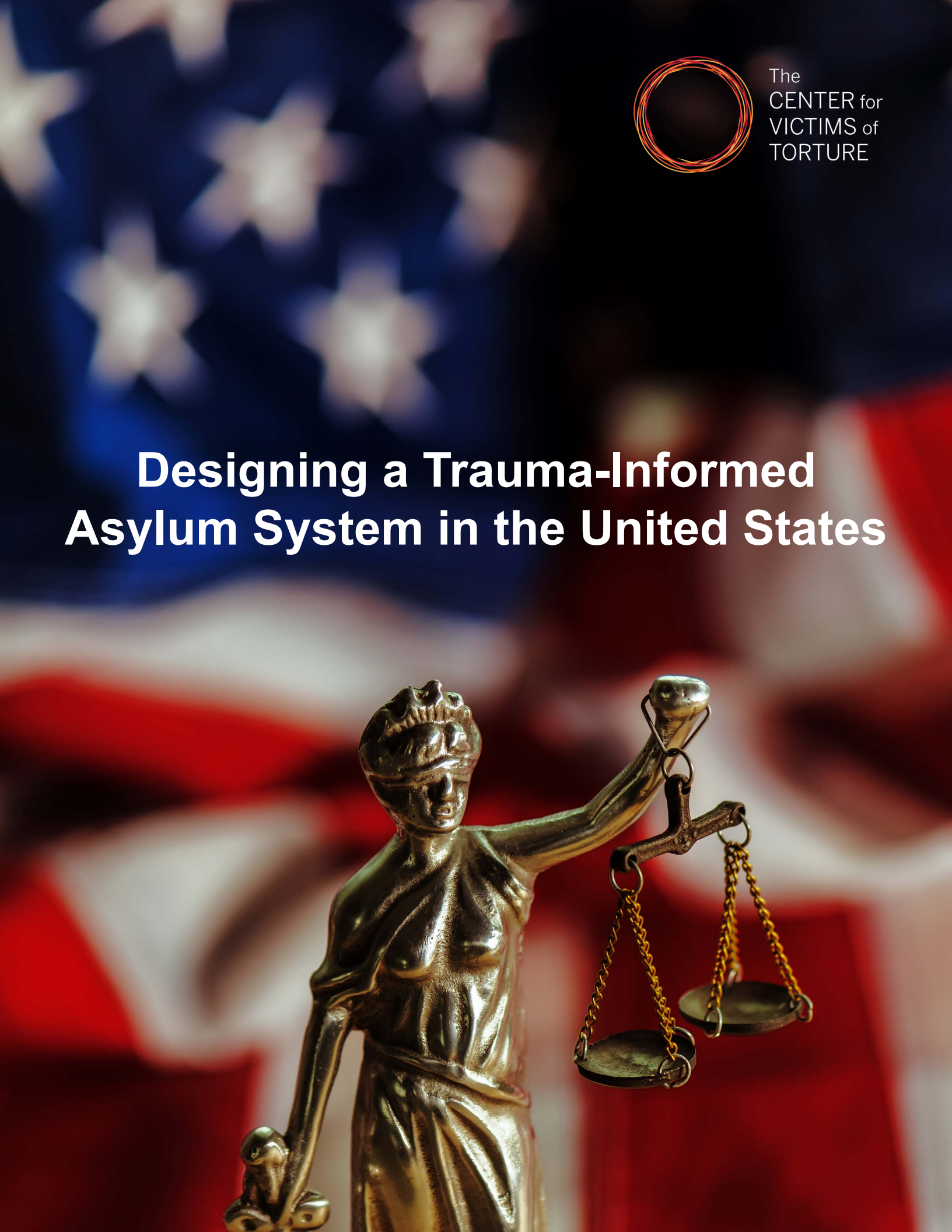
The CENTER for VICTIMS of TORTURE

Designing a Trauma-Informed Asylum System in the United States



ACKNOWLEDGEMENTS

The Center for Victims of Torture (CVT) is a nonpartisan, nonprofit organization based in St. Paul, Minnesota, with additional offices in Africa, the Middle East and the United States, including Washington D.C. and Atlanta, Georgia.

Designing a Trauma-Informed Asylum System in the United States was authored by CVT Senior Clinician for External Relations Alison Beckman, M.S.W., L.I.C.S.W., CVT Senior Policy Counsel Andrea Carcamo, CVT Staff Wellbeing and Mental Health Specialist Leora Hudak, L.C.S.W., and CVT Washington Director Scott Roehm.

The report also benefited from external review by CVT National Advisory Council Member Dr. Sondra Crosby, M.D. Dr. Crosby is an Associate Professor of Medicine and Public Health at the Boston University Schools of Medicine and Public Health and Co-founder of the Immigrant and Refugee Health Program at Boston Medical Center.

***

Founded in 1985 as an independent NGO, the U.S.-based Center for Victims of Torture (CVT) is the largest organization of its kind in the world. Through programs operating in the U.S., the Middle East, and Africa – involving psychologists, social workers, physical therapists, physicians, psychiatrists, and nurses – CVT annually rebuilds the lives and restores the hope of nearly 30,000 primary and secondary survivors of torture, other gross human rights violations, and severe war-related trauma. The vast majority of CVT's clients in the United States are asylum seekers.

For over 20 years, CVT clinicians have participated in the Refugee, Asylum, and International Operations Directorate Officer Training, leading the section on understanding torture survivor behavior in an asylum / refugee interview.

Through 35 years of clinical practice, research, and evaluation, CVT is intimately familiar with the types of trauma refugees and asylum seekers experience, how trauma manifests, and the ways in which the U.S. asylum system fails to understand or accommodate trauma—and, often exacerbates it.

Introduction

As a candidate, President Joe Biden pledged to "finish the work of building a fair and humane immigration system—restoring the progress Trump has cruelly undone and taking it further." More specifically, he promised to "reassert America's commitment to asylum seekers and refugees," including by ensuring migrants' dignity and "their legal right to seek asylum."

An important step toward fulfilling those commitments is for the Biden / Harris administration to build a trauma-informed asylum system.

Exposure to traumatic events and experiences – in the countries from which refugees and asylum seekers flee and/or along their migration journey – is prevalent among those populations and has profound impacts, both directly on survivors and indirectly on those who engage with them in a professional capacity. In order to maximize the asylum system's fairness, accuracy, and efficiency, and to minimize harm to those who access or work within it, the system must be structured to account for and appropriately address trauma.

What is trauma?

As described by the Substance Abuse and Mental Health Services Administration, trauma can result from an event, a series of events, or a set of circumstances when "experienced by an individual as physically or emotionally harmful or threatening." Trauma often has "lasting adverse effects on the individual's functioning and physical, social, emotional, or spiritual well-being."[1] How an event, a series of events, or a set of circumstances affects a person, though, often depends on how the individual experiences it, which can turn on a number of factors, including: individual biology and psychology; sociocultural differences; personal characteristics; and whether the event or events carry a particular meaning.

Effects of trauma can include difficulty concentrating, nightmares, insomnia, memory loss, fatigue, anxiety, depression, and posttraumatic stress disorder (PTSD). As one of the foremost experts on the effects of trauma on the brain and body has described:

> We have learned that trauma is not just an event that took place sometime in the past; it is also the imprint left by the experience on mind, brain and body. This imprint has ongoing consequences for how the human organism manages to survive in the present. Trauma results in a fundamental reorganization of the way mind and brain manage perceptions. It changes not only how we think and what we think about, but also our very capacity to think.[2]

Those who hear about, or are otherwise indirectly exposed to, the firsthand experiences of another person's trauma can themselves experience trauma indirectly—a phenomenon known as secondary trauma. This is a natural by-product of working or regularly interacting with traumatized people. It can cause symptoms that mirror those of PTSD, such as feelings of isolation, anxiety, and helplessness; dissociation; and difficulty sleeping, among other physical conditions.

Exposure to traumatic events and experiences is prevalent among refugees and asylum seekers

Refugees, including the asylum seekers among them, make excruciating and nearly impossible decisions to flee their homes. Whether due to war, torture, gender-based violence, or other forms of persecution, they can no longer remain safely in their countries. Many must escape quickly and with only the possessions they can carry. Their journey in search of safety is often long and perilous; women, LGBTQIA people, and other vulnerable groups are at heightened risk of violence and abuse along the way.

Over the last four years, refugees who have arrived at the United States' southern border seeking asylum have been exposed to, and suffered, additional harms as a result of myriad cruel policies and practices. These include, but are not limited to: family separation, "Remain in Mexico" (which evidence suggests has led to thousands of kidnappings, sexual assaults, and other attacks on asylum seekers, some of which have resulted in deaths),[3] prosecution and detention, and removal to unsafe countries without due process (in some cases without any process at all).

Longstanding features of the asylum system exacerbate trauma or are independently traumatizing

It is not surprising, then, that exposure to traumatic experiences and resulting trauma is widespread among refugees and asylum seekers. For example, CVT's research indicates that as many as 44 percent of refugees and asylum seekers living in the United States are torture survivors, many of whom are in need of rehabilitation services.[4] Other studies indicate a similarly significant torture prevalence rate among forced migrants (including asylum seekers) in high income countries.[5] Of course, torture is only one of many sources of pre- and post-migration trauma.

Even before the Trump administration imposed its punitive and cruel asylum-related policy agenda, some longstanding features of the asylum system exacerbated trauma or caused trauma independently. For example:

<u>Detention</u>

Immigration detention is often indefinite in nature, and as such can cause severe and protracted health problems. The indeterminacy of indefinite detention can be overpowering—it creates such uncertainty, unpredictability, and loss of control over the basic aspects of one's life that it can seriously harm healthy individuals, independent of other aspects or conditions of detention.

Indefinite detention's harmful psychological and physical effects can include: severe and chronic anxiety and dread; chronic levels of stress that have damaging effects on the core physiologic functions of the immune and cardiovascular systems, as well as on the central nervous system; depression and suicide; PTSD; and enduring personality changes and permanent estrangement from family and community that compromises the person's ability to regain a normal life following release.

The profound health consequences of indefinite immigration detention are intensified in people who have been traumatized before being detained. Indeed, multiple studies evaluating the detention of asylum seekers have demonstrated that detention has a particularly negative impact on trauma survivors.[6] For example, a 2015 systematic study of research into the mental health impact of detention on asylum seekers found "evidence to suggest an independent deterioration of the mental health due to detention of a group of people who are already highly traumatized. Adverse effects on mental health were found not only while the asylum seekers were detained … [but also] extending well beyond the point of release into the community."[7]

These findings are consistent with CVT's clinical experience. According to CVT's Director of Client Services, Dr. Andrea Northwood:

> One of the features of PTSD is that its symptoms (nightmares, flashbacks, feeling the same terror one felt during a previous trauma, etc.) are often triggered by exposure to reminders of that trauma. Immigration detention facilities are replete with these reminders: uniformed guards, institutional settings, guns, limited control or movement, shackles, wearing a prison-like uniform, being threatened with forced removal (routinely regarded as a death sentence for CVT asylum-seeking clients), being under the control of a government authority. These are all common features of traumatic events that persons who are fleeing political persecution and human rights violations have already experienced. In my experience, trauma survivors in institutional settings such as locked hospital wards or prisons experience significant exacerbation of their PTSD reexperiencing and hyper-arousal symptoms in the presence of these triggers, with accompanying heightened distress and emotional dysregulation. It has been my consistent clinical observation in treating asylum seekers that symptoms of Major Depression and PTSD [also] increase substantially in environments of deprivation and boredom.... Sitting around all day with nothing to do is described as a major stressor (at best) and even a cause of insanity ("going crazy") by our asylum-seeking trauma survivors, as they use "keeping busy" and meaningful activity to distract themselves from involuntary, disturbing traumatic memories as well as profound sadness and loss.

Of course, medical neglect and abuse – among other well-documented inhumane conditions of confinement,[8] including the use of isolation – which increasingly appears to be widespread throughout the immigration detention system, only makes the system more dangerous and damaging. And because detained immigrants are often held in detention facilities far from their family members, or in remote locations that are difficult to access, immigration detention can also result in family separation, which itself has a devastating impact on families. Because social support is an essential component of managing and recovering from trauma, highly-traumatized populations are particularly vulnerable to the adverse effects of family separation.

<u>Interactions with Customs and Border Protection (CBP)</u>

For the many asylum seekers who have been exposed to traumatic experiences involving police or military forces, militias, gangs, and similar actors, interactions with uniformed and/or armed government personnel – like CBP – can be triggering. This is true irrespective of the manner in which CBP officers engage with asylum seekers, but especially concerning given CBP's long history of mistreating asylum seekers, which has peaked under the Trump administration.[9]

<u>Immigration court proceedings</u>

At present, asylum seekers looking for refuge in the United States can pursue relief in two different ways: by filing an asylum application with United States Citizenship and Immigration

Services (USCIS) once they are inside the country (the affirmative process) or by filing for asylum in immigration court once they are placed in removal proceedings (the defensive process). Individuals who turn themselves in to U.S. authorities at the border or while crossing the border fall under the second category and so, if they pass their credible fear interview, must then present their case before the immigration court.

Court proceedings are inherently adversarial. Asylum seekers must describe the details of their traumatic experiences, often multiple times and through an interpreter, to government lawyers who are attempting to demonstrate that they do not qualify for or otherwise deserve asylum and to judges who are evaluating their every word and behavior. Even the courtroom setting itself – a witness stand that sits next to but is purposefully lower than the judge's bench, and directly facing the lawyer's podium or table – coupled with the formality of the proceedings, contributes to an atmosphere of confrontation.

Not only can this combative process exacerbate trauma, but by doing so it also (as explained below) undermines the search for truth.

The asylum backlog

Most asylum seekers face a years-long and often painful period of waiting while their asylum claims work their way through the system. Unless and until they are granted asylum, they cannot bring immediate family members living abroad into the United States, no matter the degree of danger those family members might face (which at times is acute). As Alison Beckman, M.S.W., L.I.C.S.W., CVT Senior Clinician for External Relations, explains: "Clients tell us about years of waiting, without their families, without their children. They feel so alone, without hope. The asylum process in the United States is like a void, nothing but waiting."

Several of CVT's asylum-seeking clients have described in their own words the anguish and grief associated with family separation of this sort, which is often made worse by uncertainty surrounding their own status in the United States:

- After five years waiting for asylum without her husband and six children, who had to stay behind in their country in Africa, Mary[10] told CVT: "I can't concentrate. I am depressed and exhausted. How can I stay in this situation? It's hard to keep living a life interrupted like this. What is my life for, here without my kids?"
- Adam[11] described his asylum-seeking process similarly: "It is painful, stressful…. I have had suicidal thoughts at times, living a life without my family, not knowing how long that will be. At the same time, I continue to worry for the safety of my family back home. No guarantee for their safety. My absence puts them at risk. I can't plan for my future."

In CVT's experience, the prolonged uncertainty as to when and if asylum seekers will see their families again can cause such acute feelings of hopeless and depression that it can result in suicidality.

Work permit delays

Asylum seekers are not permitted to work in the United States without first obtaining an employment authorization document (EAD). Until 1994, asylum seekers could file their asylum and work authorization applications at the same time. Through a change to that regulation, and in 1996 a similar amendment

"I can't concentrate. I am depressed and exhausted. How can I stay in this situation? It's hard to keep living a life interrupted like this. What is my life for, here without my kids?"

to the Immigration and Nationality Act (INA), asylum seekers are no longer eligible to receive an EAD until 180 days after filing an asylum application. The Trump administration issued administrative rules to delay this process even further for some, and that would prohibit obtaining an EAD altogether for others (including through the imposition of a substantial filing fee).

Inability to obtain timely work authorization is needlessly harmful to asylum seekers who have suffered trauma. According to Dr. Northwood:

> For torture survivors who have fled for their lives into exile, the period of time between arriving in a country of refuge and obtaining asylum is one of extreme psychological vulnerability and fragility. This is when survivors are most at risk, most distraught by recent trauma and losses, and least supported: they lack adequate food, clothing, shelter, health care, social support, employment authorization, legal support and legal assistance. They usually have medical and psychological wounds from their torture that have not received any treatment. This often puts their lives literally at risk: they can present at our doors with life-threatening physical conditions and life-threatening psychological symptoms, including suicidality and torture-related flashbacks that result in dangerous activities such as walking into traffic or leaving shelter at night in a semi-conscious state.

Delays in the grant of an EAD "deliberately increase this period of extreme risk," she continues, "which is both immoral and inhumane."

CVT clinicians Jennifer Scofield, M.S.W., L.G.S.W. and Amy Kamel, M.A., M.S.W., L.I.C.S.W. provide an example of the catastrophic impact of such policies:

> In exchange for shelter and the limited food from her host, one of our clients is expected to provide child care at all times to the host's young child. Often the client will wake up in the morning and find that she is alone with the child, and she is therefore unable to leave in order to attend scheduled medical or mental health appointments. The client has stated that this is expected of her because she does not pay rent….
>
> The client was a successful professional in her home country, but has not been able to continue in her field in the United States. Her ability to leave home is extremely limited. Her HIV is worsening, and she is in constant pain. She suffers from a lack of independence because of the exploitation and control in her [current] living situation, and PTSD symptoms have shown little to no improvement. She has ongoing nightmares of her torture, made worse by the stress of her living situation.
>
> This client did not receive her work permit until 8 months after applying for asylum. Despite working with a vocational counselor and social worker to apply for jobs, she is not working. Had she been able to access a work permit sooner, this client could potentially have found employment while she was physically well; this would have increased her access to basic needs, medical care, mental health care, and shelter, and therefore she may have avoided exploitation, isolation, and the decline in her physical and mental health.

Secondary trauma is prevalent among those who engage regularly with refugees and asylum seekers

Secondary traumatic stress results from exposure to the traumatic experiences of others. In CVT's experience, secondary trauma is inherent and unavoidable among people who interact regularly with refugees and asylum seekers. In the asylum context, those affected range from asylum officers, to lawyers, to judges, to clinicians. The very nature of working within the asylum system is to elicit, ask questions about, evaluate, and record some of the very worst traumatic experiences an individual has survived.

On a recent assessment trip to the U.S. southern border, CVT observed that secondary trauma is especially widespread among stakeholders working there and was exacerbated by the Trump administration's myriad, ever changing, and cruel border-related policies and practices. A 2008 study of immigration judges found levels of secondary trauma that are higher than among other groups studied, including prison wardens and physicians working in busy hospitals.[12]

The impacts of secondary trauma are wide ranging and can include nightmares, intrusive thoughts, inability to concentrate, changes in how one sees the world, numbness, and cynicism. These effects are inevitable but can be mitigated. If not mitigated, there is a risk that one's judgment and decision-making processes could be impaired.

How trauma can manifest during the asylum-seeking process

Trauma can manifest during the asylum-seeking process in a variety of ways. For example, it is not uncommon for asylum officers, government lawyers, and immigration judges to experience the following when interviewing or otherwise questioning asylum seekers:

- The asylum seeker's story contains ambiguities, to the point that it does not seem to add up.
- They answer some open-ended questions with one word answers.
- They provide lengthy answers to other questions, but the answers are hard to follow—places, dates, and times blur.
- Their emotional behavior does not make sense; they show no emotion at all when discussing distressing events, but exhibit significant emotion about things that seem mundane.
- They are not fully present, appearing to drift in and out mentally.
- Their story contains significant, seemingly inexplicable gaps.

These behaviors – which can intensify the more adversarial the setting – are at times mistakenly interpreted as signs of dishonesty or a lack of credibility, when in fact they are hallmarks of trauma. They surface during the asylum process because features of the system heighten conditions of stress and serve as reminders, implicitly or explicitly, of past traumatic experiences.

There is a robust scientific literature about the ways in which trauma can manifest. Traumatic memories are often encoded in the form of images and sensations—fragmented and without context. For example, a victim raped by a man wearing a red shirt may be triggered by seeing a man in a red shirt, but cannot recall and relay specific details of the rape. Overgeneralized memory is sometimes a biological protective mechanism, allowing a trauma survivor to avoid recalling specific, painful details. When that process repeats over time, an overgeneralized memory retrieval style can become ingrained.

Other effects of trauma contribute to survivors' limited ability to describe what happened to them in a cohesive, linear narrative. For example, some will respond differently to stressful situations (which include asylum interviews and hearings). "Under normal conditions people react to a threat with a temporary increase in their stress hormones. As soon as the threat is over, the hormones dissipate and the body returns to normal. The stress hormones of traumatized people, in contrast, take much longer to return to baseline and spike quickly and disproportionately in response to mildly stressful stimuli."[13] Others suffer debilitating shame, and are "reluctant to speak directly of feeling ashamed, since to acknowledge shame is (in their eyes) to admit that there is something to be ashamed of."[14]

In addition to trauma, a host of other factors could impact the way in which asylum seekers present their cases that could be interpreted as the individual having a lack of candor. They include responsiveness or demeanor related to culture, the power differential between the asylum seeker and the government official, gender dynamics, the asylum seeker's level of formal education, the existence of a brain injury, or other cognitive and medical issues.

Trauma can manifest during the asylum-seeking process in other ways as well. For some survivors, especially those not represented by counsel and without additional support, the features of the asylum system that exacerbate trauma or cause trauma independently may become so overwhelming that they abandon their case altogether. And as discussed above, the prevalence of secondary trauma among those who work in the system can both harm them and impair their ability to make fair and accurate assessments and decisions in asylum seekers' cases.

Priority recommendations for designing a trauma-informed asylum system

Reversing the Trump administration's myriad punitive and cruel asylum-related rules, policies, and practices is necessary to building a trauma-informed asylum system, but it is not sufficient.

A system that is trauma-informed "realizes the widespread impact of trauma and understands potential paths for recovery; recognizes the signs and symptoms of trauma in clients, families, staff, and others involved with the system; and responds by fully integrating knowledge about trauma into policies, procedures, and practices, and seeks to actively resist re-traumatization."[15]

Consistent with and building on recommendations[16] that more than 100 NGOs (including CVT) have made to transform the nation's immigration system broadly, as well as more specific humanitarian protection-focused

A system that is trauma-informed "realizes the widespread impact of trauma and understands potential paths for recovery; recognizes the signs and symptoms of trauma in clients, families, staff, and others involved with the system; and responds by fully integrating knowledge about trauma into policies, procedures, and practices, and seeks to actively resist re-traumatization."

recommendations from partner organizations,[17] CVT urges the Biden / Harris administration to prioritize the following five steps toward a trauma-informed asylum system:

1. Provide initial and ongoing training to all government personnel who regularly engage with asylum seekers on: recognizing signs of trauma exposure; understanding common behaviors of people exposed to trauma; and, sensitive or trauma-informed principles for interacting.

All government personnel who regularly engage with asylum seekers should receive basic training on the psychological and physical effects of torture and other traumas, and on how to engage with trauma survivors in a non-adversarial manner. Such training is especially critical for law enforcement personnel. The training should include, for example, how to ask questions in a non-interrogative manner; incorporating boundaries, transparency and choice; and allowing for breaks as needed.

Subsequent to basic training, additional training should be tailored to the specific role of those who regularly engage with asylum seekers. For example, for those whose role is to elicit information or evaluate claims – including but not limited to asylum officers, lawyers, and judges – particularly when the focus is traumatic material, training should be provided on how trauma impacts an asylum seekers' ability to narrate and recount their stories. This is particularly important because those impacts may be contraindicated by current guidance that credibility can be determined by candor, demeanor, and responsiveness. In addition to the impact of trauma, training on how culture, power, gender, and other factors may impact an interview should also be included.

Government officials who engage with asylum seekers in a medical (including mental health) capacity also need specific types of training, which will differ depending on the role of the provider.

In all cases, training should be ongoing, with an initial session upon hiring and then at regular intervals. It should also be responsive to the needs of the government personnel as they gain field experience with asylum seekers and when the work shifts from the more theoretical (when first hired) to applied experience. For example, all asylum and refugee officers should receive training when initially hired, coordinated at the headquarters/national level, and then subsequent trainings at the individual regional offices on a regular repeating basis—ideally quarterly but at least bi-annually.

2. Provide secondary trauma and resilience training and support, initially and at regular intervals, to all government personnel who routinely engage with asylum seekers.

In CVT's experience, secondary trauma training is typically conducted as an afterthought to more general training on trauma. It is often at the end of the agenda and rarely goes beyond "Secondary Trauma 101" training focused on what the individual should be doing for self-care. It often focuses on activities outside of work in the form of an exhausting list of 'to-dos' that have the potential to create more stress.

Secondary trauma and resilience training and support need to be expanded and emphasized for all government personnel who regularly engage with asylum seekers, including but not limited to asylum officers, CBP officers, Immigration and Customs Enforcement officers, immigration judges, and medical personnel. No amount of yoga or hot baths can 'wash away' the trauma to which those in the asylum system have been exposed. Appropriate training should be provided upon hiring and then repeated regularly, and adjusted accordingly, as the impact of secondary trauma changes over time. Secondary trauma training should be directed not only at individuals but also at the level of agencies/organizations; adjustments should be made at the organizational level to help support staff in their difficult jobs. This in turn could help reduce the expense and loss of experience and knowledge associated with staff turnover and ensure that the judgement and ethical decision-making of personnel are in-tact.

3. Provide trauma survivors with government-funded rehabilitation services, including as a

form of redress for migrants traumatized by Trump administration policies and practices.

The executive branch should work with Congress to establish a program to provide asylum seekers and asylees access to rehabilitation services to address physical and psychological harms arising out of their exposure to traumatic experiences, whether in their home countries, along their migration journey, or as a result of cruel Trump administration policies and practices. The provision of such services is not only a humanitarian imperative and a necessary form of redress for those the U.S. government has harmed, but also a smart investment. For example, rehabilitation services for asylum-seeking torture survivors have been proven to reduce survivors' symptoms and improve their social functionality dramatically, which leads to more stable employment, deeper community engagement, and substantial health care cost savings.[18]

The program should be housed in the Administration for Children and Families' Office of Refugee Resettlement (ORR) but should operate in close coordination with USCIS. Rehabilitation services should be provided by non-governmental organizations and entities with appropriate clinical expertise that contract with the federal government.

Asylum seekers and asylees should be provided with information on the availability of rehabilitation services at all points of contact with the asylum system, including but not limited to: upon arrival (at the border or when otherwise first presenting for asylum), at all ORR facilities, accompanying any communication from or appointment with USCIS, and when asylum is granted.

All medical providers who interact with asylum seekers during the asylum process should be equipped to provide information about and referrals to rehabilitation services, and be trained (per Recommendation 1) to recognize signs of trauma symptoms.

The program should be oriented toward capacity development, such that government funding provides an ongoing base of support – conditioned on certain performance standards – that can empower providers to grow over time and help more clients than government funding alone would otherwise allow. Recipient organizations should be required to conduct some degree of fund development on their own, and to engage with their local communities in ways that build support for asylum seekers.

In the immediate term, and until a program of the sort described above is formally established, the administration should look for creative ways to partner with local mental health and psychosocial service providers with relevant expertise, including as feasible by reallocating existing funding from areas of immigration enforcement. This could include service providers at the border and proximate to local asylum offices. Organizations currently funded to provide rehabilitation services to torture survivors through ORR's Services for Survivors of Torture Program would be one place to start.

4. Phase out immigration detention.

Given the profound harm that immigration detention causes – both independently and by exacerbating previous trauma – the system needs to be phased out. As described in the 2021 Immigration Action Plan, to which CVT is signatory:

> Over decades, our nation's civil immigration system has become an arm of the penal incarceration system, largely driven by lobbying and profit motives of the prison industrial complex. Hundreds of thousands of immigrants each year, many seeking protection from persecution or torture, are detained in jails and prisons across the country that are notorious for deplorable, inhumane conditions. A new administration should end mass incarceration in our nation's civil immigration system.[19]

The administration can dramatically reduce the detained population quickly by immediately ending family detention and cutting ties with the private prison industry; eliminating bond for those eligible for release; and applying a presumption

of liberty when revisiting the status of currently detained immigrants and during initial assessments of those newly arriving. In its first budget request to Congress, the administration should propose dramatically reduced funding for Immigration and Customs Enforcement's detention budget, and over the longer-term work with Congress to eliminate mandatory detention.

5. To the maximum extent possible, eliminate features of the asylum system that are unnecessarily adversarial or otherwise exacerbate or cause trauma.

The Biden / Harris administration should formally reject the whole of Trump's asylum-related agenda, from ending the "Remain in Mexico" policy, to lifting unnecessary and discriminatory COVID-related border rules and restrictions (such as so-called "Title 42 expulsions"), to stopping obstructive border practices like "metering"—and everything in between.

But even before Trump took office, the asylum system was far too structurally adversarial. The ways in which asylum seekers engage the system, and the associated policies and practices through which their claims are processed, should be rooted instead in philosophies of cooperation and humanitarianism. Making this shift would both limit re-traumatization and make the system more fair, accurate, and efficient.

The following steps are critical toward that end:

Emphasize resetting institutional culture

President Trump relentlessly promoted a culture of cruelty and impunity that took hold in certain areas of, and with certain personnel operating in, the U.S. asylum system and related areas of the broader immigration system. The Biden / Harris administration needs to prioritize and emphasize a culture shift – to one of humanitarianism and cooperation, justice, and respect – from the highest levels of leadership on down.

Shift to a reception center model at the border

When refugees arrive at U.S. borders, the system they encounter should reflect a national commitment to welcoming those seeking safe haven in the United States. They should be treated as human beings in need, not as security risks. The most important step in this transformation is to shift from a "processing" or "detention" model to a "reception" model. More specifically, border policies, practices, and structures should:

- Treat refugees humanely;
- Provide them initial medical and humanitarian needs assessments (performed by trained personnel, per Recommendation 1, and offering where appropriate information about rehabilitation services per Recommendation 3);
- Minimize the amount of time they spend in government custody (transitioning them quickly to non-profit, non-governmental contractors where more in-depth needs assessments can take place);
- Ensure due process as their cases are heard; and
- Clearly communicate to them – in a way each person can understand – what will happen at each step in the asylum process.

Refugees who need social services or case support should be placed in community-based programs. And any COVID-19 related measures

This protracted period of uncertainty – particularly when asylum seekers are separated from families, as many are – can exacerbate pre-existing trauma symptoms and otherwise obstruct recovery.

should follow the recommendations of public health experts.[20]

Process all asylum applications through USCIS

The best way to eliminate the harms, inefficiencies, and inaccuracies associated with adjudicating asylum cases in immigration court is to process all asylum applications through USCIS. There the process is significantly less litigious and can be made even more non-adversarial – for example, through changes in how interviews are conducted and in what settings – in ways that will reduce harms to asylum seekers and better facilitate fair and accurate decisions on their applications.

Immediate steps toward making this shift should include reserving referral to immigration court to cases where it is legitimately necessary (and consistent with turning away from overbroad enforcement practices), such as by resolving discrepancies in favor of the asylum-seeker and resolving jurisdictional issues in favor of adjudicating applications with USCIS.

The administration should also support legislation that allows cases to remain with USCIS's Asylum Division, such as the Refugee Protection Act.

Issue new guidance on "assessing credibility"

The REAL ID Act modified the INA with regard to factors that an immigration judge may consider in determining the asylum seeker's credibility. In short, the REAL ID Act gave heightened importance to inconsistencies in an asylum seeker's claim, even if those inconsistencies were minor or immaterial to the heart of the claim.

In practice, asylum seekers, especially from non-western cultural backgrounds, with limited English skills, with PTSD, or with other conditions, may make what are perceived to be errors in the telling and retelling of their stories, or demonstrate behaviors that are perceived to indicate dishonesty, when neither is true nor a reliable indicator of credibility.

The Biden / Harris administration should issue guidance requiring credibility assessments and determinations to be made in an appropriately culturally sensitive manner and consistent with current scientific literature on behavioral indicators of truth-telling, and the neuroscience of trauma and traumatic memory.

Such guidance can be developed consistent with the current statutory language in the INA, but the administration should also support an accompanying legislative revision, such as that contained in the Refugee Protection Act.

Dramatically reduce the asylum case backlog

USCIS is facing a backlog of over 370,000 asylum cases yet to be processed. In early 2018, USCIS began implementing the last-in-first-out (LIFO) policy, which has allowed for recent cases to be adjudicated quickly but extended even further the wait time for some asylum seekers whose cases have been pending for years. This protracted period of uncertainty – particularly when asylum seekers are separated from families, as many are – can exacerbate pre-existing trauma symptoms and otherwise obstruct recovery.

There are a number of steps that the new administration can, and should, take to dramatically reduce the backlog. Most immediately, the administration should create two parallel tracks to the LIFO policy, one that starts with the other end of the backlog, focusing on the cases that have been waiting longest, and another that prioritizes children. Each of these tracks should be pursued simultaneously and cases should be processed according to the case-types presented at each asylum office, with appropriate health and safety measures, notwithstanding the COVID-19 pandemic.

In order to facilitate this adjudication strategy, the administration should look to ways to streamline the interview process, including ensuring that all security vetting mechanisms are efficient and truly necessary. It should also develop a strategy for quickly increasing staff capacity, both through additional hiring and by implementing practices – like the secondary trauma and resilience training described in

Recommendation 2 – that maximize staff retention.

Support minimizing the waiting period for work permits

The Biden / Harris administration should work with Congress to amend the INA so that asylum seekers can simultaneously file an asylum application and an application for an EAD, and to allow asylum seekers to receive work authorization unless and until the government determines that an application is frivolous.

Endnotes

[1] Trauma-Informed Care in Behavioral Health Services, Treatment Improvement Protocol (TIP) Series, No. 57, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, https://www.ncbi.nlm.nih.gov/books/NBK207195/#part1_ch1.s5 (internal quotations omitted).

[2] Bessel van der Kolk, The Body Keeps the Score at 21 (2014) ("The Body Keeps the Score").

[3] Walking the Talk, 2021 Blueprints for a Human Rights-Centered U.S. Foreign Policy, Chapter 3: Upholding Refugee Protection and Asylum at Home at 4, https://www.humanrightsfirst.org/sites/default/files/HRF_Standalone_Ch.3_v6.pdf ("Walking the Talk").

[4] Updating the Estimate of Refugees Resettled in the United States Who Have Suffered Torture (2015), Craig Higson-Smith, Center for Victims of Torture, https://www.cvt.org/sites/default/files/SurvivorNumberMetaAnalysis_Sept2015_0.pdf.

[5] Sigvardsdotter, E., Vaez, M., Rydholm Hedman, A., Saboonchi, F. (June 2016), Prevalence of torture and other war-related traumatic events in forced migrants: A systematic review, Torture: quarterly journal on rehabilitation of torture victims and prevention of torture, https://pubmed.ncbi.nlm.nih.gov/27858780/.

[6] The Center for Victims of Torture & The Torture Abolition and Survivor Support Coalition, Tortured & Detained – Survivor Stories of U.S. Immigration Detention (2013) (hereinafter "Tortured and Detained") at 11. https://www.cvt.org/sites/default/files/Report_TorturedAndDetained_Nov2013.pdf.

[7] Filges, T., Montgomery, E., Kastrup, M., Jorgensen, A.K., The impact of detention on the health of asylum seekers: A systematic review at 40, Campbell Systematic Reviews (2015). An October 2018 literature review conducted by Physicians for Human Rights (PHR) corroborates, and expands upon, these conclusions: "The data … demonstrates that detention negatively impacts mental health outcomes for refugee children, adolescents, and adults. The marginalizing and restricting environment re-traumatizes asylum seekers, an already vulnerable population with a significant pre-history of trauma, instead of providing them with the safety that they need. The experience of detention is associated with increased rates of psychological and developmental disorders among refugees, which include PTSD, major depressive disorders, attachment disorders, separation anxiety, episodes of self-harm, and attempted and completed suicides. Other studies have shown similar negative impacts even when detention was relatively brief (approximately 30 days)." The Impact of Immigration Detention on Migrant Mental Health at 5, PHR Issue Brief, October 2018, https://s3.amazonaws.com/PHR_other/factsheets/PHR_Asylum_Issue_Brief_Immigration_Detention_Impact_on_Mental_Health.pdf. See also From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers at 10, Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, June 2003, https://phr.org/wp-content/uploads/2003/06/persecution-to-prison-US-2003.pdf.

[8] See, e.g., Concerns About ICE Detainee Treatment and Care at Four Detention Facilities, Office of the Inspector General, Department of Homeland Security (June 3, 2019), https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf.

[9] See, e.g., CBP Has Taken Steps to Limit Processing of Undocumented Aliens at Ports of Entry, Office of the Inspector General, Department of Homeland Security (Oct. 27, 2020), https://www.oig.dhs.gov/sites/default/files/assets/2020-10/OIG-21-02-Oct20.pdf.

[10] Name and some details have been changed for confidentiality and security purposes.

[11] Name and some details have been changed for confidentiality and security purposes.

[12] Lustig, S.L., Karnik, N., Delucchi, K., Tennakoon, L., Kaul, B., Marks, D.L., Slavin D. (2008), Inside the judges' chambers: Narrative responses from the National Association of Immigration Judges Stress and Burnout Study, Benders Immigration Review, 22-30, https://www.naijusa.org/images/uploads/publications/Burnout-and-Stress-Among-United-States-Immigration-Judges_01-01-08_1.pdf.

[13] The Body Keeps the Score at 46.

[14] David Shapiro, The Tortured, Not the Torturers, Are Ashamed, Social Research, Vol. 17, No. 4 (Winter 2003).

[15] Substance Abuse and Mental Health Services Administration, SAMHSA's Concept of Trauma and Guidance for a Trauma-Informed Approach, July 2014, https://ncsacw.samhsa.gov/userfiles/files/SAMHSA_Trauma.pdf.

[16] 2021 Immigration Action Plan, https://static1.squarespace.com/static/5b60b2381aef1dbe876cd08f/t/5f3bed0aee93e01231a3343b/1597762828090/2020+Immigration+A

ction+Plan+-+08182020.pdf.

[17] Walking the Talk, 2021 Blueprints for a Human Rights-Centered U.S. Foreign Policy, Chapter 3: Upholding Refugee Protection and Asylum at Home, https://www.humanrightsfirst.org/sites/default/files/HRF_Standalone_Ch.3_v6.pdf.

[18] Andrea K. Northwood, Maria M. Vukovich, Alison Beckman, Jeffrey P. Walter, Novia Josiah, Leora Hudak, Kathleen O'Donnell Burrows, James P. Letts, Christine C. Danner, Intensive psychotherapy and case management for Karen refugees with major depression in primary care: a pragmatic randomized control trial, BMC Family Practice (2020), https://bmcfampract.biomedcentral.com/articles/10.1186/s12875-020-1090-9.

[19] 2021 Immigration Action Plan, https://static1.squarespace.com/static/5b60b2381aef1dbe876cd08f/t/5f3bed0aee93e01231a3343b/1597762828090/2020+Immigration+Action+Plan+-+08182020.pdf.

[20] Public Health Recommendations for Processing Families, Children and Adults Seeking Asylum or Other Protection at the Border, https://www.publichealth.columbia.edu/sites/default/files/public_health_recommendations_for_processing_families_children_and_adults_seeking_asylum_or_other_protection_at_the_border_dec2020_0.pdf.