



Ensuring Due Process for Asylum Seekers: Las Americas' Credible Fear Interview Orientation Project

A Guide for Administrative
Agencies, Legal Service
Providers, and Philanthropy

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Introduction

At Las Americas Immigrant Advocacy Center, we believe in the right to access to information as much as we believe in the right to migrate. We also believe that our response to migration must recognize the mutual humanity, dignity, and agency shared by migrants and legal service providers alike. The Credible Fear Interview Orientation Project is born out of these beliefs.

The U.S. government continues to lean on expedited removal, a fast-track deportation system bringing with it a heightened risk that asylum seekers will be erroneously deported to imminent harm or death due to a lack of procedural safeguards and a lack of will on the part of DHS agencies and their contractors to comply with even the most basic due process requirements for those in immigration custody. Although an individual can mitigate the risk of being deported soon after being apprehended by expressing a fear of persecution in their home country and passing a screening interview known as the credible fear interview (CFI), access to this process alone is not enough to prevent egregious errors and abuses as individuals make their way through the expedited removal process.

For CFIs to be meaningful, migrants seeking asylum need to know the legal system they are facing and the full scope of their rights and responsibilities in that process—as such, early intervention by legal advocates is essential for asylum seekers in expedited removal to have a real opportunity of getting their day in court. Legal intervention has an immense impact on the outcome of asylum cases; in FY 2023 asylum seekers without representation faced a nearly 80 percent denial rate while those with representation had their claims denied less than half of the time.¹ Here at the southern border, policies like Remain in Mexico² and Title 42 gave us a first-hand look at how programs externalizing the U.S. asylum process leads to de facto restrictions on legal representation, undermining access to due process for anyone caught in the snares of these programs and increasing the likelihood that without a lawyer to help them, persons with valid asylum claims would be turned away.³

“Early intervention by legal advocates is essential for asylum seekers in expedited removal to have a real opportunity of getting their day in court.”

Providing representation, however, in the U.S./Mexico border region is a real challenge. The demand for quality legal representation consistently outpaces legal resources. Here in west Texas, the lack of a law school only exacerbates the issue, leading to voluminous dockets and high rates of turnover and burn-out. This challenge is only compounded by the immense time pressure of the new expedited removal processes, including the seven-days a week schedule maintained by the asylum office and immigration judges responsible for reviewing denials.

In response to this demand for legal aid in detention, Las Americas’ Detained Deportation Defense Program developed a model to provide early interventions to asylum seekers in advance of the credible fear interview. Over the course of an eight-week period in the summer of 2023, attorneys and a cadre of undergraduate and law students put the concept into practice via a pilot project dedicated to providing CFI orientations and preparatory sessions for asylum seekers held in ICE custody and subject to the expedited removal process. Our approach, detailed below, leveraged available legal resources in new and creative ways to overcome resource limitations without compromising the quality of the legal services.

This report documents the structure and results of this pilot, showing that our intervention model enhanced organizational capacity and improved legal outcomes for individuals we served.

1. <https://trac.syr.edu/phptools/immigration/asylum/>

2. <https://trac.syr.edu/phptools/immigration/asylum/>

3. <https://www.keranews.org/the-asylum-trap-stories-from-migrants-forced-to-wait-in-mexico-while-seeking-asylum>



Key Findings and Recommendations

KEY FINDINGS

1. Early legal interventions in the CFI process can lead to remarkable improvements in legal outcomes. Notably, Las Americas' efforts, a pilot project providing a CFI orientation, were able to secure participating asylum seekers a 50% greater likelihood of success than the general pool of cases considered by the Houston Asylum Office during the same eight-week period. This is a significant result and one that speaks to the potential of even limited interventions staffed by persons other than attorneys and accredited representatives to provide meaningful support. By adopting this approach, Las Americas was able to provide meaningful service to persons we would have not been able to help before; this project significantly bolstered our capacity to do this particular type of work. While there is more to be done to refine and build on this initial effort, we urge partner legal organizations serving asylum seekers in detention to duplicate this model, and we urge funders and supporters to provide Las Americas with the additional resources we need to sustain and expand upon this work.

2. At the same time, substantive due process hurdles impair our ability to provide this critical CFI orientation to asylum seekers in detention. There is an urgent need for Immigration and Customs Enforcement (ICE); United State Citizenship and Immigration Services (USCIS); and Executive Office for Immigration Review (EOIR) to address, mitigate, and resolve these problems, including a lack of privacy in the conduct of fear interviews in detention, a lack of adequate access to interpretation, interference by facility guards that prevents asylum seekers from exercising their right to present evidence, as well as arbitrary and unlawful delays in the CFI process.

3. Notably, while there were problems across all four ICE facilities served in this pilot project, conditions at the Tarrant County Detention Facility in New Mexico were the most disruptive to the CFI process. That such a pattern of abuse is present at this facility following a recently documented string of issues around understaffing, lack of adequate sanitation, and abuses toward persons detained in the facility is both unsurprising and gravely concerning.⁴ Given this pattern, we reiterate calls for ICE leadership to close the Tarrant facility as soon as possible.

RECOMMENDATIONS

The following recommendations are based on project findings rooted by the expertise Las Americas staff hews as front-line legal service providers working in Texas, New Mexico, and on both sides of the U.S./Mexico border. This unique skill set was honed in response to migrant needs at the border and the ongoing externalization of the U.S. asylum process initiated by the Obama and Trump administrations.

ADMINISTRATIVE AGENCIES

As the agency with the authority and responsibility to conduct credible fear interviews for detained asylum seekers, United States Citizenship and Immigration Services (USCIS) should do the following:

- **Adhere only to the “significant possibility” standard⁵** during the administration of a credible fear interview because elevating this standard pursuant to the Circumvention of Lawful Pathways rule⁶ presents various harms that completely eradicate a fair screening process for pro se detained asylum seekers.

4. [“Violations of ICE Detention Standards at Tarrant County Detention Facility,”](#) Department of Homeland Security Office of Inspector General. September 28, 2022.

5. 8 C.F.R. § 208.30(e)(2)-(3). See also [“Questions and Answers: Credible Fear Screening,”](#) U.S. Citizenship and Immigration Services. September 12, 2023.

6. 88 Fed. Reg. 31,314 (May 16, 2023) (codified at 8 C.F.R. §§ 208.33, 1208.33).

- **Eliminate any evidentiary requirement⁷** at the CFI stage as the scope of the interview does not include adjudication of the actual asylum claim. At a minimum, USCIS should provide clear, written guidance on evidentiary policies during a credible fear interview to provide pro se detained asylum seekers a meaningful opportunity to present their claims—especially considering the ambiguity in current federal regulations. USCIS should also work with ICE Enforcement and Removal Operations (ICE ERO) and the Office of the Principal Legal Advisor (OPLA) to ensure pro se detained asylum seekers with scheduled CFIs have access to any evidence, including cell phone data, they had on their person at the time they entered the United States.

“We urge partner legal organizations serving asylum seekers in detention to duplicate this model, and we urge funders and supporters to provide Las Americas with the additional resources we need to sustain and expand upon this work.”

- **Institute similar guidance on encouraging and facilitating pro bono legal services** as those established by the Executive Office for Immigration Review in their November 5, 2021, Director’s Memorandum (DM 22-01).⁸ Most importantly, when detained asylum seekers have pro bono legal representation or are in the process of seeking it, USCIS should allow them to reschedule a credible fear interview at least once—especially considering that federal regulations allow “[a]ny person...with whom the a[sylum seeker] chooses to consult [to] be present at the interview and... p[otentially]...present a statement at the end of the interview.” This recommended rescheduling practice by USCIS would mirror the flexibility—especially in scheduling—with pro bono representatives that DM 22-01 sets forth. Overall, USCIS would be better served by clearly outlining their treatment of and practices toward pro bono legal service providers representing or seeking to represent detained asylum seekers during credible fear interviews.
- **Address due process concerns arising out of the ambiguity of applicable federal regulations** on the administration of the credible fear interview, including, but not limited to; timely administration of an interview and notification of its result; lack of privacy during an interview; poor interpretation quality during an interview; the arbitrary revocation (sometimes destruction) by detention center staff of asylum seekers’ documentary evidence.
- **Stop the administration of a credible fear interview when an interpreter for a particular language is not available** because USCIS must respect language access, particularly to indigenous languages. Therefore, USCIS should engage in policies and practices that are in line with the attorney general’s November 21, 2023, Memorandum for Heads of Federal Agencies, Heads of Civils Rights Offices, and General Counsels on Strengthening the Federal Government’s Commitment to

7. 8 C.F.R. § 208.30(d)(4).

8. Memorandum from David L. Neal, Dir. of Executive Office for Immigration Review, DOJ, to Immigration Courts and Court Staff, re: Encouraging and Facilitating Pro Bono Legal Services, at 3-4 (November 5, 2023), available at <https://www.justice.gov/eoir/book/file/1446651/download>.

9. 8 C.F.R. § 208.30(d).

10. Memorandum from Merrick Garland, Attorney General, DOJ, to Heads of Federal Agencies, Heads of Civil Rights Officers, and General Counsels, re: Strengthening the Federal Government’s Commitment to Language Access, at 1-2 (November 21, 2022), available at https://www.justice.gov/d9/pages/attachments/2022/11/21/attorney_general_memoirandum_-_strengthening_the_federal_governments_commitment_to_language_access_508-2.pdf. The attorney general’s memo is a request for federal agencies to review their policies and practices on language access so that the federal government strengthens its engagement with individuals with limited English proficiency.





Language Access.¹⁰ To help ensure full participation by individuals with limited English proficiency or whose primary language is indigenous, the Department of Homeland Security and the Department of Justice should use their authority to amend 8 C.F.R. §208.9(g) (1) to indicate that interpreters shall be provided in all USCIS adjudicatory interviews, and the USCIS Language Access Plan must be updated to ensure that language services be provided at all points of public contact with USCIS and at all points involving an asylum officer's determination of a pro se detained asylum seeker's credible fear interview or its appeal.¹¹

- **Develop comprehensive policy guidelines outlining the use or practice of prosecutorial discretion** upon specific categories of vulnerable asylum seekers who should not be subjected to a credible fear interview (i.e., placed in expedited removal) in detention and who instead should be placed in INA §240 proceedings.¹² These categories should include indigenous persons; those who are TPS-eligible; transgender people; victims of trafficking; individuals who report some form of abuse or mistreatment while

in detention; and individuals who are part of a family group and/or have a pending immigration application. USCIS already has practices that provide alternatives to detention.¹³ These examples demonstrate that developing comprehensive guidelines of prosecutorial discretion toward these recommended groups would be in line with, and a simple extension of, current practices. Additionally, this would incidentally benefit taxpayers by saving millions—if not billions—of dollars over time in custody-related resources.

- **Better coordination and communication between DHS agencies**—including USCIS and ICE—to eliminate information-access barriers negatively impacting pro se detained asylum seekers in expedited removal and pro bono legal service providers representing impacted asylum seekers in need of procedural remedies and protections due to agency actions. This effort should entail the development of comprehensive guidelines detailing what inter-agency cooperation looks like when issues crossover, including a detailed list of points of contacts for service providers and pro se applicants to utilize.

11. 8 C.F.R. § 208.30(g).

12. 8 U.S.C. § 1229a.

13. For example, Immigration and Customs Enforcement's (ICE) Directive 11064.3, Interests of Noncitizen Parents and Legal Guardians of Minor Children or Incapacitated Adults, serves to ensure that USCIS does "not unnecessarily disrupt or infringe upon the parental or guardianship rights of noncitizen parents or legal guardians of minor children or incapacitated adults" in its civil-immigration-enforcement activities. Another example is ICE Directive 11005.3, Using a Victim-Centered Approach with Noncitizen Crime Victims, which directs ICE agents to forego enforcement actions against either beneficiaries or current applicants for victim-based immigration benefits (unless exceptional circumstances exist). Yet another example is ICE Directive 11032.4, Identification and Monitoring of Pregnant, Postpartum, or Nursing Individuals, which disallows ICE from detaining, arresting, or taking into custody individuals known to be pregnant, postpartum, or nursing (with two exceptions).

“Substantive due process hurdles impair our ability to provide this critical CFI orientation to asylum seekers in detention.”

LEGAL SERVICE PROVIDERS

- **Direct resources designated for expedited removal programs, projects, etc. to aid asylum seekers undergoing their credible fear interview in ICE custody.** Although Las Americas is aware that asylum seekers are also undergoing interviews in CBP custody, our experience through the Credible Fear Interview Orientation Project taught us that high numbers of asylum seekers undergo CFIs in ICE custody, in facilities already plagued by abuses against asylum seekers. Hence, the potential to make an impact on a person’s chance to win asylum. During our eight-week pilot project period, Las Americas learned of instances where only the interview record created by an asylum officer (I-870, Record of Determination/Credible Fear Worksheet) becomes the I-589, Application for Asylum and for Withholding of Removal, that an asylum seeker submits to an Immigration Judge. This was not the case with the interview record created by CBP (I-867A, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, or I-867B, Jurat for Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act). Additionally, I-870s are far more detailed than I-867As or I-867Bs as to asylum eligibility or bars and essentially all other information. Moreover, the application of the “significant possibility” and Circumvention of Lawful Pathways legal standards play a role only in an I-870.¹⁴
- **Leverage early, basic legal interventions** in the credible fear interview process.
- **Las Americas urges other practitioners working with asylum seekers to consider duplicating this model** as a means of expanding existing work to including legal aid to individuals in ICE detention. Any agencies interested in supporting this work are welcome to reach out. Our staff are ready to support, offer training, and join new partnerships in an effort to bring justice to individuals impacted by these practices.

- **Increase capacity by utilizing non-attorney/ accredited representative staff and student volunteers,** create clinical partnerships with law schools willing to provide assistance remotely, and offer accreditation pathways to legal support staff interested in building careers in legal advocacy.

PHILANTHROPY

- Las Americas and other legal service providers simply cannot provide these services at the scale detained asylum seekers need without a significant influx of additional resources. Additional resources are urgently needed to sustain, refine, and build upon this work, including multi-year, flexible funding to hire attorneys and train accredited representatives, and to support the cost of conducting business in DHS detention facilities. Multi-year grants with flexible conditions on spending allow organizations serving border communities to sustain their work without facing yearly crisis periods related to staff hiring and retention.
- Fund scholarship programs to create career pathways for community members with lived experiences to join the immigration law sector as accredited representatives. Organizations such as ours, operating in localities without law schools, have a unique opportunity to invest in our communities if we can find sufficient resources to create a talent pipeline. With the right support, Las Americas is interested in building a border community accreditation program that would offer talented community members access to free training and guaranteed job placement upon receipt of the accreditation certificate. This would also provide a cost-effective way of expanding legal services to meet demand, giving organizations like ours a more sustained means of providing quality legal services to a higher number of migrants.

14. In contrast, Las Americas staff observed that the initial processing interview conducted in CBP custody and memorialized in Form I-867A, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, or I-867B, solicits information from asylum seekers pertaining to the countries they transited and not whether they experienced any issues with CBP One or made attempts to use it.



Expedited Removal and the Credible Fear Interview

Signed into law by President Clinton in 1996, expedited removal is a streamlined deportation process for immigrants apprehended within 100 miles of the U.S. border within 14 days of entering the country, and who have not been admitted or paroled by the U.S. government. However, if the immigrant being apprehended expresses a fear of persecution in their home country, or an intention to apply for asylum, they will be referred to an asylum officer for a credible fear interview instead of being summarily deported as expedited removal mandates. An asylum seeker must receive a positive result on their CFI to seek relief before an immigration judge who will fully adjudicate their claim. Our observations underscore that there is a greater chance that asylum seekers are being erroneously deported to imminent harm or death under expedited removal making early intervention essential.



The credible fear interview is the critical first step of the asylum-seeking process under expedited removal. This interview is supposed to simply be a threshold determination about whether, during a full hearing, there is a significant possibility the asylum seeker would be able to win asylum. In reality, many asylum officers put asylum seekers through a grueling, 3+ hour phone interview about why they fled their home country without the chance to speak with an attorney or seek other help beforehand. Additionally, the notes from the CFI (created by the asylum officer in charge) will follow the asylum seeker through the duration of their asylum case and could even be used against them at a court date years down the road. Many of the asylum seekers Las Americas accompanies do not understand the purpose and the consequences of this interview, or the crucial role it plays in the asylum-seeking process.

Despite its importance, not everyone gets a credible fear interview. Asylum seekers who have a previous deportation order, or who were convicted of one or more aggravated felonies after admission to the U.S., will receive a reasonable fear interview. This interview has a higher standard of proof for asylum seekers to meet, making it harder to receive a positive result. Additionally, there are some instances where asylum seekers automatically receive a court date with an immigration judge without undergoing a fear interview at all.

When border entry restrictions under Title 42—a law used by the government to expel asylum seekers based on the COVID-19 pandemic—expired, the Department of Homeland Security (DHS) published a new regulation, titled Circumvention of Lawful Pathways, establishing new protocols to process asylum seekers at ports of entry along the southwest border of the United States. The regulation, referred to here as the Asylum Transit Ban, makes anyone who traveled through a third-country but failed to seek asylum or other protections in those countries ineligible for asylum in the United States. This restriction, however, does not apply to people who can reach central and northern Mexico and make an appointment for processing at ports of entry through a mobile DHS scheduling application, known as CBP One.

Although the new regulation allows migrants arriving at ports of entry without an appointment to maintain asylum eligibility if they can show they could not access the appointment process due to serious obstacles impacting use of the app, in practice the app has become the de facto standard for preserving asylum eligibility upon entry into the country. Those who do not arrive with the app (or who do use the app but have prior immigration and/or criminal records) are placed into expedited removal and subjected to mandatory detention until their credible fear process is completed, either with CBP or ICE, depending on a myriad of factors including location of apprehension, bed space, family composition, and language needs.

NEGATIVE AND POSITIVE DETERMINATIONS

If an asylum seeker receives a negative credible fear determination, it is very likely they will be deported without ever having a chance to seek parole into the U.S. or present their case to an immigration judge, even if they have asylum claims. The avenues of appeal are extremely limited, consisting of having an immigration judge review the decision or asking the asylum office to use their discretion to reconsider the first determination. Unfortunately, practitioners across the country have found that the chance of success in an appeal is minimal. As such Las Americas

believes early intervention through our CFI Orientation Program is the best way to help asylum seekers in expedited removal.

Asylum seekers who receive a positive credible fear determination will be formally placed in asylum proceedings and given a court date with an immigration judge. For many, it also means that ICE will consider giving them parole, so they can be released in the U.S. and pursue their asylum case while living with their sponsors, friends and/or family, instead of waiting in a detention center.

Purpose and Mission of the Project

This pilot endeavored to engage in both direct representation and agency advocacy. Early intervention ensures that detained asylum seekers understand the process, legal standards, and the significance of the statements they make during the fear interview, and helps individuals gain a better understanding as to how their own lived experience fits within U.S. asylum law. By providing guidance to an individual on how to thoughtfully organize their reasons for fleeing their home country, CFI orientation can help eliminate misunderstandings or misconceptions that might otherwise negatively impact the interview. A well-informed asylum seeker can present a coherent and compelling narrative, thus increasing their chances of passing their CFI and moving forward with their asylum claim. Ultimately, thorough understanding and preparation empowers detained asylum seekers to effectively convey the genuine nature of their fears and the potential persecution and/or torture they face.

The purpose of supporting detained asylum seekers through their Credible Fear Interview goes beyond simply helping someone understand the best way to share their reason for seeking asylum. For the majority of the people that Las Americas supported, this was the first time anyone treated them as a peer and explained to them what was going on. It also allowed Las Americas to establish a relationship with numerous asylum seekers, allowing asylum seekers in custody a sense of agency during a time when they may feel otherwise powerless. Finally, the pilot provided a direct means of collecting information and uncovering issues and abuses that we include in our complaints to the Office for Civil Rights and Civil Liberties, DHS field directors in charge of administering these programs within the El Paso ICE jurisdiction, and individual deportation officers.

Structure of the Pilot and Materials for Support

The goal of preparing a detained asylum seeker for their CFI is to ensure that they are equipped with the necessary knowledge, communication skills, and confidence to effectively present a complete and relevant narrative to the asylum officer. The pilot was initiated as a result of major policy changes instituted by the Biden administration in 2023 impacting all aspects of the asylum process at the border. Needing to respond quickly to the lifting of the Title 42 travel ban and the introduction of CBP One and the asylum transit ban, Las Americas shifted programmatic priorities in an effort to ensure our legal team could continue to gain access to asylum seekers before any kind of adjudication had been reached in their case.

Knowing that we could not gain physical or telephonic access to CBP facilities running CFIs, Las Americas swiftly chose

to focus our work in detention on CFIs in ICE custody. The CFI Orientation Project was constructed and implemented with minimal resources, relying heavily on undergraduate, law school fellows, and interns to deliver CFI orientations and track significant data points. Fellows and interns were supervised directly by one attorney fellow on staff, with support from the Detained Deportation Defense Supervising Attorney and the Director of Advocacy and Legal Programs. Las Americas provided an extensive training program on U.S. asylum law for all participating interns and volunteers, covering a range of topics, including asylum, withholding of removal, protection under the Convention Against Torture (CAT), expedited removal, the asylum transit ban, rules governing ICE custody, and DHS complaint and oversight mechanisms.



The pilot was managed by one attorney fellow, a recent law school graduate of Texas Tech University, and staffed by the following: one legal assistant dedicating approximately 40-50% of their capacity to the pilot; one summer legal fellow; six interns, all undergraduate students. For the summer kick-off of the pilot, the majority of CFI orientation sessions were provided either in person or remotely at the Otero County Processing Center and the Torrance County Detention Facility, both located in New Mexico. Volunteers and interns visited Otero at least two times a week, and spent an additional two days a week on the administrative side of the work, including tracking biographical and asylum claim information for every individual served, drafting intake interview summaries, document retention, and participating in weekly attorney debriefing and analysis sessions. During the debriefing sessions, occurring immediately after site visit days, students were tasked with proposing classifications and categorizations for every asylum claim they listened to.

All asylum seekers interested in participating in the pilot were provided an intake interview, followed by at least one CFI orientation session. Las Americas staff created a comprehensive intake form designed to track information relevant to the individual's asylum claim and the provisions of the asylum transit ban, as well as biographical information including name, relationship, and contact information for family members and friends already living in the U.S. willing to serve as a de facto sponsor upon the individual's release from custody (["CFI Orientation Intake Form"](#)). A typical fear interview orientation session begins with an introduction to the purpose of the session itself, followed by the execution of an agreement between the detained asylum seeker and Las Americas stating that we are unable to provide further help (i.e, representation) beyond CFI orientation for the time being.

Once an intake is completed, Las Americas staff and interns walk asylum seekers through three standardized modules of key information. This format is essential because it ensures that non-attorneys can deliver accurate guidance without giving legal advice which is only permitted to licensed attorneys.

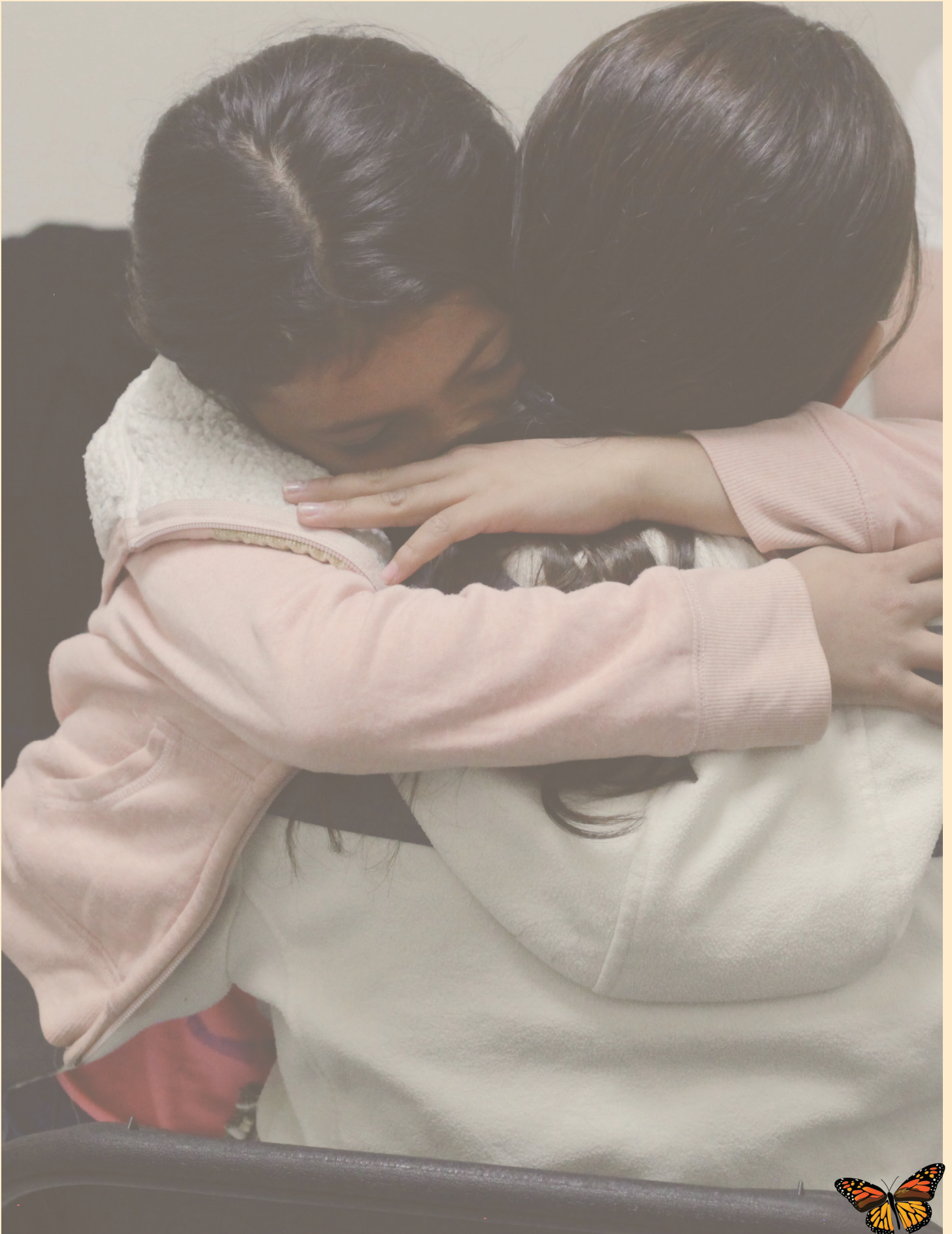
1. The first module is meant to teach asylum seekers about asylum law in the U.S. in an easy-to-understand manner where the most important elements are highlighted without legalese (i.e., past harm/serious possibility thereof based on one of the five grounds; home country's government unwillingness/inability to protect; firm resettlement). This section ends with a diagram named ["La Manita"](#) ("The Little Hand") produced by a volunteer with the Dilley Pro Bono Project. This is a very simple



tool to help asylum seekers organize their story in a manner that touches on the most important elements of asylum while maintaining narrative integrity. In La Manita, each finger represents a simple question that an asylum seeker's story must answer during a Credible Fear Interview. Asylum seekers keep this diagram for future reference.

2. The second module explains the basics of credible fear interviews. This includes what is discussed during the interview, its significance, a breakdown of the structure of the interview itself, reassurance in the confidentiality of an interview, and more. Before the second module ends, Las Americas provides a document for asylum seekers' future reference. [This document is an easy-to-read rundown of what federal regulations state should take place at Credible Fear Interviews.](#)¹⁵
3. The third module includes [four essential fear interview tips that Las Americas believes every asylum seeker should know and concludes with time to role play and practice for the interview](#) if the person would like. In this case, Las Americas takes on the role of the asylum officer and asks questions about and dissects each person's respective asylum claims. We ask that asylum seekers receiving our support answer these questions as they would answer an asylum officer at their actual Credible Fear Interview.

Before concluding the session, Las Americas encourages every individual to reach out to us promptly after receiving a result to determine if we have the capacity to help them in the next step of their case. Each person that goes through this process also receives print resources specifically designed for asylum seekers in their preferred language.



Data Collection

Undergraduate and law school interns involved with the Credible Fear Interview Orientation Project spent a total of eight weeks conducting interview orientation sessions with asylum seekers at Otero County Processing Center (Otero), El Paso Service Processing Center (EPPC), and the Torrance County Detention Facility (Torrance). Interns visited these detention centers from June 6 to August 9, 2023, completing a total of 73 sessions. The majority of the sessions took place in Otero (located in Chaparral, New Mexico) and Torrance (located in Estancia, New Mexico). Otero and Torrance were the focus because both detention centers were being used to place asylum seekers in expedited removal. A total of 56 sessions were conducted at Otero, 11 took place at Torrance, and six at EPPC.

Las Americas identified detained asylum seekers in need of CFI orientation after they (or their family/friends) reached out to us by screening them using two U.S. government websites: [Executive Office of Immigration Reviews’ \(EOIR\) Automated Case Information](#) page, and [ICE’s Online Detainee Locator System](#). EOIR’s page serves to search upcoming immigration court dates for anyone in proceedings, while ICE’s online system serves to verify if an immigrant is in ICE custody (and if so, where). We checked the asylum seekers’ information through these two websites looking for persons who were shown as detained by ICE in their online system but who did not yet appear

on EOIR’s page; the latter suggested that detained asylum seekers had either not undergone a CFI or received a result from one yet—otherwise, information on their removal proceedings would be available. This method proved highly successful in identifying detained asylum seekers who could benefit from this project, turning up false positives only in a handful of cases where persons had undergone their CFI very shortly before coming into contact with Las Americas such that information on their removal proceedings was not yet in the EOIR page. The analysis, key findings, and data summary section of this report are exclusively based on these screened individuals—detained asylum seekers we served who had not yet undergone a CFI—for whom this project was able to provide an initial orientation.

Las Americas uses a three-pronged approach to collect data on CFI outcomes as a means of measuring and evaluating the effectiveness of our interventions. During the pilot project period, Las Americas gathered results by visiting detained asylum seekers between two and three weeks after providing the CFI orientation and checking in with them on the status of their interview. In some cases, the persons served via this project directly contacted Las Americas to share the outcomes of their interviews. In cases where we were unable to reestablish direct contact with an asylum seeker we served, we used the two U.S. government websites discussed above.

Program Results

At the time of this publication, Las Americas received final interview results for all individuals we served in both EPPC and Torrance. Only two results remain outstanding and they are both from asylum seekers detained in Otero who appear to not yet have undergone a Credible Fear Interview (representing 3.57% of the CFI results from Otero). Although result information is not made readily available on EOIR’s page, we were able to determine the procedural posture of their CFI by confirming their continued detention in ICE custody (i.e., via ICE’s online system).

Ultimately, the asylum seekers that Las Americas assisted during the eight-week project period in Otero, EPPC, and Torrance saw a 91.6% pass rate through the Credible Fear Interview process (i.e., 65 asylum seekers). As of this publication, 92.6% of the Otero asylum seekers—50 individuals—who participated in our modules had a positive outcome. 100% of the 11 asylum seekers who participated in our modules at Torrance had a positive outcome. Finally, 66.7% of the EPPC asylum seekers—four

of the six individuals—who participated in our modules had a positive outcome. In contrast, the contemporaneous numbers from the Houston Asylum Office during the months of June through August 2023 show an overall pass rate of approximately 60% for credible fear interviews.¹⁶ This represents a more than 50% higher aggregate CFI pass rate and suggests the efficacy of legal intervention in advance of the interview taking place, although more data will need to be analyzed to gain a deeper understanding of the variation in results between the three detention facilities where this pilot was tested. Las Americas is excited by this preliminary result and feels that it provides a strong basis to continue this work going forward and to encourage others to include this work in their legal programming.

TORRANCE COUNTY DETENTION FACILITY

At Torrance, the wait time for an interview was drastically shorter than EPCC, often only a few days after arrival to the detention center. Thus, Las Americas focused on delivering group presentations rather than individual sessions. After



finishing a group presentation, Las Americas worked with the asylum seekers to answer any additional questions and to help them practice telling their stories in one-on-one or small group settings. Due to the difficulties in conducting individual sessions, the preferred practice, at Torrance. Las Americas does not have the same amount of data as for Otero and EPPC, however, Las Americas developed a 100% passing rate out of the 11 CFI orientations conducted at Torrance.

Moreover, we learned that the wait time for a credible fear interview at Torrance ranged from four to 44 days. This range underlines the challenge presented by time limitations at Torrance. This range also serves to point out that some of Torrance's asylum seekers may have to wait over a month for an interview—thus being ineligible for release in the meantime. Furthermore, the conduct of some Torrance staff during CFIs raised a number of important concerns that highlight how the combination of CFIs and expedited removal can short-circuit due process. Ultimately, because Torrance's practices as to the CFI process differed so greatly from Otero's and EPPC's, the Data Summary section

below is based only on the 62 individual sessions in those two facilities and omits the eleven sessions conducted in Torrance.

AGENCY ADVOCACY EFFORTS

During the pilot period, Las Americas filed two CRCL complaints containing evidence of serious abuses committed against detained asylum seekers, [one of which was prepared in partnership with important regional partners committed to the rights of migrants held in ICE custody, including the New Mexico Immigrant Law Center \(NMILC\), ACLU NM, and Innovation Law Lab](#). Legal team members also made several attempts to seek the release of asylum seekers issued negative fear determinations who were not provided with fair and impartial interviews and/or vacatures of the negative finding and the scheduling of a new interview. These requests documented and, although ultimately denied, provided a clear record of DHS agencies' unwillingness to utilize its authority to remedy its failures or interfere with the actions of individual officers, no matter how egregious.

16. <https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data?page=1>, Asylum Division Monthly Statistics Report, Fiscal Year 2023, October 2022 to August 2023 (released September 19, 2023). This percentage only encompasses CFIs not RFIs conducted by the Houston Asylum Office during the months of June through August 2023.



Data Summary

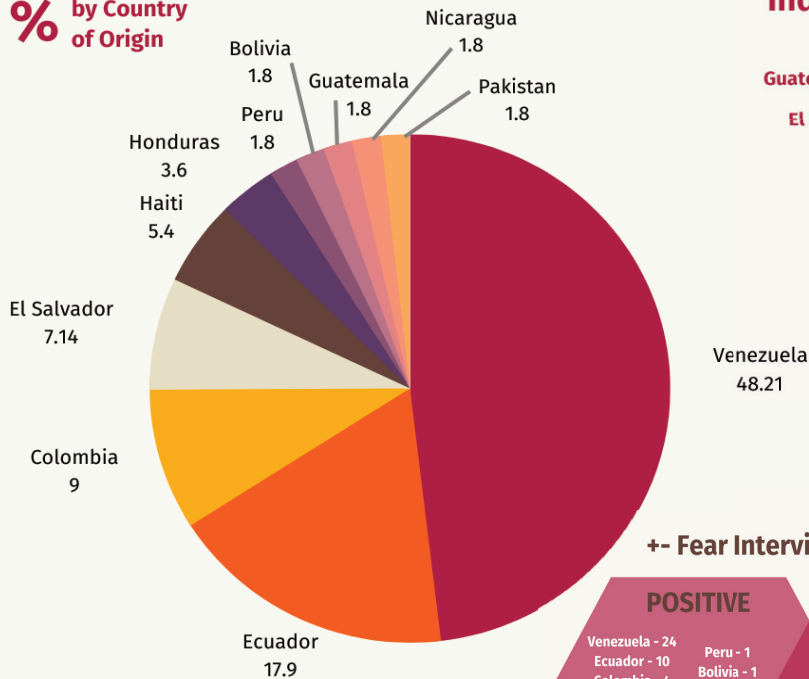
Otero County Processing Center (Chaparral, NM) &
El Paso Service Processing Center (El Paso, TX)

EPPC & OTERO COUNTRY OF ORIGIN

12 countries of origin, predominantly from South and Central America, were represented among the 62 sessions conducted at Otero and EPPC during Las Americas' project period.

Otero County Processing Center | Chaparral, NM

% by Country of Origin



+/- Fear Interview Outcomes

POSITIVE

Venezuela - 24
Ecuador - 10
Colombia - 4
El Salvador - 3
Haiti - 3
Honduras - 1
Peru - 1
Bolivia - 1
Nicaragua - 1
Guatemala - 1
Pakistan - 1

NEGATIVE

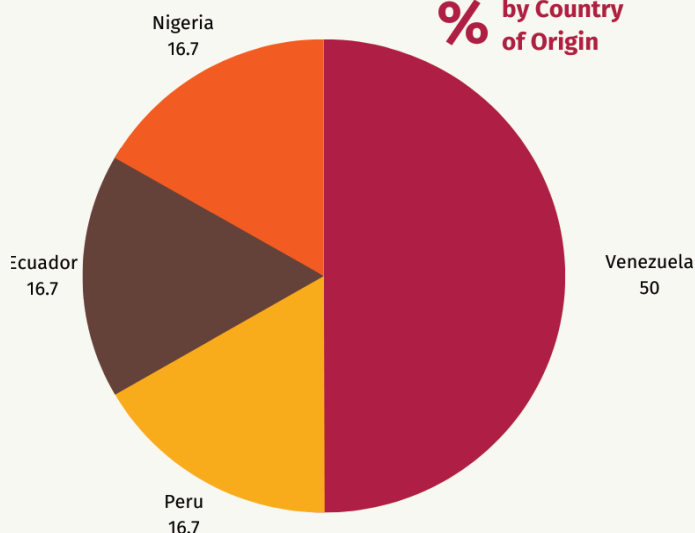
Venezuela - 1
Ecuador - 0
Colombia - 1
El Salvador - 1
Haiti - 0
Honduras - 1
Peru - 0
Bolivia - 0
Nicaragua - 0
Guatemala - 0
Pakistan - 0

Individuals by country of origin

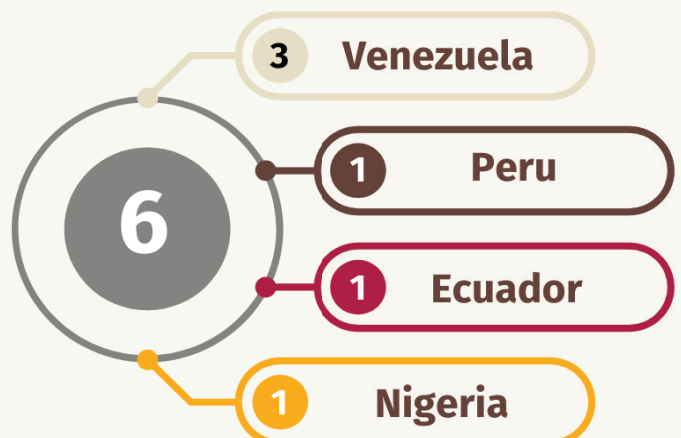


El Paso Service Processing Center | El Paso, TX

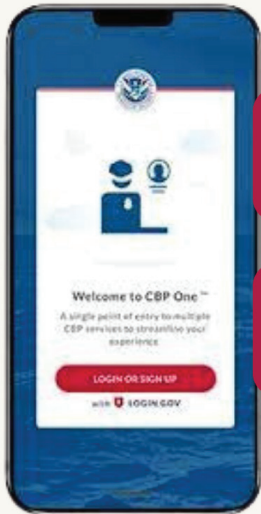
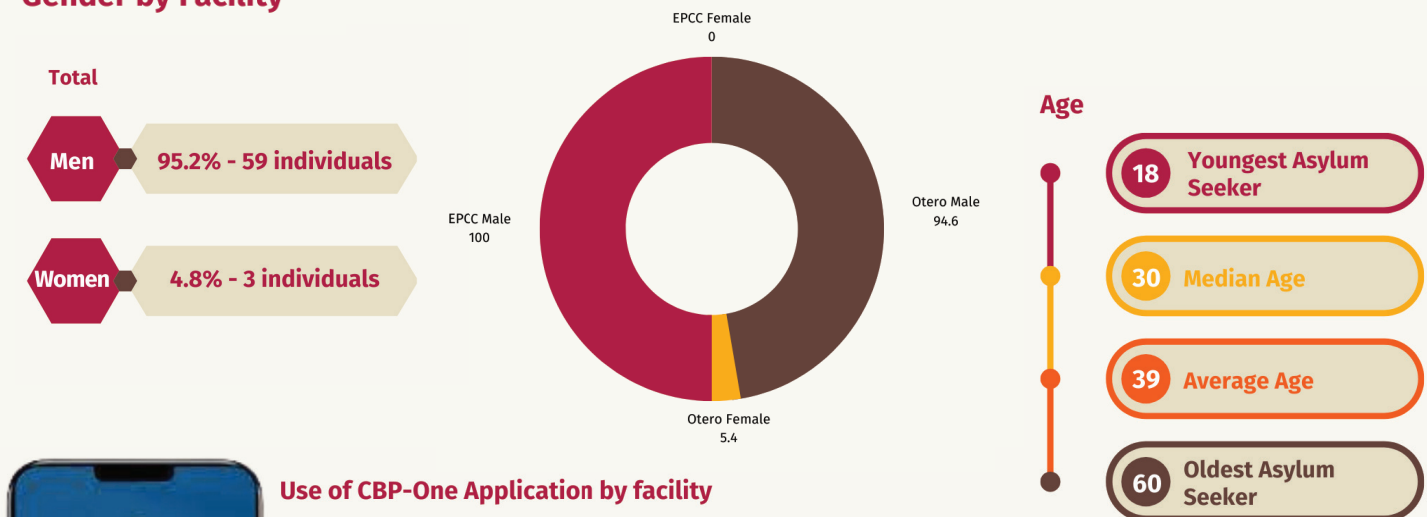
% by Country of Origin



Individuals by country of origin



Gender by Facility



Use of CBP-One Application by facility

OTERO

26.8% (15 individuals) entered at a port of entry with a CBP One appointment-- 14 positive, 1 no CFI

EPCC

33.3% (2 individuals) entered at a port of entry with a CBP One appointment-- 2 positive

75%

42 individuals had claims of persecution based on their membership in a particular social group (PSG), including but not limited to LGBTQ+ membership, persecution based on family ties/association, domestic or gender-based violence.--38 positive, 4 negative

ASYLUM CLAIM TYPE

Asylum seekers in the U.S. must demonstrate that the persecution they are fleeing is on "account of race, religion, nationality, membership in a particular social group, or political opinion[.]"¹⁷ Las Americas encountered all five of the protected grounds for asylum in both Otero and EPCC.¹⁸

44.5%

25 individuals had political opinion claims. -- 22 positive, 1 negative, 2 no CFI

7.1%

4 individuals had claims relating to race and/or ethnicity. --4 positive

3.6%

2 individuals had religion claims.--2 positive

41%

23 individuals had claims involving the Convention Against Torture.--21 positive, 2 no CFI

17. 8 U.S.C. § 1101(a)(42).

18. Las Americas extensively trained the group of interns who delivered CFI orientations during the pilot project period. The training focused on asylum and each of its five grounds, withholding of removal, and protection under the Convention Against Torture (CAT), among other important topics in immigration law whose understanding is crucial to deliver a CFI orientation (e.g., Expedited Removal, Biden's Asylum Ban). Each intern classified each CFI orientation that they delivered under one of the five grounds. All of the interns' classifications were verified by Las Americas' fellow attorney, Jorge Dominguez, who coordinated and supervised the CFI Orientation Project research in Otero and EPCC. The verification of the interns' classifications were made through group or one-on-one debriefings, or via a review of the intake summary written by the interns for each of the CFI orientations they delivered (followed by more questions when necessary). Due to their particular facts, some of the CFI orientations were classified under more than one of the five grounds. Also due to their particular facts, some CFI orientations were classified under one or more of the asylum grounds and CAT.



Insights Regarding Grounds for Asylum and Country of Origin

Out of the 62 asylum seekers served at EPPC and Otero:

- 69.2% (18 individuals) of the Political Opinion claims were from Venezuela
- 39% (18 individuals) of Particular Social Group claims were from Venezuela
- 19.6% (9 individuals) of Particular Social Group claims were from Ecuador
- 10.9% (5 individuals) of Particular Social Group claims were from Colombia
- 60% (15 individuals) of claims involving the Convention Against Torture were from Venezuela
- 8% (2 individuals) of claims involving the Convention Against Torture were from Colombia

Basis for Asylum Claim



Obstacles to Due Process During Credible Fear Interviews in Detention

The discussion below addresses challenges to due process and procedural irregularities witnessed by staff and volunteers and reported by clients in ICE detention during the pilot project period. In addition to concerning practices observed during the administration of the fear interviews, a number of asylum seekers faced unreasonably long waiting periods before undergoing an interview (anywhere from four weeks to several months), a concerning practice given they are generally not eligible for release until a decision has been reached in the CFI process.

Long Waiting Periods to Undergo a Credible Fear Interview or Receive a Result¹⁹

Las Americas noticed a significant change in the wait times for credible fear interviews between the start and end of the pilot period. When Las Americas first began holding sessions in June, we learned that deportation officers were informing asylum seekers that the wait time to obtain a CFI was between four to six weeks. As CFI sessions were conducted during the pilot project period, we realized that the four-to-six-week time frame stated to asylum seekers was inaccurate. Las Americas encountered individuals who had been in detention for eight to ten weeks—sometimes even longer—without having a fear interview. Overall, Las Americas' data shows that the wait time for CFIs at Otero increased toward the end of our research period.

For example, Bryan (from Otero), who participated in one of our CFI orientation sessions in early July, recently called Las Americas seeking help because his interview had yet to take place even after almost 100 days in detention. In total—after Las Americas contacted the Houston Asylum Office requesting an interview as quickly as practicable—Bryan waited for 108 days.

19. 8 C.F.R. §§ 208.30(d)(1)-(6). Although these sections do not explicitly state a time frame in which a CFI must take place, (d)(4) states that the asylum seeker cannot “unreasonably delay the process” by attempting to consult with someone of their choosing prior to their CFI. Las Americas believes that principles of equity and due process should not allow the U.S. government to unreasonably delay the CFI process either, hence why we tracked and collected information on waiting-times issues in both detention centers. Las Americas reasons that (d)(4) should apply as a two-way street for asylum seekers and the U.S. government.

While asylum seekers at Otero reported long wait times for obtaining a credible fear interview, asylum seekers at EPPC reported a delay in receiving their results and being given inaccurate information about their upcoming court hearings after passing their interview.

For example, after receiving confirmation of his positive CFI result, Nico waited over 18 days to receive a Notice to Appear (NTA) with information about his court date. By the time Nico received his notice, the court date listed on the document had passed, delaying his first court hearing by a month. Nico confirmed that others at EPPC shared his frustrations with long notice to appear wait times and an overall lack of information. He and 18 other detained asylum seekers organized and participated in a brief hunger strike to protest the deportation officers' neglect of requests for information. The strike ultimately prompted the deportation officers to schedule personal meetings with the participants of the hunger strike.

Throughout the course of the eight-week pilot project period, Las Americas also worked with asylum seekers who had already received negative credible fear findings by the time we first met with them. Their experiences reflect egregious errors likely to have impacted the outcome of their interview.

Issues with Interpreters During CFIs²⁰

Follow-up visits with asylum seekers after their fear interview highlighted various challenges with interpreters.

Several asylum seekers shared that they were told by interpreters to only answer “yes” or “no” to questions, and to answer in a few words despite the fact that the questions they were being asked required detailed explanations.

It was also reported that interpreters were constantly interrupting and pausing asylum seekers, thus preventing them from finishing their responses. As a result, asylum seekers often expressed concerns about how their



interviews went because they were unable to provide all the details they believed to be important in their story.

During a follow-up visit prior to receiving the result of his interview, one asylum seeker explained that he was worried because he was unable to tell the asylum officer his entire story during his fear interview. He experienced frequent interruptions by the interpreter, who would then proceed to the next question without allowing the asylum seeker to finish his previous answer.

Lack of Privacy During Credible Fear Interviews

The U.S. government's guidance states that a credible fear interview must occur “separate and apart from the general public.”²¹

Asylum seekers at Torrance reported that multiple people were simultaneously undergoing their respective CFI in the same room. Additionally, people from the same country—even the same city—were being placed right next to one another during their credible fear interviews. At least one man admitted to leaving out details about the harm he experienced because he was aware that another individual from the same part of the country was within earshot of his interview.

According to Daniel Symonds, an intern from Temple University Beasley School of Law, “Every single person [at Torrance] described the interview room in the same way: a

20. 8 C.F.R. § 208.30(d)(5). This section mandates that an asylum officer use an interpreter when the asylum seeker cannot “proceed effectively in English, and if the asylum officer [cannot] proceed competently in a language the a[sylum seeker] speaks and understands[.]” Because of their crucial role in the CFI process, Las Americas believes that it is imperative that interpreters conduct themselves in an appropriate manner and allow for the full expression of asylum seekers' stories, statements, and thoughts. Additionally, § 208.30(d) states that CFIs will be conducted in a “nonadversarial manner[.]” The following discussion details what are arguably violations of the “nonadversarial” provision in § 208.30(d).

21. Under 8 C.F.R. § 208.30(d), an asylum seeker's CFI must occur “separate and apart from the general public.” The following discussion detailing issues of privacy during CFIs that follow this footnote arguably constitute a violation of this federal regulation.



small room with multiple booths divided by plastic dividers. Each booth had a phone and a white noise machine that either did not work or did nothing to help block the noise coming from the other booths. These booths were merely inches apart from one another, making it extremely easy to hear everything being said by the people next to each other.”

Michelle Ortiz, an intern from The University of Chicago, commented that, “during my training, before attending Torrance, I had an idea of how CFIs would be conducted by the U.S. government, but I never imagined that there would be so many issues touching on due process. It was my understanding per the federal regulations that CFIs are to be conducted with utmost privacy. However, at Torrance, CFIs were happening in a big room with multiple booths that were simply divided by plastic dividers that did not reach the ceiling; this allowed everything being said during a CFI to travel between booths. The asylum seekers I spoke to could quite literally quote the people in the booths next to them; they told me that they could even hear others cry during their CFIs. That is not private at all. None of the detainees I spoke to knew that they were entitled to privacy.”

Arbitrary Prohibition of Presentation of Evidence in Otero and EPPC

Under the current regulations, an asylum seeker may present evidence at their credible fear interview.²² Despite this policy, pilot participants described disturbing behavior by facility staff, DHS agents, and asylum officers interfering with the individual’s ability to present evidence during their interview, without a reasonable justification as to the reason for the denial. Moreover, the overall regulatory scheme guiding the administration of CFIs places the authority to conduct CFIs solely with asylum officers (“The asylum officer shall conduct the interview as follows....”).²³ The discussion below demonstrates numerous instances where asylum seekers had their physical evidence disposed of (or even destroyed) by DHS agents and contractors.²⁴ Pseudonyms are provided throughout this portion to protect the identities of pilot participants.

At least four asylum seekers in Otero reported that guards confiscated and/or prohibited the use of personal documents during their CFIs. Enrique and Jaime shared that prior to their interviews guards notified them that they were not permitted to have documents with them during the interview. Aidan reported leaving his written statement concerning his asylum claim in his room out of fear that guards would rip it up; this is what he heard among fellow asylum seekers that guards were doing to others. Benito asserted that he could not take documents into the CFI as the guards would confiscate, rip, and dispose of them; he heard of Edgar who attempted to hide documents in his socks until a guard noticed and interrupted his CFI, returning him to his cell.

22. 8 C.F.R. § 208.30(d)(4).

23. 8 C.F.R. § 208.30(d).

24. 8 C.F.R. § 208.30(d)(4). Through this section, an asylum officer is also given the authority of placing “reasonable limits on the number of persons who may be present at the [CFI] and on the length of the statement.”

Testimonials

Mariana Meza, Duke University (assigned to Otero)

“In conducting CFI orientations, I encountered an unexpected sense of hope concealed behind the desolate, dreary walls of the detention centers. We began conducting CFI orientations after being taught the technical knowledge of asylum law in the United States, aware of its austere reality—one that futilely attempts to define the validity of a person’s fear, functions on arbitrary standards that disregard the diversity of asylum seekers’ experiences, and decides who to deem valuable or disposable. Contending with this unforgiving, discretionary system, the CFI Orientation Project offered a return to the humanity of detained asylum seekers, recognizing their unique strengths, and empowering them to tell the best version of their story. The momentary yet golden interpersonal connections I developed with asylum seekers during the CFI orientations I conducted imparted me with beautiful lessons of resistance. Within the sterile bounds of these detention centers, the asylum seekers’ living example of hope, gratitude, pride, dignity, and even joy in the face of despair flourished.

Even with the guidance of the CFI Orientation Intake Form, each conversation presented an opportunity to deconstruct my preconceived notions about asylum seekers, acknowledging individuals’ skills, humor, pain, and comfort level with trusting a legal service provider like Las Americas. Every interaction warranted the patience to sit with the detained asylum seekers and bear witness to their suffering and strengths alike, transcending a transactional consultation through a comforting word, a smile, a reassurance that hopefully assuages the harshness of their circumstances. Although at times digesting stories of severe anguish proved difficult, I feel privileged to have participated in a program that allowed me to work towards providing the solace, listening ear, and dignified treatment lacking in the immigration detention system. I hope that the lessons of this program extend beyond legal service providers and challenge others to treat and accompany asylum seekers with appreciation and empathy.”

Silvana Navia, Barnard College - Columbia University (assigned to Otero and EPPC)

“When I first learned from Las Americas that I would be doing CFI orientations, I was terrified because how well I prepared detained asylum seekers for their CFIs could drastically impact their results; it worried me to think that someone’s future was somewhat in my hands. However, this fear went away when I sat down with them and took the time to listen to their stories. As I took notes down of the asylum seekers’ claims, it hit me that asylum officers were probably not taking as detailed notes during CFIs. This was later confirmed when I began hearing from asylum seekers that they or someone they knew of was told to provide only few details about their story and to simply respond with a “yes” or “no” answer. The poor quality of CFIs with unequipped interpreters and asylum officers that show a lack of care for the stories of those they interview sheds light on a greater systemic issue. CFIs do not occur in a fair and just manner, yet they hold so much power over the lives of asylum seekers.

During my CFI orientations with detained asylum seekers in both Otero and EPPC, they often told me that this was the first time they spoke with someone about their asylum claim. Many of these asylum seekers do not have the financial resources to afford private





counsel, so they can only hope that an organization like Las Americas may help them. If this does not occur, they do not have a choice but to undergo their CFIs without any preparation. During my CFI orientations, asylum seekers were very attentive and cooperative (some even took notes down of what I was telling them concerning their rights and the requirements for asylum in the U.S.).

Towards the end of my internship, I noticed that more asylum seekers came to the CFI orientation with a written statement of what they planned to say during their CFI. I was surprised to learn that they had done this on their own. Some of them told me that they had been helped by others who underwent Las Americas' CFI Orientation Project. Given that we handed the "La Manita" diagram (among other resources) to asylum seekers, we soon realized that it was possible that this resource was being shared by asylum seekers to help each other. This further emphasizes the importance of Las Americas CFI Orientation Project making information accessible to detained asylum seekers. CFI orientations are essential because they not only help asylum seekers

prepare for their interview and inform them of their rights (and the process as a whole), but they also empower them with the knowledge to advocate on their own behalf during their CFI and to help others in the same situation."

Michelle Ortiz, The University of Chicago (assigned to Torrance and Otero)

"When I first began my time at Las Americas, I had no prior knowledge of how the asylum process worked or what the requirements to obtain it were. Once explained to me, I understood a little bit more. However, the thing that allowed me to fully understand the asylum-seeking process, the difficulties of it, and how helpful something as simple as "La Manita" can be, was preparing detained asylum seekers for their CFI. At first glance, a CFI seems very simple, something that a person doesn't really need to be prepared for, but it's the complete opposite. Every time I conducted a CFI orientation, I noticed asylum seekers' attentiveness. To me, I was explaining something simple, but to them, I was explaining how they could potentially secure their safety. Although I quickly realized that certain due process issues weren't something that I could change in the foreseeable future (e.g., people being forced to have their CFI in a setting with a complete lack of privacy), I could empower asylum seekers with preparation, making them feel less intimidated about their CFI. Seeing how 100% of the people we thoroughly prepared at TCDF received a positive CFI result assured me that Las Americas' CFI Orientation Project works and that, for the time being, it is the best option that we have."

Las Americas and the Detained Deportation Defense Program

Las Americas Immigrant Advocacy Center is a 501(c)(3) bi-national nonprofit organization based in El Paso, Texas; Ciudad Juárez, Mexico; and New Mexico. Founded in 1987, Las Americas assists low-income immigrants including refugees and asylum-seekers, crime victims, and families seeking reunification through high-quality legal services offered at no or low cost. Las Americas has aided over 70,000 people from over 77 countries in the El Paso region. The attorneys, accredited representatives, and staff of Las Americas work towards a vision of accessible representation based on the principles of justice and human rights.

Las Americas' Detained Deportation Defense Program provides 100% pro bono legal services to detained immigrants in El Paso Service Processing Center, Otero County Processing Center, Cibola County Correctional Center, and Tarrant County Detention Facility. The Detained Deportation Defense Program runs a Credible Fear Interview Orientation Project in addition to offering pro se assistance or full representation in every aspect of removal proceedings.

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- Rosa Vega Rodriguez, University of Notre Dame
- Alex Reynolds-Scheel, Colorado College
- Dan Symonds, Temple University James E. Beasley School of Law

To support Las Americas Immigrant Advocacy Center and the Credible Fear Interview Orientation Project, give at las-americas.org/donate.

If you're interested in replicating this project in your area, email information@las-americas.org.



