Submission to the U.S. House of Representatives Committee on the Judiciary:
Asylum Abuse: Is it Overwhelming our Borders?
December 12, 2013

Introduction

The Center for Victims of Torture (CVT) is an international non-profit organization that provides rehabilitation services to survivors of torture and severe war atrocities. Since its founding in 1985, CVT has extended care to nearly 25,000 survivors at our healing sites in the United States and around the world. Many of CVT’s clients at our clinic in St. Paul, MN are asylum seekers who came to the United States in search of protection and found themselves navigating a confusing labyrinth of complicated laws and legal procedures in an asylum adjudication process that takes months or years.

In November 2013, CVT in partnership with the Torture Abolition and Survivor Support Coalition and the Unitarian Universalist Service Committee released the report, “Tortured & Detained: Survivor Stories of U.S. Immigration Detention,” focused on the personal and psychological aspects of the detention experience. In researching that report, CVT staff interviewed individuals who survived various forms of severe trauma, including torture, fled their country of origin and arrived in the United States believing they had reached a destination of safety—only to find themselves arrested, shackled, and held in confinement for weeks, months and, in some rare cases, years.

As the House Committee on the Judiciary examines this important question of asylum seekers at the U.S. border, CVT offers a series of recommendations for steps Congress can take to improve efficiencies in the asylum adjudication process and make the system less vulnerable to fraud. These steps would improve the system overall, while helping those who have genuine asylum claims move more smoothly—and less traumatically—through the asylum process.

Survivors of Torture Seeking Asylum in the United States

As they flee for their lives, asylum seekers often carry the heavy weight of multiple and cumulative traumas. They have been forced to leave their homes, their communities, their families, their professions, and their culture. Many have been tortured or raped. Most are fleeing situations in which genocide, war, military dictatorships, organized violence, massacres, disappearances or other gross violations of human rights have occurred. Furthermore, their journey to the United States is often riddled with danger and uncertainty.

These traumatic experiences lead many asylum seekers, particularly those who have been subjected to torture, to suffer from severe sleep disorders, chronic physical pain, anxiety, depression and suicidal ideation. CVT’s clients regularly describe feeling haunted by intrusive memories, excessive rumination, nightmares, and repeated episodes of actively re-experiencing past traumas. In less than three years—from October 2010 to February 2013—CVT estimates the United States detained approximately 6,000 survivors of torture as they were seeking asylum protection.

As a party to the 1967 Protocol to the 1951 United Nations Convention Relating to the Status of Refugees and the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United States has committed itself to uphold the principle of non-refoulement and not return refugees to countries where their life or freedom would be threatened or where they are more likely than not to be tortured. The United States enshrined these principles into domestic law through the Refugee Act of 1980 and through incorporating CAT standards into Section 8 of the Code of Federal Regulations in 1999.²

Nevertheless, upon arrival in the United States, asylum seekers regularly report feeling shocked at being detained, particularly in the conditions in which they are held. At the short term facilities on the border managed by U.S. Customs and Border Protection, asylum seekers describe feeling intensely uncomfortable, being forced to endure painfully cold temperatures with authorities refusing to give them a blanket or extra clothes. They report feeling humiliated due in part to a lack of privacy in the small and crowded holding cells, creating a situation in which they must urinate or defecate in front of their cellmates. They describe an utter state of confusion as they undergo interviews by border officials—sometimes without an interpreter—and are forced to sign papers they do not understand, either due to a language barrier and lack of translation or to not knowing the law or legal process, or all of the above.

Throughout this time at the border—and later while in detention under the custody of U.S. Immigration and Customs Enforcement—asylum seekers continue to suffer from a profound lack of information and understanding of what is happening and why. For survivors of torture, these conditions and treatment can lead them to relive their experience of torture, as their subjective experience is being rendered powerless and, in some circumstances, forced to endure prolonged physical discomfort. The effect can lead to a deterioration of an asylum seeker’s mental state, especially when combined with the indefinite nature of the situation: Whether someone is detained for 2 hours or 2 years, the subjective experience at any given time includes not knowing when or if it will ever end. The indefinite nature of this experience is a psychologically destructive blanket over it all.

For the asylum system to function well, credible fear interviews and an assessment of whether an asylum seeker who passes credible fear is eligible for release from detention should happen promptly. These prompt assessments and utilization of more cost-effective alternatives to detention can help prevent prolonged and unnecessary detention, reducing the hardship on the individual while saving valuable taxpayer dollars. Similarly, on a systematic level, providing detainees with access to legal information helps the immigration court process run more efficiently and reduces delays. For the individual, having access to basic information about the process—even if it does not change the process or the outcome—can serve to support resilience, help to avoid retraumatization and reduce anxiety.

² 8 C.F.R. § 1208.18 (1999).
Beyond detention, torture survivors regularly describe agony and dread associated with waiting extended periods of time before having their asylum cases heard in the immigration courts. Currently, asylum seekers are waiting an average of 560 days before having a merits hearing. During that time, they remain separated from family members. Their housing is often unstable or unsafe, making them vulnerable to exploitation, especially as they may not be legally allowed to work. Throughout this period of waiting, they live in constant fear of being returned to the country in which they were tortured. When a survivor of torture’s life remains in this state of limbo, the trauma is ongoing and the instability may exacerbate symptoms of depression, anxiety or other conditions they may be suffering. CVT supports a congressional approach that would eliminate the backlogs in the immigration courts, reduce delays in asylum adjudications and allow asylum applicants to have their claims decided on their merits in a fair and efficient manner.

Recommendations

- **Increase personnel in both U.S. Citizenship and Immigration Services (USCIS) and the Department of Justice/Executive Office for Immigration Review (EOIR).** Properly staffing the adjudication functions of the U.S. immigration system is critically important to reducing the backlogs and driving down the overall costs of the immigration system, including by reducing detention time. More personnel in both the USCIS Asylum Division and the EOIR immigration courts will allow much quicker adjudication of asylum claims.

- **Expand EOIR’s Legal Orientation Program (LOP) nationwide.** Detainees’ lack of knowledge about immigration court proceedings often leads to delays in the adjudication of cases. Congress should increase LOP nationwide and mandate that it be made available to all immigrants in detention within five days of being taken into custody. LOP saves money by improving efficiencies in the immigration court and reducing costly detention time.

- **Provide counsel for individuals in immigration proceedings.** Not only does having counsel allow for the more fair adjudication of immigration cases, it also makes the process run more smoothly and helps prevent unnecessary delays in the immigration courts. Congress should consider mandating counsel for certain groups of individuals in immigration proceedings, especially vulnerable groups such as children, individuals with mental disabilities, and survivors of torture.

- **Expand humane alternatives to detention and improve the custody determination processes.** When physical detention is not necessary, but release is not an option, U.S. Immigration and Customs Enforcement (ICE) should have other, less expensive, less restrictive tools to utilize. Congress should establish alternative to detention programs nationwide that contract with community based organizations and offer case management to provide survivors of torture, and others enrolled in these programs, with the support they need to comply with all court and ICE requirements. Congress should enhance protections against arbitrary or prolonged detention by allowing all immigration detainees to have access to a custody review by an immigration judge.

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