



THE PERILS OF EXPEDITED REMOVAL

How Fast-Track Deportations Jeopardize Asylum Seekers

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EXECUTIVE SUMMARY

This report shows through the use of original testimony that the government’s reliance on “fast-track” deportation methods, such as expedited removal, in conjunction with detention often results in disadvantaging one of the most vulnerable groups of non-citizens currently in the U.S. immigration system: women and their children held in detention centers in rural, isolated locations in Texas and Pennsylvania. Accounts from women and children detained at the South Texas Family Residential Center in Dilley, Texas, the country’s largest family detention center, illustrate the many obstacles a detained asylum seeker must overcome in order to obtain a meaningful day in court. The authors drew from a database of thousands of case files to identify families who experienced one or more of the challenges outlined in this paper. Although many of the families whose stories are highlighted in this report were ultimately able to forestall immediate deportation with the assistance of legal counsel, all of them faced serious obstacles accessing the asylum process. Detained asylum seekers encounter numerous challenges, including the following problems detailed in this report.

- **High Incidence of Psychological Trauma among Detainees**

Many of the asylum-seeking women and children who are detained in Dilley experience psychological trauma as a result of their past persecution or fear of future persecution. This trauma is compounded by the experience of detention, the limited access to medical and psychological services in the detention center, and other policies outlined below.

- **Separation of Family Members after Arriving at the Border**

Current government policy mandates that women must be separated from their spouses, adult children, parents, siblings, and other family members before they are transferred to the detention center in Dilley, Texas. The emotional impact of family separation – and the possibility that a separated family member with the same claim for relief may be deported – may have a profound effect on the ability of a woman or child to testify during their fear interview with the asylum office or before the immigration court.

- **Medical Conditions Adversely Impact the Ability to Pursue Protection**

The women and children who are transferred to the detention center in Dilley suffer from a range of medical conditions. The prevalence of medical conditions may affect a worried mother's ability to tell her story during her interview if her child is ill, or the sickness itself could affect a child or woman's ability to articulate her story.

- **Limited Access to Language Services**

While the majority of families who are transferred to the detention center in Dilley speak Spanish, many do not. The languages spoken within the walls of the detention center in Dilley are diverse. Access to interpretation services is limited, which may present problems for women and children attempting to seek help at the medical clinic, ask questions about their legal cases, and, most importantly, undergo fear interviews with the asylum office or hearings with the immigration court.

- **Complexity of the Legal Standard Applicable to Credible Fear Screenings**

The immigration system is notoriously complicated, and the credible fear screening process is no exception. The legal standards to which asylum seekers are held are nuanced and complex, even for well-trained attorneys, let alone lay persons. Many of the factors outlined in this paper, including the prevalence of trauma and medical conditions, may further impede a person's ability to understand the legal process and articulate a claim for protection.

- **Procedural Defects in the Credible Fear Interview Process**

The credible fear interview process is potentially rife with procedural errors. Asylum officers are required to conduct the interview in compliance with printed guidance and law, but occasionally fail to do so. For example, officers must ensure that an asylum seeker feels comfortable, ask sufficient follow up questions to reveal critical information in the person’s case, and evaluate a parent’s claim for protection separately from the child’s (and vice versa). However, an officer may not develop the rapport with the mother or child that is needed to fulfill these obligations. Such procedural pitfalls, and many others, may adversely affect the outcome of an asylum seeker’s claim.

While the voices in this report are predominantly of asylum-seeking mothers and their children from Central America and the surrounding region, the obstacles this population faces illustrate the high risk of error in asylum screenings for all noncitizens who are held in detention facilities around the country during their fast-track deportation proceedings. Finally, the report looks at the critical role attorneys play in the cases of those who fail to pass their fear interview in the first instance due to one or several of the challenges highlighted above. The case stories illustrate how these pitfalls place families at risk of being returned to the very countries where they fear persecution.

INTRODUCTION

“ I was interviewed by a male asylum officer. He asked me if I wanted to be interviewed by a female officer and I said that I had no preference. At that moment I felt uncomfortable telling the officer that I didn’t want to be interviewed by him. I had been raped in Guatemala and I could not share that entire story with a male officer. But I didn’t feel like I could tell him that I wanted to change officials. If I had a female officer I might have been able to tell her my full story. I felt fear and shame at the interview. I also feared that my husband could find out that I had been raped if I had said it. I can’t tell my husband because he would reject me and blame me. In my culture, if a man does improper things to a woman, most of the time the woman is blamed. My people think that if a man “crossed the line” it is because the woman allowed him to. In the Mam culture, men are the ones who rule and women have to obey their fathers and husbands.”¹

These are the words of Valeria, a Guatemalan asylum seeker, who described the difficulty she had sharing critical aspects of her claim to the asylum officer during her screening interview. Valeria fled Guatemala with Idalia, her then 7-year-old daughter, after years of extreme physical violence at the hands of Valeria’s father, rape by her ex-partner, and, more recently, a brutal gang rape by members of a transnational criminal organization (TCO).

Valeria and Idalia sought asylum in the United States, but were detained and placed in the expedited removal process. They were required to undergo the credible fear interview process—the first step for asylum seekers in fast-track removal processes—before being released from detention and permitted to continue fighting their case in immigration court. During those weeks in custody, the U.S. government expected Valeria to quickly navigate a complex asylum system in an atmosphere that frequently impedes a fair hearing. Valeria was required to overcome the challenges of speaking a rare language and articulating a traumatic story before she could pursue her claim for asylum in a full merits hearing with an immigration judge.

In years past, Valeria and Idalia might have been given the chance to make their case directly to an immigration judge, providing ample time to seek legal counsel and prepare to tell their stories fully. However, protection for asylum-seeking families like Valeria’s has been more difficult to access since 2014. In response to the dramatic rise in Central American families arriving at the southwest border to seek asylum, the government sought to stem the number of asylum claims by reducing the time and opportunity available to make a claim for asylum. This has been accomplished largely by placing many of these families in remote detention facilities while subjecting them to fast-track deportation processes. These processes involve remarkably complex procedures designed to prevent the unlawful deportation of asylum seekers, yet in practice they create additional barriers for many families.

Given that very few asylum-seeking families speak English, most have experienced significant trauma in their countries or during their journeys north, and they have no right to government-appointed legal counsel, the bureaucratic hurdles can be insurmountable. The added stress of detention, particularly detention of children, further complicates most mothers’ ability to remain focused on presenting a clear case for asylum. Nuanced legal standards applied by government officials asking difficult questions about a family’s worst fears and experiences threaten to transform what is meant to be merely a preliminary screening process into a full-blown, high-stakes asylum interview.

For many families, the physical presence of pro bono legal counsel at family detention facilities has made all the difference in their opportunity to seek asylum. But even for those who successfully navigate the process with the help of legal counsel, the challenges are extraordinary. Identifying and categorizing these challenges not only illustrates the high barriers to accessing the asylum system and immigration court, but also demonstrates why attorneys are an essential part of the process. To understand these interconnected issues, the authors drew from thousands of case files of families detained at the South Texas Family Residential Center in (STFRC) in Dilley, Texas—the country’s largest family detention center—to identify some of those who experienced challenges in their pursuit of protection. Although many of the families whose stories are highlighted in this report were ultimately able to forestall immediate deportation and will have their asylum cases heard by an immigration judge, in all of the cases the presence of legal counsel enabled the families to overcome the multiple challenges they faced. These accounts from women and children provide a window into how these challenges plague all asylum seekers subjected to fast-track deportations while held in detention facilities throughout the country.

U.S. “EXPEDITED REMOVAL” POLICY AND ASYLUM SEEKERS AT THE BORDER

Beginning in the spring of 2014, the United States saw a dramatic uptick in arrivals of Central American mothers with children, as well as unaccompanied children, at the southern border in the Rio Grande Valley of Texas. While there is always a confluence of factors that drive a wave of migration at any one time, epidemic levels of violence and impunity in the Northern Triangle of Central America (comprising El Salvador, Guatemala, and Honduras) unmistakably drove these vulnerable groups to flee their countries in search of protection.² The murder rates in these countries are among the highest in the world. In 2016, El Salvador was the most violent nation in the Americas, while the murder rates in Honduras and Guatemala were among the five highest in the hemisphere.

Although most victims of murder in these countries are men, there is acute violence against women. In 2012, El Salvador and Guatemala were ranked first and third, respectively, as having the highest murder rates for women in the world. Gang activity is a major cause of the violence that plagues the region. Teenage boys are targeted for gang recruitment under threat of death, while women and girls are forced to become “gang girlfriends” and the “property” of gang members or face a similar fate. These threats are often compounded by rampant domestic violence and threats of political persecution that jeopardize the well-being and stability of many families fleeing the Northern Triangle and parts of the Caribbean.³

The migration routes from many countries to the United States are well-trod; for decades asylum seekers and migrants have made the journey to flee civil wars, poverty, and environmental disasters. Many who are fleeing Central America turn to the United States as a strong option for safe haven, given family and community ties. Most who fled in recent years knew full well the risks and perils they would face on the journey—traffickers, cartels, and bandits prey on migrants along the way—⁴ but left anyway. The search for safety was a necessity and remaining at home was no longer an option.

When more asylum-seeking families arrived at the U.S.-Mexico border in 2014,⁵ the U.S. government quickly ramped up capacity to detain arriving families with the creation of large detention facilities in Artesia, New Mexico (closed in December 2014); Karnes City,

Texas; and Dilley, Texas. Prior to this, only a small residential facility in Berks County, Pennsylvania, was in operation. By the spring of 2015, the Department of Homeland Security (DHS) had approximately 3,300 beds and cribs to detain mothers and their minor children, who ranged from newborns to near 18-year-olds.

Most families placed in detention are in a fast-track deportation process called “expedited removal.”⁶ A person subject to expedited removal (which, under current U.S. policy, may include those apprehended within 100 miles of a U.S. land border and within 14 days of entry) can be immediately ordered deported by an immigration officer without ever seeing an immigration judge. Those who tell a DHS official that they are afraid to return to their home countries are given screening interviews with an asylum officer to see if they have a credible fear of persecution. If so, they are entitled to a full asylum hearing before an immigration judge. If not, they face swift deportation unless they seek review of the negative determination by an immigration judge, which is generally cursory.

This process, while complex, is supposed to ensure asylum seekers are not unlawfully deported to a country where they could face grave harm or death. In practice, however, U.S. Customs and Border Protection (CBP) officers do not always adequately screen migrants or ask if they fear return to their home countries. At times agents ignore expressions of fear and summarily deport asylum seekers.⁷ Less than 20 percent of the people ordered removed ever see an immigration judge due to CBP’s use of summary removal processes.⁸

PITFALLS IN PROTECTION

The South Texas Family Residential Center (STFRC) opened in December 2014, the same month the Artesia family detention center in rural New Mexico—which had bed space for 700 mothers and their children—closed. Several partner organizations launched a pro bono representation project in Dilley, Texas (“Project”), in order to provide legal and advocacy services to the hundreds of detained mothers and children at the STFRC.⁹ Since then, a team of attorneys, legal assistants, and volunteers have consistently worked to ensure that services are provided to all of the women and children who request them. Legal assistance helps prepare asylum seekers for their screening interviews with an asylum officer, ensure they have representation in immigration court proceedings, and receive pre-release advisals—including the importance of finding competent legal counsel, meeting pertinent filing deadlines, and appearing for scheduled court hearings. As of March 2017, the Project had provided direct legal services to over 40,000 women and children in Dilley alone, including the clients whose accounts are included in this report.

The presence of an on-site legal project in a family detention facility has offered a unique view of how the expedited removal process works in practice. This perspective broadens the understanding of the process’ deficiencies that have been noted previously. The U.S. Commission on International Religious Freedom, for example, documented in 2005 and again in 2016 sustained problems with how the U.S. government treats arriving asylum seekers.¹⁰ Beyond observing the mechanics of the bureaucracy, legal teams working nearly around the clock have intimately witnessed the pitfalls in the system that make it especially challenging for detained families to succeed with their claims for protection. The most egregious challenges these mothers and children face include (a) a high incidence of trauma among detainees; (b) separation of family members after arriving at the border; (c) medical conditions that adversely impact the ability to pursue protection; (d) limited access to language services; (e) the complexity of the legal standard in credible fear proceedings; and (f) procedural issues in the screening process. The following case stories help to illustrate how these pitfalls place families at risk of being sent back to the fear and persecution they fled.

High Incidence of Trauma

“ I did not want anyone to know what had happened to me and I did not want to remember that moment. When I retell it, I feel like I am living that moment again. I feel his hands all over me, the fear for my daughter. I do not want to be in that place.”¹¹

These are the words of 26-year-old Gloria, an asylum seeker from Guatemala, who fled her home with her then 6-year-old daughter after many months of extortion demands and death threats from members of the M-18 transnational criminal organization (TCO), culminating in a traumatizing sexual assault by an M-18 member.

Women and children in family detention often suffer from psychological problems—such as depression and anxiety—related to trauma they experienced in the countries from which they fled, which is often compounded by their treacherous journeys to the United States. The effects of these traumatic experiences can be exacerbated by detention;¹² the loss of control over one’s life and circumstances, and the feeling of being trapped, can remind detainees of past trauma and retrigger feelings of victimization and shame.¹³

Moreover, feelings related to past persecution or trauma may prevent a woman from telling her entire story during the screening process, such as in her credible fear interview or when seeking an immigration judge’s review of a negative credible fear finding. Valeria, a Guatemalan survivor of rape, described explicitly how her past trauma impacted her physically and her ability to remember facts. She said:

“ I get very nervous when I talk about how my father beat and sexually assaulted me or about how Juan raped me. When I get nervous, I forget things. For example, during my interview, I said that I had 7 brothers and sisters. In front of the immigration judge, I said that I have 6. I don’t know why I said the numbers wrong. I just can’t answer questions when I’m nervous. I forget everything. I actually have three brothers and sisters.

When I talk about the abuse I’ve suffered and my nerves start, I get terrible headaches and pains in my stomach. I don’t want to remember what happened to me. It hurts to remember. I’m still so afraid of my father.”¹⁴

Another mother, Camila, was pregnant when she fled El Salvador with her 12-year-old child. They were kidnapped for six days in Mexico on their way to the United States and, as a result, Camila suffered a miscarriage. Camila described the ordeal:

“ On December 2 I was kidnapped in the Mexican city of Villahermosa, Tabasco, while traveling via bus. They took us to a house in the middle of nowhere and there were lots of other people there, about twenty and then they kept bringing more. It was very traumatic being there. I had to watch as they tortured people; they would nearly drown people in a barrel of water and use a noose to nearly suffocate people. On December 3, I lost my baby to a miscarriage, from suffering such a horrible fear that I don’t want to live through again.”¹⁵

Camila was profoundly traumatized when she arrived at the detention center in Dilley. Her attorneys with the Project contacted detention facility staff to request that she receive psychological counseling as a result of the trauma she endured in Mexico. They requested copies of her medical and psychological records, knowing that such documentation could positively impact her case.

Separation of Family Members after Arriving at the Border

Families also experience trauma when they are separated from loved ones at or near the border, when they are transferred to different detention centers around the country, or when some family members are released while others remain detained. Although the notion of “family detention” suggests that all families arriving at the U.S. border are kept intact, this is far from the truth. Husbands are typically separated from wives, adult children are not detained with minor siblings or their parents, and children are separated from grandparents or adults other than their mothers.¹⁶ With the exception of a handful of beds available at the small family detention facility in Berks County, Pennsylvania, DHS does not detain fathers and children together.

Luciana fled El Salvador with her two daughters, 13-year-old Ximena and 18-year-old Isabella, and her two-year-old granddaughter Hildana. Members of the MS-13 gang had murdered Luciana’s niece for refusing to join their gang, and Luciana feared that her daughters would meet the same fate. When she arrived at the border, Luciana was separated from her 18-year-old daughter, who was placed in an adult detention facility, and her granddaughter, who was treated as an unaccompanied child and transferred to a shelter run by the Department of Health and Human Services, Office of Refugee Resettlement. Luciana described her anxiety:

“ Hildana was sleeping in my arms when a female officer came in. She told me that I had to hand the baby over to her. I began to pass Hildana to the woman when she woke up and began to cry. I also began to cry. Hildana was crying and screaming out for me saying, ‘Mami! Mami!’ Hildana is like my own daughter because I have raised her since she was only one year old.

This is the last time I saw Hildana. I don’t know where she is, but I know that they have called my daughter in Virginia. She still is not with my daughter in Virginia. It has been almost two weeks since I saw either Hildana or Isabella The days here are very long. I stay awake at night thinking about Isabella and Hildana, wondering where they are, how they are, and worrying about them. My other daughter who is still with me, Ximena, is my only consolation. She is my only source of comfort.

I try to be strong for Ximena. If Ximena sees that I am sad, she cries and she doesn’t eat. I pray [that] the day we are all together is soon. What really concerns me is that Isabella is only 18 years old. She is a young girl—she is not an adult yet. If she was an adult, I would not be so worried. She needs her mother. I do not think they should separate my children from me.”¹⁷

Isabella was transferred to the Laredo Detention Center and subsequently to the T. Don Hutto Detention Center, both in Texas. Her current whereabouts remain unknown, though it is likely that she was deported back to El Salvador. Luciana passed her credible fear interview and was released with her then 13-year-old daughter, Ximena, to family in Virginia while they continued to fight their asylum cases in immigration court. If Isabella had not been separated from her mother and sister, or if her case had been linked to her mother's, she would have been able to pursue her claim for asylum before the immigration court.

Even when families arrive at the border fully intact, as in Luciana's case, they can be detained separately. When both a mother and father are part of the family unit, separation is particularly likely. For example, Fernanda and her husband, Josef, fled Cuba together with their 9-year-old daughter, but were separated after arriving at the U.S. border. Josef was transferred to the Otay Detention Facility in San Diego, California, apart from his wife and daughter. According to the Asylum Office, Josef did not claim a fear of persecution, even though he crossed the border at the same time as his family and fled Cuba for the same reasons: Fernanda spoke out against state corruption and was threatened with imprisonment and torture as a result. Josef remains detained in California, while his wife and child have been released and are living with family in Miami while their case is pending.¹⁸ Josef sought release from Otay in order to continue fighting his case in Miami, where his family is located, but DHS denied his request.

The family's separation resulted in a number of additional hurdles in their asylum cases. Fernanda and her daughter are fighting deportation in a different jurisdiction than Josef, and being apart has caused ongoing trauma for Fernanda, Josef, and their daughter. Family separation increases the likelihood that a family will receive different decisions in their cases. Children, for example, often do not fully understand why a parent has decided to flee, or a woman may not have access to documents in her husband's possession that may help corroborate a claim for relief. Such challenges only make it that much more difficult to obtain asylum.

Medical Conditions Adversely Impact the Ability to Pursue Protection

By the time most mothers and their minor children are transferred to family detention, they have spent several days in CBP processing facilities near the U.S.-Mexico border. While many of these women and children arrive at the border with serious medical issues that either pre-date their journeys or appear en route to the United States, other medical conditions develop while the mother or child is detained. Medical problems can, at a minimum, be a major distraction and detract from a mother's ability to focus on making a successful claim for relief; but at worst, medical issues can materially and adversely impact a detainee's testimony during a credible fear interview or review by an immigration judge. Some of the medical conditions experienced by the women and children detained in Dilley include seizure disorders, pregnancy, cancer, flu, and—very frequently—the physical manifestations of psychological trauma.

These health conditions regularly inhibit detained mothers and children from fully describing in their credible fear interviews their past experiences and fears of future persecution. Mothers frequently state that their anxiety due to sick children or their own illnesses detrimentally affects their ability to focus and articulate critical aspects of their claims during their interviews. This, in turn, can lead to negative decisions in their cases from asylum officers or an immigration judge, and ultimately to deportation.

Ana Sofia, for example, believes she received a negative decision from an asylum officer because she was not feeling well during her credible fear interview and thus could not fully articulate her claim. She explained:

“ The day of the interview I wasn't feeling well. In Guatemala I was diagnosed with low blood pressure and I have not taken my medication since I left Guatemala. I also suffer from severe headaches, knee pain, and stomachaches. I've become very forgetful. I also tend to get nervous, and when I get nervous, my symptoms get worse. I wasn't sure what was going to happen if I didn't attend the interview, [so] I forced myself to go. I realized that I don't even remember some of my answers. I only pray to have an opportunity to present my case.”¹⁹

Medical conditions had an adverse impact in another case: Antonia and her 2-year-old daughter, Rosaline. They fled Haiti after years of extreme domestic violence at the hands of Antonia's partner, who stabbed her with a knife and a machete, attempted to choke her, threatened to kill her on numerous occasions, and even raped repeatedly and impregnated Antonia's 14-year old-daughter, who went into hiding in Haiti as a result. Antonia suffers from a seizure disorder in addition to other medical conditions which impaired her ability to fully articulate her claim for asylum. She said:

“ I want to explain my claim more clearly and explain why I am having trouble articulating my claim.

I am learning more and more that I am in great need of medication to help me feel better and control my feelings. I have had two seizures since I have been in custody. I have never felt this way before and I have never suffered any seizures before that I know of. I have received medical attention since I have been in [U.S.] custody, but I don't fully understand my treatment. No one has really explained to me what is wrong. I am currently taking one pill three times a day. I have a headache all of the time. The pill that I take makes me very sleepy during the day.

I feel very depressed, stressed, and overwhelmed. My eyes hurt and I feel sad all of the time. I try not to think about what happened to me and I try to block it out. I have never had to tell anyone about the hurt and pain that I feel. When I try to recount what happened in Haiti and in Brazil I become overcome with sadness and I feel like I am being physically stabbed. Sometimes I feel like I can't go on. I forget things and I don't feel like my memory is fully intact.’’²⁰

The very nature of detention and expedited removal frequently means that there is pressure on both the government and the detainees to move quickly, irrespective of illness. Without a clear sense of whether trying to reschedule a credible fear interview would negatively impact the outcome or extend one's time in detention, detainees often proceed with their interviews even when their health is suffering.

Limited Access to Language Services

While the majority of families who are transferred to family detention speak Spanish, many do not. Women who speak Mayan languages such as Ixil, K'iche', Mam, Popti', and Q'anjob'al are present at the Dilley facility, as are families who speak Middle Eastern languages—including Syrian Arabic, Dari, and Farsi; African languages such as Amharic, Brazilian Portuguese, and increasingly, Haitian Creole. The lack of adequate language services for some families has led to additional challenges in the credible fear process, prolonged detention and, in some cases, wrongful deportation. This has been especially problematic for indigenous and other “rare language” speakers and has been well-documented since the first days of Dilley’s opening.²¹

Many rare language speakers are exempt from the fear interview, on the basis that the asylum office is unable to locate an interpreter in a timely manner, and are placed in standard removal proceedings before an immigration judge instead. However, individuals whose primary language is not Spanish are still required to undergo the credible fear interview in some instances, such as when the detainee is not appropriately identified as a rare language speaker. Vanessa, a mother who was detained in Dilley with her 8-year-old son after fleeing Guatemala in December 2015, experienced these hurdles as a rare language speaker. Vanessa grew up in a small village in Guatemala where many inhabitants, including her mother and grandparents, exclusively spoke Mam—not Spanish. Vanessa had trouble understanding the asylum officer, who conducted the interview with a Spanish interpreter, and as a result she failed to tell the officer that she was threatened with rape several times by gang members. She described the challenges she encountered:

“ I grew up speaking Mam and it is my first language. Where I grew up the people in my household spoke Mam. My mother spoke Mam. Mam is the language in which I converse with my friends and family and conduct my daily business when I am in Guatemala. I get confused when I speak Spanish and I often don’t understand what people are saying to me in Spanish....

I have not been able to explain myself well because I do not speak very much Spanish [and] I often feel like I don’t have the words to express myself adequately... Because I keep being asked so many questions in Spanish I feel very confused and I am not able to express myself.”²²

Another Mam speaker, Hilda, described her difficulty in communicating upon her arrival at Dilley. She said:

“ When I arrived at the facility on August 26 the officials asked me what language I spoke. I told them that I spoke Mam. And I told [them] that my religion was Mam as well. I have never had the opportunity to speak with any officials in Mam. Everything is done in Spanish and they never find a Mam interpreter. This includes all of my meetings with [the] immigration officials when they are explaining the immigration process. Everything is in Spanish.”²³

Even when the asylum office is able to locate an interpreter for a rare language, the applicant may still encounter problems when there are distinct dialects that can be unintelligible. In another case, the interpreter at Magdalena’s credible fear interview did not speak her dialect of K’iche’. Magdalena’s attorney contacted the asylum office following her interview to notify them that Magdalena had problems during her interview. The attorney stated, “[Magdalena] informed us that although she was provided with a K’iche’ interpreter at her interview this morning, she had difficulty understanding because the interpreter spoke a different K’iche’ dialect.”²⁴

Complexity of the Legal Standard in the Credible Fear Interview Process

Although the credible fear interview is designed to be a preliminary screening, the threshold standard that applicants must meet is far from straightforward. During a screening for a credible fear of persecution, an asylum seeker must show that there is a significant possibility of success if permitted to apply for asylum in the United States. In order to qualify for asylum, an applicant must meet the statutory definition of a “refugee”: a person in a foreign country who has a well-founded fear of persecution on account of one of five protected grounds: race, religion, nationality, political opinion, or membership in a particular social group.²⁵ The requirement that one’s fear of harm must have a connection, or nexus, to a protected ground is often the most difficult element of a protection claim for asylum seekers to establish—particularly when they are subjected to an expedited process or do not have the assistance of an attorney.

In the majority of negative credible fear decisions reviewed by the Project, claims had been denied based on failure to establish a nexus to a protected ground. One such case involved Josie and her son Hilario, who received negative decisions from the asylum office due to a lack of nexus between the harm they experienced in El Salvador and one of the protected grounds. Josie was eventually given another interview after her attorneys submitted additional evidence showing that Edwin, a friend of Hilario's who had fled to the United States under similar circumstances, had been apprehended by Mexican immigration authorities and deported back to El Salvador. Within days of Edwin's return to El Salvador, the same men who were hunting Hilario kidnapped and murdered Edwin and left his body in the street. The attorneys also submitted a letter of support from U.S. Senator Kristin Gillibrand (NY), and an op-ed was published in a major media outlet²⁶ highlighting Josie's story. This level of legal intervention is not typical, but in Josie and Hilario's case it was required to overturn the negative decision affirmed by an immigration judge and the four declined requests for reconsideration sent to the asylum office. While all families do not receive this level of advocacy, it should not be necessary just to survive a preliminary screening interview.

Understanding the concept of “nexus” to a protected ground in order to establish eligibility for asylum can be challenging for an immigration judge or seasoned attorney to grasp, as the statute remains open to interpretation and the case law is constantly developing.²⁷ The legal standard is even more difficult for a detainee to comprehend, particularly if a detained mother or her children are simultaneously grappling with health issues, dealing with trauma, or experiencing language barriers that distract and cause additional confusion in their cases. This is especially true for those who lack the competency to proceed with their cases.

In the case of Josefina and her 11-year-old son, Ignacio, legal representatives with CARA—an umbrella coalition that included the Project—working with the family recognized competency issues. The asylum office had already scheduled a credible fear interview, and Josefina's attorney requested that the family be released without undergoing the interview process. The request to the asylum office stated in part:

“ **Josefina is unable to respond to simple questions. Through extensive questioning, we have been able to learn from Josefina that she has a fourth-grade education, though she says that she completed the fourth grade when she was 16 years old. Although she can recognize some words, for example, the name of her department in Guatemala, and claims to have basic literacy skills, she was unable to respond to the simple, Spanish-language biographic questions on CARA’s client intake paperwork, and could provide biographic information to CARA only in response to intensive one-on-one, verbal assistance with a CARA volunteer who wrote down her answers. Even then, Josefina repeatedly responded ‘yes’ or ‘no’ in response to basic open-ended questions seeking biographic information (and not seeking ‘yes’ or ‘no’ answers).**

Josefina’s 11-year-old son Ignacio also appears to have competency issues. CARA staff spoke with Ignacio after meeting with Josefina, and observed that Ignacio appears to lack a basic understanding of his surroundings and may not be able to comprehend abstract concepts. He also is unable to respond even to simple questions. CARA staff initiated the conversation with age-appropriate, rapport-building questions, but Ignacio was not able to respond. When CARA staff asked Ignacio what his favorite color was, he replied ‘what is color?’ CARA staff explained what a color is and gave him examples of colors, and again asked what his favorite color was. He responded, ‘no.’”²⁸

Despite these competency concerns, DHS did not release Josefina and her son or place them in standard removal proceedings rather than the expedited removal process. Instead, they were required to appear before the asylum office for a credible fear interview; fortunately, they managed to receive positive decisions and were later released to pursue their claims for asylum before the immigration judge. Josefina’s case shows that even when the asylum office is notified in advance of demonstrated competency concerns, the credible fear interview may still proceed, and with no guarantee of a full hearing before an immigration judge.

Perceived low comprehension similarly prohibited another asylum seeker, Maite, from fully grasping the interview process. As a result, she failed to talk about her history of serious domestic violence at the hands of her ex-partner, the father of her daughter.

A legal assistant who helped to prepare Maite for her interview with the asylum office and subsequent review by the immigration judge described her observation of Maite’s low comprehension:

“ Though I have seen a wide range of responses to such trauma, and the spectrum of ‘normal’ is diverse and broad, Maite demonstrates an unusual inability to process her experiences and understand the legal system she must navigate. Unlike the vast majority of the clients I have worked with, Maite is unable to reflect back any of the conversations we have had regarding next steps.

Maite has significant difficulty comprehending abstract concepts and the legal structures surrounding her case. She struggles to articulate past harm in a linear, clear fashion. At her [credible fear interview] on July 1, 2016, she failed to communicate a significant history of physical and sexual abuse, because she did not realize its relevance to her asylum claim.’²⁹

Despite the many challenges that Maite faced throughout the credible fear process, a sympathetic immigration judge overturned Maite’s negative decision after her attorney submitted a detailed declaration explaining the issues that had prevented her from fully articulating her claim during her interview.

Procedural Problems in the Fear Interview Process

Within a few days of arriving at the detention center in Dilley, a mother—and in some cases, her children—undergoes a credible fear interview with the Asylum Office. Whenever possible, one of the Project’s legal assistants or attorney meets with the family a day before the interview to explain what to expect during the interview and help them prepare their testimony.

The interview itself can be nerve-racking and, for many, a completely unfamiliar experience. Seldom does the asylum officer speak the applicant’s language well enough to conduct the interview without a telephonic interpreter, and the layout of the interview itself—with the interviewer in front of a computer screen sitting at a desk across from the mother—can create an adversarial environment.

Applicants may also hesitate to trust the telephonic interpreter (who is not visible to the officer or the detainee) or fail to understand the interpreter’s and officer’s obligations to maintain confidentiality.

In the case of Fiorella, the use of a phone interpreter made her feel uncomfortable and prevented her from sharing important details. She said:

“ I could not express myself fully because I kept losing my train of thought because the officer would cut me off so that the interpreter could finish translating... I felt as though the asylum officer was very dismissive of what I was telling her and would not let me share my story and the real reason why I am afraid to return to Haiti.”³⁰

In other cases, failure to understand the credible fear interview process may lead some applicants to withhold information. Rodalia left two children behind and fled Honduras with her 13-year-old son, Elias, in July 2016. After receiving a negative decision from the asylum office, she explained to her attorney that she had failed to share parts of her story because she did not know that the interview would be confidential. She explained how she feared for her children in Honduras:

“ I did not understand during the interview that the things I told the officer would remain confidential. My two older children are still living in Honduras, and I was very worried during the interview that the gangs in my town in Honduras would find out what I had told the immigration authorities in the United States. I was worried that if I told the officer everything that happened, the gangs would hurt or kill my two children who remained in Honduras. Because I was so afraid for my other children, there were certain questions that I did not answer fully. I did not intend to withhold any information, but was very afraid for the lives of my other two children.”³¹

The interview experience is also potentially rife with procedural pitfalls. Asylum Officers are required to conduct the interview in compliance with relevant statutes, regulations and guidance, but sometimes fail to do so.

For example, officers must ensure that an asylum seeker feels comfortable, ask sufficient follow up questions to reveal critical information in the person’s case, evaluate a parent’s claim for protection separately from the child’s (and vice versa), and “special attention should be paid to the privacy of each family member and to the possibility that victims of domestic abuse, rape and other forms of persecution might not be comfortable speaking in front of other family members.”³² Even so, these hazards are not always avoided. One mother, Isidora, was interviewed with her daughter Daysi in the room. Isidora said:

“ We forgot to mention very important things. I didn’t want to mention what was going on because we were interviewed together. My daughter was there, and I didn’t want her to find out and fall into deeper depression.... I did not tell the officer about the [rape by Daysi’s father] or the phone call [that I received from the gang members threatening to kill my daughter first and then end with me] because I did not want my daughter to hear about it, since she is having problems with her stomach and suffers with depression. I am very worried about her.”³³

Isidora states she failed to disclose critical parts of her asylum claim because was afraid that if Daysi learned more about why they fled Honduras, it would worsen her condition. After the interview, the asylum officer determined that Isidora did not have a credible fear of persecution—but an immigration judge reversed the negative decision based on written testimony, and Isidora was not required to verbally discuss the more sensitive aspects of her claim.

On paper, the interview process is designed to elicit responses that may bolster an applicant’s claim for relief; however, what happens in practice may be quite different. In some cases, an asylum officer’s failure to build rapport and ask follow-up questions could prevent a woman from sharing her entire story. For example, Clara, described her discomfort during her interview:

“ The officer in my opinion was not very interested in what I had to say and I think he did not believe me. I was unable to open up to him about some of the reasons I was afraid because I felt like he wouldn’t believe what I was saying. In my interview, I would try to explain myself further with a question and he would tell me to stop, that I needed to limit the answer to what he was asking. ...I didn’t tell him about my uncle being murdered because of this. I just didn’t think he wanted to listen to me anymore.”³⁴

Asylum officers also struggle at times to build rapport with and adjust their interview style for children, despite specific procedures to do so that are laid out in the Children’s Asylum Guidelines.³⁵ In certain cases, in addition to interviewing the mother, the asylum officer may interview a minor child about his or her own protection concerns in the home country. The lack of child-friendly questioning left 15-year-old Eduardo feeling uncomfortable sharing his entire story with the asylum officer. He said:

“ From the beginning, the asylum officer made me feel very uncomfortable and nervous. The asylum officer asked me question after question very quickly. I felt rushed and that I did not have time to answer questions well. At one point during the first interview, towards the beginning, the asylum officer yelled at my mother. This made me even more nervous.”³⁶

The asylum officer in Eduardo’s case issued a negative decision, which an immigration judge affirmed (or agreed with). However, after Eduardo told his mother that the man who had threatened him in Honduras was the leader of a regional gang—a fact that he did not disclose during his initial credible fear interview— the asylum office agreed to re-interview him. Two days before Eduardo’s birthday, the asylum office reversed their negative decision. As is clear from Eduardo’s account, child asylum seekers are uniquely vulnerable due to their age, maturity, development, level of understanding, and limited ability to communicate. As such, asylum officers have an obligation to adjust their questioning and tailor interviews to the needs of a child during a fear interview.³⁷

The Critical Role Attorneys Play in Asylum Proceedings

The importance of legal assistance in asylum cases is evident from the Project, which provides services to the vast majority of families detained in Dilley throughout their credible fear proceedings. The services include screening clients for relief, preparation for the credible fear interview, occasional representation at the credible fear interview, and representation at bond hearings and immigration judge reviews of negative credible fear decisions.

When an asylum officer makes a negative credible fear finding, the decision must be approved by a Supervisory Asylum Officer before U.S. Immigration and Customs Enforcement (ICE) serves the decision on the family. The family can then seek review of the asylum officer's decision in a brief hearing before the immigration judge, called a Negative Credible Fear Review (NCFR) or an "IJ (immigration judge) Review." This review takes place in a traditional immigration court setting, whether the judge appears via televideo conference from an immigration court in another city (the long-standing practice) or in person (a more recent development as of mid-March 2017). In practice, however, the IJ Review bears little or no resemblance to a traditional immigration court hearing. The mother, child, or their attorney of record has a very limited opportunity to present evidence or participate meaningfully. The detainee's attorney is generally not permitted to speak during the IJ Review or present a theory of the case, case law, or arguments—which may demonstrate the applicant's eligibility for asylum or withholding of removal. The attorney is limited to submitting a declaration and supporting documents—such as a police report or death certificate—that may corroborate the applicant's testimony and claim of past persecution or fear of future persecution upon return to the country.

On some occasions, the court has attempted to limit the volume of evidence submitted, or objected to accepting any evidence due to the "untimeliness" of the submission. The Project receives a court docket the day before the hearing. This, in effect, means that the attorneys and legal assistants may have only a few hours to prepare numerous families for a hearing that could result in their deportation. In addition to the IJ Review, U.S. Citizenship and Immigration Services (USCIS) policy permits submission of a request for re-interview (RFR) following a negative credible fear finding if there was a procedural error during the credible fear interview or if the applicant can offer new supporting evidence.³⁸ RFRs are reviewed by the local asylum

office to determine whether an opportunity for a second interview will be provided. Given the complexity of the IJ Review and request for re-interview processes, it would be nearly impossible for most asylum seekers to challenge negative credible fear findings without the assistance of legal counsel.

Antonia, the Haitian-Creole asylum seeker who fled Haiti with her daughter Rosaline after a series of traumatic events, was unable to articulate her fear due to the well-documented medical issues previously discussed in this paper, including a seizure disorder, competency issues, and Post-Traumatic Stress Disorder (PTSD).

After she failed her credible fear interview with the asylum office, the immigration judge affirmed the negative decision. Acutely aware of the dangerous fate that awaited Antonia and Rosaline in Haiti, their pro bono attorneys prepared three re-interview requests for the asylum office, in addition to filing a complaint with the DHS Office for Civil Rights and Civil Liberties and coordinating letters of support from Members of Congress. The RFRs included a declaration from an attorney who explained his observations of Antonia. He described how visibly traumatized Antonia was right before she fell to the floor in front of him and suffered a seizure the day before her immigration judge review hearing:

“

At several points during our meeting, as she recounted these cumulative, horrific tragedies, [Antonia] rocked back and forth in a kind of self-soothing way, repeatedly clutching her baby to her as she rocked. At other times, she crossed her arms in a protective gesture, and crouched in a kind of defensive posture. While describing these past traumas, she sometimes appeared nervous, agitated, and angry. At other times, she stared at the ceiling with a vacant look and seemed distant, almost beyond communication. On yet other occasions, she just sobbed. We had to stop our session so that she could compose herself on four occasions. At the end of our meeting [Antonia] placed her head on the desk, covered her face with her hands, and began weeping inconsolably. There was an audible wail to her cries. Her whole body shook. I was frightened.

“ When [Antonia] was steps away from the exit door, she suddenly fell to the ground and collapsed. As she lay on the floor, her body involuntarily convulsed for several minutes. Medical staff eventually appeared. [Antonia] has not had any specialized follow-up medical [attention], such as testing, since her seizure.”³⁹

After Antonia suffered a seizure on her way to the airport on February 16, 2017, she and Rosaline were transported to the emergency room instead of being deported. By the time they returned to Dilley, their third request for re-interview had been granted. Antonia and her young child were eventually released from detention and permitted to pursue their claims for asylum in immigration court. If not for the substantial advocacy and legal efforts made by her attorneys, Antonia and her daughter would undoubtedly have been deported.

Legal counsel was pivotal in the case of Beatriz, who received a negative credible fear determination from an asylum officer after failing to fully disclose facts of her case. Beatriz was unable to discuss how she witnessed, at the age of 11, the murder of her mother while she and her baby sister—who Beatriz held in her arms—were hit with bullets fired by gang members demanding extortion.⁴⁰ Thankfully, Beatriz and her sister survived—though her father, who was also hit by the bullets, died two years later from an infection in one of the gunshot wounds. These facts were shared with the immigration judge reviewing her case, who declined to reverse the negative decision.

Beatriz was given a second interview. The day before her interview, she shared with her attorney—for the first time—that she had been gang-raped by two men who had been targeting her for extortion payments. She stated in a sworn declaration:

“ Approximately 15 days [after the shooting], two men came to threaten me again. It was the same two men. Both their faces were covered but I recognized one of them because of the mole next to his eye. They asked if I had the money they requested which I did not. The town was close to the mountains. They took me to the mountains and one of the men proceeded to rape me while the other one watched and looked out for anyone passing by. These men told me they did this to show me that they followed through on their threats.

“ The first time I ever told anyone about this rape was to the CARA Project. I did not tell my husband, my sister, or anyone what had happened to me. ...I did not previously tell the CARA Project, the asylum officer at my credible fear interview, or the immigration judge because I was afraid that it would get back to the men in Guatemala.”⁴¹

Without the assistance of Beatriz’s attorneys in Dilley, who prepared the detailed request for a second interview with the asylum office and managed to elicit additional critical details regarding her asylum claim at the eleventh hour, she would likely have been deported to Guatemala with her then 8-year-old son Joel.

CONCLUSION

The pitfalls that detained asylum seekers, and families in particular, face when subjected to a fast-track removal process place them at grave risk. The trauma these asylum seekers have already experienced, often compounded by family separation or challenging health issues, makes it difficult for mothers to present their claims for protection with the focus and detail necessary to succeed. The complexity of the legal standard, alongside limited language access for non-Spanish speakers, makes it remarkably difficult for detained families to understand the expedited removal process and share specific details of their experiences that are necessary to establish eligibility for relief.

When interviews go badly—because rapport is not established, lines of questioning are not developed, or children are questioned like adults—the critical screening role that a credible fear interview plays is doomed from the start. Without legal counsel, asylum seekers can neither navigate nor avoid these pitfalls and risk falling through the cracks of the system. The protection needs of these asylum-seeking families must be met with a robust legal process and legal assistance from the start to ensure that no one is sent back to their deaths.

ENDNOTES

1. Declaration of Valeria, August 30, 2016.
2. Danielle Renwick, “Central America’s Violent Northern Triangle,” *Council on Foreign Relations*, January 19, 2016, <http://www.cfr.org/transnational-crime/central-americas-violent-northern-triangle/p37286>.
3. *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* (Washington, DC: UNHCR, March 12, 2014), <http://www.unhcr.org/en-us/about-us/background/56fc266f4/children-on-the-run-full-report.html>.
4. Over the past several months, immigration attorneys and advocates have received numerous accounts of asylum seekers being turned away at ports of entry along the U.S.-Mexico border. See, e.g., Complaint from American Immigration Council et al. to DHS Office of Civil Rights and Civil Liberties (OCRCL) and Office of the Inspector General (OIG), Re: U.S. Customs and Border Protection’s Systemic Denial of Asylum Seekers at Ports of Entry on U.S.-Mexico Border, January 13, 2017, <https://www.americanimmigrationcouncil.org/content/us-customs-and-border-protections-systemic-denial-entry-asylum-seekers-ports-entry-us>; Joshua Partlow, “U.S. Border Officials are Illegally Turning Away Asylum Seekers, Critics say,” January 16, 2017, https://www.washingtonpost.com/world/the-americas/us-border-officials-are-illegally-turning-away-asylum-seekers-critics-say/2017/01/16/f7f5c54a-c6d0-11e6-acda-59924caa2450_story.html; U.S. Commission on International Religious Freedom, *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal* (2016), 19-20, <https://www.uscirf.gov/sites/default/files/Barriers%20To%20Protection.pdf> (reporting that despite findings and recommendations in a 2005 study relating to primary inspection, USCIRF observers in 2016 continued to find “several examples of non-compliance with required procedures” in CBP primary inspection interviews); Clara Long, *You Don’t Have Rights Here: US Border Screening and Returns of Central Americans to Risk of Serious Harm* (New York, NY: Human Rights Watch, October 16, 2014), 2, 4, <https://www.hrw.org/report/2014/10/16/you-dont-have-rights-here/us-border-screening-and-returns-central-americans-risk> (concluding that the “ cursory screening [conducted by CBP officials] is failing to identify [asylum seekers]” and reporting that some “border officials acknowledged hearing [non-citizens] expressions of fear but pressured them to abandon their claims”).
5. U.S. Customs and Border Protection, “United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016,” <https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016> (showing that the number of apprehensions of unaccompanied children jumped from around 38,000 in FY 2013 to over 68,000 in FY 2014, and the number of apprehensions of family units jumped from about 15,000 in FY2013 to over 68,000 in FY2014).
6. Clara Long, *You Don’t Have Rights Here*.
7. American Immigration Lawyers Association, *Due Process Denied: Central Americans Seeking Asylum and Legal Protection in the United States* (Washington, DC: June 14, 2016), 8, <http://www.aila.org/File/Related/16061461.pdf>.
8. *Ibid*, at 11.
9. The CARA Family Detention Pro Bono Project was established March 2015, though attorneys and legal assistants were on the ground in Dilley in the weeks after the STFRC’s opening in December 2014. In January 2017, the institutional management of the Project was transferred from the four original CARA partners—CLINIC, American Immigration Council, RAICES, and AILA— to Texas RioGrande Legal Aid, Inc., a local non-profit organization that provides free legal services to the residents of Southwest Texas. However the American Immigration Council, CLINIC and AILA, remain involved in the Project financially and continue to provide legal and advocacy support. The Project, which was renamed the Dilley Pro Bono Project in January 2017 to reflect the shift in management, continues to be referred to as the “CARA Project” by the media, and legal and advocacy community at large.
10. U.S. Comm’n on Int’l Religious Freedom, *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal*; U.S. Comm’n on Int’l Religious Freedom, *Report on Asylum Seekers in Expedited Removal* (February 8, 2005), <http://www.uscirf.gov/reports-briefs/special-reports/report-asylum-seekers-in-expedited-removal>.
11. Declaration of Sofia, October 17, 2016.
12. Complaint from CARA Pro Bono Project to OCRCL, Re: Ongoing Concerns Regarding the Detention and Fast-Track Removal of Detained Children and Mothers Experiencing Symptoms of Trauma, March 29, 2016, <http://www.aila.org/advo-media/press-releases/2016/cara-crcl-complaint-concerns-regarding-detention>.
13. Statement regarding the mental health needs of women and children detained in immigration facilities by Dr. Gisselle Hass, January 22, 2015, http://www.asistahelp.org/documents/news/Mental_Health_Statement_GH_E49E41BF6BFF5.pdf.
14. Declaration of Valeria , August 30, 2016.
15. Case notes for Camila, January 11, 2016.
16. Leigh Barrick, *Divided by Detention, Asylum-Seeking Families’ Experiences of Separation* (Washington, DC: American Immigration Council, August 2016), https://www.americanimmigrationcouncil.org/sites/default/files/research/divided_by_detention.pdf.
17. Declaration of Luciana, December 11, 2015.
18. Case notes, Fernanda, January 27, 2017.

19. Declaration of Ana Sofia, June 24, 2016.
20. Supplemental Documents in Support of our Second Request for Reconsideration or Re-Interview in the Alternative, February 23, 2017, Antonia.
21. Complaint from CARA Pro Bono Project to OCRCL, Re: Family Detention: Challenges Faced by Indigenous Language Speakers, December 10, 2015, <http://www.aila.org/advo-media/press-releases/2015/crcl-complaint-challenges-faced-family-detention>.
22. Declaration of Vanessa, January 12, 2016.
23. Declaration of Hilda, September 2, 2015.
24. Case note, Magdalena, December 2, 2016.
25. INA sec. 101(a)(42).
26. Lindsay Harris, "Opinion: Our asylum system fails and a 10-year-old boy could be deported to his death," *Fox News Opinion*, May 5, 2016, <http://www.foxnews.com/opinion/2016/05/05/opinion-our-asylum-system-fails-and-10-year-old-boy-could-be-deported-to-his.html>.
27. In February 2017, the asylum office updated its Lesson Plans, which operate as a training tool for asylum officers and serve as guidance to the officers throughout the CFI process. These changes could prove substantial and may result in the United States rejecting applicants who genuinely fear harm or death if returned to their countries. Specifically, the plans place greater emphasis on an individual establishing her identity and require the asylum officer to make a "full and final determination" of an applicant's credibility, formerly the province of an immigration judge in a full hearing. Memo from John Lafferty, USCIS Asylum Division Chief, to Asylum Office Personnel, Subj: Release of Updated Asylum Division Officer Training Course Lesson Plans (February 13, 2017), available from the American Immigration Lawyers Association, *AILA Doc. No. 17022434*, <http://www.aila.org/infonet/uscis-asylum-division-memo-releasing-revised>.
28. Case Notes, Josefina, October 8, 2016.
29. Declaration on Behalf of Maite, Erin Carter, July 11, 2016.
30. Declaration of Fiorella, December 29, 2016.
31. Declaration of Rodalia, August 1, 2016.
32. See *Id.*, Section (X)(A), Treatment of Dependents.
33. Declaration of Isidora, April 15, 2016.
34. Declaration of Clara, September 7, 2016.
35. U.S. Citizenship and Immigration Services, *Guidelines for Children's Asylum Claims* (September 1, 2009), 37, https://cliniclegal.org/sites/default/files/AOBTC_Lesson_29_Guidelines_for_Childrens_Asylum_Claims_0.pdf.
36. Declaration of Eduardo, December 5, 2016. *Ibid.*, stating "When conducting an interview of a child in the presence of another adult, the Asylum Officer should assess whether the child is comfortable speaking freely in front of the adult. In order to ascertain the child's level of comfort with the adult, asylum officers may initially bring the child into the interview room alone, and ask if the child would like for the accompanying adult to be present." In Eduardo's case, the Asylum Officer failed to follow these guidelines, which caused Eduardo to perform poorly during his interview.
37. USCIS, *Guidelines for Children's Asylum Claims*.
38. See 8 C.F.R. §1208.30 (g)(2)(iv)(A). See also Memo from Michael Benson, Exec. Assoc. Commissioner for Field Operations, to INS Directors "Expedited Removal: Additional Policy Guidance," December 30, 1997, AILA Doc. No. 98021090, <http://www.aila.org/infonet/ins-expedited-removal-guidance>. USCIS policy directs that an applicant may be re-interviewed when she has made a "reasonable claim that compelling new information concerning the case exists and should be considered.
39. Declaration of Stephen C. Halpern, Esq., February 9, 2017.
40. Declaration of Beatriz Maribel Ramirez-Mendez, October 28, 2015.
41. Supplemental Declaration of Beatriz Maribel Ramirez Mendez, November 4, 2015.