Improving U.S. Asylum Seeking Practices

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INTERNATIONAL RESCUE COMMITTEE

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Disclaimer

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HONOR PLEDGE: On my honor as a student, I have neither given nor received unauthorized aid on this assignment.

Acronyms and Defined Terms

EO:
Executive Order

ICE:
U.S. Immigration and Customs Enforcement

DHS:
U.S. Department of Homeland Security

CBP:
U.S. Customs and Border Protection

USCIS:
U.S. Citizen and Immigration Services

RFI:
Request for Information

AORs:
Areas of Responsibility

UACs:
Unaccompanied Alien Children

INA:
Immigration and Nationality Act

CA:
Central America: Mexico, Honduras, El Salvador, and Guatemala

ASYLUM PROGRAM:
Program for refugees seeking asylum at U.S. port-of-entry or inside of the United States.

REFUGEE PROGRAM:
Program for refugees seeking asylum outside of the United States.

AFFIRMATIVE ASYLUM:
Regardless of legal status, an immigrant may seek affirmative asylum by filing an I-589 form to USCIS for "Asylum and Withholding of Removal", within one year of arrival into the country.

DEFENSIVE ASYLUM:
If apprehended for illegal entry, an immigrant may request defensive asylum as a defense against removal from the country.

FIRST CONTACT OFFICER:
These are DHS officials who first come in contact with the immigrants seeking asylum. These officials include CBP and ICE agents.

HUMANITY PRINCIPLE:
Human suffering must be addressed whenever it is found. The purpose of humanitarian action is to protect life and health and ensure respect for human beings (Hilhorst et al, 2002).

NEUTRALITY PRINCIPLE:
Humanitarian actors must not take sides in hostilities or engage in controversies of a political, racial, religious or ideological nature (Hilhorst et al, 2002)

OPERATIONAL INDEPENDENCE:
Humanitarian action must be autonomous from the political, economic, military or other objectives that any actors may hold with regard to areas where humanitarian action is being implemented (Hilhorst et al, 2002).

IMPARTIALITY:
Humanitarian action must be carried out on the basis of need alone, giving priority to the most urgent cases of distress and making no distinctions on the basis of nationality, race, gender, religious belief, class or political opinions (Hilhorst et al, 2002).

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Executive Summary

In 2017, the United States granted asylum to 16% fewer applicants than in 2017, despite lack of changing trends (Authors Calculations, 2018). The U.S. Asylum Program does not have a uniform standard of assessment in all points of contact with asylum seekers. This lack of consistent protocols for treatment of asylum seeking individuals has led to fraudulent determinations made by untrained officials. The Trump administration's rhetoric on Central American migrants is a key example of how biased leadership and prejudice can affect the asylum seeking process in the United States. According to Human Rights First, the U.S. government is illegally turning away asylum seekers at official land crossings all along the southern border (Crossing the Line, 2017). On a similar note, First Contact Officials often apply personal discretion on whether an individual is eligible to access the official asylum procedures. Despite the many legitimacy problems observed in entirety of the U.S. asylum seeking process, the point of first contact is where the process begins and where the most fraudulent actions are occurring. It is essential to assure that all asylum seekers have access to assessments by trained officials and are not denied access to apply for affirmative asylum at a port-of-entry. The goal of this report is to propose the best policy option for the International Rescue Committee to advocate in its engagement with the Executive Branch or the Department of Homeland Security.

Presented Policy Alternatives

I. Let Present Trends Continue
II. Incorporate Annual Review of Asylum Practices in DHS and Apply New Training for First Contact Officials
III. Build Asylum-Focused Processing Facilities in Mexico
IV. Expand Legal Orientation Programs to all Detention Centers

Recommendation – Build Asylum-Focused Processing Facilities in Mexico

Option three recommends that the U.S. build 10 asylum processing facilities in Mexico to improve asylum practices and reduce failures of First Contact Officials in assessing asylum seekers. The processing facilities will have limited detention space of 1,000 occupants to provide safe-housing for those under threat. Processing facilities will be staffed by trained USCIS asylum officers and ICE and CBP agents who are thoroughly trained to uphold asylum principles. The asylum focus of the facility will reduce the need to go through First Contact Officers to gain proper asylum assessment and, in turn, increase positive asylum decisions to those deserving.

Problem Statement

In 2017, the United States granted asylum to 16% fewer applicants than in 2017, despite lack of changing trends (Authors Calculations, 2018). The U.S. Asylum Program does not have a uniform standard of assessment in all points of contact with asylum seekers.

Background

Asylum in the United States

Under international conventions the United States has agreed to establish an asylum system that serves on the basis of need alone and make no distinctions on the basis of nationality, race, gender, religious belief, class or political opinions. The ability for asylum assessment procedures to remain impartial is fundamental to the humanitarian aim of granting protection to those in need. The U.S. Asylum Program does not currently meet the humanitarian objectives established, and expected, by the international community.

Under the 1951 UN Refugee Convention (UNRC), the UN defines persecution on the basis of race, religion, nationality, membership in a particular social group, or political opinion. The U.S. Immigration and Nationality Act (INA) section 101(a) (42) defines persecution under the same five principles established in the UNRC ("AILA B", 2017). A refugee is a person unable or unwilling to return home because they fear serious harm from such persecutions (UNCR, 2011). The U.S. Asylum Program ("Asylum Program") is a form of protection available for persons who meet the definition of a refugee and are already inside of the U.S. or at a port of entry. The U.S. Refugee Program ("Refugee Program") is a form of protection available for persons located outside of the U.S. who can demonstrate that they were persecuted or fear persecution. This report will focus on the Asylum Program and how it applies to Central American immigrants from El Salvador, Honduras, Guatemala, and Mexico.

The Asylum Program has two pathways for protection. An immigrant, regardless of legal status, may seek Affirmative Asylum ("Affirmative Asylum") within one year of crossing into U.S. territory or arriving at a port of entry. Under Defensive Asylum ("Defensive Asylum"), if apprehended for illegal entry, an immigrant may request protection as a defense against removal from the country. At the southern border, Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) agents ("First Contact Officials") are often the first to make contact with immigrants seeking asylum. First Contact Officials at the southern border are met with defensive asylum seekers during apprehension and affirmative asylum seekers at official U.S-Mexico ports of entry. In accordance with the INA, all immigrants who express intent to request asylum are to be referred to U.S. Citizenship and Immigration Services for screenings by trained asylum officers (Credible Fear HRF, 2018). Because CBP and ICE agents are rewarded on the basis of apprehensions and immigration prevention,

First Contact Officials take it upon themselves to conduct the "screening" procedures. CBP and ICE agents are not trained in screening for fear of persecution.

Although the Department of Homeland Security (DHS) does not collect data on intent to request asylum and access to proper protection screenings, a report by Human Rights Watch presents anecdotal evidence that the U.S. government is illegally turning away asylum seekers at official land crossings all along the southern border (Crossing the Line, 2017). Human Rights Watch interviewed 125 individuals and families that have been wrongfully denied access to the U.S. asylum procedures at U.S. ports of entry (Crossing the Line, 2017). According to a study conducted by the Government Accountability Office, CBP agents who screen unaccompanied minors at the southern border do not consistently apply the required screening criteria and often fail to document the decisions from their screening (Crossing the Line, 2017).

Turning back asylum seekers at southern ports of entry prevents Central American immigrants from accessing the Affirmative Asylum process. Rejecting access to affirmative asylum is concerning, not only because of its illegal nature, but also because of the disparities in approval ratings between affirmative and defensive asylum. In 2016, the Executive Office for Immigration Review (EOIR) granted 83% positive affirmative asylum decisions and only 31% positive defensive asylum decisions (Nadwa, 2016).

Lack of legitimacy for affirmative asylum at the southern border ultimately influences these migrants to cross the border illegally and take their chances in the defensive asylum procedures. In crossing illegally, many asylum seekers get apprehended before they are able to apply affirmatively within the United States. Detention facilities also have systematic failures in access to official asylum procedures. In accordance with the 1996 Illegal Immigration Reform and Immigration Responsibility Act (IIRIR Act), fear screenings are required to be a component of the expedited removal process (Credible Fear HRF, 2018). In agreement with the UN *non-refoulement* principle, the IIRIR Act aims to assure that the U.S. does not summarily deport persons with fear of persecution who are not aware of their rights (UNCR, 2011). However, due to the limited staff trained on legitimate fear screenings and an increase in asylum arrivals, CBP and ICE officials have taken it upon themselves to conduct these assessments (Credible Fear HRF, 2018).

Present Trends

In addition to the barriers established above, the Trump administration is intentionally enacting policy and practices that further limit access to humanitarian protection. As asylum is a type of immigration, it is ultimately under the jurisdiction of the executive branch as a national security concern. The Secretary Homeland Security is appointed by the President and therefore bound to carry out the agenda of the administration in office. The USCIS, CBP, and ICE are all under the jurisdiction of the Department of Homeland Security, and therefore subject to change in practices promulgated by the Trump administration. The Executive Office for Immigration Review (EOIR) is directed by the U.S. Attorney General (AG), and its Immigration Judges (IJ) are assigned by the U.S. AG with no secondary approval. EOIR Immigration Judges have the final say in the asylum approval process. According to a memo released by the Department of Justice on December 5th, 2017, the EOIR has hired 50 new IJ's since President Trump's inauguration and intends to hire 60 more (DOJ Decision, 2018). With no secondary approval, the AG is free and likely to hire Immigration Judges who will uphold conservative ideology in assessment and approval of asylum. See Appendix A for further changes made by Attorney General Jeff Sessions.

On January 25th, 2017 the Trump Administration released Executive Order (EO) 13767 titled "Border Security and Immigration Enforcement Improvements" (EO 13767, 2017). The operational intent of EO 13767 is to reduce the back log of pending immigration cases by limiting access to asylum and increasing detention and deportation. See Appendix A for an in depth analysis of EO 13767 and its effect on asylum in the United States.

The Trump Administration has limited access to asylum in the following ways:

- Expansion of 287 (g) Program; allows localities to enter into agreements with DHS to deputize their local police to enforce federal immigration law (EO 13767, 2017).
    - According to a report by the National Immigrant Justice Center, this program has been found to result in rampant racial profiling and civil rights abuses. Additionally, this program will increase the number of First Contact Officials without proper training to assess asylum seekers (Altman, 2017). See Appendix A for further details.
- Hiring of 5,000 CBP Officers (EO 13767, 2017)

- Expansion of CBP agents with no expansion of USCIS trained asylum officers, will further affect the number of asylum seekers assessed by inadequately trained officers. See Appendix A for further details.

- Hiring of 10,000 ICE Officers (EO 13767, 2017)
  - Expansion of ICE agents with no expansion of USCIS trained asylum officers, will further effect the number of asylum seekers assessed by inadequately trained officers. See Appendix A for further details.
- Surge Initiative; emphasizes the targeting and arresting of parents or sponsors who come forward during asylum hearings of unaccompanied children (EO 13767, 2017).
  - This initiative leaves children without family ties and discourages children from seeking affirmative asylum or legal status as a whole. See Appendix A for further details.
- New USCIS Asylum Officer Training Guidelines
  - In 2017, under orders from the Trump Administration, the USCIS published a new Lesson Plan for training asylum officers on credible fear determinations. The new lesson plan removed multiple sections of the 2014 guidelines indicating it necessary to consider "reasonable doubt" and failed to mention the right of referral to an Immigration Judge if determination cannot be made. See Appendix B for further details.
- Presidential Rhetoric Condoning Affirmative Asylum at Southern Border
  - In response to recent caravans of Asylum seekers at the Southern border, President Trump has demanded that the CBP and ICE officials not let in large caravans of individuals seeking affirmative asylum (Jordan, 2018). Officials cannot oblige to these demands due to U.S. and International law. Rhetoric such as this can influence CBP and ICE officers to take illegitimate action when they are not being observed by the media.

Global Approaches

In response to the growing number of asylum seekers world-wide, the international community has pursued non-traditional pathways as an alternative to provide humanitarian protection. Near the end of 2016, there were around 2.8 million refugees (Global Trends, 2016). States continue to express a willingness to bolster solutions by adapting mobility routes for those in need of protection.

In Jordan and Lebanon, a civil-society-based project developed a 'talent register' to facilitate employment for asylum seekers in third countries through labor mobility schemes (Migration Policy, 2016). Employers in Canada and Australia have committed to work within relevant skilled migration frameworks to employ qualified refugees (Migration Policy, 2016). Education prospects such as community, private, or institution-based study visas, scholarships, internships, and apprenticeship opportunities also serve as alternate solutions to increasing need for asylum.

Since 1999, the EU has worked to create a Common European Asylum System (CEAS) (Common EU System, 2018). Between 1999 and 2005, numerous actions were adopted to harmonize common minimum standards (Common EU System, 2018). The key EU rules in setting common standards and stronger co-operation for a fair and open system include: the revised Asylum Procedures Directive, the revised Reception Conditions Directive, the revised Qualification Directive, the revised Dublin Regulation, and the revised EURODAC Regulation (Common EU System, 2018). The Dublin Regulation and Qualification directives provide guidelines to determine which EU member state is responsible for an asylum seeker. A neighboring country deemed safe enough for an individual to seek asylum is considered a "Safe Third Country" (Gil-Bazo, 2006). Establishing the first country of entry for an asylum seeker is necessary to determine which country is responsible for an individual humanitarian protection.

Safe Third Country jurisdiction is an asylum issue seen across the globe. The Trump administration claims that Mexico should be a safe third country and that refugees from Honduras, El Salvador and Guatemala should seek asylum in there (Jordan, 2018). According to Human Rights First, the U.S. and Mexico have collaborated to block access to U.S. ports of entry and create an appointment system in Tijuana, Mexico that CBP agents continue to use as a reason to turn away asylum seekers. Asylum seekers are turned away if they do not have an appointment given to them by Mexican officials, which Mexican officials often refuse to provide (Crossing the Line, 2017). This illegitimate system of asylum is not in accordance with domestic or international refugee laws.

Safe Third Country agreements are especially important to the EU as all countries within the EU are Safe Third Countries and many are landlocked. The EURODAC regulation established a Europe-wide fingerprinting data base for unauthorized entrants to the EU (Common EU System, 2018). The

revised Dublin initiative assures uniform transfer of asylum seekers to initial country of entry. The EU common standard initiatives are the latest changes to adjust to increase asylum in the EU and are the cornerstone of streamlining asylum regulation in Europe.

Germany continues to be the largest recipient of new asylum applications, with 722,400 registered during 2016 (Germany Country Report, 2017). As a landlocked country, their asylum process begins when a migrant is reported at the border. If an individual seeks access without necessary documents, they can be immediately denied and removed to a Safe Third Country (Germany Country Report, 2017). Individuals arriving to an international airport in Germany without necessary documents are subject to "airport procedures"; these accelerated assessment procedures elect whether an individual is eligible to enter the territory and be referred to the regular procedure. The regular procedure is filed at the German Federal Office for Migration and Refugees, applicants are accommodated in "initial reception center" for up to 6 months. Fear interviews take place in reception centers, afterword's individuals are often sent to local accommodation centers. A key response to the increase influx of asylum seekers was to increase the number of arrival centers and establish the 2017 legislative reform allowing the detention of applicants for up to 24 months (Germany Country Report, 2017). Another key response to rising asylum need was the government initiative to facilitate family reunion of Syrian refugees located in Turkey and Lebanon. This initiative addresses existing practical, administrative, and legal obstacles to family reunification. It is essential to note that unlike the U.S., Germany grants conditional asylum. Germany permits 3 years of legal residency for persons with refugee status, 1 year for beneficiaries of subsidiary protection, and at least 1 year for beneficiaries of humanitarian protection (Germany Country Report, 2017). The U.S. allows individuals who have been granted asylum to apply for lawful permanent residency after they have been legally present in the U.S. for at least one year (Green Card Asylees, 2017).

Greece has seen increasing immigration flows since 1990 due to its geographic location. In 2016, Greece saw a fourfold increase in individual asylum claims (Greece Country Report, 2017). In response, Greece has issued several new initiatives with a focus on policing, building reception and integration systems, and prioritized accelerated assessment (Greece Country Report, 2017). A key change for Greece is the EU-Turkey Statement, which deems Turkey a Safe Third Country. This change proclaims all Greek islands entirely inadmissible for claiming asylum. Per the EU-Turkey Statement, for every Syrian returned to Turkey from the Greek islands, a Syrian refugee in Turkey will

be resettled to Europe. In order to comply with this new regulation, Greece established a Fast Track Border Procedure: when an applicant arrives on Greek islands they get placed in Reception and Identification Centers, applied concept of "safe third country", and an opportunity to appeal the decision (Greece Country Report, 2017). Under these new procedures, the right to an oral hearing has been severely restricted. This accelerated program is limited to a 3-month examination period, where a traditional period is 6-months.

In 2017, the Netherlands had 16,785 asylum seekers and only 7,365 pending cases by the end of the year (Global Appeal, 2018). Nordic countries are regarded as some of the most efficient at navigating and processing asylum seekers. With a 51% rejection rate, the Netherlands is seen not only as efficient but as fair from a humanitarian perspective on asylum (Netherlands Country Report, 2017). Applicants are processed in three days at the Central Reception Center (COL), under which they are interviewed, assessed using data from EURODAC, and evaluated on whether another Member State is to assume responsibility under the Dublin Regulation (Netherlands Country Report, 2017). Once processed, the Dutch Immigration and Naturalization Service (IND) applies a five track policy. Key changes to the process include the intensity of the judicial review conducted by Regional Courts; an administrative judge is no longer eligible to substitute his or her own credibility of the asylum seeker's statement for that of immigration authorities. Traditionally, the Dutch asylum process provides free legal assistance at all asylum application centers. A state-funded organization is responsible for making sure sufficient lawyers are listed for use every day. The new Dutch administration has announced that free legal assistance is to be limited, preventing legal aid before the start of the actual asylum procedure. Similar to other EU member states, the Netherlands provides three asylum status options: refugee, subsidiary protection, and humanitarian protection. Per the three asylum status options, the Netherlands, like many EU member states, does not grant permanent legal status to asylum seekers or refugees (Netherlands Country Report, 2017).

Methodology

The U.S has significant flaws within their asylum process that prevent access to protection for all who seek it. This problem is due, in part, to the national security nature of immigration and, in turn, the unique jurisdiction and influence of the executive branch on matters of asylum. The only entity trained on asylum under DHS is USCIS, despite the interaction of other departments with asylum seekers. The systematic failure of First Contact Officials to acknowledge the rights of asylum seekers perpetuates a lack of impartiality and a long standing agency culture of serving a political agenda with little regard for humanitarian principles.

The following sections of this report will develop and assess four policy options, and recommend the best possible alternative for the International Rescue Committee to advocate for in its engagement with DHS and the Executive Branch. The goal of these interventions is to decrease long standing systematic bias of officials throughout the asylum process, ultimately establishing more uniform asylum trends across administrations. The evaluation criteria by which the policy options will be evaluated are presented first. The criteria are then followed by a description and assessment of each policy option. Lastly, the report will recommend a policy option and reflections for the International Rescue Committee to improve impartiality within the U.S. Asylum process.

Scope

The scope of this report pertains to the actions of the executive branch and the Department of Homeland Security on asylum in the United States. The scope is limited to individuals seeking asylum at the southern border. First contact in both affirmative and defensive asylum cases is considered.

Evaluative Criteria

Evaluative criteria include cost-effectiveness, longevity, impartiality of the process, political feasibility, and administrative feasibility. Each policy option will be assessed in line with these five evaluative criterion. Below is an in detail description of each criterion that will be used.

Cost-effectiveness

Cost-effectiveness will estimate the total costs and projected outcome of each policy alternative. The criterion assesses the extent to which each alternative maximizes the opportunity for an individual asylum seeker to be referred to proper channels of claiming asylum in the United States.

The base cost assumes that the only function of CBP, ICE, and USCIS is to grant access to asylum procedures. It is essential to note that this is not the case. Due to lack of information on specific costs attributed to asylum under CBP, ICE, and USCIS, this assumption was the primary form of calculating the base cost. The base cost is averaged from the 2009-2016 eight-year period and adjusted for inflation. The additional cost of implementing each policy option is then calculated and added to the base cost for the total costs. Total costs are divided by the projected outcome of each option (increase in asylum granted) to establish the cost-effectiveness ratio.

Increase in asylum granted addressees access to formal asylum procedures because if there is an increase in access to asylum procedures, it is assumed there should be an increase in asylum granted. Total costs are discounted at 3 percent over an eight-year period in accordance to the Office of Budget and Management (OMB) Circular A-4.

Longevity

This criterion will assess the long term effect of proposed changes. As immigration is a matter of national security, the Executive Branch has immense influence over the quality with which First Contact Officials treat asylum seekers. The key factors under consideration include: durability between changing administrations, extent of bi-partisan support, and complexity of the changes. Each policy option will be scored on a measure of 1 to 3 based on the scale of low longevity, medium longevity, and high longevity.

Impartiality of Process

A key aspect of any asylum application process is the ability to remain impartial. USCIS asylum officers have thorough training mechanisms in place to prepare them to engage with asylum seekers. First Contact Officials have no training mechanisms to engage with or assess asylum seekers. This criterion will assess the extent to which the policy alternative incorporates the following factors: ability to ensure respect for human beings (humanity), referral from taking sides or engaging in controversies of a political, racial, religious, or ideological nature (neutrality), ability to carry out task on the basis of need alone (impartiality), and ability for actions to remain autonomous from the political, economic, or military objectives that any actor may hold (operational independence). Each factors will be weighted at 0.75 and attributed a score out of that weight, adding up to a total of 3. The aggregate score will determine the impartiality of the process with the following scale: low impartiality (1), medium impartiality (2), and high impartiality (3).

Political Feasibility

Political feasibility is measured by the likelihood of the executive branch to implement the policy option. Given that the executive branch has jurisdiction over all matters of national security, it is essential to assess the extent to which each policy option will garner the most political and financial support from the current administration. Each policy option will be scored on a measure of 1 to 3 based on the scale of low political feasibility, medium political feasibility, and high political feasibility.

Administrative Feasibility

Administrative feasibility is key to assuring policy alternatives are genuinely incorporated into the day to day practices and culture of an organization. This criterion will assess the extent to which the policy alternative will be accepted within the organization's culture and practices. The assessment will incorporate the following factors: level of organizational support, number of complex changes, number of opportunities for internal implementation, and prioritization of department leadership. Each policy option will be scored on a measure of 1 to 3 based on the scale of low administrative feasibility, medium administrative feasibility, and high administrative feasibility.

Assumptions for Analysis

The following assumptions were taken in the assessment of the policy criteria. Using data from the Department of Homeland security, the authors calculations on number of apprehensions per CBP officer were used to project number of apprehensions a year in an eight-year time period, accounting for new hires. In agreement with the established trends of the FY2018 DHS Budget-in-Brief, only 10% of hires requested by EO 13767 are implemented per year during the eight-year time period. The analysis assumes no change in external conditions influencing asylum sought in the United States.

Policy Options

This section will provide a description and evaluation of the four proposed policy options for the International Rescue Committee. Each option is intended to improve the asylum seeking process by increasing the likelihood that an applicant's case will be considered by a trained asylum official. The policy alternatives focus on First Contact Officials effect on access to proper asylum channels and asylum granted. Below is an outcomes matrix of the four proposed policy options.

Option 1 – Let Present Trends Continue

Present trends include DHS practices outlined in the background section as well as the policy changes that have come into effect as a result of EO 13767 and the Trump Administrations rhetoric.
Present trends do not maintain clear and legitimate pathways to access the asylum process, ultimately reducing the probability of being granted asylum.

The present trends that have attributed to reduced asylum protection include various changing practices and increase in apprehension enforcement. Present trends are publically funded by the DHS FY 2018 Budget. DHS has not yet acquired all necessary personnel for application of EO practical and administrative changes. DHS has indicated a 10% hiring rate of personnel President Trump has indicated to hire in 2018 (2018 Budget-in-Brief). This implementation rate has been assumed for the entire eight-year period. The effect of the changes implemented to date are seen in the 16% reduction in asylum granted in 2017 alone (Author Calculations, 2018).

Cost-effectiveness

Cost-effectiveness can be separated into two categories: costs and project outcomes of asylum granted. In regards to cost of present trends, the three key programs that require additional funding and affect the quality of First Contact protocols include: the hiring of 10,000 new ICE officers, hiring of 5,000 new CBP officers, and increase in detention capacity. As established by DHS during FY 2018, the hiring of new officers is implemented at 10% of total intended hires per year. The cost per year is calculated for an eight-year period in in accordance to the Office of Budget and Management (OMB) Circular A-4. The eight-year time period is from 2018-2025.

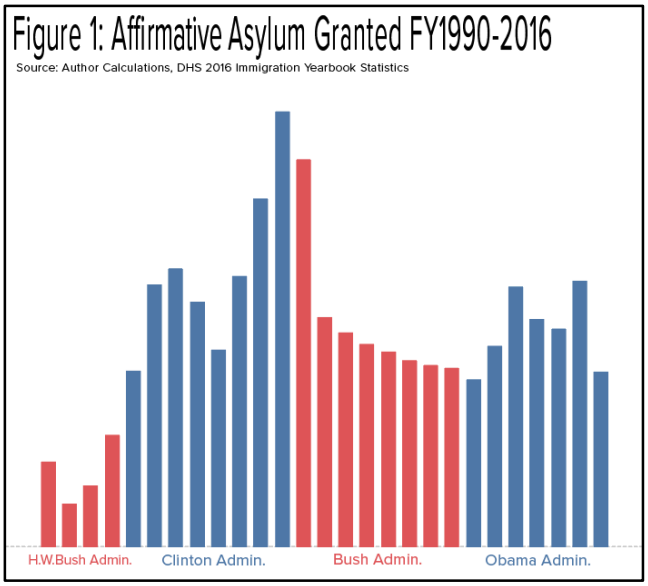
As indicated above, the major cost categories assessed include the additional hiring of ICE and CBP agents, as well as the increase in detention capacity. As per the DHS 2018FY Budget-in-Brief memorandum, the calculated cost for the year of 2017 alone, includes an increase of approximately $1.5 billion allocated to key programs identified within ICE and CBP. The **average annual cost is $26.7 billion** and the **total cost is $213.4 billion** (Authors Calculations, 2018). The projected increase in average annual cost of 2018-2025 is $1.5 billion higher than the average base costs.

The projected outcome for effectiveness is the total asylum granted per year over an eight-year period. Assuming all external trends are consistent, the effect of key implementations assessed indicate a **total of 116,952 positive asylum decisions** between 2018-2025. The **annual average is 14,619** during the eight-year time period (Authors Calculations, 2018).

Given the estimates above, the cost-effectiveness of maintaining present trends for an eight-year time period is projected to be **$1.82 million per asylum granted**. Cost per asylum seeker is extremely high due to the assumption that all ICE, CBP, and USCIS costs are included in the base cost and attributed to the projected outcome. It is important to note that all options have this assumption, therefore the cost-effectiveness ratio still serves its purpose. The large cost per asylum granted for present trends are attributed to the fact that present trends are focused on increase in apprehension and detention, with no additional resources provided for defensive asylum. This increases costs while driving down the number of trained asylum officials and therefore, asylum granted.

Longevity

Option one has **medium longevity** due to the extent to which the executive branch has influence on changing asylum practices. Per figure 1, asylum practices have a long history of altering in response to political affiliation of the leadership in office. If present trends continue, it is likely that asylum granted will increase with a change in political party of the executive branch and decrease further if President Trump wins his second term. The complexity of the changes administered by President Trump do not affect overall longevity of the policy option because they are bound to alter with change in leadership.



Impartiality of Process

On a scale of 1 to 3, option one is determined to have **low impartiality**. Impartiality is at the root of improving the current asylum process in the United States. As indicated in EO 13767, the Trump Administration implemented policy changes that have further limited humanitarian protection and access to asylum. The following rates are applied to the four humanitarian principle out of 0.75: 26% on humanity (0.25/0.75), 26% on neutrality (0.25/0.75), 26% on impartiality (0.25/0.75), and 26% on operational independence (0.25/0.75). Given the estimates on the humanitarian principles, option one receives a 1 out of 3 on the established scale, indicating it has low impartiality.

According to a study released by the Center for Immigrants' Rights Clinic, immigration detention has a long history of failing to meet health and safety standards (Imprisoned Justice, 2017). The low score for humanity is attributed to the long term inability of detention centers to prioritize the most distressed and assure healthy standards of living. In regards to "operational independence", the score granted is at 26% due to the extreme measures President Trump has taken to control DHS agents dealing with asylum. Trump has directly tweeted at DHS officials them to "not let them [asylum seekers] in" (Sieff, 2018). Similarly, in regards to neutrality and impartiality, both have failed under the Trump Administration due to the biased rhetoric of President Trump to associate all Central American

immigrants with drug trafficking and criminal activity. See Appendix A for a detailed analysis of asylum degradations under the Trump Administration.

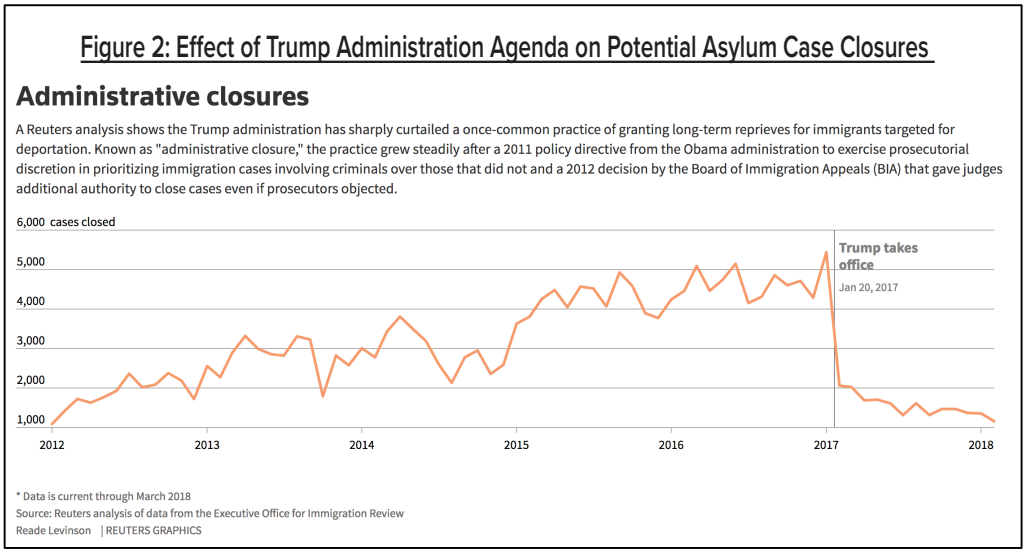
Political Feasibility

Given that the budget for policy changes by the Trump Administration has already been allocated and policy changes initiated, political feasibility is **high** on multiple levels of scale and price points. Political feasibility is highly dependent on changing leadership, due to the nature of asylum under the jurisdiction of national security.

Administrative Feasibility

The administrative feasibility for this option is **high**. DHS is the entity under which policy options are designated and implemented. As the U.S. President is in his power to select the Secretary of Homeland Security and Attorney General, the leadership of USCIS, CBP, ICE, and EOIR are all directly in line with the agenda of the executive branch.

As per Figure 2, the Trump Administration has sharply curtailed a once-common practice of granting long-term reprieves for immigrants and individuals potentially eligible for asylum. The immediate response of asylum granting entities to the priorities of the trump administration's rhetoric and agenda, exemplifies why the political administrative feasibility for present trends is high.



Option 2 – Incorporate Annual Review of Asylum Practices in DHS and Apply New Training for First Contact Entities

The First Contact Officials are the ultimate gateway to asylum in the United States. In the scope of the U.S.-Mexico border, CBP and ICE officers are the first to interact with an individual with the intent to apply for asylum. As established in the Human Rights First report "How to Protect Refugees and Prevent Abuse at the Border", CBP and ICE officers often deny applications for affirmative asylum at ports of entry and fail to refer defensive asylum applications to officially trained asylum officers (How to Protect, 2014).

Option two proposes training CBP and ICE agents on basic asylum principles, in order to assure an understanding of proper asylum channels. The failure of First Contact Officials to refer asylum seeking individuals is well established. Due to the national security nature of the job, CBP and ICE agents are likely to continue remain First Contact Officials. Therefore, training these individuals to assure their understanding of basic asylum principles is essential to increase access to proper channels for asylum assessment. Option two also recommends that DHS incorporate an annual review of its ability to uphold humanitarian principles in regard when processing asylum seeking individuals. It is essential that DHS leadership does not limit access to asylum as a bilateral consequence of enforcing stricter border protection.

Cost-effectiveness

The primary programs that are calculated in the cost of Option 2 includes the contracting of a private sector consulting firm, the additional yearly cost of incorporating new CBP and ICE personnel for training purposes, and the cost of implementing annual surveys for asylum seekers granted admission who established first contact with CBP or ICE agents. The total cost is calculated over an eight-year time period divided by the projected outcome. As per calculated costs based on the DHS FY2018 Budget-in-Brief, policy option two is an **average annual cost of $27.8 billion** and **the total cost is $222.9 billion**, both accounting for base costs and the eight-year time period (Authors Calculations, 2018). The average increase from annual base-costs to annual costs necessary for policy option two is $7.8 billion (Authors Calculations, 2018). As a reminder base cost is the average annual cost of USCIS, CBP, and ICE budgets between 2009-2016. The base costs include all aspects of the three indicated departments of DHS due to lack of information on specific budget allocations for asylum.

The projected outcome for effectiveness is the total asylum granted per year over an eight-year period. Assuming all external trends are consistent, the effect of key implementations assessed indicate a **total of 227,286 positive asylum decisions** between 2018-2025 (Authors Calculations, 2018). Over the eight-year period, the **annual average is projected at 28,410** positive asylum decisions.

Given the assumptions above, the cost-effectiveness of implementing option two is projected to be **$980,951 per asylum granted** (Authors Calculations, 2018). Costs per asylum granted drop sharply from option one because of increase funding for asylum assessment and in turn decrease in immigration detention occupancy. When individuals seeking asylum have access to properly trained personnel, they estimated to be processed and ejected more quickly than those assessed by untrained officers.

Longevity

Option two has a **medium-high longevity**. Long term sustainability beyond change in leadership is a key pillar for longevity. Acknowledging the failures of First Contact Officials allows for the policy alternative to dive beyond the surface and affect the root of the problem. Training First Contact Officials directly can change the organizational culture and remain in effect well beyond change in leadership. Incorporating an annual review can change the reward system for officers, influencing them to be more reasonable with asylum seekers. Option two is not implemented by law, rather practice, making it easy for a change in leadership to reverse it. The ability to reverse programs from option two lower the longevity.

Impartiality of Process

Option two has **low impartiality**. This option presents a key trade off in the two humanitarian principles of "operational independence" and "impartiality". In accepting failures of First Contact Officials to properly allocate asylum seekers, operation independence further devalued. Training ICE and CBP officers to identify their prejudice and react appropriately during first contact interactions increases both "impartiality" and "neutrality". The following rates are applied to the four humanitarian principles: 40% on humanity (0.3/0.75), 50% on neutrality (0.375/0.75), 66% on impartiality (0.5/0.75), and 26% on operational independence (0.2/0.75). Given the estimates on the humanitarian principles, option one receives a 1.4 out of 3 on the scale, indicating a low impartiality.

Political Feasibility

Option two has a **low political feasibility**. The priority of the Trump Administration is to reduce immigration from Central America. This means both illegal aliens and individuals seeking asylum. The Trump Administration is not likely to allocate money to the additional annual reviews or training mechanisms, unless they are directly associated with increasing deportations.

Administrative Feasibility

Option number two received a **low on administrative feasibility**. Administrative feasibility for this category is assessed on the genuine ability for the resolution to be incorporated into day-to-day practices. Given the current leadership of DHS and the overwhelming executive orders that the administration has already implemented, it is unlikely that department agents will take the additional responsibility of asylum procedure training seriously.

Option 3 – Build Asylum-Focused Processing Facilities in Mexico

Individuals applying for affirmative asylum must be inside the United States or at a port-of-entry. However, according to Human Rights First, Mexico and the U.S. have collaborated to form a third territory where individuals are assessed by Mexican and U.S. officials via an appointment system. This alternate assessment procedure in Tijuana, Mexico increases the failures of First Contact Officials and prevents Central American asylum seekers from claiming asylum through appropriate channels (Crossing the Line, 2017).

Option three recommends that the U.S. build 10 asylum processing facilities in Mexico, to formalize and legitimize the illegal third territory asylum procedures. The processing facilities will have limited detention space of 1,000 occupants to provide safe-housing for those under threat of life. Processing facilities will be staffed by trained USCIS asylum officers and ICE and CBP agents who are thoroughly incited to uphold asylum principles. The asylum focus of the facility will allow for humanitarian principles and quality of assessment to be the key objectives of the staff. If an individual is denied credible fear after legitimate analysis by a trained officer at one of the 10 processing facilities, he or she will be put on a black-list, indicating they are eligible for immediate deportation if illegal entry into the U.S. is attempted in the future. Asylum processing facilities will also be staffed with legal aid experts, eligible and willing to assist individuals in seeking affirmative asylum at an official port of entry.

Currently, there are similar non-governmental (NG) establishments in Mexico that serve as safe-houses for individuals escaping violence in Central America. These established safe-houses have limited resources and are not meant for long term housing. Due to the limited time frame and resources of established safe-houses, refugees alter their destination for asylum needs to the United States.

Cost-effectiveness

Cost-effectiveness can be separated into two categories: costs and project outcomes of asylum granted. Building an asylum-focused processing facility entails straight forward costs. The primary costs assessed in this cost-effectiveness analysis include: private contracting costs for facility construction, the one-time cost of hiring personnel to run the facility as well as annual salary costs, training costs, and cost of housing for 1,000 individuals per asylum processing facility.

Previously, ICE has partnered with GEO Group Incorporated to build immigration detention facilities (Burnett, 2017). Using GEO Group established contracting and infrastructure costs as well as ICE and CBP average training and salary costs in the DHS Budget-in-Brief, option 3 was calculated to **cost a total of $176.1 billion** over an eight-year period. Option 3 was calculated to **cost an annual average of $22 billion**, accounting for base-costs (Authors Calculations, 2018).

In order to calculate project outcomes, the following is assumed about implementation of the alternative: it is assumed that awareness of the facility among asylum seekers will be high, it is assumed that officers working in the facility uphold asylum and humanitarian principles due to priority in training, it is assumed that Mexico agrees to collaborate and that Mexican officials do not implement corrupt practices like pricey check-points on route to centers. Lastly, it in order to remain within the eight-year time period, it is assumed that the centers are all built within the first three years of the time period.

Given the assumptions above, the cost-effectiveness of building an asylum-processing facility in Mexico is projected to be $**486,044 per asylum granted**, on average over an eight-year period (Authors Calculations, 2018). Alternative three has high up-front costs due to the lack of increase in asylum while the centers are being built. The long-term benefits outweigh the costs because the option

is likely to reduce illegal entry by asylum seekers, and in turn reduce time spent in detention centers and the associated costs.

Longevity

Policy option three has **high longevity**. Due to the permanent nature of these facilities, it is highly likely that their effects will persist beyond any change is leadership. ICE, CBP, and USCIS officers who work in the facility will continue to be under the agenda of DHS and ultimately the executive branch but because these are newly built centers with the primary focus of improving the asylum assessment process, the organizational culture will be difficult to change.

Impartiality of Process

Policy option three has **medium-high impartiality** of the process. As the centers detention portion of the facility is optional to asylum seekers, centers are less likely to be overcrowded and therefore more likely to have higher standards of health and quality. As asylum-focused facilities are located in Mexico, they do not have an alternate motive of increasing deportation statistics, this is likely to improve both impartiality and neutrality. Operational independence is low, as the facilities will still be under the ultimate leadership and influence of DHS. Organizational culture may prevent this from being a problem, but it is essential to note that asylum-focused processing facilities are not completely independent. It is also important to note that the establishment of these facilities may increase failures by First Contact Officials because they will have an excuse to send individuals back to Mexico. Legally, individuals who have not been pre-assessed in Mexico are still eligible for defensive asylum if apprehended for illegal entry.

The following rates are applied to the four humanitarian principles: 86% on humanity (0.65/0.75), 86% on neutrality (0.65/0.75), 86% on impartiality (0.65/0.75), and 26% on operational independence (0.2/0.75). Given the estimates on the humanitarian principles, option one receives a 2.15 out of 3 on the scale, indicating medium-high impartiality.

Political Feasibility

Policy option three has a **medium-low political feasibility**. In EO 13767, President Trump directed DHS to begin plans to build detention facilities in Mexico (EO 13767, 2017). Asylum-processing facilities are similar in that they prevent detention inside of the U.S. and increase efficiency of expedited removal by black-listing pre-assessed individuals. These benefits may appeal to the Trump

administration. Option three is not completely politically feasible because the Mexico-based facilities are oriented towards processing asylum seekers and increasing the quality of their assessment.

Administrative Feasibility

Policy option three has **high administrative feasibility**. Expanding asylum assessment to Mexico-based processing facilities will generate an entire new aspect to the asylum seeking process. The DHS is not likely to object as this would legitimize the current third territory in Tijuana, Mexico. Establishing pre-assessment in Mexico would also facilitate the job of U.S.-based DHS officials because individuals may be eligible for custody, rather than detention while their case is being determined.

Option 4 – Expand Legal Orientation Programs to all Detention Centers

Beginning in 2005, the Vera Institute of Justice became the primary Legal Orientation Program (LOP) provider for U.S. immigration detention facilities (Siulc et al, 2008). LOP is a legal service provided to immigrants seeking defensive asylum during immigration proceedings. In 2018, the Vera Institute found that detained LOP participants had immigration court case processing times that were an average of 13 days shorter than cases for detained persons who were not served by LOP (LOP Cost Savings, 2014). The Syracuse University Transactional Access Clearinghouse found that asylum seekers with legal representation are five times more likely to be granted asylum than those without (Impact of Representation, 2014).

Option four expands on the established benefits of the Legal Orientation Program and proposes to implement the program in all detention facilities that do not currently have it. The benefit of legal services within detention centers can be two-fold: increase efficiency in immigration proceedings and decrease number of individuals held in detention. The implementation of this policy option would be made possible with the aid of the Vera Institute of Justice and partnering NGO's that provide legal aid for immigrants. The Vera Institute conducts internal reviews for efficiency and is likely to adjust application of legal aid to maximize efficiency for both the asylum seeker and the detention facilities (Siulc et al, 2008).

Cost-effectiveness

Cost-effectiveness can be separated into two categories: costs and project outcomes of asylum granted. Expanding the Legal Orientation Program to all detention facilities simply increases an already

established cost. In April 2013, the U.S. Justice Department released a Cost Savings analysis which projected the net savings of the program (LOP Cost Savings, 2013). Savings are attributed to increase in asylum determinations and in turn increase in rate of discharged individuals from detention facilities (LOP Cost Savings, 2013). Currently, LOP is only established in 25 out of 250 detention facilities. The implementation of this policy option would expand the program to 225 detention facilities.

Using established costs presented by the Department of Justice EOIR LOP Evaluation, **the total costs of expanding LOP is $167.9 billion**. Assuming all other factors remain consistent, policy option four has an **annual average cost of about $20.9 million** (Authors Calculations, 2018).

Access to legal aid does not necessarily mean legal aid avenues are used. Policy option four was assumed to have increased efficiency with time, due to lack of awareness among asylum seekers in initial stages of the program. Policy option four does not address the issue of First Contact Officials limiting the total pool of asylum applicants in the official asylum procedures to present trends.

Given the assumptions above, the cost-effectiveness of expanding LOP to all detention facilities is projected to be $**1.1 million per asylum granted**, accounting for base-costs on average over an eight-year period. This high cost can be attributed to the lack of increase in asylum-based trained officials. As stated in the Syracuse University TRAC study, access to legal aid makes an asylum applicant five times more likely to gain asylum, but it has no effect on gaining access to official asylum channels (Impact of Representation, 2014). It is important to note that the cost of asylum granted by additional costs, rather than total costs, is $996.39 per asylum granted over an eight-year time period.

Longevity

Policy option four has **medium longevity**. In the case of policy option number four, longevity is dependent on the if the legal aid program will continue to receive funding beyond change in leadership. This is uncertain because of the changing priorities of administrations. Ideally, under a more conservative leadership, the program can highlight detention cost-savings due to quicker processing times. The increase probability of being granted asylum is not seen as a benefit in more traditionally conservative leadership. Under traditionally moderate leadership, a simple cost-benefit analysis, qualifying asylum granted as a benefit, would increase likelihood of continued funding.

Impartiality of Process

Policy option four has **medium-high impartiality** of the process. Increasing access to legal aid allows asylum applicants access a fairer trial and determination, in the second half of the asylum procedures. Legal aid does not address the First Contact problem, failing to increase the access to proper channels of asylum. The following rates are applied to the four humanitarian principles: 86% on humanity (0.65/0.75), 86% on neutrality (0.65/0.75), 86% on impartiality (0.65/0.75), and 26% on operational independence (0.2/0.75). Given the estimates on the humanitarian principles, option one receives a 2.15 out of 3 on the scale, indicating medium-high impartiality.

Political Feasibility

On April 11th, 2018, the Vera Institute of Justice released a memo indicating that the Trump Administration has suspended the current application of the Legal Orientation Program (DOJ Decision, 2018). The administration claims the reason for suspension is to conduct a cost-benefit analysis. Given that previous cost-effectiveness analysis' have been conducted and present finings hat indicate high efficiency, the re-analysis indicates that there is low political feasibility in the current political climate. It is assumed that a new cost-benefit analysis will not assume increase in granting asylum as high. Due to the recent actions of the Trump administration, policy option four has **low political feasibility**.

Administrative Feasibility

Policy option four **has high administrative feasibility.** The implementation of this program into current DHS systems and day-to-day practices is highly likely because it has been done before. The simple replication of the previously implemented mechanisms would allow for a smooth and efficient transition into program expansion.

Outcomes Matrix

	Weight	Option #1	Option #2	Option #3	Option #4
Avg. Annual Cost	-	$26.7 billion	$27.8 billion	$22 billion	$20.9 billion
Cost-effectivenss	20%	$1,825,458.34	$980,951.59	$486,044.27	$1,175,075.00
Longevity	20%	Medium	Medium-High	High	Medium
Impartiality of Process	30%	Low	Medium	Medium-High	Medium-High
Political Feasibility	15%	High	Low	Medium-Low	Low
Administrative Feasibility	15%	High	Low	High	High

Sources: Authors Calculations using DHS 2016 Immigration Statistics Yearbook, DHS FY2018 Budget-in-Brief, and Syracuse University Transactional Records Access Clearinghouse.
Note: Annual costs include all costs under CBP, ICE, and USCIS in a year under the DHS budget. Annual costs are not only the cost of the program, rather the entire cost of annual operations, including the policy alterantive being evaluated.

Recommendation – Policy Option 3

This report recommends policy option three: advocate for U.S. asylum-focused processing facilities based in Mexico. As per the Outcomes Matrix, this policy alternative has a high rate of longevity, administrative feasibility, and impartiality. This policy option also has the lowest price for cost-effectiveness. Building asylum processing facilities in Mexico has positive effects on all stakeholders. Individuals who are aware of the facilities will be able to access them without the need to hire expensive and dangerous smugglers. Although increase in border security is not directly correlated with increase in smuggling, it is shown to affect the type of routes taken to smuggle individuals into the country, and increase the dangers of smuggling (Gathmann, 2008). Rather than facing these dangers, asylum seekers may seek safe-housing and asylum from properly trained U.S. officials.

Implementation

As established in the background, Mexico is not yet regarded as a Safe Third Country. Providing this proper U.S. channel for asylum within Mexico may decrease apprehension of persons with intent to apply for defensive asylum, and in turn decrease the backlog of asylum applications within the U.S. detention and immigration system. Unlike a detention facility with various types of immigrants, an asylum-only facility may be able to process applications more efficiently while maintaining high quality of assessment. The safe-house and asylum oriented nature of these facilities also provide external benefits to individuals seeking a safe-haven. Local NGO safe houses or sanctuaries for asylum seekers may cooperate with the asylum-processing facilities and assess whether U.S. asylum is the best option for individuals. This would provide more clarity to individuals blinded by fear of persecution who see the U.S. as the only safe option.

The ultimate aim of this report is to propose a policy alternative that will increase access to proper asylum procedures and increase asylum for individuals who are worthy. In the long run, option three allows for the U.S. government to legitimize and improve asylum procedures being conducted south of the border, reduce first contact with untrained officers, and reduce overall costs of asylum for the Department of Homeland Security.

Limitations

Advocating for this policy option will prove difficult due to the associated costs and general size of the project. In terms of appealing to the Trump Administration, the International Rescue Committee will benefit from highlighting the long term cost-effectiveness of the program and highlight the idea that less asylum seekers will attempt to cross illegally. There are some limitations to consider for the implementation of the Mexico-based asylum center. In order for the center to benefit the asylum seeker training for officers at the newly established centers is to be of the highest priority. CBP, USCIS, and ICE officers that work in collaboration with the Mexico-based asylum centers must understand in full the asylum procedures of the U.S. The center will benefit to partner with non-government organization south of the border that already provide sanctuaries for women and children.

It is essential to reiterate that policy option three was recommended with the assumption that Mexico will cooperate and allow the implementation of the processing facilities. This is assumed to be likely because Mexico would benefit from these centers as an additional resource for asylum seekers using Mexico as a country of transit. In running these centers in Mexico, it is possible that Central American smugglers and officers set up check point to reach these asylum centers to profit from the new access to U.S. backed safe-houses. In order to combat this, measures will need to be taken to educate Central American asylum seekers on their rights and the free-access to asylum assessment. Other enforcements may need to be taken to prevent corruption and assure access is not limited by third-party stakeholders (such as smugglers).

Conclusion

First Contact Officers have a key role to play in providing a thorough and legitimate asylum assessment procedure. The Trump administration is a key example of how drastically Presidential rhetoric can alter asylum practices in the United States. In order to assure that Central American asylum seekers have access to proper channels of asylum assessment, and are ultimately granted asylum when deserving, First Contact Officers must uphold asylum principles and refer all who intend to seek asylum to trained officials. Providing asylum processing facilities in Mexico will generate a more direct route to trained asylum officers for Central American refugees. Processing Asylees properly and in Mexico will decrease DHS detention costs, transportation cost, and appeals costs. Centers will allow a direct route for asylum seekers, avoiding potentially fraud First Contact Officers. Through prioritization of asylum training in Mexico-based asylum centers, more individuals will access proper channels for asylum assessment and in turn proper asylum determinations.

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Appendices

Appendix A: Changes in Asylum Practices under Trump Administration

Focus –

The focus of this memo is the effect of the Trump Administration's recent Executive Order (EO) on Border Security and Immigration Enforcement, as well other Administrative influence on the asylum seeking process. In turn, this memo expands on the Federal Agency policy, practical, and unofficial status quo changes in response to these orders on the protection mechanisms for those seeking Asylum in the United States.

Asylum is a status and form of protection for individuals that have suffered persecution in their countries due to: race, religion, nationality, membership in particular to a social group, and/or political opinion. In order to request asylum from the U.S. Government (USG) an individual must already be within the U.S. borders or have arrived at a port of entry. These definitions restrict the majority of asylum seekers to originate from Central American countries. Therefore, the majority of federal government changes have been geared towards the U.S. Southern Border and individuals from Central America, more specifically the Northern Triangle which includes: El Salvador, Guatemala, and Honduras.

Scope –

According to Section 208(a) of the Immigration and Nationality Act (INA), persons who are physically present in the U.S. or arrive at a port of entry may apply for asylum, irrespective of the individuals' immigration status[1].

Per section 208 (a) of the INA, the official process of seeking asylum begins at a port of entry where the foreign national directly seeks out government officials to begin the process (defensive proceedings), or when the foreign individual is seized for illegal entry by Customs and Border Protection (CBP) and subsequently files need for asylum (affirmative proceedings). Irrespective of the method of entry, Border Agents must refer persons seeking asylum or expressing fear prosecution to a protection screening interview or immigration court proceeding. According to the 1996 Illegal Immigration Reform and Immigration Responsibility Act (IIRIR Act), a component of the expedited removal process for illegal entry is a fear screening process[2]. This is to ensure the U.S. does not summarily deport genuine asylum seekers[2]. This memo will expand on the ways in which EO 13767 and Federal Agencies have altered the implementation of practices to degrade the legal rights of asylum seekers and the accompanying and active consequences of these changing circumstances.

On January 25th, 2017 the Trump Administration released EO 13767 titled "Border Security and Immigration Enforcement Improvements"[3]. EO 13767 was addressed directly at asylum seekers as a response to recent surge of illegal immigration at the southern border with Mexico. These are areas where federal agencies, immigration enforcement, and local communities are deemed overwhelmed with illegal alien entries. Per EO 13767, the surge in migration is established to be a threat due to the traditional criminal organizations that come in conjunction with illegal immigration; such as drug operations or human trafficking networks. The EO expands that it is the responsibility of the federal government to provide means and cooperate with border states to secure the Southern Border. The overarching enforcement improvements within the EO consist of:

- Fund construction of wall
- Mass detention at the border and interior

- Expand Detention Capacity
- Expand Expedited Removal
- Expand 287(g)
- Conduct Removal Proceedings Outside U.S.
- Limit Humanitarian Protection
- Criminal Prosecution of Unlawful Entry

The overarching goal of Trump Administration is to secure the Nation and its borders via the reduction of all migration, including the "abuse" of the asylum process. There are a handful of strategic ways in which these practical changes affect the ability for asylum seekers to receive quality fear interviews and ultimately protection.

Beginning with the immediate construction of a physical and monitored wall, there is a concern in the ability for asylum seekers to reach a port of entry, an aspect necessary to seek asylum. Historically, there have already been cases of "turn-back" mechanisms, where despite accessing U.S. officials and deeming need to asylum, legitimate applicants are returned by CP officers, whom do not have the legal jurisdiction to determine whether an individual may be eligible for asylum[1]. It is the job of CBP officers to refer migrants seeking asylum to USCIS where they are assessed for eligibility. Expanding and restricting further the physical border between U.S. and Mexico will only reduce further the number of asylum seekers that access the legitimate asylum consideration process with the USCIS.

There is an aim to increase prompt removal and expedite the determinations of apprehended individuals who claim eligibility to remain in the U.S. In expediting these determinations, there are aspects of the asylum determination process that are bound to be deteriorated likely decreasing the accuracy in assessments.

Expanding detention capacity to the exterior of the border is in the aim of gaining "complete operational control" of the border implies zero unlawful entries into the United States. This decrease in access to U.S. port-of-entries, again, decreases the access the legitimate asylum process.

The EO directed U.S. Attorney General (AG) Jeff Sessions to assign immigration judges to immigration detention facilities to conduct removal proceedings. The assignment of immigration judges does not require third party confirmation, therefore influencing the asylum jurisdiction process to further degradations through the strict interpretation of the INA. The U.S. Attorney General can refer any Board of Immigration appeal decision to his office for review, single handedly overturn decisions, and set interpretations of immigration law[4]. Interpretations set by the AG later become precedents in Immigration Courts, catapulting a long-lasting effect on the tone and stringency asylum seekers face in the protection seeking process.

Section 8 of EO 13767 establishes that Border Patrol shall take appropriate action to hire an additional 5,000 border patrol agents. The consequences of such a large up-scaling of border patrol agents without specific training mechanisms established increases the likelihood of maltreatment and violations of asylum protection principles. If patrol agents are not trained thoroughly and do not understand their limited responsibilities, there is a possibility of increased turn-back violations and failure to allocate asylum seekers to correct federal agency with asylum assessment jurisdiction.

Along similar provisions, the 287 (g) program allows local law enforcement agencies to participate as active partners in identifying criminal aliens in their custody[5]. EO 13787 states that there will be an effort to expand this program, enrolling more local and state government employees into border patrol jurisdiction[5]. The increase in untrained and often biased officers can increase tensions faced by illegal aliens and ultimately individuals eligible for asylum. Lack of understanding of the asylum process and the rights of aliens in the expedited removal process may reduce quality and access to fear screening and increase wrongful repatriation without the opportunity to present claims to a judge.

Section 11 of EO 13767 is most directed at limiting the asylum process in stating that there is a need to "assure asylum and parole are not illegally exploited". The section expands on the need to conduct credible fear interviews in a manner consistent with plain language of provision 235 (b) of INA[5]. Interpreting provisions "in plain language" is an extension of strict asylum protection principles aimed at decreasing quality and multidimensional nature of the assessment process.

EO 13767 indicates that the Department of Homeland Security (within 90 days of released EO) and AG (within 180 days) report to the President on the progress and changes made in respect to orders directed by the President. Below this memo will explore the changes made to DHS, USCIS, AG, CBP and ICE immigration enforcement practices in response to EO 13767.

❖ Executive Branch Intention to Include Citizenship Status on Census[6]

The potential move towards including citizenship status on the census demonstrates the Trump Administrations intent to crack down on all illegal immigration. Census data is used to allocate federal funds to certain localities and states. The increase in federal funds to certain states with high concentration of illegal immigration may indicate an increase in expedited removal and rushed assessment of asylum procedures.

Agency Policy and Practice Response –

In order to understand the practical changes made within federal agencies, it is essential to understand their relationship to one another and the Asylum process. The DHS stated goal is to prepare for, prevent, and respond to domestic emergencies, particularly terrorism[7].

Within DHS stands the Immigration and Naturalization Service (INS). The INS divided their enforcement and service functions into two agencies: Immigration and Customs Enforcement (ICE) and Citizenship and Immigration Services (USCIS). Lastly, under INS, therefore within DHS jurisdiction as well, is the border enforcement function of INS, which is encompassed by U.S. Customs and Border Patrol (CBP). Ultimately, all matters to do with immigration are regulated under the umbrella of DHS and the agencies within its functionality.

➢ **<u>Department of Homeland Security</u>**

In response to EO 13767, DHS released a memo titled "Enforcement of the Immigration Laws to Serve the National Interest". The memo constitutes guidance for all departments and their personnel regarding enforcement of U.S. immigration laws (i.e. ICE, CBP and USCIS). The memo established very broad language encouraging personnel to simply "initiate enforcement actions…consistent with the President's enforcement priorities"[7]. The memo also implemented a handful of specific responses expanded on below.

The initial focus of the memo is to prioritize the expedited removal of aliens that have been convicted or charged with a criminal offense. An expedited removal is a procedure that allows DHS officials to immediately remove a noncitizen without a hearing before an immigration judge or review by the Board of Immigration Appeals (BIA)[8]. Without access to removal proceedings, noncitizens do not have access to an attorney or subsequent due process protection. This often entirely removes the ability of noncitizens to claim asylum and access adequately trained asylum officers[7].

The departments prioritization of criminal acts, encompassing laws such as jaywalking or driving without a license. Exercise on Prosecutorial Discretion by all federal officials, in conjunction with the expansion of the 287 (g) program, expansion of officers from local and state governments, increases the departments likelihood of discriminating based on looks and act on racial profiling. In this regard, the Obama era Priority Enforcement Program (PEP) has been rescinded, and the Secure Communities Program (SCP), a Bush era mechanism, has been restored. Since its reactivation in 2017, SCP has "intolerably" led to the removal of over 363,400 criminal aliens in the United States[9]. These small changes, such as increased ability to arrest on racial profiling, collaboration with local and state law enforcement, and the SCP program reduce access to fair and just treatment by U.S. officials towards alien individuals[9].

Under the newly implemented SCP program, ICE has applied a "fast track" removal of criminal aliens[10]. Fast tracking removal process can generate the following issues in regard to the asylum review requirement of removal:

- Undermines Section 208(a) of INA (all may apply to asylum process, irrespective of immigration status)
- Undermines thoroughness and legitimacy in fear interview process
- Allows immigration officers to act as judge and jury – not adequately trained to assess
- Undermines due process and access to Immigration Court appeals

In response to EO 13767 DHS has dictated ICE to hire an additional 10,000 new officers and agents "expeditiously". The expansion of new officers hired in an accelerated fashion reduces quality of training and ultimately skill in identifying and assessing asylum worthy individuals[10].

DHS indicated that removal proceedings shall be initiated against aliens incarcerated in federal, state, and local correction facilities under Institutional Hearings and Removal Program pursuant to section 238(a) of INA. Per the IIRIR Act of 1996, these individuals are required to be screened for asylum as a part of their removal proceedings. Initiating removal proceedings at local and state facilities will reduce access to legitimately trained asylum officers and USCIS officials to assess and register their asylum needs. Initiating removal hearings in local and state correction facilities reduces the probability that alien individuals be correctly screened. Expediting removal processes from detention centers also reduces access to pro bono legal counsel[11].

DHS emphasizes the collecting and reporting of data on alien apprehension and release. In streamlining the data collection process the agency intends to use "uniform" terminology in a "format that is easily understandable by the public"[12]. Categorical data collected includes information such as criminal nature of offense, gang member status, and prior immigration violations; the information does not include asylum assessment status. This highlights the departments dwindling maintenance of incorporating asylum assessment expedited removal and repatriation process.

DHS agency changes affect all departments underneath its jurisdiction[12]. Therefore, systematic top-down linguistic changes in the examined DHS memo allow for large implications in the defensive and the affirmative proceedings of aliens seeking asylum in the U.S. Both aliens seeking asylum during expedited removal and those defensively arriving and claiming asylum are in danger of being disregarded as illegitimate asylum seekers and repatriated without appropriate assessment.

- **Immigration Court Changes**

One of the most significant changes to the asylum seeking process is the altering significance and use of the Immigration Court system. The ultimate goal of EO 13767 is to prevent entrance, process illegal entries, and repatriate aliens from the United States more quickly and efficiently. In order to accelerate the process of repatriating illegal aliens, there is a reduced emphasis on the asylum assessment process.

Within this reduced emphasis is the decisive intent to reduce access to the Immigration Courts, as due process and further analysis of asylum eligibility by immigration judges is seen as a timely and redundant measure by the Trump Administration. Moreover, within the Immigration Court, there have been systematic changes, such as the assignment of more conservative judges and the adjustment to narrow interpretation of law, that affect how asylum seekers are evaluated. Below I will expand on these changes.

- Judges Assignments and Systematic Flaws

The Immigration Court of the United States is under the Executive Office of Immigration Review (EOIR). The object of the court is to adjudicate immigration cases and provide the final assessment in determining whether an individual meets the standard for asylum[2]. Access to an immigration court comes only once the individual has been found to have a credible fear of persecution or torture. This is essential to highlight, because it is not the responsibility of asylum officers to determine whether an individual be granted asylum or not, rather, simply assess whether they have credible fear and allow the judge to grant the final decision.

The U.S. Immigration Court is not a party of Article III courts, meaning they are not in the official capacity of the Judicial Branch, rather Administrative courts in which judges are assigned by the Attorney General without third party confirmation. These administrative judges are not required to have any legal background or degree, and are more easily subject to firing from the Administration because of limited judicial and statutory safeguard of the EOIR. Immigration Judges are evaluated on the political sway they demonstrate in granting and denying asylum; if their outcomes are not in alignment with the status quo of the administration, they can be fired and replaced. The result of asylum decision evaluations ultimately influences judges to change their practices in order to keep their jobs. Similarly, different regions are prone to different political leanings and therefor differ starkly in asylum granting statistics. For example, between 2012-2017, the average denial rate for Arlington, Virginia Immigration Judges was around 27%, while the average denial rate for Dallas, Texas judges was 81%[15].

- Administrative Influence and Interpretation

The administrative fashion in which immigration courts are directed gives the Attorney General substantial power to single handedly direct how immigration law is interpreted in the Country. In

March 2018, AG Jeff Sessions overturned a ruling from 2014; a precedent setting the decision that all asylum cases are entitled to a hearing before their claims can be rejected[4]. Just as judges have been assessed by the political leaning their case decisions expose, AG Jeff Session intends to introduce a systematic assessment where judges are evaluated on the number of cases they close[4]. AG Sessions is assessing a 2014 landmark case that made it easier for domestic survivors to receive asylum

The following changes have affected asylum assessment in the Immigration Courts

- Overturning 2014 precedents that all asylum cases are entitled to hearing before rejection
- Introduction of potential performance metrics for judges – increase efficiency in firing those that don't align with Trump administration goals
- AG re-assessment of interpretation on how much victims of crime can quality for asylum
- Lack of protection for immigration judges such as life appointment make them vulnerable to conflict of interest with administrative priorities
    - Makes EOIR judges easy vehicle to advance policies of White House

The flawed immigration court system of the EOIR existed before the Trump administration. The flaws of the system are what allow the Trump administration to exert so much influence in a system which should remain impartial and apolitical. The arrangement of combining the Justice Department's EOIR and the independently functioning Department of Homeland Security makes courts vulnerable to conflict of interest and abuse.

NEW: AG Jeff Sessions quietly re-opened a case looking at whether the government needs to pause deportation proceedings until an immigrant is done pursuing legitimate claims to stay in the U.S. (i.e. likely seeking asylum). The case reviews the definition of a "particular social group" and victims of private criminal activity eligibility to apply for asylum[16]. In opening the briefing schedule, the AG allows for external parties to assist in the review of the case.

DHS requested that the AG respect the due process of the court and wait schedule until the BIA acts on the Immigration Judges certification, yet this was denied. The denial of this request Session shows the intention of the administration to have overriding authority in immigration proceedings process and set harsh and narrow precedents[16].

❖ Supreme Court Decisions

The process of appeals for immigration cases is the only aspect of the EOIR that prevents the Administration in power from obtaining absolute influence. Immigrants can appeal cases to federal circuit courts, which may eventually reach the supreme court in which a decision of the Immigration Court or Justice Department decision can be overruled. The Supreme Court can also affect decision making in the Board of Immigration Appeals (BIA) through significant interpretations of law.

The U.S. Supreme court has recently held that to properly consider the totality of the circumstances in an asylum case, "the whole picture… must be taken into account." The BIA has interpreted this to include taking into account the whole of the applicant's testimony as well as individual circumstances of each applicant[13].

On February 27th, 2018 the Supreme Court ruled that immigrants, including asylum seekers, do not have the right to periodic bond hearings in the case *Jennings v. Rodriguez*[17]. This decision unambiguously refers that detention can be finite as long as the asylum case is under consideration or removal

proceedings are in effect[18]. Alien individuals assessed for asylum and/or in the process of expedited removal are usually detained for an average of 13 months[17].

The official interpretation by the Supreme Court indicating unlimited detention periods will result in the following:

- Further acceleration of the asylum process by officers trained under the Trump administration status quo in order to prevent increase in case backlog
- Further extended detention of asylum seekers leading to re-assessment of initially unaccompanied minors as adults in asylum process

❖ Court Decision on Sanctuary Cities

On Tuesday March 27th, 2018 the Justice Department and West Palm Beach accounted a settlement related to the city's resolution 112-17, which examines how much local official can cooperate with federal immigration authorities[19]. The decision determined that new resolution passed by West Palm Beach does not violate section U.S.C § 1373 of DHS policy, and permits the DHS to receive all information it may need to take custody of aliens who commit crimes.

This court decision reiterates the increase in cooperation between local and federal governments to crack down on illegal aliens and increase expedited removal. Decisions such as these establish unofficial standard for other local governments and ultimately put all sanctuary cities in danger.

➢ **Detention Centers Changes Affecting Asylum**

❖ Cases of Family Separation and Consequences

The asylum seeking process encounters families that arrive in the United States as a unit and seek asylum. The DHS does not have an official policy on separating family and children. A recent change to the family assessment progress is the consideration to implement official required separation of mothers and children to deter other illegal aliens from entering the country as a unit[20].

Officially, ICE is under the responsibility to detain adult immigration violators, while the U.S. Department of Health and Human Services cares for unaccompanied immigrant children[20].

Two recent cases of unlawful family separation indicate the increased use of family separation as an intimidation mechanism for alien families. Both cases occurred in the federal district court of San Diego. The first of a Congolese woman and her 7-year-old daughter was taken to a facility in Chicago while the mom was held in San Diego. The second case included a Brazilian woman who was separated from her 14-year-old son after they both sought asylum in August.

It is important to note that the Executive and Departmental orders to increase reports on apprehension and asylum granting statistics, does not include the increase monitoring and assessment of family separation. This is a technique that is not in official policy yet is used as a deterrent for families seeking asylum.

There are around 600,000 pending immigration cases to be assessed by immigration judges and about 300 judges in the EOIR. The ultimate goal of AG Session is to close the backlog of these cases. It is essential to continue to track the changes the AG influences over the EOIR through re-interpretations and review of fear determinations.

❖ Treatment of Vulnerable Populations – ICE Policy Changes

o Change in Treatment of Pregnant Women

According to the 2016 ICE Policy Memo "Identification and Monitoring of Pregnant Detainees", it is indicated that pregnant women be held under custody, rather than detention, unless the independent case presented extraordinary circumstances or mandatory detention requirement[21].

In 2018, ICE set forth new policy and procedures in the treatment of pregnant alien women. Under the new policy, ICE has ended the presumption of release for all pregnant women[22]. The changes indicate that pregnant women will now be assessed by ICE officials on a case-by-case custody determination taking any special factors into account[22]. This policy change does not indicate that all pregnant will be detained, rather only those deemed "flight risk" or "danger to the community"

The determination of "fight risk" or "danger" are concluded by officers trained under the new administration. This policy is intended to use detention far more aggressively against pregnant women, despite substantial evidence that detention of this particularly vulnerable population is linked to serious health implications[23]. This is just one example of the Trump Administrations systematic targeting of vulnerable populations.

o Change in Treatment of Unaccompanied Children

Regarding children and the removal of family arrivals, DHS indicates that ensuring "proper enforcement of immigration laws" includes placing parents or guarding of children into removal proceedings independently. In turn, separating children from their guardians throughout the removal and asylum process[24]. In the cases of Unaccompanied Alien Children (UAC), DHS isolates UACs as majority illegal when they state that "regardless of conditions, smuggling of children is intolerable"[24]. DHS indicates UAC family members residing in the U.S. who aim to reunite with UACs can be prosecuted for having the child smuggled into the country.

Implemented under ICE, the new "Surge Initiative" focused on dismantling human trafficking into the U.S., emphasizes the targeting and arresting of parents or relatives who pay for their children to be smuggled into the country[25]. Under the Obama Administration, children fleeing Central America were placed with sponsors while awaiting their legal hearing in Immigration Courts[26].

The targeting of potential sponsors who come forward during immigration hearings of children by ICE discourages asylum in the following ways:

- Leaves children without family ties
- Removes support system from children seeking asylum
- Removes long term plan for settlement with family
- Discourages children from seeking asylum legally
- Potentially increases probability of more dangerous smuggling mechanisms
- Reduces access to legal or adult representation in Immigration Courts

o Increase in Punitive/Illegal Mechanisms Against Asylum Applicants

An unnamed alien immigrant applying for asylum arrived as USCIS appointment on March 14, 2018, where she went through a series of asylum interview questions[27]. In the denial report of her asylum application, the asylum officer indicated that the reason for denial was due to the asylum applicant not show up for the interview at all. Not reporting for an asylum interview allows the officer to immediately put the applicant in deportation proceedings[27].

An applicant with a pending asylum application is eligible for work authorization, an asylum seeker marked as "no show" is not. A spokesperson of USCIS indicated that the agency has "not recently implemented any policy changes in reference to people who have showed up at a scheduled interview"[27]. This case is essential to note because it marks an unofficial change in practice by USCIS officers in the asylum seeking process to accelerate and de-legitimatize the asylum and removal.

➢ Consequences of Systematic Changes

There are far reaching consequences to the multiple policy and practice changes identified above. The changes are not always officially documented nor legal changes, rather interpretations and influential status quo changes that alter the way asylum process mechanisms are run. Narrowing the scope of the rights of asylum seekers through due process changes, judge assignments, asylum officer training, word of mouth practices, supreme court decision outcomes, AG Jeff Sessions narrowed interpretations, and more.

Some of the consequences already documented from the changes above include:

- Increase in trafficked persons (Webinar)
- Increase in turn back methods (complete lack of acknowledgement to seek asylum)
- Reluctance to comply by Flores agreement (policy for treatment of immigrant in detention centers)
- Lack of immigration court overview and full access to due process
- Decrease in access and availability of to legal counsel
- Shift in conduct of CBP officers towards asylum seekers and Central American aliens

Appendix B: USCIS Changes to Credible Fear Persecution Determinations

In response to DHS guidance on immigration enforcement the USCIS released a new *Lesson Plan Overview* in February 2017[13]. This *Lesson Plan Overview (LPO)* outlines the training mechanisms used to explain how to determine whether an alien subject to expedited removal, or arriving on stowaway, has credible fear of persecution or torture using credible fear standard. The last update to the Lesson Plan was in 2014[14]. Changes to the *USCIS* LPO are a direct result of the changing approach to immigration enforcement influences by the Trump Administration directives'.

In comparing the 2014 and 2017 *LPO* side by side, below are the following changes:

❖ Under Section 5 – Burden of Proof –

Unit C*:* Considerations in Interpreting and Applying the Standard

Modifications in Unit C: The following statement was removed from the 2017 LPO: "reasonable doubt regarding the outcome of a credible fear determination, applicant likely merits a positive credible fear determination" (*LPO* 2014, p. 17).

Assessment in Unit C: This indicates that the USCIS is legally changing practical approaches to granting asylum, in a manner that increases difficulty for applicants. Reasonable doubt is essential in the asylum seeking process due to the nature in which alien individuals often arrive in the United States without resources or legal

Unit D: Identity

Modifications in Unit D: The 2017 LPO indicates incorporates that the applicant "must be able to credibly establish his or her identity by preponderance of the evidence" and that "credible testimony alone can establish identity and nationality", not originally included in LPO 2014. In 2014 LPO the first paragraph under the identity section indicates that an "Credible testimony alone can establish identity". The 2014 LPO includes conditions such as "In many cases, an applicant will not have documentary proof of identity or nationality", not stated in 2017 LPO. teaching the officer in training common trends in asylum seeking individuals.

Assessment: The statement removed teaches the officer in training common trends in asylum seeking individuals. Removing such trend setting language and indicators can change the expectations of officers in training and establish different and narrower approaches to asylum assessment.

❖ Under Section 6 – Credibility

Unit A: Credibility Standard

Modifications in Unit A: In the 2017 LPO there was an additional statement indicating that the "asylum officer should assess the credibility of the assertions underlying the applicant's claim, considering totality of the circumstances and all relevant factors", not originally included in the 2014 LPO.

Assessment: The additional inclusion of this statement reiterates that asylum officers second guess statements they are faced with, ultimately harshening assessments further.

Modifications in Unit A: The 2017 LPO augments this section with the strict interpretation of immigration law stating "U.S. Supreme court has held that to properly consider the totality of the circumstances, 'the whole picture… must be taken into count'. The Board of Immigration Appeals (BIA) has interpreted this to include taking into account the whole of the applicant's testimony as well as the individual circumstance of each applicant".

Assessment: The addition of the above statement indicates the systematic incorporation of conservative interpretation of Immigration Law and precedent setting mechanisms within the training of asylum officers. Such stringent interpretation of the law reduces the authentic understanding of asylum applicant's circumstances and probability of protection.

Unit B: Evaluating Credibility in Credible Fear Interview

Modifications in Unit B: Under LPO 2017, provision A (originally in 2014 LPO), has been removed. This provision indicates that the "the asylum officer does not make the final determination as to whether the applicant is credible" (LPO 2014, p.17; LPO 2017, p. 18).

Assessment: The exclusion of this provision indicates that the USCIS wants to train officers to believe that they are the sole decision maker in the status of asylum seekers and have full authority over assessment of asylum. Training officers in this manner reduces the utility of the courts and right for asylum seekers to pursue a full hearing.

Unit C: Assessing Credibility in Credible Fear when Making Credible Fear Determination

Modifications in Unit C: LPO 2017 excludes the following statement, originally in LPO 2014, from provision C: "the purpose of evaluating the credibility of an applicant is solely to determine eligibility for a full asylum or withholding hearing".

Assessment: This statement, originally in LPO 2014, acknowledges the existence and prominence of immigration courts. Its exclusion from LPO 2017 indicates the intentional nature of the USCIS to remove the legal rights of asylum seekers to access Immigration Courts where their case may be heard in further detail.

Modification in Unit C: LPO 2017 indicates that "the applicant's ability or inability to provide detailed descriptions of the main point of the claim is critical to the credibility evaluation", a statement not originally included in LPO 2014. To the contrary, LPO 2014 includes that "as long as there is a significant possibility that the applicant could establish in a full hearing that the claim is credible, unresolved questions regarding an applicant's credibility should not be the basis of a negative credible fear determination", a statement excluded from LPO 2017. Similarly, the following statement was removed from LPO 2017: "In assessing credibility, the officer must evaluate whether there is a significant possibility that the applicant's testimony could be found credible in a full hearing before an immigration judge. The officer must consider the totality of the circumstances and all relevant factors when evaluating credibility".

Assessment: The exclusion of all provisions indicating access to an immigration court and judge, influence newly trained officers to believe they are only entitled to a binary decision. When face with a weak evidence and a difficult decision, asylum officers trained by the 2017 LPO may lean towards denying protection rather than recommending the case for assessment in an immigration court.

Modification to Unit C.5: Under the assessment of minor inconsistencies, the 2017 LPO added the following provision: "The Second Circuit advised: If, after reviewing the record of the [CBP] interview in light of these factors and any other relevant considerations suggested by the circumstances of the interview, the … [agency] concludes that the record of the interview and the alien's statements are reliable, then the agency may, in appropriate circumstances, use those statements as a basis for finding the alien's testimony incredible. Conversely, if it appears that either the record of the interview of the alien's statements may not be reliable, then the … [agency] should not rely solely on the interview in making an adverse credibility determination" (LPO 2017, p.22).

Assessment: The addition of the above provision sets the precedent that USCIS asylum officers, trained for asylum assessment and fear interview credibility, may use the determinations made by CBP officers who are not trained nor legally entitled to determine asylum eligibility.

Modification to Unit C.5: Regarding minor inconsistencies, the following was removed from LPO 2017: "These inconsistencies can be explored by the immigration judge in the full asylum and withholding hearing".

❖ Under Section 13 – Summary
Unit G: Other Issues
Modifications to Unit G: The following statement was removed from LPO 2017: "… asylum officers must elicit and make note of all information relevant to whether or not a bar to asylum or withholding applies" (LPO 2014, p.46). Also removed from LPO 2017 is the statement: "The asylum officer shall consider whether the applicant's case presents novel or unique issues that merit consideration in a full hearing before an immigration judge" (LPO 2014, p.47).

Assessment: The exclusion of the above statements indicates the de-prioritization of making use of the Immigration Court system and failure to provide asylum seekers with the full picture of their legal rights. It is essential to re-iterate the exclusion of mentioning immigration courts from the majority of the training sectors and its small mention in the summary of the text. The first time the 2017 LPO writes any mention of an immigration court is in the summary, again, indicating the nature in which asylum officers interact with asylum seekers.

Modification: The 2017 PLO added a final statement to the Summary of the Lesson Plan document reiterating that "if there is evidence so substantial that there is no significant possibility of future persecution or other serious harm or that there are no reasons to grant asylum based on the severity of the past persecution, a negative credible."

Assessment: The addition of this statement is intended to reiterate the narrow interpretation of worthy fear in granting asylum, and educate the officers in training that they are to negate credible fear in circumstances lacking significant evidence or those which present doubt. This rhetoric of repetition is dangerous to the rights of asylum seekers because it enforces the idea that asylum officers are to assess cases in a matter of fact fashion, and rejects the notion of immigration court referral or the unique nature of asylum circumstances and fear itself.

- Conclusion of Lesson Plan Overview Changes

The changes made to the LPO of 2017 in comparison to the PLO of 2014 highlight the technical and practical changes the Trump Administration has influenced among the asylum seeking process.

The manner in which asylum officers are trained and what information they are given will affect the assessment of thousands of asylum seekers to arrive in the United States. Furthermore, changing the training mechanisms and interpretations at a time in which the Administration has indicated the hiring of 10,000 new ICE officers and an additional 5,000 new border patrol agents, will change the attitude, rhetoric and common understanding by US officials in dealing with asylum seekers.

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