James L. Madara, MD
CEO, EXECUTIVE VICE PRESIDENT
james.madara@ama-assn.org

October 19, 2021

The Honorable Alejandro Mayorkas
Secretary
Department of Homeland Security
Residence and Admissibility Branch
Residence and Naturalization Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, MD 20746

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
Office of Policy
Executive Office for Immigration Review
5107 Leesburg Pike
Falls Church, VA 22041

Re: DHS Docket No. USCIS-2021-0012: Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers

Dear Secretary Mayorkas and Attorney General Garland:

On behalf of the physician and medical student members of the American Medical Association (AMA), I appreciate the opportunity to comment on the Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and Convention Against Torture (CAT) Protection Claims by Asylum Officers proposed rule. The AMA applauds the proposals under this rule to expand the power of asylum officers, increase the use of parole in the immigration system, and increase funding for the immigration system. However, the AMA recommends that asylum officers receive extensive training and guidelines to ensure they are making accurate asylum and CAT determinations and believes that asylum and CAT applications should continue to receive a full hearing from an Immigration Judge if their application is denied by an asylum officer.

Systematic changes needed to improve the immigration process.

Since its establishment after the September 11, 2001, terrorist attacks, the Department of Homeland Security (DHS) has viewed immigration through a national security lens focusing on counterterrorism and border security. While recognizing the importance of this role, there are other important DHS responsibilities within immigration that need greater attention, including humanitarian protection, legal immigration and naturalization, foreign student education and cultural exchange, and economic competitiveness.[1] As such, we strongly recommend that DHS systematically improve its immigration functions, especially when it comes to asylum seekers and CAT applicants.

[1] https://www.law360.com/immigration/articles/1428442/disjointed-dhs-gumming-up-immigration-gears-report-finds?nl_pk=e81010be-c163-4004-b2aa1ad615a78630&utm_source=newsletter&utm_medium=email&utm_campaign=immigration.

Given the heightened number of individuals seeking sanctuary in the United States, we believe that the problems and backlogs the immigration system faces will only grow, underscoring the need for near-term systemic changes. We believe that the changes in the proposed rule concerning the expanded power of asylum officers, increased use of parole in the immigration system, and increased funding will improve how the immigration system functions and reduce cases like that of Omar Abdulkarim Qanat and Fadhila Mustafa Yosof, who fled Libya in the wake of the collapse of the Gaddafi regime and recently filed a suit in federal court requesting that the federal government schedule an asylum interview for them after having "been irreparably damaged from the fear of not knowing what will happen with their asylum case for the past five years...."[2] Unfortunately, these cases are not unusual, and are representative of the hundreds of thousands of asylum cases pending before U.S. Citizenship and Immigration Services (USCIS).

USCIS Applications Received and Applications Pending, FY 2016–20

Note: Data for pending applications show the number pending at the end of each fiscal year.
Sources: USCIS, "Number of Service-Wide Forms by Fiscal Year to Date, Quarter and Form Status 2016" (data table, USCIS, Washington, DC, n.d.); USCIS, "Number of Service-Wide Forms by Fiscal Year to Date, Quarter and Form Status 2017" (data table, USCIS, Washington, DC, n.d.); USCIS, "Number of Service-Wide Forms by Fiscal Year to Date, Quarter, and Form Status 2018" (data table, USCIS, Washington, DC, n.d.); USCIS, "Number of Service-Wide Forms Fiscal Year to Date, by Quarter, and Form Status Fiscal Year 2019" (data table, USCIS, Washington, DC, n.d.); USCIS, "Number of Service-Wide Forms Fiscal Year to Date - By Quarter and Form Status Fiscal Year 2020" (data table, USCIS, Washington, DC, n.d.).

[3]

Adequately training asylum officers on how to interact with trauma victims and on the procedures necessary to make an asylum determination would benefit the United States immigration system and applicants.

Currently, a DHS immigration officer who encounters a noncitizen subject to expedited removal may order the noncitizen to be "removed from the United States without further hearing or review" unless the noncitizen indicates either "an intention to apply for asylum" or "a fear of persecution."[4] If the noncitizen

[2] https://www.law360.com/articles/1428567/attachments/0.
[3] https://www.migrationpolicy.org/sites/default/files/publications/mpi-rethinking-dhs-immigration-governance_final.pdf.
[4] INA 235 (b)(1)(A)(i), 8 U.S.C. 1225(b)(1)(A)(i).

indicates such an intention or fear, the immigration officer must refer the noncitizen for an interview by an asylum officer to determine whether the noncitizen has a "credible fear of persecution."[5,6] If the asylum officer determines that the applicant does not have a credible fear, the applicant can request that an Immigration Judge review the asylum officer's decision.[7] If the Immigration Judge also finds that the applicant does not meet the credible fear criteria, then no additional administrative appeal is available and the applicant can be expeditiously removed from the United States.[8] Under current regulation, if the applicant does meet the credible fear standard, the applicant will be referred to an Immigration Judge for an adversarial removal proceeding.

This system, however, has not proven to be effective. Currently, the Executive Office for Immigration Review (EOIR) is facing an imminent caseload of around 1.3 million cases, with about 610,000 of those being pending asylum applications.[9] This equates to an average wait time of 811 days for an EIOR review.[10] This timeframe increases significantly if the applicants are a migrant family. "According to DHS data, of migrants apprehended while traveling with family from FY 2014 to FY 2019, only 11 percent had either been granted asylum or another form of deportation relief—or been deported—by March 2020. Another 67 percent were still in removal proceedings, with data showing that families apprehended since 2014 have been spending up to five years in removal proceedings."[11] As such, it is apparent that changes are warranted within the asylum and CAT application process.

The proposed rule would change the current procedure so that asylum and CAT applicants would have their claims for asylum, withholding of removal under section 241(b)(3) of the Immigration and Nationality Act (INA), or protection under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment initially adjudicated by an asylum officer within USCIS in a non-adversarial hearing. Individuals who are granted relief by the asylum officer would be entitled to asylum, withholding of removal, or protection under CAT, as appropriate, and an application for asylum would be considered to have been filed. This means that asylum officers would be allowed to fully adjudicate all protection claims made by asylum and CAT applicants who have received a positive credible fear determination, a role previously carried out only by Immigration Judges as part of a proceeding under section 240 of the INA.[12]

For these determinations by asylum officers to be accurate, it is essential that asylum officers have the proper training to elicit all the necessary information to make an informed decision especially given the fact that the United States Commission on International Religious Freedom (USCIRF) has found, since 2005, that "DHS officials often fail to follow required procedures to identify asylum seekers and refer

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[5] INA 235(b)(1)(A)(ii), (B)(ii), 8 U.S.C. 1225(b)(1)(A)(ii), (B)(ii).
[6] *See* INA 235(b)(1)(A)(ii), (B), 8 U.S.C. 1225(b)(1)(A)(ii), (B); 8 CFR 235.3(b)(4), 1235.3(b)(4)(i).
[7] *See* INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III); 8 CFR 208.30(g), 1208.30(g).
[8] 8 CFR 1208.30(g)(2)(iv)(A).
[9] https://www.federalregister.gov/documents/2021/08/20/2021-17779/procedures-for-credible-fear-screening-and-consideration-of-asylum-withholding-of-removal-and-cat#footnote-16-p46908.
[10] https://www.migrationpolicy.org/sites/default/files/publications/mpi-rethinking-dhs-immigration-governance_final.pdf.
[11] https://www.migrationpolicy.org/sites/default/files/publications/mpi-rethinking-dhs-immigration-governance_final.pdf.
[12] https://www.federalregister.gov/documents/2021/08/20/2021-17779/procedures-for-credible-fear-screening-and-consideration-of-asylum-withholding-of-removal-and-cat.

them for credible fear determinations…"[13] Additionally the U.S. Government Accountability Office found that "USCIS asylum offices do not all provide additional pre-departure training before officers begin screening families in person at DHS' family residential centers. Asylum Division officials told GAO that additional training for asylum officers before they begin screening such cases is important—in particular, credible fear screenings at these facilities represent about one-third of USCIS' caseload."[14] Survivors of violence or other forms of trauma arriving at the border are ill-equipped to effectively communicate every piece of information required to comply with asylum case review standards. It could take time for survivors of major trauma to feel comfortable disclosing what they have been through, or to be physically well enough to undergo the potential re-traumatization of an asylum interview, and so it is vitally important that time is given and that protocols are followed. Asylum seekers often have a range of "serious medical issues that either pre-date their journeys or appear en route to the United States, other medical conditions develop while the [individual] is detained. Medical problems can, at a minimum, be a major distraction and detract from [an individual's] ability to focus on making a successful claim for relief; but at worst, medical issues can materially and adversely impact a detainee's testimony during a credible fear interview or review by an immigration judge."[15] Yet, it is not just medical issues that can impact the ability of asylum and CAT applicants to articulate their stories. In most detention centers access to interpreters is very limited which could restrict or completely curtail the ability of applicants to ask legal questions, undergo fear interviews, or speak with asylum officers.[16] As asylum seekers often arrive profoundly traumatized, malnourished, exhausted, and lacking an understanding of our legal process and language, it is exceptionally important that asylum officers are trained in interacting with this population to ensure fair and adequate case review. Moreover, if the asylum officer finds that the applicant should not be granted asylum, withholding of removal, or protection under CAT, asylum officers should be required to ask the applicant if they would like to have their request further reviewed by an Immigration Judge to ensure that the "affirmative request" portion of the proposed rule is met.

The AMA applauds the proposal to return the definition of the "credible fear" standard to the "significant possibility" definition, replace the "reasonable possibility" standard with the same "significant possibility" screening standard for statutory withholding of removal and CAT withholding or deferral of removal, not apply the mandatory bars to the credible fear screening determination threshold screening, and continue to require supervisory review of all credible fear determinations before they can become final. By reverting the standard to the "significant possibility" level of proof, the proposed rule would return the credible fear determination to that of requiring an applicant to "demonstrate a substantial and realistic possibility of succeeding" in immigration court rather than the higher "reasonable possibility" standard which requires asylum applicants to demonstrate a well-founded fear of future persecution and CAT applicants to demonstrate a reasonable fear of persecution or torture.[17] This lower standard of proof will enable more worthy applicants to have their case heard by asylum officers and will help to ensure that those that qualify for asylum and withholding of removal are granted that relief.

[13] https://www.uscirf.gov/sites/default/files/2021-04/2021%20Annual%20Report_0.pdf.
[14] https://www.gao.gov/products/gao-20-250.
[15] https://www.americanimmigrationcouncil.org/research/expedited-removal-asylum-seekers.
[16] https://www.americanimmigrationcouncil.org/research/expedited-removal-asylum-seekers.
[17] https://libguides.law.drake.edu/c.php?g=996061&p=7922575.

Immigration Judges should still perform a full evidentiary hearing of the asylum and CAT cases that are appealed to ensure an accurate and thorough determination.

Under the proposed rule, if the asylum officer determines that the applicant does not meet the credible fear criteria, then an Immigration Judge will review the asylum officer's decision through an independent de novo review of the record of the hearing before the Asylum Office, plus any additional, non-duplicative evidence presented to the court that is necessary to reach a reasoned decision. This means that "[i]f an Immigration Judge determines that the applicant (who may not have been represented by a lawyer) provided sufficient evidence to the asylum officer, the claim may be decided entirely on the record from that initial non-court interview."[18] The applicant would have the right to representation during the review by the Immigration Judge and the Immigration Judge would be able to vacate proceedings if the Judge found that the applicant was prima facie eligible for other forms of relief from removal. However, this review would not provide the asylum or CAT applicant with a full evidentiary hearing of their claim.

Currently, if an asylum or CAT applicant is found by an asylum officer to have established a credible fear, they are granted a full hearing before an Immigration Judge. The full hearing allows the asylum or CAT applicant to submit documents, call witnesses, and present testimony. This complete hearing was what Congress intended when it created the credible fear screening system in 1996. This intention can be seen from Senator Alan Simpson (R-WY) when he stated that individuals "will be provided a full - full - asylum hearing," and Senator Patrick Leahy (D-VT) who noted that those with a credible fear will "get a full hearing without any question."[19] As such, the proposed rule would take away the ability for asylum and CAT applicants to have the full hearing that is their right, per the creation of the credible fear screening process.

The need for a full hearing by an Immigration Judge when an asylum officer does not grant asylum upon their review is of paramount importance. The 2016 EOIR Statistical Yearbook, the last year that statistics have been provided for, indicated that "83% of cases referred by asylum officers were granted asylum that year by Immigration Judges conducting de novo hearings."[20,21] This large difference in how cases are decided is likely due to the full de novo hearing which Immigration Judges preside over. During the hearing many asylum and CAT applicants are represented by lawyers with knowledge of the immigration system that are able to provide additional documents, offer filings and briefs, ensure accurate testimony, and present legal arguments with the depth of knowledge that is necessary to successfully navigate this extremely complex area of law. Furthermore, within the full hearing process, "Immigration Judges also enjoy greater decisional independence than asylum officers, who require supervisory approval of their decisions, are more susceptible to political pressure, and are more limited in the legal theories they may rely on."[22,23]

Additionally, without a standard definition of "non-duplicative" it is likely that persuasive evidence may not be seen or considered by the Immigration Judge, and thus could have a detrimental impact on the

[18] https://www.jeffreyschase.com/blog/2021/10/6/the-need-for-full-fledged-asylum-hearings.
[19] https://www.congress.gov/104/crec/1996/05/01/CREC-1996-05-01-pt1-PgS4457.pdf.
[20] https://www.jeffreyschase.com/blog/2021/10/6/the-need-for-full-fledged-asylum-hearings.
[21] https://www.justice.gov/eoir/page/file/fysb16/download.
[22] https://www.jeffreyschase.com/blog/2021/10/6/the-need-for-full-fledged-asylum-hearings.
[23] https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/the-affirmative-asylum-process.

outcome of an asylum seeker or CAT applicant's case. In some cases, duplicative evidence is necessary to persuade an Immigration Judge. For example, multiple reports of the same phenomena might help to persuade an Immigration Judge of the prevalence of an issue. While some sources, such as those from the government, might be more persuasive to an Immigration Judge in a case.

Moreover, limiting what evidence may be submitted, even if it is duplicative, infringes on the due process rights of asylum seekers. "In a 2013 decision, *Oshodi v. Holder*, the U.S. Court of Appeals for the Ninth Circuit held that limiting an asylum seeker's testimony to events that were not duplicative of the written application, on the belief that the written record would suffice for deciding veracity, was a violation of the asylum seeker's due process rights. Yet the proposed regulations seek to codify what according to *Oshodi* the Constitution specifically forbids. The court in *Oshodi* stated that 'the importance of live testimony to a credibility determination is well-recognized and longstanding." [24,25]

Furthermore, allowing for a full hearing with testimony is potentially invaluable to the asylum or CAT applicant and could be the determining factor in deciding if an applicant is allowed to remain in the United States or be returned to a country where they could be killed.

> A question from counsel, or sometimes from the judge, will elicit an answer that unexpectedly gives rise to a new line of questioning, or even a legal theory of the case. An example is found in last year's Second Circuit decision in *Hernandez-Chacon v. Barr*. In that case, the Second Circuit found that a woman's act of resisting rape by an MS-13 gang member could constitute a political opinion based on one sentence not contained in the written application, and uttered for the first time at the immigration court hearing: when asked why she resisted, the petitioner responded: "Because I had every right to." From that single sentence, the Second Circuit found that the resistance transcended mere self-protection and took on a political dimension. Under the proposed rules, the attorney would likely never have been able to ask the question that elicited the critical answer. At asylum office interviews, attorneys are relegated to sitting in the corner and quietly taking notes. Furthermore…the concept of imputed political opinion was not available to [asylum officers] as a basis for granting asylum, a fact that pretty much guarantees it will not be covered in an asylum office interview.[26, 27]

The initial review and ability for the asylum officer to grant asylum will greatly increase efficiency and will allow many individuals to have a decision about their case much earlier than the current asylum system allows for. However, the limitation on Immigration Judges to only review the record, and for applicants to only add "non-duplicative" evidence, will harm asylum and CAT applicants who were unable to provide a complete record to the asylum officer due to trauma, lack of understanding of the process, lack of counsel, language barriers, or a number of other hurdles that these individuals must overcome when they are undergoing the immigration process. The minimal decrease in adjudication time that may result from this change is not worth the Constitutional violations, and the significant number of applicants that may be negatively impacted if they are not provided a full hearing with an Immigration

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[24] https://www.jeffreyschase.com/blog/2021/10/6/the-need-for-full-fledged-asylum-hearings.
[25] https://scholar.google.com/scholar_case?case=2328923467881700506&hl=en&as_sdt=6&as_vis=1&oi=scholarr.
[26] https://www.jeffreyschase.com/blog/2021/10/6/the-need-for-full-fledged-asylum-hearings.
[27] https://scholar.google.com/scholar_case?case=15727798902630473337&q=hernandez+chacon+v+barr&hl=en&as_sdt=6,33&as_vis=1.

Judge. As such, though we support the increased ability for asylum officers to make initial determinations and grant asylum, we believe that Immigration Judges should still perform a full hearing for those that are not granted asylum or withholding of removal by officers.

The ability for, and clear pathway to, appeal Immigration Judges' decisions is a much-needed addition to the immigration system.

"[M]anaging immigration as a system calls for coordinated operational capabilities, decision-making structures, and resource allocations. These become especially critical in responding to sudden changes in migration trends or unforeseen events, such as the pandemic."[28] As such, the proposed rule would allow either party to appeal an Immigration Judge's decision to the Board of Immigration Appeals (BIA) and, if still dissatisfied with the outcome, the applicant could petition for review of the BIA decision at the appropriate circuit court of appeals. The AMA strongly supports the clearly delineated appellate system that would be created by the proposed rule, which would span CBP, USCIS, and the Department of Justice (DOJ).

The expanded ability for asylum and CAT applicants to obtain parole is a positive step for the well-being of asylum applicants and the viability of detention centers.

Currently, consideration for parole before a credible fear determination is limited to situations in which parole "is required to meet a medical emergency or is necessary for a legitimate law enforcement objective."[29] This equates to the current parole standards preventing DHS from placing otherwise eligible asylum applicants, especially families per the Flores Settlement Agreement, into expediated removal.[30] However, the proposed rule would expand the ability for DHS to offer asylum applicants parole if "detention is unavailable or impracticable (including situations in which continued detention would unduly impact the health or safety of individuals with special vulnerabilities)."[31]

The AMA supports the preferential use of Alternative to Detention (ATD) programs, such as parole, that respect the human dignity of immigrants, migrants, and asylum seekers who are in the custody of federal agencies.

Health care access and delivery are substandard in the immigrant patient population. Whether it be failure to manage chronic conditions, delays in medical treatment, or denial of specialized medical attention, this inadequate care is a public health crisis. This substandard medical care has become especially poignant in immigration detention centers and has become life threatening during the public health emergency (PHE).

The holding capacity of many facilities, especially those along the southwest border, has been reached or exceeded, which can be seen by the chart below.

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[28] https://www.migrationpolicy.org/sites/default/files/publications/mpi-rethinking-dhs-immigration-governance_final.pdf.
[29] 8 CFR 235.3(b)(2)(iii), (b)(4)(ii).
[30] https://www.federalregister.gov/documents/2021/08/20/2021-17779/procedures-for-credible-fear-screening-and-consideration-of-asylum-withholding-of-removal-and-cat#footnote-27-p46910.
[31] https://www.federalregister.gov/documents/2021/08/20/2021-17779/procedures-for-credible-fear-screening-and-consideration-of-asylum-withholding-of-removal-and-cat.

USBP Average Daily Subjects In Custody by Southwest Border Sector[32]

U.S. Border Patrol facilities, such as stations and central processing centers, provide short-term holding capacity for the processing and transfer of individuals encountered by agents. Maximum facility capacity along the Southwest border is approximately 4,750, which assumes a homogenous population and full operating status at all facilities. Actual capacity fluctuates constantly based on characteristics of in-custody population, to include demographics, gender, criminality, etc.

Sector	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21
Big Bend	68	40	57	48	27	11
Del Rio	625	816	1,258	1,198	1,728	1,497
El Centro	204	424	271	189	254	249
El Paso	913	476	227	242	693	518
Laredo	263	334	361	263	155	204
Rio Grande	3,779	2,883	1,063	1,908	4,096	4,641
San Diego	501	1,140	640	369	555	670
Tucson	490	305	199	224	255	387
Yuma	488	785	584	568	1,508	1,712
Total	7,332	7,204	4,659	5,009	9,271	9,887

Due in part to the overcrowding, the number of COVID-19 infections in detention facilities has been rising. The unsanitary conditions combined with the vast number of shared spaces serve as breeding grounds for infectious diseases such as COVID-19, or other highly communicable diseases, to spread quickly. As such, these conditions pose serious health risks for detainees.

Likewise, prolonged detention can lead to harmful mental health outcomes for this vulnerable population. Mental health support is sorely lacking for immigrant detainees and in some cases is discouraged. The negative mental consequences of detention are particularly felt by asylum-seeking women and children who experience psychological trauma due to their past persecution or fear of future persecution. "This trauma is compounded by the experience of detention, [and] the limited access to medical and psychological services in the detention center…."[33] In general, levels of psychosocial stress, such as anxiety, depression, and post-traumatic stress disorder, are high among the asylum-seeking population and are correlated with the length of time individuals spend detained.[34]

The purpose of ATD programs, such as parole, is to ensure increased and humane immigration compliance and move individuals through court proceedings without holding them in detention centers. Analyses of ATD programs around the world show that ATDs maintain average compliance rates of 90

[32] https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics.
[33] https://www.americanimmigrationcouncil.org/research/expedited-removal-asylum-seekers.
[34] https://www.thelancet.com/action/showPdf?pii=S0140-6736%2803%2914846-5.

percent or higher and cost up to 80 percent less than detention-based programming.[35] Due to the negative health consequences of detention, especially long-term detention, and given that many of these facilities are overcrowded, sometimes holding double their capacity,[36] the AMA believes that the expanded use of parole in asylum and CAT cases will minimize the negative health consequences that immigrants experience and help decrease the burden that is currently being placed on federal holding facilities.

Moreover, it has been shown that detention does not have a deterrent effect on irregular migration.[37] In light of this, the U.S. government has already begun to address irregular migration through various methods, including the ATD program that is run by Immigration and Customs Enforcement's (ICE) through Enforcement and Removal Operations. This program has seen massive success especially when it comes to the economics of detention. The average daily cost of participation in the ICE ATD program is only $4.43 per day compared to the $144 daily cost of detention for one adult.[38] In FY 2021 alone, detention accounted for $2.8 billion of ICE's total budget.[39] If parole were to be utilized more often for asylum and CAT applicants then considerable cost would be saved and that saved money could be utilized to make the asylum and CAT process more efficient.

Furthermore, the ICE ATD program has significantly higher compliance rates than other programs. Nearly 100 percent of individuals in the ATD successfully appear at their scheduled court hearings[40] compared to only 67 percent of detained individuals who are later released.[41] Since the U.S. has seen such success with the ICE ATD program, and given the overall effectiveness of ATD programs, the proposal to expand the ability for DHS to offer asylum applicants parole if "detention is unavailable or impracticable" is a welcome one. Based on the already existing ICE ADT program it is highly likely that the increased use of parole in asylum and CAT cases will produce similar compliance rates and have a similar positive impact on the immigration system and on the health of immigrants.

According to the Centers for Disease Control and Prevention, there are numerous advantages to developing policies that improve population health such as: a reduction in mortality, a reduction in medical costs, and a reduction in life expectancy inequity. Thus, asylum seekers and CAT applicants should be provided with the option of parole to increase this population's overall health. As such, the AMA supports the increased use of parole for asylum and CAT applicants since it will likely increase the overall health of the asylum population and the general population.

Increased funding for DHS to ensure a better functioning immigration system is needed.

The AMA understands that the implementation of this rule will incur a financial cost.[42] However, in order to decrease the asylum and CAT backlog, create a system that provides immigration decisions in a timely

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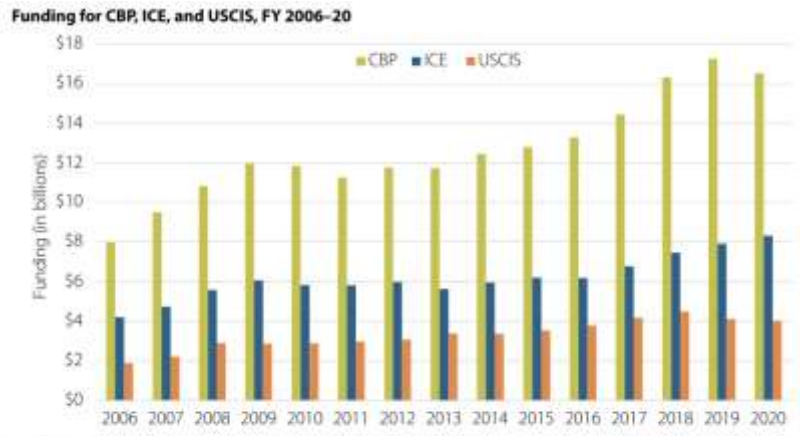
[35] https://idcoalition.org/wp-content/uploads/2015/10/There-Are-Alternatives-2015.pdf.
[36] https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-51-Jul19_.pdf.
[37] https://idcoalition.org/wp-content/uploads/2015/04/Briefing-Paper_Does-Detention-Deter_April-2015-A4_web.pdf.
[38] https://www.dhs.gov/sites/default/files/publications/u.s._immigration_and_customs_enforcement.pdf.
[39] https://www.dhs.gov/sites/default/files/publications/u.s._immigration_and_customs_enforcement.pdf.
[40] https://www.gao.gov/assets/gao-15-26.pdf.
[41] https://www.justice.gov/sites/default/files/eoir/legacy/2014/04/16/fy13syb.pdf.
[42] https://www.federalregister.gov/documents/2021/08/20/2021-17779/procedures-for-credible-fear-screening-and-consideration-of-asylum-withholding-of-removal-and-cat. See Table 11.

manner, and ensure better coordination amongst the immigration courts, the AMA believes that the additional cost is warranted. Currently the non "enforcement" components of DHS are underfunded.



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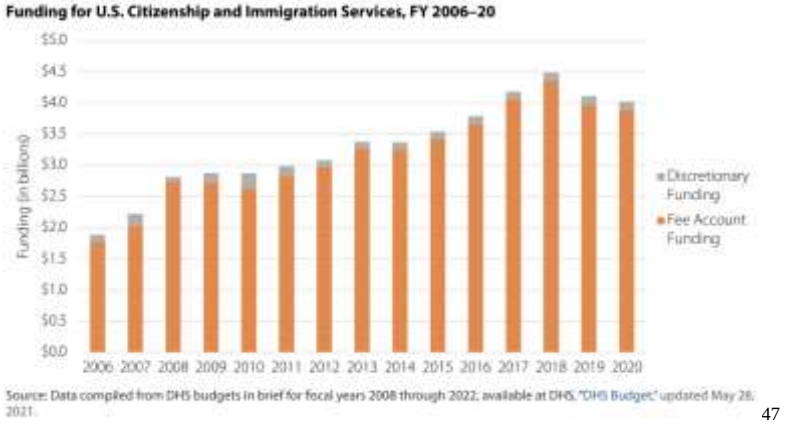
"In FY 2020, annual immigration enforcement appropriations (largely CBP and ICE) stood at $25 billion, a spending level that exceeds the budgets of all other principal federal criminal law enforcement agencies combined by about 28 percent."[44] This is an exceptionally large amount of funding, especially when compared to the funding that USCIS receives to fulfill nonenforcement activities. USCIS, unlike most agencies, is funded in large part by fees that applicants pay for lawful permanent residence and other immigration benefits.[45] In FY 2020 USCIS was appropriated $132.4 million, a number that has been a steadily declining portion of the USCIS budget since 2003.[46]



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[43] https://www.dhs.gov/dhs-budget.
[44] https://www.justice.gov/jmd/page/file/1398951/download.
[45] *See* Homeland Security Act of 2002, §477(d)(3).
[46] https://www.migrationpolicy.org/sites/default/files/publications/mpi-rethinking-dhs-immigration-governance_final.pdf.
[47] https://www.dhs.gov/sites/default/files/publications/u.s._immigration_and_customs_enforcement.pdf.

However, fees are usually waived for refugee and asylum applicants. Moreover, the fee rates at USCIS are set so that they can cover the expense of ongoing programs but are not designed to cover the startup costs for new programs or activities. As such, USCIS "cannot sustain operations at established levels during periods of prolonged decreases in application filings."[48] Thus, USCIS funds went from $790 million in FY 2017 to a negative balance in FY 2019 and USCIS was projected to have a deficit of $1.1 billion by the end of FY 2020.[49] Budgeting adequately for the financial stability of the proposed changes, and USCIS in general, will promote a better functioning legal immigration system what will increase public confidence and strengthen the benefits that intelligent immigration policies provide to the United States. Therefore, in order to implement the important changes in this proposed rule, especially without application fees, the AMA believes that the cost of the proposed rule is reasonable and necessary to ensure that asylum and CAT applications are processed in an accurate and timely manner.

The AMA believes that physicians have a professional responsibility to advocate for social and political changes that ameliorate suffering and contribute to the well-being of all humans. We therefore appreciate the opportunity to comment on this proposed rule and encourage DHS to ensure that asylum officers receive extensive training and guidelines that improve the accuracy of asylum and CAT determinations and urge DHS to continue to provide a full hearing before an Immigration Judge for asylum and CAT applicants that are denied asylum, withholding of removal, or protection under CAT by an asylum officer. If you have any questions, please contact Margaret Garikes, Vice President for Federal Affairs, at margaret.garikes@ama-assn.org, or by calling 202-789-7409.

Sincerely,

James L. Madara, MD

[48] https://www.migrationpolicy.org/sites/default/files/publications/mpi-rethinking-dhs-immigration-governance_final.pdf.

[49] USCIS, FY 2019–2020 Immigration Examinations Fee Account: Fee Review Supporting Documentation with Addendum (Washington, DC: USCIS, 2020), 17.