

## Seeking Asylum in U.S., Immigrants Become Long-Term Detainees Instead

Cecilia Cortes crossed the Tijuana border into San Diego on a Sunday morning this March. The 34-year-old curly-haired brunet, with her 3-year-old son, Jonathan, and her 6-year-old daughter, Alexa — both U.S. citizens — walked a pedestrian bridge into the Otay Mesa Port of Entry station controlled by U.S. Customs and Border Protection. Though Cecilia is not an American, she was confident federal agents would allow her to enter the country. She would ask for political asylum, a type of refugee status granted to people who arrive in the United States after fleeing persecution in their homeland.

"They're not criminals. In fact, they're following the legal procedure the government has put in place for them to get protection."

During a phone interview from his home in Jacksonville, Javier Galvan, Cortes' husband, explains that the couple had spent ten years living in Florida until returning to Cecilia's hometown of Morelia in the state of Michoacan, Mexico, in 2011. "My wife's mother fell ill," he says. "She had no one to take care of her, so we went back."

But soon, the harsh reality of living in Mexico knocked on their door. Shortly after opening a butcher shop, Galvan says members of the Knights Templar drug cartel, which control territories throughout Michoacan, began extorting him for protection money. "If I didn't pay, they threatened to kidnap me and my family," he says. "In Michoacan, you don't take their threats lightly."

Indeed, Galvan relays, his wife witnessed the Knights Templar's bloody handiwork while riding a bus. On the side of the road, the cartel had left six gory heads arranged neatly next to their decapitated bodies. By late 2012, Galvan says he closed the butcher shop and decided it was time to come back to Jacksonville. After three failed attempts to cross the Rio Bravo bordering Mexico and Arizona, Galvan and Cortes found out about the #BringThemHome campaign, an effort by DREAMers' MOMS, a nonprofit that helps undocumented immigrants whose children were born in the United States. Last October, Galvan had crossed the border in Brownsville, Texas, with his 16-year-old son, Javier Jr. "I had no problems," he says. "With the help of the Mexican consulate, we were able to come back to Jacksonville."

But his hopes of being reunited with his wife and two other children were quickly dashed by customs officials in San Diego. Agents slapped handcuffs on Cortes, Galvan says, and separated her from the children. They allowed her to call Galvan so he could have his brother in California pick up Jonathan and Alexa. Officers threw her into a cold, cramped cell before turning her over to Immigrations and Customs Enforcement, which loaded her onto a plane and transported her to an immigrant detention center in San Luis, Arizona, where she is being held indefinitely even though she has no criminal record and has a legitimate claim for asylum. "I haven't been able to fly out to pick up our kids because of economic reasons," Galvan says. "And I don't have any idea if my wife will be released."

The situation is remarkably common. Across the country, vulnerable noncitizens seeking safety and a new beginning are instead funneled into prison-like detainment centers, held indefinitely, and often sent back, sometimes in mass deportations, to the countries where they face threats. When the process goes smoothly, asylum seekers tend to be released in four to six weeks, but many end up imprisoned for months or even years. About 6,000 survivors of torture — exiles from Iran, Myanmar, Syria, and other brutal regimes — were detained while seeking asylum over the past three years, according to a 2013 report by the Center for Victims of Torture.

"It's really tragic," says Amelia Wilson, staff attorney for the American Friends Service Committee, a faith-based organization that aids asylum seekers. "They're fleeing persecution, and many of them have just fled institutions of incarceration in their home country. Through guile or luck or the right contacts, they manage to get out of their country. They come here, and they're promptly detained. They're shocked. They're not criminals. In fact, they're following the legal procedure the government has put in place for them to get protection."

Raising concerns that some people are crying about persecution to gain American residency when really they have nothing to fear, some Republican leaders are now pushing draconian measures that would put even more asylum seekers behind bars. House Judiciary Committee Chairman Bob Goodlatte, a Republican from Virginia, has said the asylum system is "exploited by illegal immigrants in order to enter and remain in the United States."

"The tone of immigration politics, even when it comes to asylum seekers, has gotten really vicious," says Alina Das, codirector of the Immigrant Rights Clinic at the New York University School of Law. "People have generally forgotten what it means to be seeking asylum in our country. It's really disturbing, and I think it's a sad commentary on how easily a minority of elected officials can hijack an issue that should really speak to core American values."

In Florida, Immigration and Customs Enforcement has six detention facilities, four of which are operated by local sheriff's offices in Monroe, Glades, Baker, and Wakulla counties. The all-male Krome Detention Center in Miami-Dade is run by ICE. A majority of the 581 detainees at Krome have criminal convictions and orders of deportation. They cannot seek political asylum, but they can appeal to ICE to let them remain in the United States if they can show they will be tortured or even killed if returned to their home country. The sixth facility is the Broward Transition Center, which is run by a private company, the GEO Group. Located in Pompano Beach, most of the 700 detainees at BTC do not have criminal records and are asylum seekers.

American taxpayers are funding the system's dysfunction. The Department of Homeland Security budget for "custody operations" in fiscal 2014 is \$1.84 billion. It costs about \$160 per day to keep each asylum seeker in immigration detention. According to DHS' own estimates, if the agency used electronic ankle monitoring and other less expensive alternatives instead of detention, the government could save more than \$1.44 billion annually: a 78 percent reduction in costs.

Yet, every day at airports and border crossings around the country, immigrants who committed no crime beyond seeking to save their own lives are locked up for weeks, months, and even years. And if they are sent home, deportation can be tantamount to a death sentence.

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The two most famous asylum seekers in recent history are Edward Snowden and Julian Assange, but those cases are hardly typical. The ex-National Security Agency contractor fled first to Hong Kong and then to Moscow after supplying journalists with a trove of information about controversial U.S. spy tactics; the WikiLeaks cofounder sought refuge in an Ecuadorian embassy in London amid fears he'd be extradited to Sweden to face sexual-assault charges.

Unlike Snowden and Assange, the vast majority of asylum seekers are anonymous. In 2012, according to the United Nations, 45 million people worldwide were forcibly displaced owing to persecution and conflict. While the majority became refugees, roughly 1 million sought political asylum. ("Refugees" typically remain near their homeland when they initiate the emigration process, while "asylum seekers" arrive at their desired destination without prior authorization.)

The legal framework that exists today was established in 1951 to deal with millions of displaced people in the aftermath of World War II. As a party to the United Nations Convention Against Torture, the U.S. agreed to "not return refugees to countries where their life or freedom would be threatened and where they are more likely than not to be tortured." In the old days, asylum seekers were rarely detained.

With the 1993 bombing of the World Trade Center, everything changed. Later that year, *60 Minutes* broadcast a report emphasizing the fact that Sheik Omar Abdel Rahman, the suspected mastermind behind the attack, had applied for asylum. The sound bite that stuck was provided by a representative from the Federation for American Immigration Reform, an anti-immigrant group: "Every single person on the planet Earth, if he gets into this country, can stay indefinitely by saying two magic words: 'political asylum.' "

In truth, Abdel Rahman had entered the U.S. on a tourist visa and received a green card despite his status on a terrorist watch list. He didn't apply for asylum until years later, and his claim was ultimately rejected. But the damage was done. According to a 1998 report on asylum by the Cato Institute, a libertarian think tank in Washington, D.C., the *60 Minutes* segment "created the impression that few, if any, claims of asylum in the United States are legitimate." In the aftermath, federal agencies adopted more stringent standards for identification of asylum seekers (typically requiring a passport, birth certificate, or other form of ID) and imposed a minimum 180-day waiting period before issuing a work permit.

Unsatisfied with these reforms and reacting to a broader influx of undocumented immigrants, Congress passed a sweeping overhaul of the nation's immigration laws in 1996. The legislation set a one-year deadline for immigrants to apply for asylum and created an "expedited removal" process to swiftly deport anybody who arrives at a port of entry without proper documentation. For the first time in history, arriving asylum seekers were subject to mandatory detention.

"That became somewhat of a game-changer," says Annie Sovcik, director of the Washington, D.C., office of the Center for Victims of Torture. "From there, you started to see an overall growth in the detention system itself, both in the number of people detained on a daily and annual basis as well as in the different categories of people that are held."

The number of beds in immigration jails has more than quintupled since 1996, rising from 6,280 to 34,000 in 250 facilities across the nation in 2014. Since 2006, Congress has required ICE to keep all 34,000 of those beds perpetually filled, a provision known as the bed mandate.

A 2013 report by Americans for Immigrant Justice described some typical conditions: "The temperature in the cells is so cold that [Customs and Border Patrol] officers themselves refer to them as '*hieleras*,' or iceboxes, in Spanish. Detainees' fingers and toes turn blue and their lips chap and split due to the cold. Blankets are not provided. These crowded *hieleras* have no mattresses, beds, or chairs."

"They've signed up for a certain degree of hardship during these journeys," Sovcik says of asylum seekers in general. "But at that moment when they believe they've reached a place they can ask for help, they're handcuffed and taken into cold rooms. They have no idea what's going on. There's a certain degree of shock in that experience that adds to the intensity of their trauma."

Dr. Allen Keller, director of the Bellevue/NYU Program for Survivors of Torture, with his team of researchers interviewed 70 asylum seekers for a study published in the *Lancet* in 2003. "What we found were very alarmingly high levels of psychological distress among asylum seekers in detention," Keller said. "There was a clear correlation between the length of time in detention and the severity of these symptoms, including depression, sadness, and hopelessness, as well as profound symptoms of anxiety and posttraumatic stress."

In 2009, ICE issued new parole standards: If arriving asylum seekers pass a "credible fear" interview, they can be eligible for release. At these, a government interviewer, often with a translator's help, asks the detainee about his or her background and whether he or she has ever been threatened or harmed due to race, ethnicity, religion, nationality, political opinion, sexuality, or other factors.

Still, the U.S. Commission on International Religious Freedom issued a report in April 2013 concluding that ICE "continues to detain asylum seekers under inappropriate conditions in jails and jail-like facilities."

A spokesman for ICE did not respond to repeated requests for comment for this article.

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Jessica Shulruff, senior attorney with Miami-based Americans for Immigrant Justice, says the Broward Transitional Center in Pompano Beach currently houses at least 25 women from Honduras, El Salvador, and other Central American countries who are seeking asylum because they face gender-based persecution if they return to their home countries. The women crossed the Mexico-Texas border, but ICE transferred them to Pompano due to a lack of beds in Lone Star State facilities. Americans for Immigrant Justice is providing the women with civil rights presentations and legal advice.

"Once they are at BTC, most of the individuals go through the credible-fear interview," Shulruff says. "Agents along the border are either not letting immigrants know about the credible-fear interview or simply ignore requests for one."

The women have legit claims of fear, Shulruff relates. "One El Salvadoran had been with a very abusive husband for more than 20 years," she says. "She tried to leave him several times, but he would never accept it. She tried to get restraining orders against him, but local police were ambivalent, telling her it was a civil matter." It got to the point the woman believed her husband was going to kill her, so she fled to the United States.

Other women, Shulruff says, are victims of violent gangs and corrupt cops. "A gang member or a police officer will decide they want to be with a woman, yet she doesn't," Shulruff says. "The man will track her down, stalk her, brutally rape her, and force her to be with him. Because he wields so much power, there is nothing she can do about it."

They also become victims of professional extortionists. "If they don't pay, the extortionists threaten their families or ransack their businesses," Shulruff says. "In some case, the extortionists have murdered family members to send a message."

Miami immigration attorney Grace Gomez handles asylum cases for Catholic Charities. She's represented a number of gay Jamaican aliens being held at Krome. Jamaica is one of the countries with the worst human rights abuses against gay, lesbian, and transgendered people, Gomez says. "In Jamaica, there is a propensity for homophobic violence," she says. "There have been cases of gay men being drowned or burned to death."

So when such aliens are sent to Krome, ICE will not put them with other Jamaican detainees. "They put gay and transgendered detainees in isolation to protect them from other inmates," she says. "They didn't trust the other Jamaicans to play nice."

In 2011, Gomez represented a transgendered human rights activist from Jamaica who was put in solitary for three months. He had fled the island nation because he feared he would be murdered if anyone found out he was HIV-positive. "He had already been thrown out of his home and lost his job," Gomez says. "His former boyfriend was murdered too."

She says he was sent to Krome after being convicted of a minor crime, petty theft. "He had not completed the surgery, but he was dressing like a woman and taking hormones," Gomez says. "Luckily we won asylum for him, and he was able to move on with his life."

Michael Ray, a Miami immigration attorney, says that in some cases, transgendered aliens are put in solitary for up to six months. "When you are seeking freedom from persecution and then ICE detains you, puts you in solitary, and brings you to court in chains — that is torture," Ray opines. "Of course, ICE calls it 'administrative isolation.' They don't call it 'solitary confinement.'"

Of the roughly 68,000 people who applied for asylum in 2012, only 29,000 had their requests approved. Reasons for rejection can run the gamut from security concerns to fraudulent claims, but in many cases, the decision whether to approve an application appears to be cruelly arbitrary.

Even if they are allowed out on bond while awaiting their hearing, asylum seekers aren't allowed to look for employment until 180 days after they've filed their application, and bureaucracy and backlogs can delay work authorization for months. Legally barred from finding a job, they are forced to subsist on handouts.

Shulruff says ICE officials at Broward had been releasing detainees who passed the credible-fear interview pending their immigration court hearing. However, three weeks ago, officials stopped doing that and are now holding immigrants until their hearing, usually presided by Immigration Judge Rex Ford, who has developed a nasty reputation because he denies 96 percent of the cases in which people come before him asking for asylum.

"This is a humanitarian crisis," Shulruff says. "We have all these asylum seekers being held on the government's dime who go before a judge who denies all of them a bond."

As a result, Shulruff says, the Central American detainees are consenting to being deported so they can hurry up and get out of the Broward Detention Center. "They have been in custody for one to two months," she says. "They would rather be sent to their home country because of the fear of being detained even longer, knowing they are going to lose their asylum case anyway. It's a very big problem."

A series of reports by the Transactional Records Access Clearinghouse at Syracuse University "found extensive disparities in how the nation's immigration judges decide the thousands of individual requests for asylum that they process each year." One New York judge approved just 5 percent of asylum cases in a single year, while another judge in the same building approved 67 percent.

The inherent randomness is commonly known as "refugee roulette." Analyzing more than 270,000 decisions by immigration judges and asylum officials over a four-and-a-half-year period, one study concluded that "in many cases, the most important moment in an asylum case is the instant in which a clerk randomly assigns an application to a particular asylum officer or immigration judge."

Jaya Ramji-Nogales, a professor at Temple University and coauthor of the refugee roulette study, says the problem boils down to a matter of time and resources. Immigration judges typically lack both. Facing a backlog of more than 354,000 cases — an 85 percent increase from five years ago — judges are forced to make snap decisions about complex legal issues that can have life-or-

death consequences. A recent *Washington Post* story quotes one immigration judge who describes the current system as "like doing death-penalty cases in a traffic-court setting."

"In comprehensive reform, we see money for night-vision goggles at the border, everything the border patrol could possibly want," Ramji-Nogales says. "But we don't see the same funds directed to immigration courts. That's huge. Who wants to be the person in this political climate that says, 'Let's pour money into immigration court?'"

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Every asylum seeker has a heartbreaking story to tell. Unfortunately, the tales aren't always true. In 2012, federal prosecutors in Manhattan filed an array of charges against 30 attorneys, paralegals, interpreters, and others accused of helping dozens of Chinese immigrants file fraudulent asylum claims. One lawyer was caught on tape telling his client to "just make it up" if immigration officials probed for details of the forced-abortion narrative he'd scripted for her.

The high-profile Chinatown case has contributed to backlash against asylum seekers that advocates fear could have tragic consequences for those with legitimate claims.

The elected official leading the campaign against asylum seekers is Bob Goodlatte, Republican chairman of the House Judiciary Committee. On February 11, Goodlatte presided over a hearing ominously titled "Asylum Fraud: Abusing America's Compassion?"

"Our nation's record of generosity and compassion to people in need of protection from war, anarchy, natural disaster, and persecution is exemplary and easily the best in the world," Goodlatte began. "We grant asylum to tens of thousands of asylum seekers each year. We expect to continue this track record in protecting those who arrive here in order to escape persecution. Unfortunately, however, because of our well-justified reputation for compassion, many people are tempted to file fraudulent claims just so they can get a free pass into the United States."

Goodlatte claimed that a whopping 70 percent of asylum applications are fraudulent and stated that "the rule of law is being ignored, and there is an endemic problem within the system that the [Obama] administration is ignoring."

His "70 percent" statistic comes from a 2006 report from the Government Accountability Office on benefit fraud. The authors analyzed 239 asylum cases and concluded that 29 of them — or 12 percent — were fraudulent. To reach the alarming 70 percent figure, Goodlatte included an additional 138 cases from the report that exhibited "possible indicators of fraud."

Anyone who sets foot in this country and seeks asylum is detained, if only briefly. But the differences in how some are treated can seem arbitrary and unfair. Applicants considered "affirmative applicants" — meaning they applied within a year of arriving, possess proper identification, and followed regulations — are rarely detained for any length of time. "On the other hand," a draft Homeland Security report reads, "many defensive applicants" — including people who failed to apply for asylum within a year of arriving in the U.S., even some who

passed a credible-fear interview — "are detained for at least some portion of the processing of their immigration cases."

Those "defensive applicants" counted for more than 23,000 cases of detention in 2012. They include individuals like Hussein Mohamed, a young Somali detained in New Jersey. His mistake was to walk across the border and immediately approach a border patrol agent to ask for asylum. By crossing on foot and essentially turning himself in, Mohamed became subject to "expedited removal," a type of deportation proceeding with mandatory detention.

"In the perverse way the system works right now," Lutheran Immigration and Refugee Service attorney Megan Bremer explains, "if you come to the border and ask for asylum, you're considered a defensive asylum applicant. If you actually leave the airport — I don't know where you go — but the next day, you go to the immigration office and ask for asylum, then you're affirmative. It makes no sense."

The uncomfortable truth is there is no sure-fire way to prevent fraud. The very nature of asylum requires officials to take people at their word to a certain extent. Documents and witness testimony are available in some instances, but short of personally traveling to conflict zones like Syria or lawless corners of Somalia and Pakistan, there is often no way for officials (or journalists, for that matter) to independently verify the stories asylum seekers tell them.

A 31-year-old Pakistani man named Khan incarcerated at a New Jersey detention facility says he has spent the past seven months behind bars waiting for a decision on his asylum claim. He says he was forced to flee his home in Pakistan's tribal region after the Taliban executed his parents and threatened to kill him, his wife, and their children.

"The Taliban, they killing all the time," Khan says in broken English. To emphasize this point, he lifts his hands and makes a tat-tat-tat noise as if hoisting a machine gun. "The Taliban doesn't know the word 'sorry.' You may be fine for one year, two year, three year, four year — then maybe 15 years they come for you."

Khan explains that a judge had asked him for police reports of the killing and death certificates for his parents, but those records either didn't exist or were impossible for his friends and family in Pakistan to obtain. It's likely impossible to verify his story without visiting his village to investigate.