One of the reasons Ashcroft gave for the decision to continue detention was deterrence of future asylum seekers from Haiti. Under international law, deterrence is not a legitimate rationale for detaining asylum seekers.<sup>406</sup> The decision suggests that by simply making such a designation, the Attorney General can designate any country he chooses and thereby prohibit release of asylum seekers from the designated country. These measures are draconian and undermine our respect for due process, international law and judicial proceedings. Consequently these measures should be overturned.

### **Grant Work Authorization to Asylum Seekers Paroled or Otherwise Released**

It is critical that asylum seekers receive work authorization, so that they can support themselves instead of relying on government or other sources to cover living expenses. It helps asylum seekers toward self-sufficiency and productive use of their time and gain some control over their lives and overcome the powerlessness of detained asylum seekers documented in this study. Work authorization has been crucial to the success of community-based parole programs.

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<sup>405</sup> Stanley Mailman and Stephen Yale-Loehr, *Detaining and Criminalizing Asylum Seekers*, *New York Law Journal*, April 28, 2003; *Matter of D-J-*, 23 I. & N. Dec. 572 (Att'y Gen. 2003).

<sup>406</sup> See Chapter XI Legal Standards, subsection International Law on Detention of Asylum Seekers.



# XIII. APPENDICES

## APPENDIX A:

### Dr. Ferraro's Comment To The INS Regarding Determination Of Chronological Age Using Bone Age And Dental Age Standards

TO: Director, Policy Directives and Instructions Branch,  
Immigration and Naturalization Service  
FROM: Nalton F. Ferraro, D.M.D., M.D.  
RE: Public Comment on Proposed Rule at 64 FR 39759  
(INS No. 1906-98)  
DATE: March 12, 2002

I am an oral and maxillofacial surgeon and Associate in Surgery at Children's Hospital in Boston, Massachusetts; Associate in Surgery at Brigham and Women's Hospital in Boston; member of the Courtesy Staff at Franciscan Hospital in Boston; and member of the Courtesy Staff at Massachusetts General Hospital in Boston. I am also a member of the Craniofacial Surgery Team at The National Birth Defects Center at Franciscan Children's Hospital and an Instructor at the Harvard School of Dental Medicine. My major research interests include: 1.) obstructive sleep apnea patterns in patients with craniofacial and maxillofacial deformities and surgery for obstructive apnea and maintenance of the upper airway in children; 2.) management of oral surgical problems in the chronically, critically ill pediatric and young adult patient and 3.) hemifacial microsomia: growth of costochondral mandibular grafts, progressiveness of the untreated hemifacial deformity and operations in the growing patient. My complete curriculum vitae is attached for your inspection.

Judging skeletal maturity to decide the timing for various operations is an important part of my surgical practice. I am submitting this comment because I am extremely troubled by the inaccuracy of the current INS practice of using bone age and dental age standards to judge chronologic age among undocumented immigrants and asylum seekers – a practice that, as I understand it, would be reaffirmed under the proposed regulations. This practice imparts an unwarranted scientific legitimacy to what I understand to be a social-political-legal problem. I appreciate the desire to give some objectivity to the resolution of certain age claims in the absence

of thorough documentation. However, a fundamental concept is being ignored in the current INS approach to “age testing”: chronologic age, dental age and skeletal (bone) age are not necessarily the same in a given individual. In fact, deviation among these three “ages” is common and well appreciated in pediatric medical and dental practice. Discrepancies among these ages can amount to as much as five years; this is substantial when one is considering a span as short as the first two decades of life. A 14-year-old female, for example, can be skeletally, dentally, and sexually mature, but be four years short of legal adulthood.

Every recognized authority on physical development has stressed this fact. This is precisely the fact that one well-known INS practitioner, Dr. R. Trager at Kennedy International Airport, has ignored or failed to comprehend in his INS-sanctioned practice. The volume that Dr. Trager calls his “bible” (as quoted in the *New York Times*, “Crucial I.N.S. Gatekeeper: The Airport Dentist,” July 22, 2000), the venerable and classical work: *Radiographic Atlas of Skeletal Development of the Hand and Wrist* by William Walter Greulich and S. Idell Pyle, explicitly recognizes this fact:

*Because of this variability, the chronological age of a child during the early part of the second decade of life is often but little more than a measure of the length of time that he or she has lived; it bears no necessarily close relationship to the amount of progress which the child has made toward attaining adulthood. (2ed. p. 2)*

Another citation:

*The chronological age at which boys attain puberty is quite as variable as that of girls at the same period of life due to both genetic and environmental factors. This variability is strikingly illustrated by the photographs reproduced in Figure 5. [referring to illustrations in the Atlas] The boys shown were either fourteen years, fourteen years and one month, or fourteen years and two months of age when the photographs were made. Despite their similarity in chronological age, they ranged from early prepuberal to an only slightly subadult stage of development. (p. 13).*

This Atlas was not designed to determine chronologic age. Rather, it was designed to assess the skeletal (bone) age of an individual and compare it to the “average” or “typical”. It is a method of grading only the physical progress of development. If, for example the average 18-year-old male has nearly completed skeletal growth and the bone growth plates on a radiograph are, on average, closed or nearly closed, this is graded as a bone age (or “B.A.”) of 18 to 18.5 years. Any child whose hand-wrist radiograph looks similar is given a bone age grade of 18-18.5 years. This grade is independent of the chronologic age. It is also important to note that the Atlas was based on data for white North American children. Applying these standards to children of other colors and from other

regions of the world compounds the fundamental error.

My understanding is that the INS treats unaccompanied immigrant minors and asylum seekers quite differently than adults and that minority status is based on the number of calendar years following birth. Minority status is not, as I understand it, based whether a person has finished growing or on whether they have mature wisdom teeth, events that do not correlate significantly with chronologic age. J.M. Tanner in his classic work on physical development, *Fetus into Man* (1990), states: "One simply should not talk of '14-year-olds': the statement that a boy is 14 is hopelessly vague, for so much depends on whether he is an early or a late maturer." (p. 75). Tanner continues: "Evidently we need a measure of developmental age, or physiological maturity, which represents more truthfully than chronological age how a given individual has progressed along his or her road to full maturity." (p. 75).

Just as chronological age is not a measure of developmental age, developmental age measurements (bone age and dental age being two such measurements) do not represent chronologic age. Using bone age and dental age to help corroborate an administrative decision on minor or adult status is patently unreasonable because the fundamental premise is flawed. An erroneous and misinterpreted starting point or hypothesis will not aid in determining the truth. Physicians and dentists who participate in assigning chronologic age based on developmental tests, well-intentioned or not, are using a pretense to lend scientific legitimacy to administrative decisions. The margin of error in correlating bone, dental and chronologic age is too great to permit reasonable conclusions and the physical development literature makes this point over and over.

One should note that the reliance on bone and dental ages inevitably will produce two kinds of inaccurate conclusions regarding chronologic age. There will be those legal minors treated as adults using bone age criteria, which, of course, raises humanitarian concerns. There will also be some legal adults who are afforded minor status, which may not serve the interests of justice and safety either. There will, of course, be individuals whose chronologic, bone and dental ages do coincide; no one, however, can be sure of who these individuals are. These tests will not pick out these individuals whether in a group of ten or in a group of a thousand.

The validity of the current age testing procedures is not enhanced by recourse to a "law of averages." The average degree of bone and dental development of 18-year-olds is derived from the widely varying developmental experiences of many individuals. It is precisely that variation from the average that renders bone and dental age testing unreliable measures of chronologic age. The old statistician's adage vividly illuminates this point: "if your head is in the freezer and your feet are in the oven, your average temperature is quite comfortable." Average and truth can be quite disparate.

Human development is complex and diverse. We cannot count rings as in dating the longevity of a tree, and we must not give the impression that we can. These momentous decisions – for both the individuals affected and for the INS — should not be based, even in part, on a flawed and erroneous understanding of human developmental biology.

Another troublesome aspect of this program is the placing of an individual in a situation where he or she feels compelled to submit to a radiographic examination that may not help him or her in the least. The license to order radiographs for an individual carries with it significant responsibility. Radiographic imaging cannot be compared to photographs or even fingerprints, it is an invasive procedure and must be guided by medical ethical constraints.

Another important question in this same line must be raised. When thousands of people are radiographed for “age determination,” what becomes of incidental findings noted on these radiographs? A radiograph after all is a diagnostic record; the bone can contain findings that are important to an individual. That the radiograph is being obtained to judge “age” should not absolve a dentist or physician from the responsibility to analyze that film thoroughly. If the film reveals a cyst, an infection, evidence of rickets or scurvy, evidence of an endocrinological condition that is progressive and severe such as hyperparathyroidism, or lead lines that indicate lead poisoning, is the patient (one becomes a patient at this point) advised, instructed, counseled or consoled? Even if one is being immediately deported, ethical constraints would seem to require some intervention. Dental films routinely contain incidental findings, e.g. periodontal disease, deep dental decay, jaw cysts or tumors. Is the patient told of this information contained on the radiograph or is the film just buried in a file? If a dentist or physician assumes the responsibility of taking the radiograph, he or she must assume the obligation of reviewing the whole film. To knowingly ignore pathologic findings is unconscionable. This is an issue of professional responsibility and basic human decency.

Respectfully submitted,  
Nalton F. Ferraro DMD, MD



18. Country from which fleeing persecution (specify only if different from nationality)

19. Race (circle one):

- Black . . . . .1
- Caucasian . . . . .2
- Latino/Hispanic . . . . .3
- Other . . . . .4 (Specify)

20. Ethnicity / Tribal group

21. Religion:

- Buddhist . . . . .1
- Jewish . . . . .2
- Christian . . . . .3
- Muslim . . . . .4
- Hindu . . . . .5
- None . . . . .6
- Other . . . . .7 (Specify)

22. Highest level of education attained: (Circle one)

- None . . . . .1
- Primary School . . . . .2
- Some high school/secondary School course Work . . . .3
- High School/Secondary School graduate Degree . . . .4
- Some college vocational course work . . . . .5
- College/vocational degree . . . . .6
- Graduate Professional training (beyond college) . . . .7
- Graduate/professional degree (ex. M.D., J.D., Ph.D.) .8

23. Primary occupation in his/her native country:

- Student . . . . .1
- Monk/nun (religious figure) . . . . .2
- Physician . . . . .3
- Other health professional . . . . .4 (Specify)
- Lawyer . . . . .5
- Journalist . . . . .6
- Government Employee (non-military/police.) . . . .7 (Specify)
- Police/Military . . . . .8 (Specify)
- Farmer . . . . .9
- Housewife . . . . .10
- Service Sector (example: taxi driver, shopkeeper) . .11 (Specify)
- Other . . . . .12 (Specify)

24. Marital status

- Single . . . . .1
- Married . . . . .2
- Divorced . . . . .3
- Widowed . . . . .4

25. Does the client have children?

- Yes.....1
- No.....2

26. Language interview was conducted in

- English .....1
- French .....2
- Arabic .....3
- Other .....4 (Specify)

27. (Language from #16) is

- Subject's native language .....1
- A language subject is fluent in .....2
- A language the client's attorney believes client is capable of conducting an interview in .....3
- Other (Specify) .....4

28. Participation Outcome: \_\_\_\_\_

Eligible/Survey Complete=1; Not Eligible=2; Not available (2 attempts)=3; Refusal=4a,b,c, or d; Lack of time=4a; Fear reprisal=4b; opposed to study=4c; other (specify)=4d Unable to complete=5a,b,c,d, or e interrupted=5a; emotional=5b; safety=5c; language difficulty=5d; Other (specify)=5e.

**Part II. (Data from Asylum Application: I-589 Form/Affidavit)**

1. Subject seeking asylum from persecution/fear of persecution because of:

- Race .....1
- Religion .....2
- Nationality .....3
- Membership in a particular Social Group .....4 (Specify)
- Political Opinion .....5
- Other .....6 (Specify)

2. Trauma Questionnaire:

Review affidavit / I-589 and note if there is information documenting that an individual experienced a particular traumatic event.)

Traumatic Event	Experienced
1. Lack of food or water.	
2. Ill health without access to medical care.	
3. Lack of shelter.	
4. Imprisonment.	
5. Serious injury.	
6. Combat situation.	
7. Rape or sexual abuse.	
8. Forced isolation from others.	

- 
9. Being close to death.
- 
10. Forced separation from family members.
- 
11. Murder of family or friend.
- 
12. Unnatural death of family or friend.
- 
13. Murder of stranger or strangers.
- 
14. Lost or kidnapped.
- 
15. Torture. Specify
- 
16. Friends/colleagues imprisoned or tortured
- 
17. Family members/relatives imprisoned or tortured
- 
18. Harassment visits or threats at work or school (including loss of job or expulsion) by authorities, groups controlled by authorities, or groups the govt. is unable/unwilling to control? (I589, p. 5 #3)
- 
19. Harassment visits or threats, at home(including loss of property) by authorities, groups controlled by authorities, or groups the govt. is unable/unwilling to control? (I589, p. 5 #3)
- 
20. Uncertainty about the whereabouts of family
- 
21. Concern that family is in danger
- 
22. Belief that his/her life would be in danger if forced to return to native country
- 

**Part III. (Subject interview begins)**

1. Before you began experiencing difficulties or persecution in your country, did you have
- A. Any serious physical health problems? (Circle One)  
 Yes .....1  
 No.....2
- B. Any serious psychological/mental health problems?  
 Yes .....1  
 No.....2

If Yes, Please Specify

Nature of Health Problem	a. Have you experienced this health problem while in Detention?		b. Are you experiencing this health problem now?	
1.1	Yes	No	Yes	No
1.2	Yes	No	Yes	No
1.3	Yes	No	Yes	No

2. After you began experiencing difficulties or persecution in your country, but before you arrived in the United States did you have any other serious physical or health problems (besides any health problems that you have already mentioned)?

Yes .....1      No.....2

If Yes, Please Specify

Nature of Health Problem	a. Have you experienced this health problem while in Detention?		b. Are you experiencing this health problem now?	
	Yes	No	Yes	No
2.1	Yes	No	Yes	No
2.2	Yes	No	Yes	No
2.3	Yes	No	Yes	No

3. Have you experienced any serious health problems that started while you were in INS Detention (besides any health problems that you have already mentioned)?

Yes .....1      No.....2

If Yes, Please Specify

Nature of Health Problem	b. Are you experiencing this health problem now?	
	Yes	No
3.1	Yes	No
3.2	Yes	No
3.3	Yes	No

4. During the time that you have been in INS detention have you ever needed or wanted to see a doctor?

Yes .....1

No.....2

5. Among the health problems mentioned in questions 1-3, what are the 3 most serious of these health problems that you have experienced while in INS detention?

5.1 \_\_\_\_\_

5.2 \_\_\_\_\_

5.3 \_\_\_\_\_

*note: if subject mentions mental health related problems as a "serious" health problem, it should be listed above. Do not complete remainder of question 5 for mental health related problems. Mental health care will be asked about in Part V*

Complete for each health problem:

---

<b>5.1.A. Nature of Problem</b>	5.1. B. Specify Date problem started ____/____/____ day month year	5.1. C. Specify time frame/location where problem started a. Before you began experiencing difficulties/persecution in your country  b. Since you experienced your persecution but before arriving in the United States  c. Since being detained by the INS  d. Other (specify)
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D. While in INS Detention, have you been seen by health professional(s) for *(name of health problem)*?

Yes .....1  
No.....2

E. While in INS detention, were you given treatment for this problem?

Yes .....1  
No.....2

If yes, specify treatment:

F. Were you evaluated or treated for this health problem outside of the detention center?

Yes .....1  
No.....2

If yes, (Specify where and what)

G. Do you think the medication (or other treatment) helped?

Yes .....1  
No.....2

H. During the time you have been in INS Detention, has this health problem...

Improved a great deal .....1  
Improved a little .....2  
Stayed about the same .....3  
Become a little worse .....4  
Become much worse .....5

Explain:

I. While in INS Detention, have you experienced difficulty in obtaining health care services for *(name of health problem)*

No difficulty .....1  
A little difficulty .....2  
A lot of difficulty .....3

- Extreme difficulty . . . . .4
- Did not request health care . . . . .5

*(If 3 or ,4 ) Explain difficulties (Circle all that apply. Do not read choices. Write brief description)*

- Difficulty/delay in receiving initial care/evaluation . . .1
- Difficulty/delay in receiving follow up care . . . . .2
- Seen by Nurse but difficulty getting to see doctor . . . .3
- Difficulty receiving specialized care . . . . .4  
(specify: example: surgery\_\_\_\_\_)
- Difficulty in receiving medications when needed . . . .5
- Difficulty in obtaining dental care . . . . .6
- Difficulty with getting an interpreter when needed . . .7  
one for medical care
- Other (specify) . . . . .8

*(If 5 for 1) Why not? (Circle all that apply. Do not read choices. Write brief description)*

- Did not think health services were available for this . . . .1  
health problem
- Were discouraged by INS Staff for seeking . . . . .2  
health care for this problem
- Were discouraged by experience of other . . . . .3  
detainees or what other detainees said
- Did not feel I needed health care for this problem . . . .4
- Other (Specify) . . . . .5

Explain response:

J. How would you describe the quality of the health care services you have received for *(State name of health care problem)* during the time that you have been in INS Detention?

- Very Poor . . . . .1
- Poor . . . . .2
- Fair . . . . .3
- Good . . . . .4
- Excellent . . . . .5
- Did not receive health care services . . . . .6

Explain:

*(If poor or very poor) Explain why you think this (Circle all that apply. Do not read choices. Write brief explanation)*

- Inadequate Evaluation . . . . .1
- Inadequate treatment . . . . .2
- Dissatisfied with interaction with the health . . . . .3  
care provider  
(Specify)\_\_\_\_\_
- Given same medication repeatedly with little effect . . .4
- Other . . . . .5  
(Specify)\_\_\_\_\_

Explain:

(Interviewer: Write brief narrative describing health problem, course of illness and treatment received (including prior to arrival to U.S., if applicable), and who provided care: example nurse, physician, psychiatrist, psychologist.)

6. During the time you have been in INS detention, have you ever needed an interpreter to help with receiving health care?  
Yes .....1  
No.....2

(If no to go to Part IV.)

7. During the time you have been in INS detention, have you ever utilized an interpreter to help with receiving health care?  
Yes .....1  
No.....2

8. (If an interpreter was used ask), who was the interpreter?  
(Circle all that apply and put in order of frequency)
- Another detainee .....1
  - Detention center staff interpreter .....2
  - Telephone interpreter .....3
  - Detention center health staff could communicate . . . .4
  - adequately in my language
  - Other (specify) .....5

9. While in INS Detention, have you experienced difficulty in getting an interpreter when receiving health care services?
- No difficulty .....1
  - A little difficulty .....2
  - A lot of difficulty .....3
  - Extreme difficulty .....4
  - Never provided with an interpreter .....5
  - when I needed one

10. If 3 or 4 Please explain (*Circle all that apply*)
- Often not provided with an interpreter .....1
  - when I need(ed) one
  - Frequent delays in getting an interpreter .....2
  - Other (Specify) .....3

11. When interpreter services were provided for your health care, while in INS Detention, how would you describe the quality of these interpreter services?
- Very Poor .....1
  - Poor .....2
  - Fair .....3
  - Good .....4
  - Excellent .....5

- 12 If poor or very poor (circle all that apply)
- Lack of confidence in interpreter's translating skills . .1

- Uncomfortable with gender of interpreter . . . . .2
- Fear that interpreter had links to government . . . . .3
- Other (Specify) . . . . .4

Explain:

**Part IV. Hopkins Symptom Checklist-25 and PTSD Portion of Harvard Trauma Questionnaire**

1. General Symptoms

*Below is a list of problems and complaints that people sometimes have. For each one please tell me how much discomfort that problem has caused during the past seven (7) days including today: Not at all, a little, Quite a lot, or extremely*

<b>A How much were you distressed by:</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
(Please check)	Not at all	A Little	Quite a lot	Extremely

01 Suddenly scared for no reason

02 Feeling fearful

03 Faintness, dizziness, or weakness

04 Nervousness or shakiness inside

05 Heart pounding or racing

06 Trembling

07 Feeling tense or keyed-up

08 Headaches

09 Spells of terror or panic

10 Feeling restless, can't sit still

**B. You said that you have experienced problems such as (list items scoring 3 or 4). When did these problems begin?**

Before you began experiencing . . . . .1  
difficulties/persecution in your country

Since you began experiencing . . . . .2  
your persecution but before arriving  
in the United States

Since being detained by the INS . . . .3

**C. Since being in INS Detention, have these problems:**

Explain response to C and D:

- Improved a great deal . . . . .1
- Improved a little . . . . .2
- Stayed about the same . . . . .3
- Become a little worse . . . . .4
- Become much worse . . . . .5

**D. To what extent do you think detention is contributing to the symptoms you mentioned above?**

- Not at all . . . . .1
- A little . . . . .2
- Quite a lot . . . . .3
- Extremely . . . . .4

2. Depression Symptoms

A How much were you distressed by: (Please check)	1	2	3	4
	Not at all	A Little	Quite a lot	Extremely
11 Feeling low in energy, slowed down				
12 Blaming yourself for things				
13 Crying easily				
14 Loss of sexual interest or pleasure				
15 Poor appetite				
16 Difficulty falling, staying asleep				
17 Feeling hopeless about the future				
18 Feeling sad				
19 Feeling lonely				
20 Thoughts of ending your life				
21 Feeling of being trapped or caught				
22 Worrying too much about things				
23 Feeling no interest in things				
24 Feeling everything is an effort				
25 Feelings of worthlessness				

**B. You said that you have experienced problems such as (*list items scoring 3 or 4*). When did these problems begin?**

- Before you began experiencing . . . . .1  
difficulties/persecution in your country
- Since you began experiencing your . . .2  
persecution but before arriving in  
the United States
- Since being detained by the INS . . . .3

**C. Since being in INS Detention, have these problems:**

- Improved a great deal . . . . .1
- Improved a little . . . . .2
- Stayed about the same . . . . .3
- Become a little worse . . . . .4
- Become much worse . . . . .5

**D. To what extent do you think detention is contributing to the symptoms you mentioned above?**

- Not at all . . . . .1
- A little . . . . .2
- Quite a lot . . . . .3
- Extremely . . . . .4

Explain response to C and D:

### 3. Trauma Symptoms

*The following are symptoms that people sometimes have after experiencing hurtful or terrifying events in their lives. Please decide how much the symptoms bothered you in the past week.*

	1	2	3	4
	Not at all	A Little	Quite a lot	Extremely
1	Recurrent thoughts or memories of the most hurtful or terrifying events.			
2	Feeling as though the event is happening again.			
3	Recurrent nightmares.			
4	Feeling detached or withdrawn from people.			
5	Unable to feel emotions.			
6	Feeling jumpy, easily startled.			
7	Difficult concentrating.			
8	Trouble sleeping.			
9	Feeling on guard.			
10	Feeling irritable or having outbursts of anger.			
11	Avoiding activities that remind you of the traumatic or hurtful event.			
12	Inability to remember parts of the most traumatic or hurtful events.			
13	Less interest in daily activities.			
14	Feeling as if you don't have a future.			
15	Avoiding thoughts or feelings associated with the traumatic or hurtful events.			
16	Sudden emotional or physical reaction when reminded of the most hurtful or traumatic events.			
17	Boredom			
18	Fear of being returned to your country			

**B. You said that you have experienced problems such as (*list items scoring 3 or 4*). When did these problems begin?**

Before you began experiencing . . . .1  
difficulties/persecution in your country

Since you began experiencing your . .2  
persecution but before arriving in the  
United States

Since being detained by the INS . . . .3

**C. Since being in INS Detention, have these problems:**

Improved a great deal . . . . .1

Improved a little . . . . .2

Stayed about the same . . . . .3

Become a little worse . . . . .4

Become much worse . . . . .5

**D. To what extent do you think detention is contributing to the symptoms you mentioned above?**

Not at all . . . . .1

A little . . . . .2

Quite a lot . . . . .3

Extremely . . . . .4

---

Explain response to C and D:

**Part V.**

1. During the time you have been in INS detention, have you wanted counseling for feelings of sadness, nervousness, difficulty sleeping or any of the other problems you just described?

Yes .....1

No.....2

*(If no to question 1 skip to question 8)*

2. During the time you have been in INS detention, have you requested counseling for these problems?

Yes .....1

No.....2

If you did not request counseling, why not?

Did not think counseling was available . . . . .1

Did not have confidence in services provided in . . . .2  
detention facility

Did not feel comfortable talking with detention . . . .3  
facility staff

Other (specify) . . . . .4

3. During the time you have been in INS detention, have you *received* any counseling for these problems?

Yes .....1

No.....2

If yes, who provided the counseling?

Mental health professional provided by . . . . .1  
detention facility (ex. psychologist, psychiatrist, social worker)

Mental health professional not provided . . . . .2  
by detention facility (ex. psychologist, psychiatrist, social worker)

- Volunteer visitor .....3
- Priest/chaplain/religious leader .....4
- Other (specify) .....5

4. (If person did receive counseling ask): Do you think the counseling you received helped?
- Yes .....1
  - No.....2

Explain:

5. During the time you have been in INS detention have you wanted medications for problems such as feelings of sadness, nervousness or difficulty sleeping?
- Yes .....1
  - No.....2
6. During the time you have been in INS detention have you requested medications for problems such as feelings of sadness, nervousness or difficulty sleeping?
- Yes .....1
  - No.....2
7. During the time you have been in INS detention , have you *received* any medications for problems such as feelings of sadness nervousness or difficulty sleeping?
- Yes .....1
  - No.....2
8. Do you think the medication helped?
- Yes .....1
  - No.....2

Explain:

9. During the time that you have been in INS detention, have you had thoughts of ending your life?
- Yes .....1
  - No.....2
10. (if yes to 10 ask): Did you tell detention facility staff?
- Yes .....1
  - No.....2

If Yes How did they respond?

If No Why not?

11. During the time that you have been in INS detention, have you attempted ending your life?
- Yes .....1
  - No.....2
12. To what extent do you think the stress of being in detention is responsible for your thoughts and/or attempts at ending your life.
- Not at all      a little      quite a lot      extremely

Explain:

13. How was your physical health at the time that you left your country?

- Very Poor .....1
- Poor .....2
- Fair .....3
- Good .....4
- Excellent .....5

14. In general, how is your physical health at this time?

- Very Poor .....1
- Poor .....2
- Fair .....3
- Good .....4
- Excellent .....5

15. During the time you have been in INS detention, has your physical health

- Improved a great deal .....1
- Improved a little .....2
- Stayed about the same .....3
- Become a little worse .....4
- Become much worse .....5

Please explain any changes – improvements or worsening - in your physical health since you have been in detention:

16. How was your psychological/emotional health at the time that you left your country?

- Very Poor .....1
- Poor .....2
- Fair .....3
- Good .....4
- Excellent .....5

17. In general, how is your psychological/emotional health at this time?

- Very Poor .....1
- Poor .....2
- Fair .....3
- Good .....4
- Excellent .....5

18. During the time you have been in INS detention, has your psychological/emotional health

- Improved a great deal .....1
- Improved a little .....2
- Stayed about the same .....3
- Become a little worse .....4
- Become much worse .....5

Please explain any changes – improvements or worsening - in your psychological/emotional health since you have been in detention:

19. Overall, while in INS Detention, have you experienced difficulty in obtaining health care services for *(name of health problem)*

- No difficulty . . . . .1
- A little difficulty . . . . .2
- A lot of difficulty . . . . .3
- Extreme difficulty (ie.Unable to get health . . . . .4 services at all )

Explain:

*(If 3 or ,4) Explain difficulties (Circle all that apply. Write brief description)*

- Difficulty/delay in receiving initial care/evaluation . . .1
- Difficulty/delay in receiving follow up care . . . . .2
- Seen by Nurse but difficulty getting to see doctor . . . .3
- Difficulty receiving specialized care . . . . .4
- Difficulty in receiving medications when needed . . . .5
- Difficulty in obtaining Dental Care . . . . .6
- Difficulty getting an interpreter needed for . . . . .7 medical care
- Other (specify) . . . . .8

Explain:

20. Overall, how would you describe the quality of the health care services you have received during the time that you have been in INS Detention?

- Very Poor . . . . .1
- Poor . . . . .2
- Fair . . . . .3
- Good . . . . .4
- Excellent . . . . .5

Explain:

*(If poor or very poor) Explain why you think this (Circle all that apply. Do not read choices. Write brief explanation)*

- Inadequate Evaluation . . . . .1
- Inadequate treatment . . . . .2
- Dissatisfied with interaction with the . . . . .3 health care provider
- Given same medication repeatedly with little effect . . .4
- Other (specify) . . . . .5

Explain:

21. Is there anything else you want to tell us about your health or the medical care you have received while in detention?

**Part VI.**

1. When you were first interviewed at the airport (or other point of entry) by the INS, were you asked about traumatic events you experienced in your country?

Yes .....1  
No.....2

2. Where was the interview conducted?

Private room.....1  
Open area.....2

3. Do you feel you had adequate privacy during the interview?

Yes .....1  
No.....2

4. When you were interviewed at the airport by the INS, did you need an interpreter?

Yes .....1  
No.....2

5. If you needed an interpreter was one provided?

Yes .....1  
No.....2

6. (If yes to 5 ask ) Who was the interpreter?:

Another passenger .....1  
INS Staff .....2  
Telephone interpreter .....3  
Other .....4 (specify)

7. How would you describe the quality of the interpreter services that you received while in INS custody at the airport?

Very Poor .....1  
Poor .....2  
Fair .....3  
Good .....4  
Excellent .....5

8. If poor or very poor (circle all that apply)

Lack of confidence in interpreter's translating skills . .1  
Uncomfortable with gender of interpreter .....2  
Fear that interpreter had links to government .....3  
Other (Specify) .....4

Explain:

9. Were there any other difficulties in this interview?

Yes .....1  
No.....2

Explain:

10. How long (hours) were you held at the airport (hours)?

11. Were you shackled/handcuffed during your wait at the airport?  
Yes .....1  
No.....2

If yes, for approximately how many hours were you shackled?

12. Were you given food and water at the airport?  
Yes .....1  
No.....2

13. Were you given access to the restroom at the airport?  
Yes .....1  
No.....2

14. Were you strip searched or body cavity searched at the airport?  
Yes .....1  
No.....2

15. During the time you were at the airport (or other port of entry) did you experience...(ask each one individually)  
A. Verbal abuse Yes .....1 No.....2  
B. Physical abuse Yes .....1 No.....2  
C. Other (specify)\_\_\_\_\_

If yes, specify, who committed the abuse and what the abuse was:

*(Ask questions 16-18 for individuals who reported their age was 18 or younger at the time of their arrival to the United States)*

16. After arriving in the United States were you examined by a dentist to evaluate how old you are?  
Yes .....1  
No.....2

17. Prior to the examination, were you informed that this was the reason for the dental examination?  
Yes .....1  
No.....2

If no, what were you told was the reason for this examination?

18. Were you accused of lying about your age?  
Yes .....1  
No.....2

(if yes, by whom?)

19. At the time of your arrival to this country, do you feel that your right to apply for political asylum was adequately explained to you?  
Yes .....1  
No.....2

Explain:

20. At the time of your arrival to this country, do you feel you were treated in a respectful manner? (please explain)

Yes .....1

No.....2

Explain:

21. Before you were brought to the INS Detention Facility, was it explained to you where you were being taken?

Yes .....1

No.....2

22. Other comments regarding experiences at the time of your arrival to this country.

**Part VII.**

1. During the time you have been in detention, have you experienced any of the following?

*(Ask about each individually)*

- |                                             | Experienced | Witnessed |
|---------------------------------------------|-------------|-----------|
| A. Verbal abuse by Detention Center Staff   |             |           |
| B. Physical abuse by Detention Center Staff |             |           |
| C. Segregation                              |             |           |
| C.1. # of days                              |             |           |
| C.2 Threatened with Segregation             |             |           |
| D. Difficulties in practicing your religion |             |           |
| E. Other (specify)                          |             |           |

Please explain any of the above: (ex. If held in segregation, what was reason for this)

2. Have you been given adequate access to recreational activities?

Yes .....1

No.....2

Please explain:

3. Have you been given adequate access to visit/communicate with your lawyer?

Yes .....1

No.....2

Please explain:

4. In general, how would you say you are treated by the guards or other staff of the detention center?

Very Well.....1

Well.....2

Neutral.....3

Poorly .....4

Very poorly .....5

Can you explain this with any specific examples?

5. Is there any other relevant information/experiences you would like to add?

6. What are the 3 things you have found most difficult about being in detention?

7. What are the 3 things that most help you cope with your current situation?

8. List 3 things that could improve conditions in detention:

**THANK YOU FOR COMPLETING THIS QUESTIONNAIRE**