

DECLARATION OF ANDREA GUTTIN

I, Andrea Guttin, make this declaration make the following declaration based on my personal knowledge and declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

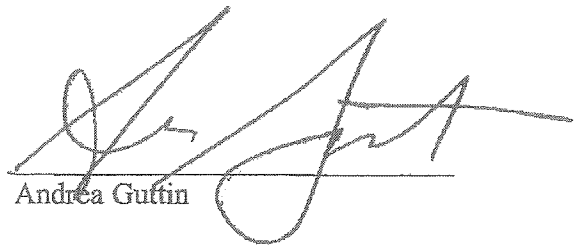
1. I am an attorney licensed to practice law in New York, Georgia and Texas. I am an Associate Attorney in the pro bono refugee representation program of Human Rights First. The program provides pro bono representation to asylum seekers, training and mentoring to volunteer attorneys at law firms to represent asylum seekers in their immigration proceedings. I joined Human Rights First in 2012. I live and work in New York, New York.
2. I have significant experience in immigration legal services and representation of asylum seekers. A central part of my job is to interview asylum seekers and help assess their eligibility for asylum, so I have extensive experience in assessing eligibility for asylum and other protection-related relief. As part of my duties with Human Rights First's refugee representation program, I work with individuals in immigration detention who seek to apply for asylum at two facilities: the Elizabeth Contract Detention Facility ("Elizabeth") in Elizabeth, New Jersey, and the Delaney Hall Detention Facility ("Delaney Hall") in Newark, New Jersey. Those facilities are located approximately 35 and 45 minutes by public transportation from my offices in New York, respectively.
3. I also have significant knowledge and experience of the credible fear interview ("CFI") process for individuals facing expedited removal. I estimate that I have provided legal information or advice to at least 500 detained individuals at Elizabeth and Delaney Hall, approximately 65% percent of who have gone through the CFI process.
4. The men and women held at Delaney Hall have generally been individuals who requested asylum upon arrival at the John F. Kennedy Airport in New York, New York or the Newark Airport in Newark, New Jersey. The center has also held immigrants arrested within the country for other reasons. In the last two years, a growing number of individuals who were detained on the U.S. - Mexico border and indicated fear of return to their home countries have been transferred to Delaney Hall and Elizabeth prior to receiving a CFI. I would estimate that approximately 90 percent of the transferred individuals are from Guatemala, El Salvador or Honduras.
5. Historically, the vast majority of individuals at Elizabeth and Delaney Hall have passed their CFIs. Until very recently, in my observation, individuals transferred from the border continued to pass their CFIs at equivalent rates, including those with claims relating to domestic violence and or to fears of persecution by non-state armed groups including gangs.

6. Human Rights First does not regularly represent individuals at the CFI stage, though we do in some cases. I regularly review the CFI Record of Determination ("Record of Determination"), which includes a written summary of the CFI, whenever possible for individuals I advise or whose cases Human Rights First is considering for representation in full immigration court proceedings.
7. At Delaney Hall, four local non-profit legal providers give a know your rights presentation at least once a week. This covers the CFI and asylum process. At Elizabeth, there is currently a government funded Legal Orientation Program in place, which covers all forms of relief, including asylum and the CFI process.
8. In my experience, asylum seekers detained upon arrival at the airport generally receive a CFI within 14 days of arrival, though sometimes asylum seekers must wait longer periods before being interviewed.
9. Some asylum seekers transferred from the southern border may receive a CFI within the first few days of their arrival at Delaney Hall if they have been in the U.S. for periods close to or exceeding 14 days, either in immigration custody or in federal criminal custody in connection with a charge illegal entry or reentry.
10. Prior to the CFI, my understanding is that individuals are provided with notice of the credible fear interview, which sometimes – though not always – includes the date of the interview. They also receive an orientation from the Newark Asylum Office explaining the process.
11. CFIs at Elizabeth and Delaney Hall are conducted by asylum officers ("AOs") from the Newark Asylum Office. They are generally conducted in person in either a room within the detention facility or at the Newark Asylum Office, to which the asylum seeker is taken for the interview. To my knowledge each individual receives a separate CFI, even if they were detained with a spouse, sibling or other family member.
12. Where an interpreter is needed, one is provided telephonically. If the AO has not understood in advance that an interpreter is needed, but an individual is unable to communicate in English or a language for which telephonic interpretation is readily available, the AO usually will reschedule the interview for a time when an interpreter is available telephonically.
13. Until very recently, the overwhelming majority of asylum seekers passed their CFI determinations at Elizabeth and Delaney Hall.
14. Most individuals who are given a positive credible fear determination at Elizabeth or Delaney Hall after having been apprehended within the United States are granted bond by Immigration and Customs Enforcement ("ICE"). While bond amounts have been variable and frequently higher than arriving asylum seekers can afford, outright denials of bond by ICE have been rare.

15. From [REDACTED] was present in Artesia, New Mexico in my capacity as an attorney with Human Rights First to provide legal assistance to women and children detained at the Artesia Family Residential Center ("Artesia"). During my time there, I represented three mothers and three children at their CFIs and in reviews of negative CFI determinations before an immigration judge. I also assisted women in preparing asylum applications and preparing for bond hearings. In the course of that representation, I reviewed over twenty Records of Determination for women who had been given negative credible fear determinations.
16. Based on my review of Records of Determination, personal observation, and conversation with clients, AOs interviewing families at Artesia followed a procedure different from the procedure that has been used by AOs interviewing individuals at the Elizabeth and Delaney Hall facilities. The AOs at Artesia often require individuals to answer questions that use legal terminology, such as asking whether the individual is a member of a particular social group. This was much less common in my observation in CFIs conducted at Elizabeth or Delaney Hall, where officers asking questions that involved the use of legal terms of art, or other terms that applicants frequently do not understand ("what is your ethnicity," for example), would typically take the time to explain those terms. It is common for an AO at Artesia to interrupt an individual before she has completely answered a question. In one case, an asylum officer told a woman that the domestic violence she suffered several years ago was irrelevant to her claim, even though she was fleeing continued persecution on the part of her abuser. AOs at Artesia rarely ask in-depth follow-up questions that elicit information helpful and relevant to their claims.
17. During the CFIs and reviews of negative credible fear determinations I saw at Artesia, children were brought into the interview or hearing rooms with their mothers. During the CFIs at Artesia, AOs either asked no questions of the children, or asked questions only about biographic data, such as names and birthdates. Sometimes the AOs asked if the children wanted their claims to be separate from those of their mothers, but they did not explain what a separate claim would mean. Children at Artesia feared being separated from their mothers and did not understand what the AOs meant when they asked about separate claims. During the CFI reviews that I observed, the immigration judges did not ask whether the mother wanted her children to be excused from the hearing. Indeed, because these review hearings are being conducted by tele-video conference, the immigration judge may be unaware of the presence of a child in the room if the video camera is focused on the mother and the child does not show up on the screen visible to the judge.
18. AOs performing CFIs at Artesia use telephonic interpreters for individuals who do not speak English, as is the case in other detention centers. However, in the Records of Determination that I reviewed at Artesia, the AO never asked an applicant who spoke Spanish whether she wanted to proceed in any other language. This was true even in cases of women who noted in the CFI that Spanish was not their primary language.

19. Negative CFI determinations are much more common at Artesia than at Elizabeth or Delaney Hall. Based on my experience and review of Records of Determination, I estimate that well over half of the women given CFIs at Artesia receive a negative determination.
20. Many of the Records of Determination that I reviewed evinced clear asylum claims with a significant possibility of an asylum grant, yet they were denied. Many were denied on the grounds of not showing nexus – especially in cases in which eligibility for asylum would be based on the applicant’s membership in a particular social group. Officers asked asylum seekers if they were part of a particular social group or if they had a characteristic that makes them different from others. Many did not articulate a social group on their own and AOs made a negative credible fear finding. Based on my discussions with women seeking asylum, they generally did not understand what such technical legal questions were actually asking and they did not understand what kind of information was relevant to this question.
21. Meeting with clients in Artesia presented many challenges, including the lack of a confidential meeting space where the attorney and client can meet privately. The space used for attorneys is a large open room with various small tables. The room has about fifteen small tables and if there are more attorneys than tables, attorneys must sit in chairs next to their clients. While I was meeting with clients, I could hear what other women said to their attorneys. In order to confer with a lesbian client who feared anyone finding out about her sexual orientation, I had to use a white noise machine and sit next to my client and speak quietly to her. Both my clients and I were disrupted by children, who were either sitting with the women or running around the room, as ICE has stated that the children must be within eyesight of their mothers during attorney interviews. ICE officers were also seated within earshot.
22. Some of the immigration judges conducting negative CFI review hearings via tele-video in Artesia have taken the position that attorneys are not allowed to speak during those hearings. When one judge explained this to me – off the record – he stated that he would not hear any objections to the role of the attorney in credible fear review hearings. Only after repeated requests did the judge agree to state on the record that he would not let me speak during the hearing. Once we were on the record, I stated an objection to my limited role and the judge proceeded to berate me and threatened to expel me from the courtroom if I said “one more word.” In another credible fear review hearing, the immigration judge did not let me speak during the hearing. There were problems with the interpretation, which could have lead to inaccurate or incomplete facts presented to the court. In an attempt to avoid this, I used notes to alert my client of the problem so that she should repeat her statement for accurate interpretation. Some of the interpreting issues were due to the tele-video conferencing system, which cut out a couple of times during the hearing. The judge sarcastically stated that I did not understand what “passive role” meant because she saw me passing notes. In both those cases, the judges affirmed the AOs negative finding of credible fear. One of the cases presented a strong asylum claim based on domestic violence and the other had a claim for protection under the Convention Against Torture.

Dated: Aug. 20, 2014



Andrea Guffin