



United States Department of State

*United States Permanent Mission to the
Organization of American States*

Washington, D.C. 20520

Dr. Paulo Abrão
Executive Secretary
Inter-American Commission on Human Rights
Organization of American States
Washington, D.C. 20006

August 19, 2019

**Re: Asylum Seekers from Nicaragua in the United States
Request for Information (Article 18 – IACHR Statute)
United States
CIDH/SE/Art.18/5-2019/30**

Dear Dr. Abrão:

The U.S. Government has the honor of submitting to the Inter-American Commission on Human Rights this response to the request for information your office transmitted to us on May 16, 2019. Please find enclosed the United States' response to the request. We trust this information is useful to the Commission and thank the Commission for its attention to this matter.

Please accept renewed assurances of my highest consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Carlos Trujillo', written in a cursive style.

Carlos Trujillo
Ambassador

Asylum Seekers from Nicaragua in the United States

1. Provide the number of Nicaraguans that have entered the United States and that have been detained in migration detention centers since April 18, 2018; the centers in which they are detained, and the reasons for the detention, as well as their sex, ages, among other information that is considered relevant.

As of June 29, 2019, there were 1,738 Nicaraguan nationals in U.S. Immigration and Customs Enforcement (ICE) detention.¹

As a general matter, ICE places detainees in detention centers based on available bedspace and custody resources. In cases where aliens are not subject to mandatory detention under U.S. law, ICE has the authority to determine whether those aliens, including family units, will be held in custody or released while in removal proceedings or while awaiting removal from the United States. ICE officers make custody determinations based on a variety of case-specific factors, evaluating the totality of the information that is known to the agency at the time. When determining whether an individual should be detained or released, as well as what release conditions are appropriate, numerous factors are taken into account during each individual case review. Factors considered include, but are not limited to, the individual's criminal and immigration history, supervision history, family and/or community ties, status as a caregiver or provider, and other humanitarian or medical considerations. In short, ICE makes an independent custody determination on every detained alien, regardless of nationality.

With respect to the sex and age of Nicaraguans who have been detained between April 18, 2018, and June 29, 2019, ICE reports the following:

ICE Initial Bookings of Nicaraguan Nationals by Gender and Age (04/18/2018-06/29/2019)

| Gender | Adult | Juvenile | Total |
|---------------|--------------|-----------------|--------------|
| Total | 8,265 | 1,004 | 9,269 |
| Female | 1,982 | 485 | 2,467 |
| Male | 6,282 | 519 | 6,801 |
| Unknown | 1 | - | 1 |

2. Describe the actions taken to guarantee that the conditions of detention are in accordance with relevant international standards.

¹ ICE detention data excludes individuals who are transferred to, and in the custody of, the Department of Health and Human Services' Office of Refugee Resettlement or the U.S. Marshals Service.

ICE Enforcement and Removal Operations (ERO) oversees the civil immigration detention of one of the most highly transient and diverse populations of any detention system in the world. As such, ICE is committed to ensuring that all detainees reside in safe and secure environments.

Over the past several years, ICE has also taken steps to improve its immigration detention system, wherein ICE facilities undergo robust inspections to ensure that they meet applicable ICE detention standards with respect to medical care, access to legal resources, food service, telephone access, visitation, recreation, and other aspects of detention. Detention and Deportation Officers, assigned to the Detention Standards Compliance Unit, within the ICE ERO Headquarters Custody Management Division, work daily with ICE ERO field offices, on-site federal detention service managers (DSMs) assigned to designated facilities, the ICE Office of Detention Oversight, and the U.S. Department of Homeland Security's Office for Civil Rights and Civil Liberties to ensure facilities comply with ICE detention standards and that appropriate corrective actions are implemented when deficiencies are identified.

To inspect for facility compliance with ICE detention standards, ICE ERO contracts with an independent third-party group, which conducts over 100 inspections annually across all ICE ERO field offices. At the conclusion of an inspection, the Headquarters Custody Management Division assigns each facility an overall rating of compliance: Acceptable or Not Acceptable, Meets Standards or Does Not Meet Standards, or Deficient. Additionally:

- *Facilities with an average daily population (ADP) of greater than 50 detainees are inspected annually.*
- *Facilities with an ADP greater than 10 and less than 50 detainees are inspected biennially (every other year), provided the facilities have consistently demonstrated compliance to the ICE detention standards.*
- *Facilities with an ADP of less than 10 detainees that meet certain criteria are allowed to conduct annual self-inspections under the guidance of the local field office, using the ICE-created inspection tool.*

3. Describe the mechanisms in place to effectively identify people that require international protection, such as asylum and withholding of removal.

Consistent with U.S. obligations under the 1967 Protocol relating to the Status of Refugees and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), U.S. law permits aliens physically present in the United States to apply for international protection in three different circumstances.

First, aliens who are in removal proceedings under section 240 of the Immigration and Nationality Act (INA) may apply for asylum, withholding of removal, and other relief and protection before an immigration judge ("defensive applications").

Second, an alien may raise a claim for asylum, withholding of removal, and other relief and protection in expedited removal proceedings. Expedited removal applies to aliens who are

encountered at ports of entry or apprehended anywhere in the United States within two years of illegal entry and who are inadmissible to the United States because they engaged in fraud or misrepresentation (section 212(a)(6)(C) of the INA) or they lack proper documents (section 212(a)(7) of the INA). In the ordinary case where an alien does not have prior immigration or criminal history that limits their eligibility for asylum, when an immigration officer or agent encounters or apprehends an alien, determines that alien is subject to expedited removal, and that alien expresses a fear of persecution or torture, a fear of return to his or her country, or an intention to apply for asylum, the case is referred to a U.S. Citizenship and Immigration Services (USCIS) asylum officer to conduct a credible fear interview. The purpose of the credible fear interview is to determine if an alien has potentially meritorious protection claims for further consideration by an immigration judge while preventing individuals subject to removal from delaying removal by filing unmeritorious claims. If an asylum officer finds that an alien has established a credible fear of persecution or torture, the officer issues a Notice to Appear before the immigration court and the alien is placed into removal proceedings before an immigration judge (under section 240 of the INA) where the alien is afforded the opportunity to apply for asylum or any other relief or protection for which the alien may be eligible. If the asylum officer finds that an alien has not established a credible fear of persecution or torture, the alien may ask an immigration judge to review the asylum officer's negative credible fear finding. If the alien declines review, or if the immigration judge concurs with the asylum officer's finding, then the alien may be removed from the United States under the expedited removal order.

Third, aliens physically present in the United States and not already in removal proceedings before the immigration court may apply for asylum with USCIS ("affirmative applications"). However, unaccompanied alien children, who may not be placed into expedited removal, also may apply for asylum initially with USCIS even if they are in full removal proceedings before an immigration judge. If USCIS does not grant the application, the application is referred to an immigration judge for review of the application.

4. Provide the number of requests for asylum by Nicaraguan citizens since April 18, 2018, and of these, the number of persons who have been granted asylum and the number of cases that have been rejected. Provide the number of Nicaraguans, if any, that have been granted withholding of removal under CAT.

With respect to affirmative asylum applications, USCIS received 1,110 applications from citizens of Nicaragua between April 18, 2018 and March 31, 2019. USCIS granted 139 affirmative asylum applications filed by Nicaraguans during this time period, but these applications may have been filed during a different time period.

With respect to defensive asylum applications, according to the Department of Justice's Executive Office for Immigration Review (DOJ/EOIR), 2,524 citizens of Nicaragua applied for asylum defensively between April 18, 2018 and May 16, 2019. During this time period, 167 Nicaraguans were granted asylum defensively and 364 Nicaraguans were denied, but again, these applications may have been filed during a different time period.

*With respect to withholding of removal under the INA, DOJ/EOIR reports that 35 citizens of Nicaragua were granted this form of protection between April 18, 2018, and May 16, 2019. Please note that this number may include some of the 167 Nicaraguans who were granted asylum defensively (see above) or the 23 Nicaraguans that were granted CAT protection (see below) during the relevant time period, because the same individual may have applied for one or all three forms of protection. For example, the same individual may have been granted **both** asylum and withholding.*

With respect to withholding or deferral of removal under the CAT regulations, DOJ/EOIR reports that 23 citizens of Nicaragua were granted this form of protection between April 18, 2018, and May 16, 2019. Please note that this number may include some of the 35 Nicaraguans who were granted withholding under the INA or the 167 Nicaraguans who were granted asylum for the reasons explained above.

5. Provide the number of Nicaraguan citizens in US migration detention centers that have requested asylum.

Please see Response No. 1 for the number of Nicaraguan citizens who have been detained in U.S. immigration detention centers and Response No. 4 for the number of Nicaraguan citizens who have applied for asylum defensively in the United States during the relevant time period.

6. Provide the number of Nicaraguans that have been deported since April 18, 2018.

Between April 18, 2018 and September 30, 2018 (the end of Fiscal Year (FY) 2018),² ICE removed 460 Nicaraguan nationals from the United States. As of June 20, 2019, ICE had removed 1,497 Nicaraguan nationals in FY 2019.

7. Describe measures taken to guarantee their right to due process in their asylum and deportation procedures, including the rights to have legal representation and translation.

Under U.S. law, aliens in removal proceedings are provided numerous procedural protections to ensure that they receive due process. An alien in removal proceedings (as with an alien seeking asylum affirmatively) has the right to be represented by counsel of his choosing at no expense to the government. Immigration judges typically grant continuances to allow aliens in removal proceedings to procure counsel if they so request after they are advised of their rights. According to ICE's detention standards, attorneys and other legal representatives may visit detainees to discuss legal matters. Each detainee may meet privately with current or prospective legal representatives and their legal assistants. Legal visits may not be terminated for routine official

² FY 2018 data are historical and remain static. ICE Removals include Returns. Returns include Voluntary Returns, Voluntary Departures, and Withdrawals Under Docket Control. ICE Removals include aliens processed for Expedited Removal or Voluntary Return who are turned over to ERO for detention. Starting in FY 2009, ICE began to "lock" removal statistics at the end of each fiscal year and counted only the aliens whose removal or return was already confirmed.

counts. Each facility shall permit legal visitation seven days a week, including holidays, for a minimum of eight hours per day on regular business days (Monday through Friday), and a minimum of four hours per day on weekends and holidays. In emergency circumstances, facilities may consider requests from legal representatives for extended visits for visits outside normal facility visiting hours.

With respect to due process considerations more broadly, aliens in removal proceedings may appeal an adverse decision of an immigration judge to the Department of Justice's Board of Immigration Appeals, and thereafter to the federal circuit court of appeals with jurisdiction over their case.

As for interpretation services, interpreters are provided in removal proceedings at no expense to the alien, but affirmative asylum applicants must provide their own interpreter. Additionally, according to ICE detention standards, each detainee will be provided comprehensive written orientation materials that describe such matters as the facility's rules and sanctions, disciplinary system, mail and visiting procedures, grievance system, services, programs, and medical care, in English, Spanish, and other languages, and detainees must acknowledge receipt of those materials. The local handbook supplement provided to detainees shall generally be translated into Spanish. Further, the facility shall provide communication assistance to detainees with disabilities who are limited in their English proficiency (LEP). The facility will provide detainees who are LEP with language assistance, including bilingual staff or professional interpretation and translation services, to provide them with meaningful access to programs and activities.