S. HRG. 111–599

REVIEWING AMERICA'S COMMITMENT TO THE REFUGEE CONVENTION: THE REFUGEE PROTECTION ACT OF 2010

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

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REVIEWING AMERICA'S COMMITMENT TO THE REFUGEE CONVENTION: THE REFUGEE PROTECTION ACT OF 2010

WEDNESDAY, MAY 19, 2010

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC

The Committee met, Pursuant to notice, at 10 a.m., Room 226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Franken and Sessions.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Good morning, everybody. Welcome, and thank you for being here.

Before we get to the hearing, and because a number of members of the press have asked me, I am announcing that the Senate Judiciary Committee will hold the confirmation hearing on the nomination of Solicitor General Elena Kagan to be an Associate Justice of the United States Supreme Court beginning on June 28. We will do that so that the hearing can be concluded before the July recess.

I have reached out, of course, and talked with Senator Sessions, the Committee's Ranking Republican, to discuss the scheduling of this hearing. We met again yesterday. I will let Senator Sessions speak for himself.

I am sure some would like more time. On the other hand, some would like to do it earlier. But we did work cooperatively to send a bipartisan questionnaire to the nominee last week, something sent from both Senator Sessions and myself, and we received the response yesterday.

Yesterday, the two of us also joined in sending a letter to the Clinton Library asking for files from the nominee's work in the White House during the Clinton Administration. Of course, I will continue to consult with Senator Sessions on that material as we get it.

I know that we gained a lot of respect for the conduct of the Sotomayor hearing and for the Roberts hearing. I would like to follow that example, because last year we proceeded with the hearing on the nomination of Justice Sotomayor 48 days after she was designated. This year, I am scheduling the Kagan hearing 49 days after the nomination was announced.

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Justice Stevens, of course, announced on April 9 that he would be leaving the Court. He noted, quote, "It would be in the best interest of the Court" to have his successor appointed and confirmed well in advance of the commencement of the Court's next term.

I wholeheartedly agree with Justice Stevens; it is in the best of the Court and, of course, of the country.

One person criticized this nomination, saying she has not been a judge and does not have years of opinions to be considered. Well, actually, that should make preparing for a hearing less labor-intensive and must make it easier.

But she was confirmed just a year ago for Solicitor General, so much of this material we looked at when we considered her record last year. She was then, by a bipartisan majority vote, confirmed to serve as the Solicitor General of the United States, a position often called the tenth justice.

This last weekend, a number of Republican Senators said that Solicitor General Kagan's answers at the confirmation hearing were going to be the key. I would encourage everybody to come to the hearing with an open mind, listen to her answers to those questions. We will make sure that every Senator, on both sides of the aisle, have ample time to ask the questions they want.

But, also, the hearing will allow the American people to evaluate this nominee. The hearing is an opportunity for all of us to ask questions and raise concerns and evaluate the nomination.

The Supreme Court justices are there serving, representing all 300 million Americans, but the Senators are the only 100 Americans who get to vote one way or the other on this nomination. And on this Committee, we are the ones that have to vote first. Then the Senate has to vote. I think that every one of us has to take that responsibility seriously, standing in lieu of 300 million of our fellow Americans.

President Obama handled the selection process with the care the American people expect and deserve. He has met with Senators from both sides of the aisle.

I suggested to the President what I have suggested to every President, Republican or Democratic, to look for somebody outside the judiciary monastery. He did. Some of these experiences were not limited to those in the Federal appellate courts.

So I will note that the President has consulted. We asked him to, and I am glad he has.

Before I make my statement about the hearing we have today, let me yield to Senator Sessions.

Senator SESSIONS. Mr. Chairman, you have been very gracious with your time, and we have talked about this on a number of occasions and had a very productive and cordial meeting yesterday to go into some depth about your vision for the hearings and mine.

And I think, fundamentally, we share the view that we should conduct a thorough and effective examination, one that fulfills our constitutional role and makes the Senate proud, so that we can proud of it, that we have fulfilled our responsibilities.

Senator Kaufman has noted that we get along remarkably well around here, but sometimes we just disagree about how things ought to be done.

I know that we had asked that we be able to have the hearing after the recess just to give our colleagues more time to study the record and maybe prepare their remarks and the questions they would like to ask. But the pace would be consistent with last year's Sotomayor hearing, but we had a shorter time period. The President did give us an extra 2 weeks this time to consider the nomination.

I told him and I have told Senator Leahy that I thought we could reasonably complete this hearing before the August recess. It is what the President asked me at the White House and I told him I believed we could do that and I committed to try to achieve that.

We will try to do our best to conduct an effective hearing, even if I would have preferred a little more time.

I would say this. Clearly, a Supreme Court nominee for any seat is exceedingly important. The American people are concerned about their Court. They are concerned about effectiveness of law in America. They are concerned that constitutional principles are being eroded; that we are not recognizing the fact that our government is a limited government.

And we can have a fine nominee in many different ways, but if they are not committed to the limited role of a Federal judge, if they are not aware that they must serve, as their oath says, under the Constitution, not above it, then they are not qualified to serve on the bench.

So this will be the nature of the inquiry. I hope it is a high level inquiry. We will discuss judicial activism, faithfulness, the plain words of the Constitution, and I expect it to be a vigorous and important hearing.

Mr. Chairman, one of the things I appreciate is you renewed your commitment that we would have a good 30-minute first round. I appreciate you doing that. That does allow more engagement with the nominee.

I do not think it was abusive last year in any way with Sotomayor, and I think we should do that again. So I think we have started off on a pretty good basis.

I look forward to working with you within the realms of what we can agree on and what we may not be able to agree on to complete the process before the August recess and in a way that makes the Senate and our country proud of how we have conducted the hearings.

Chairman LEAHY. I appreciate those kind words I think both you and I realize that Senators do have to have time to ask questions. I do not think anybody is going to waste time asking repetitious questions, and we will make sure they have that time.

To tell the rest of you, I did suggest, semi-facetiously, to Senator Sessions that we should do the hearing as a field hearing in Vermont. At that time of the year, it would be nice, but I do not think that is going to be possible.

So all the members of the press who are already getting their expense accounts ready to go to Vermont for a week—that is not going to happen.

Now, on today's hearing, earlier this year, we marked the 30th anniversary of the Refugee Act. In the years since that landmark legislation was enacted, the law has evolved in ways that place, I

believe, unnecessary and harmful barriers before genuine refugees and asylum-seekers.

So I introduced the Refugee Protection Act of 2010, S. 3113. It brings the United States into compliance with the Refugee Convention. It will restore our Nation as a beacon of hope for those who suffer from persecution around the world. And I thank Senators Levin, Durbin, Akaka, and Burris for joining as cosponsors.

I supported the Refugee Act in the 96th Congress. I voted for it when it passed the Senate. When the Senate debated the bill, Senator Ted Kennedy, the longest-serving member of the Senate Judiciary Committee in history, spoke of his dual goals to welcome homeless refugees to our shores, thereby embracing one of the oldest and most important themes in our Nation's history. The Act gives statutory meaning to our National commitment to human rights and humanitarian concerns.

We lost Senator Kennedy last year, but we can honor his memory in one of America's greatest traditions by carrying forth the mantel of refugee protection.

Our Act corrects misinterpretations of law that limit access to safety in the United States for asylum-seekers. The legislation contains provisions from a bipartisan bill I introduced in the 106th and 107th Congresses to correct the harshest and most unnecessary elements in the Illegal Immigration Reform Act of 1996, because that law had tragic consequences for asylum-seekers.

Finally, our current proposal modifies the immigration statute to ensure that innocent persons with valid claims for protection are not unfairly barred from the United States by laws enacted after September 11, 2001 to prevent terrorists from manipulating our immigration system.

I think we can do both. We can correct the law and protect refugees without diluting the bars to admission for dangerous terrorists and criminals.

In the years since the Refugee Act was enacted, over 2.6 million refugees and asylum-seekers have been granted protection in the United States. I am proud that my home State of Vermont, a state of only 660,000 people, assisted asylum applicants with their requests for protection and we welcomed refugees through resettlement programs.

More than 5,300 refugees have been resettled in Vermont since 1989 from countries as diverse as Burma, Bhutan, Somalia, Sudan, Bosnia, and Vietnam.

One of our witnesses today is Patrick Giantonio, Executive Director of Vermont Immigration and Asylum Advocates. He is one of many Vermonters who put in countless hours and days and evenings and weekends to help victims of persecution win protection and build new lives in our state and our country. And I cannot thank you enough for what you do—what you do for them, what you do for the state.

I want to also welcome Dan Glickman, who was recently appointed the President of Refugees International. Dan has been a friend for decades. We worked together when he was a member of the House of Representatives, when he served as Secretary of Agriculture in the Clinton Administration; more recently, as President of the Motion Picture Association of America.

He has devoted years of his life to fighting hunger and advocating for under-served populations, and now he has taken on a new challenge in protecting refugees around the world.

And our third witness will be Igor Timofeyev. Did I come close to pronouncing that right?

Mr. TIMOFEYEV. It was perfect, Mr. Chairman.

Chairman LEAHY. Thank you. Mr. Timofeyev served as a Special Advisor on Refugees and Asylees at the Department of Homeland Security during the Bush Administration. Of course, we welcome him.

Our nation is a leader among the asylum-providing countries. Our communities have embraced refugees and asylum-seekers, welcoming them as Americans, and our laws should reflect America's humanitarian spirit.

I know that is what brought my maternal grandparents from Italy to the United States and Vermont, and so many of us, our grandparents or great-grandparents.

Senator Sessions.

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you. And I want to thank our witnesses for being here today to talk about this important issue. We are, as a nation, a beacon of hope for many across the globe who have suffered unspeakable injustices, many who have had their lives threatened.

I am proud to live in a nation that is so welcoming of those who are facing persecution. America is a leader in the world in that issue, and we do provide safe haven to so many who their lives may be threatened.

I note that for 2010, the number of people who could be allowed into the country as refugees is 80,000, as refugees. This speaks to the generous nature of our immigration system. Probably 10 percent of the people who enter our country, at least, are asylees or refugees, and I believe this policy will help change the lives for a lot of those people in a dramatic way.

Over 5,000 refugees, for example, have been resettled by the Catholic Social Services Refugee Resettlement Program in Alabama in recent years. The goal of this program is to assist refugees in becoming independent, self-sufficient, self-supporting members of the community, and I am proud of the work that they have done.

I also think that we have some particular responsibility to those who suffer for battling for freedom in their countries, particularly those who have been in some way allied with the United States and whose lives are at risk for those very qualities.

So we can be proud of our history, but we need to be diligent in our analysis of any proposal that seeks to change the law by which people are admitted into the United States.

The legislation recently introduced by our Chairman seeks to amend many aspects of the current program. That piece of legislation is the basis for this hearing, and I am grateful that we have the opportunity to hear what this panel has to say.

I do have concerns about some of the provisions in the legislation and I hope we can gain insight today.

I want to point out a few provisions that are problematic to me. As we read it, the bill would change the definition of asylum-seeker to include any alien who simply indicates an intention to apply for asylum, regardless of how long they have been in the country or how frivolous their claim might be; and, indeed, we do have a lot of frivolous claims.

We have a number of people who, for one reason or another, desire to come to the United States and they seek to use this vehicle to place themselves ahead of the normal process. And I am not saying that may not have had some difficulties back home, but it may well not reach the definitional level of an objective and good statute with regard to refugees and asylees.

This provision that I refer to could have massive implications for our court system. The legislation also seeks to eliminate the current law that mandates a 1-year waiting period after arrival before an alien can seek asylum.

We recently dealt with this issue in another piece of legislation, but that bill kept the 1-year waiting period, and it did pass out of this Committee. So we did not change it in our previous reform effort.

This bill would allow, in addition, any alien to apply for asylum at any time after arriving in the United States, which could place an even heavier burden on our overwhelming caseload for USCIS.

The bill would grant lawful permanent resident status, permanent resident status, to refugees upon admission, a dramatic departure from the 1 year they must currently wait while background checks are completed.

These provisions would make it much more difficult to terminate the status of an alien who committed fraud. Once they become a legal permanent resident, they are given quite a number of legal rights, if they came into the country as a refugee or asylee.

Now, I understand the desire to quickly and efficiently process legitimate cases, but these changes will lead to increased fraud, I am certain, in these categories of visas and further add to the already substantial backlog that we are wrestling with.

The most troubling provision in the bill seeks to dramatically modify the definitions of those barred from entering the country based on the involvement in a terrorist organization, either directly or through offering material support, by revising the definition of terrorist activity so that it no longer applies solely to conduct considered criminal in the alien's country of origin or the United States.

The bill would bar admission only to conduct that is designed to coerce or intimidate, and, also, punishable as a crime. This is a change in the law.

Furthermore, the bill seeks to eliminate the bar to spouses and children of those who are knowingly involved in terrorist activities.

These are some of the concerns I have. I look forward to working with the Chairman and our Committee to see if we can make constructive suggestions. But I would just say it is a fact that we have almost 100,000 people a year, 10 percent-plus, probably, people lawfully entered into our country who come under one of the programs of asylee or refugees.

I think that we should have that kind of—I am not necessarily complaining about that number. In some years, that is probably well justified. What I do say is that it is a program that can be abused. It had a good bit of abuse, and we do need to make sure that the processes work effectively to provide entrance to those who are legitimately entitled to it and can identify those who are not.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much. As I mentioned in my opening statement, Dan Glickman recently became President of Refugees International. He served in the House of Representatives for 18 years; was Secretary of Agriculture under President Clinton; and always worked to combat hunger and protect vulnerable populations.

I told Secretary Glickman that I felt Refugees International was lucky to have him join their ranks.

I thank you for your service on behalf of refugees, and the floor is yours.

STATEMENT OF HON. DAN GLICKMAN, PRESIDENT, REFUGEES INTERNATIONAL, WASHINGTON, DC

Mr. GLICKMAN. Thank you very much, both Senator Leahy and Senator Sessions, for hosting this hearing and for your kindness to me in the myriad roles I have had over the last several years.

I recall a meeting in Senator Sessions' office on I think it was film piracy not too long ago. And, of course, we have one of the great film stars of all time in Senator Leahy.

[Laughter.]

Mr. GLICKMAN. Let me say, I have been involved in this great organization for only about six weeks. So this is the first time I have had a chance to testify on these issues.

Largely, Refugees International deals with the conditions and plight of refugees and displaced people worldwide, and focusing on the humanitarian problems that they deal with.

This legislation largely deals with domestic issues, and we are also very concerned about that and we have a few things that we want to add to the debate. The U.S. has a long and proud history of providing protection to refugees, including the Hmong refugees who fought with us in Vietnam, Soviet Jews, Iraqis who were displaced during the U.S.-led war, and others who seek an opportunity to rebuild their lives.

After September 11, shifts in security procedures and admission requirements contributed to a dramatic decrease in the number of refugees admitted to our country. We went from 100,000 per year through the early 1990s to fewer than 27,000 in 2002.

However, since that time, there has been an upward trend, I think, as Senator Sessions talked about. In 2009, we admitted about 75,000 refugees. But I believe the United States, the world's leading humanitarian actor, the leader in the world on these issues, can continue to do better.

This bill will help us do the right thing by creating a more efficient and fair process for providing safe haven for the world's most vulnerable, and we can do this—and I want to emphasize this as a former member of the House and former government official—we can do this without compromising our ability to keep bad actors

from entering the country, because that is, obviously, one of the great challenges that we have to deal with.

There are four provisions of the bill that I want to highlight today, but I want to particularly emphasize the issue of statelessness, which is my last point.

I assume the entire statement, written statement, will appear in the record, Mr. Chairman.

Chairman LEAHY. It will.

Mr. GLICKMAN. So one provision will enable the Secretary of State to designate certain refugee groups eligible for an expedited admissions process. Today, anyone trying to find refuge here must prove refugee status, even if we know he is an Iraqi who helped the U.S. fight against Saddam Hussein or that person has spent 10 years in a Chad refugee camp.

The ability to give certain groups refugee status will allow expedited interviews and streamlined consideration for admission to the U.S., and, meanwhile, the Department of Homeland Security can focus on each individual's admissibility and security issues rather than on reestablishing that each individual meets the refugee definition.

Another critical provision will prevent victims of terrorism from being defined as terrorists. Through unintended consequences of the USA PATRIOT Act, our country denies entry and protection to thousands of refugees and asylum-seekers with bona fide claims.

Our staff travels the world often and meets with men and women who have been terrorized into giving what little they have to armed groups. That does not make them terrorists.

As a former Member of Congress, I understand the delicate balance between national security and our obligation to help the neediest. This bill does not change or undermine our ability to keep anyone out of the country if we believe them to be a threat.

It just prevents us from automatically turning away the most harmed individuals, those who are often the victims of terrorism.

The legislation will also require an annual review to ensure that grants provided to help settle refugees will cover the true costs involved.

Finally, I want to talk about the bill's provision to address one of the most compelling and least understood and, yet, solvable global issues that relates to what we are talking about today, and that is statelessness.

There are an estimated 12 million people worldwide who do not have claim to any nationality. It is an existentialist nightmare. They are more vulnerable than refugees due to their near total lack of ability to exercise their human rights.

Currently, there is no pathway for the 4,000 stateless people in the U.S. to gain lawful status, and this bill would allow them to apply for legal permanent residency here and obtain the right to a nationality.

My statement refers to a case of a woman named Tatianna, who was born in the former Soviet Union, came to this country because of political repression; and has no country because of the change in citizenship laws after the Soviet Union broke up.

She has to check in with the Department of Homeland Security, but she never knows what might happen when she goes to DHS and lives in fear that she could be arbitrarily jailed.

She is a person without a country. There are about 4,000 of those in the United States, an eclectic group of people from all different parts of the world. There is no one place that necessarily a majority come from.

And we are delighted to see that this bill provides a way for these people to enter the chain to get their status as a permanent resident or ultimately a refugee, defined.

This is a matter of great personal distress to a lot of families who are truly people without a country.

I thank you very much for allowing me to testify, and my entire statement goes into much greater detail on everything I have said.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Glickman appears as a submission for the record.]

Chairman LEAHY. I appreciate. I have read the statement, and I appreciate having it. The example you use is, unfortunately, not the only person who has that same or has a similar type of history and one of the things that we want to correct.

I am glad to have my fellow Vermonter, Patrick Giantonio, here. Not all Italian-Americans in Vermont have to have the first name of Patrick, but the two of us do.

He is the Executive Director of Vermont Immigration and Asylum Advocates, formerly Vermont Refugee Assistance; a graduate of Goddard College. He has worked with the legal needs of asylum-seekers, refugees and immigrants for more than 15 years; fully accredited representative under the Board of Immigration Appeals; 1984 to 1989, lived and worked in Central and East Africa and, I think probably as a result, speaks KiSwahili—sorry, you can pronounce it better than I can—and French; basic level competence of Lingala—and I have no idea what that language is.

He is a cofounder of New England Survivors of Torture and Trauma Program.

I thank you for being here, and it is good to see you again.

STATEMENT OF PATRICK GIANTONIO, EXECUTIVE DIRECTOR, VERMONT IMMIGRATION AND ASYLUM ADVOCATES, BURLINGTON, VERMONT

Mr. GIANTONIO. Thank you, Senator. I would like to give my deepest thanks to you, Senator Leahy, and, also, to the Senate Judiciary Committee for inviting me to testify before you today.

It is a great honor to be here and to testify in support of the Refugee Protection Act of 2010. This bill, I believe, will usher in practical, secure, and much needed changes to our refugee and asylum systems.

On this 30th anniversary of the Refugee Act of 1980, it is an appropriate time to pause and reflect on just who these asylum seekers are and why we should care about them. It is also a time to reaffirm our commitment to maintain an asylum system that welcomes those who have fled persecution and torture.

This was the case for one of our clients, a 29-year-old mother of three from the Republic of Congo, who was arrested, detained, ac-

cused of anti-government activities because of her ethnicity, tortured and raped repeatedly by military officers for more than a year before escaping and finding her way to the U.S. to seek asylum.

Most of these individuals never planned or intended to come to the United States. Their path to security is often a frightening epic journey that leaves their loved ones and all they have known behind.

These are the asylum seekers that we are talking about and why the Refugee Protection Act of 2010 is so important to pass and sign into law.

Regarding the 1-year filing deadline, most individuals in this room will likely recall that the 1-year deadline to apply for asylum was enacted in 1996, with the original intention of preventing fraud, such as the filing of frivolous asylum claims, to delay removal and gain a work authorization, as well as to address the substantial backlog, which, by 1994, had reached approximately 425,000 cases.

Actually, though, by 1996, INS had already implemented procedures that addressed issues of fraudulent applications and imposed new restrictions on work authorizations for asylum seekers.

Importantly, the legislative intent in 1996 was very clear that the 1-year filing deadline should not bar legitimate asylum applicants from receiving protection.

In 1996, Senator Orrin Hatch assured the Senate with the following quote—"I am committed to ensuring that those with legitimate claims of asylum are not returned to persecution, particularly for technical deficiencies. If the time limit is not implemented fairly, I will be prepared to revisit this issue in a later Congress," end quote.

Reasons for late filing of an asylum application can be related to fear of revealing the basis of the persecution, such as domestic or sexual abuse, sexual orientation, lack of counsel, trauma related to torture, or loss of family and home.

The application of the 1-year rule has been rigid and has led to a constellation of unintended consequences both for applicants and for the asylum system. Thousands of meritorious asylum claims have been denied protection and returned into the hands of their persecutors simply because of not meeting the 1-year filing deadline.

Many of those who were denied asylum were then granted withholding of removal or protection under the Convention Against Torture, both of which require a higher standard of proof than asylum.

It is indisputable that the 1-year filing deadline has been needlessly contributing to the enormous burden and backlogs of our crippled immigration court system. Repealing the 1-year filing deadline would increase efficiency and save resources, increase the level of protection for asylum seekers, and maintain the U.S. commitment not to return bona fide refugees to persecution.

In closing, I believe that the changes proposed in the Refugee Protection Act are a very sensible and comprehensive package of much needed changes to law that will restore and ensure integrity and true protection in our refugee and asylum systems, without compromising security.

Maintaining integrity and efficiency in these systems should not be a Republican or Democratic issue. Our commitment to welcome refugees who have fled their homeland should also be nonpartisan.

By passing this bill and offering fair treatment and safe haven to refugees, we can illustrate to the world and to our own citizens our strength, our confidence, and our compassion. Most importantly, we should continue, through our laws and through our actions, to be the spire of light that elicits hope and safety as we embrace and welcome the persecuted into our homes, our cities, and our communities.

Mr. Chairman and Committee members, I believe this bill moves us forward decidedly toward achieving these goals.

Thank you.

[The prepared statement of Mr. Giantonio appears as a submission for the record.]

Chairman LEAHY. Thank you very much, and thank you for coming down to testify.

Mr. GIANTONIO. Thank you, Senator.

Chairman LEAHY. Now, as I mentioned earlier, Mr. Timofeyev served as Special Advisor on Refugees and Asylees at the Department of Homeland Security during George W. Bush's Administration.

What I did not mention earlier, he originally came to the United States as a refugee. He is currently an associate at the law firm of Paul, Hastings.

We welcome you here today. Thank you for coming by.

STATEMENT OF IGOR V. TIMOFEYEV, ASSOCIATE, PAUL, HASTINGS, JANOFSKY & WALKER, LLP, WASHINGTON, DC

Mr. TIMOFEYEV. Thank you. Chairman Leahy, Senator Sessions, thank you for the opportunity to testify before you today about the Refugee Protection Act of 2010 and about the United States' policy with respect to refugees and asylees.

I offer my views as the former Special Advisor for Refugee and Asylum Affairs and the former Director of Immigration Policy at the Department of Homeland Security, positions I held between February 2006 and October 2008. I would like to note, moreover, that I appear here today in my personal capacity.

As a nation founded by immigrants, the United States has a proud history of welcoming individuals who sought to escape political, religious, or ethnic persecution. Historically, the United States has been the largest recipient of refugees in the world, accepting more refugees than all other countries combined.

I am proud to count my own family as a part of this heritage. My great-grandfather and his family arrived in the United States around the turn of the 20th century as Jewish immigrants from Russia, seeking to escape then-rampant anti-Semitism.

My immediate family and I made a similar journey about a century later, when we left the then-Soviet Union to seek asylum in the United States.

We must remain a welcoming home to refugees and asylum-seekers. But we must ensure that the immigration law remains a useful tool in our counterterrorism and immigration enforcement efforts.

The executive branch must retain the flexibility to deny admission to the United States to dangerous individuals who belong to or support terrorist organizations. The executive agencies must also be able to remove expeditiously from the United States individuals who do not have a valid protection claim.

Finally, our refugee program must be able to react to unexpected events, such as a sudden refugee crisis abroad.

In my view, many provisions of the proposed legislation would deprive the Executive of the necessary flexibility in ths areas, and many of the bill's aims can be accomplished within the existing legislation.

I will focus on the following examples: the terrorism inadmissibility provisions, the detention and removal procedures, and the requirements pertaining to the U.S. refugee program.

With respect to the first, the bill would make two profound changes. First, the bill would eliminate the concept of undesignated Tier III terrorist organization. Second, it would exempt from a definition of material support any activity committed under duress.

The current law, however, already provides the Executive with authority to exempt individuals covered by these provisions from the terrorism inadmissibility bars. Both the Bush and the Obama Administrations have exercised this authority.

The proposed changes would, however, restrict the Executive's ability to respond to the rapidly mutating nature of terrorist threats. Terrorist organizations form, break down, and regroup without much notice, and their exact identity may not become known until well after the fact.

A formal designation process would not be able to keep up with the shifting identities of the terrorist world. Similarly, the Executive would no longer be able to evaluate the case-specific circumstances of duress claims—something permitted by the current waiver process.

Many of the bill's provisions with respect to immigration detention and removal are commendable goals, such as the establishment of secure alternatives to detention or the provision of quality medical care.

These standards, however, are best effectuated through administrative guidelines. Thus, I question the wisdom of codifying in law DHS's five-months-old parole policy for individuals in immigration detention, rather than giving DHS the opportunity to evaluate the effectiveness of that policy and to modify and improve it if necessary.

The Committee should also consider the resource implications of some of the provisions, such as the immigration court review of parole determinations or the relaxation of review standard for removal orders. These provisions risk further burdening the already taxed immigration courts and Federal courts of appeals.

Finally, I would recommend against transforming the annual Presidential determination as to refugee admissions into a rigid goal instead of a flexible ceiling. While the United States should seek to admit as many individuals in need of protection as possible, a strict legislative quota would limit the Executive's ability to respond to unanticipated refugee crises and ignores security and political contingencies of refugee processing.

As we strive to maintain and improve refugee and asylum programs, we should not limit the Executive's ability to adjust these programs as required by circumstances.

This is particularly important given these programs' close interrelationship with the issues of national security and immigration enforcement and the need to react quickly to humanitarian crises abroad.

I thank the Committee for the opportunity to share my thoughts on ths important issues. I thank Chairman Leahy and Senator Sessions for your attention to this issue. I refer the Committee to my full written statement, and I would be pleased to answer any questions.

[The prepared statement of Mr. Timofeyev appears as a submission for the record.]

Chairman LEAHY. Thank you. And all of the full statements will be placed in the record.

I would also like to submit to the record a letter coordinated by Human Rights First, with 180 organization and individual signatures, in support of the Refugee Protection Act, and the statements of a number of refugee and asylum groups, the Advocates for Human Rights, American Jewish Congress, Amnesty International, Church World Service, Hebrew Immigrant Aid Society, Human Rights First, Human Rights Watch, International Rescue Committee, Kurdish Human Rights Watch, Lutheran Immigration and Refugee Service, National Immigrant Justice Center, Physicians for Human Rights, Refugee Women's Network, Survivors of Torture International, Tahirih Justice Center, the United Nations High Commission for Refugees, and others.

[The information appears as a submission for the record.]

Chairman LEAHY. Let me begin, Mr. Giantonio, with you. The 1-year filing deadline was deemed unnecessary by the Immigration and Nationality Service back in 1996, when it was enacted. Then at the INS, and now at DHS, we have asylum adjudicators who are trained to root out fraudulent or frivolous applications, and they do identify some that are fraudulent or frivolous.

In practice, the 1-year deadline has unnecessarily barred genuine applicants from gaining the benefits of our asylum law.

My question is this. You have vast experience representing asylum seekers before the agency. Are you aware of cases in which the 1-year deadline prevented genuine asylum seekers from winning protection, and how would repeal of the deadline affect your clients?

Mr. GIANTONIO. Thank you, Senator. My response to your question is a definitive yes. I am aware of many, many, a multitude of cases nationally that have been denied asylum because of the 1-year filing deadline. And as I said in my oral statement, many cases have then been granted withholding of removal or protection under the Convention Against Torture, which, as I said, has a higher standard of proof.

So it is very clear that, nationally, many asylum seekers are being denied asylum and many also have been returned into the hands of their persecutors simply due to not meeting the 1-year filing deadline.

The second part of your question, what—and, excuse me, can that be rephrased? Was it what——

Chairman LEAHY. If you repealed this deadline, how would that affect your clients?

Mr. GIANTONIO. In a real world picture, the way that would affect our clients is that many of our clients—when I meet with an individual who is applying for asylum, the first thing that I tell them is that this is going to be one of the most rigorous processes that you are ever going to go through in your life and be prepared for that.

Many of our clients are—the impact on many of our clients of the 1-year filing deadline is that individuals who come to us, if they are close to filing, if they are close to being in the United States for 1 year, for most attorneys and advocates, they have to work very quickly to try and assemble a very thorough case and it does not do the applicant any good, it does not do the advocates any good, as well.

I think that repealing that 1-year filing deadline—as I said, the reasons why the 1-year filing deadline was enacted were really resolved years ago by 1996.

Also, the original Congressional intent of the 1-year filing deadline has really been violated by returning individuals into the hands of their persecutors.

There is also—as I had said in my oral statement, there are multiple processes to detect and prevent fraud in the——

Chairman LEAHY. As I said in the question, the asylum officers are trained to do that, because some do try to file frivolous applications, but they are usually pretty easy to weed out.

Mr. GIANTONIO. They are trained and I think that one thing that is important to note is that while this year is the 30th anniversary of the Refugee Act, it is also the 20th anniversary of the development of the enactment of the Asylum Corps. And the Asylum Corps and the Asylum Office is a very effective and efficient way to adjudicate asylum claims.

Chairman LEAHY. Secretary Glickman, you spoke of the overly broad definition of material support to terrorist organizations and talked about how somebody who has actually been a victim of the terrorist organization, coerced to assist the organization, is then barred from protection as refugees.

Senator Kyl and I worked together in 2007 to give DHS the authority to provide waivers and exemptions in material support cases. It requires Federal agencies to examine individual organizations, to find out whether there is an overly broad definition of terrorist.

Now, you served 18 years in the House. You know the legislative process as well as I do. Can we redraft the statute in a way that would allow for genuine refugees and still prevent supporters of terrorism from entering the U.S.?

Mr. GLICKMAN. Senator, I think we can. I think your bill actually does that. I recognize the complexity of the balancing of interests here to ensure that we do not open the door to people who would want to do great harm to our country and by the way, most refugees have been such for years and years under horrendous conditions.

The ability to analyze their individual cases to determine if they are eligible or not, I think, can be done under the legislative model that you have proposed. The current process has not been implemented very quickly and I think your legislative proposal does a lot to try to regularize that.

But it is important to recognize that your legislation will not in any way open the door to terrorists coming into this country. The standards for our government to review these people on an individual basis would be unchanged.

Chairman LEAHY. And, Mr. Timofeyev, you mentioned the waiver and exemption authority to the material support bar. Those amendments were written by Senator Kyl and myself.

You are correct in saying the implementation of the waiver process has been slow; 6,000 cases are still stuck in limbo. That is why I tend to disagree with you that a change in the statute is unnecessary.

But I think there is one area we should agree on. You mentioned the waiver authority can be improved for individuals in immigration court proceedings.

What are some of the things that they could do to improve it? Assuming we keep with the present law, what are some of the things we could do to improve it and get past that 6,000 case backlog?

Mr. TIMOFEYEV. Mr. Chairman, first, I would like to note that I agree with Mr. Glickman that, I think, in this area, you have to proceed very carefully because of the important considerations of national security.

And I think whenever you have a provision in the law which is admittedly broad, it also means it gives the government a broader or better ability to actually keep the people who we do not want in this country out.

With respect to your immediate question, I agree, as you mentioned, that the waiver process should have been implemented faster. I think, particularly, from 2006, when I was in the Bush Administration, we slowly put that process underway.

I think now the executive has significant history, significant experience in how to operate that process in a way that comports with national security, but allows admission and application of waivers to deserving individuals.

I think with respect to, specifically, immigration court processing, one suggestion I would make, which I do not believe is yet the case, is I think there should be a way to allow for an adjudication of these waivers early in the process, not waiting until an individual who is in removal proceedings has his final order of deportation.

I think it should be feasible to have a system where the consideration of whether or not that individual is eligible for a waiver of material support of other terrorist admissibility bars can be made early in the process.

I think that is one concrete suggestion that under the legislation that, as you mentioned, you and Senator Kyl worked on, the executive currently has authority to do.

Chairman LEAHY. Senator Sessions. And then Senator Franken is going to take over for me, because I have to go back to the floor. You remember those days, Dan.

Senator SESSIONS. Thank you.

Thank you, Mr. Chairman. You have got too many leadership roles in the Senate. And we would be glad to take a few of those, if you would like to give any away.

[Laughter.]

Senator SESSIONS. A few crumbs for the opposition.

Chairman LEAHY. The subtlety of that offer.

Senator SESSIONS. Mr. Timofeyev, I appreciate your experience as Director of Immigration Policy and Special Advisor for Refugee and Asylum Affairs at DHS, and I know President Bush believed in and supported lawful immigration and was generous about it.

But let us talk about—first, would you share with me as succinctly as you can, I do not want to delay my colleague, but the practical difficulties that are presented to our governmental representatives when someone appears and says "I am an asylee" or "I am a refugee, let me in, and I want to be an American citizen?"

As a practical matter, is there a need for some clarity in our legal requirements for that?

Mr. TIMOFEYEV. Senator Sessions, I agree. I think you spotted one of the significant problems in asylum processing and then in this bill.

The problem is that right now, as you, Senator, know fully well, we have still a tremendous pressure on the southern border, because of illegal immigration. And while we need to have measures in place where individuals who are legitimate can come in and seek asylum, we also should realize that it is very easy for someone to, as you put it, just show up and say: "Look, I would like to seek asylum."

So I think the difficultly is when you are presented with an individual who arrives at the checkpoint or who is apprehended even trying to illegally cross the border, you often have no idea who that individual is, what is his identity, whether he really is a legitimate seeker from persecution or whether he wants to come into the U.S. because of economic or other reasons.

And I think it is tremendously difficult, particularly for members of the Border Patrol or Customs and Border Service to make those evaluations. Indeed, they often cannot.

The measures that currently are in place is when someone shows up and he exhibits a fear of returning to his country, they call a professional asylum officer who does a very preliminary screening and then that individual, if the screening indicates that, indeed, the individual may have such a fear, is referred to the immigration court system, where a more formal cross-adversarial process can——

Senator SESSIONS. Just to interrupt. So if a person, even at the southern border, is apprehended unlawfully crossing, if they say "I am seeking asylum" or "I am a refugee. I will be under threat if you return me home," what does a young Border Patrol officer do at that point?

Mr. TIMOFEYEV. He has to then refer that individual to a member of the Citizenship and Immigration Services Asylum Corps and then an asylum officer will perform what is called a credible fear screening, which evaluates—does a surface evaluation of—whether that fear is genuine.

It is not meant to be a full asylum adjudication. It is meant to be kind of a preliminary threshold glance. And over the years, many of the individuals who indeed showed up and said "I am afraid to return" were referred to the credible fear screening.

The asylum officer then concluded that the fear was really not genuine. So I think that indicates to you—certainly, it indicated to us, when I was in the government—that many of these preliminary claims are, indeed, not the valid ones.

Senator SESSIONS. And then once that—let us say the officer found that was not a legitimate claim and they say "You must be deported," can they appeal that? Is there any appeal from that?

Mr. TIMOFEYEV. Yes. There is a system of expedited removal, which allows for a faster removal of such individuals from the United States.

And so I think there is some limited appeal from that. I think that is what allows the border authorities to extradite those people quickly outside of the country.

An individual who does have a credible fear screening, he is then referred to the immigration court system for a more thorough evaluation.

Senator SESSIONS. Then a trial of some kind can occur. We have got thousands of cases, I understand, pending around the country on these kind of matters, do we not? Do you have any idea what the number might be?

Mr. TIMOFEYEV. I do not know, Senator. I do not know the exact number. I do know that a lot of studies have been conducted recently by the American Bar Association, which showed a great magnitude of cases within the immigration court system.

I can also speak from personal experience that there are a lot of immigration cases in the Federal courts of appeals. I have clerked for a judge, now chief judge of the Ninth Circuit, and it is one circuit that has a tremendously crushing workload of immigration cases.

Senator SESSIONS. Well, it is a difficult thing and to the extent—I think we have to recognize that every person that is threatened in their home country, every person that is a member of an ethnic group that is not being fairly treated, every person that is in a political party that is losing out and under pressure cannot be automatically admitted to the United States in unlimited numbers, or you could have the situation of Iraq or Afghanistan.

If those wars go badly and Taliban takes over, we could have millions of people who would be under some danger perhaps because they work with us.

Reality tells us that we are not able to solve every problem in the world and we have high duties and responsibilities to be an effective advocate for people who are being oppressed.

I am sure you felt like President Bush was aggressive in standing up for the oppressed around the world. I thought he was.

But at any rate, it just puts numbers and pressures on us that we have to be honest about. Most people do not like to talk about it, but we have to be honest about it.

What can we do? How many can we accept? Canada has some good provisions, I think. They set aside a certain number of their slots each year for those who are asylum seekers and are proud of

their heritage, like we are. It is not a whole lot different, I think, than ours.

With regard to the terrorist matter, this legislation does change the law. Under current law, the wife of or children of Osama Bin Laden or leaders of Hezbollah or Hamas cannot be admitted to settle in this country.

So the bill, as we read it, would repeal or eliminate this bar. It does allow—the current law allows the Executive Branch the discretion to waive this if it is unjust or excessive in the situation.

And maybe I will ask all of you all. Am I incorrect at that, No. 1? And No. 2, do we really want to eliminate this bar since we know we cannot allow everybody into the country and would we not do well to be more cautious about those who associated with terrorists activities?

Mr. Glickman.

Mr. GLICKMAN. As I understand it, Senator, what this bill would do would—right now, if you are on the waiver list, the government can look at these on a case-by-case basis.

Basically, if you are not on that list, you are automatically disqualified. So what the bill would do is it would simplify the waiver authority. So if you are in this particular class, you would be eligible for entry as a refugee, but you would still have to go through all of the individual basis for determination of whether you can come into this country or not.

This bill would not permit anybody automatic entry in the United States. You still have to go through all of the security processes, fingerprinting. Refugees are often the most reviewed and inspected people of any immigrants in this country.

I think the concern has been the current process, the waiver authority is slow and episodic and has not resulted in any kind of clear way, and people have been held back unnecessarily.

So what we are saying is if you are in a group of people, you ought to be eligible and not have to prove were you persecuted. But you still must go through the vetting process. That is unchanged.

Senator SESSIONS. Mr. Giantonio, would you like to comment on that?

Mr. GIANTONIO. Excuse me, Senator. I think I will just defer that question to Dan Glickman. Thank you.

Senator SESSIONS. And, Mr. Timofeyev.

Mr. TIMOFEYEV. Senator Sessions, I think right now, under the current law, if someone is a member or provided support to an organization which has not been formally designated by name, that individual is inadmissible, unless there is a waiver.

And the waiver is applied in two ways. They currently apply to groups that we looked at and we said, "Look, these are really groups that are freedom fighters," for example, like the Alzados who fought against Fidel Castro in Cuba.

These are groups that the U.S. supported. So if you are a member of that group, if you provide support to them, you can come into the U.S. automatically.

The waivers also apply to any member or any individual who provided support to an undesignated Tier III group under duress. So all of those individuals can automatically come in.

Under the proposed legislation, I think the biggest problem is that these individuals who provided support to undesignated groups will no longer be barred. So the government will have to know who are the terrorist groups that exist, what is their name, and they will have to put them on the formal Tier One or Tier Two list.

And the problem is that we quite often do not know the exact identity of a terrorist group. So I think it is a question of—I view it really as a question of default. I think the default is that the individuals who belonged to or provided support to organizations that have engaged in violent activities that we believe are likely to be terrorists, these individuals are inadmissible.

We can evaluate the circumstances, either individual circumstances of an applicant or the circumstance of a specific group, and we can waive them into the country.

So the result, I think, will be the same. The individuals whom we do want to come in, who are genuine refugees, we will allow them. But it provides a better way for the Executive, I think, to manage the process and to guard against individuals whom we really do not want.

Senator SESSIONS. Thank you. Thank you, Mr. Chairman.

I would note, for example, as I understand it, the Pakistani Taliban who attempted to do the bombing in New York was a part of the TTP, which was not designated as a terrorist, and Senator Schumer is demanding to know why they were not. But the government is not always able to keep up with that.

Secretary Glickman, it is great to see you. Thank you for your leadership in so many ways and you giving your time to this effort. It is something Americans believe in, and we just—I would like to see the system work better and more effectively.

Thank you, Mr. Chairman.

Senator FRANKEN. [Presiding.] Thank you, Senator Sessions.

I think you kind of answered—and it is good to see you, Secretary Glickman. Do you want to speak to the Ranking Member's concern that the Bin Laden family might be allowed in?

Mr. GLICKMAN. Well, my judgment is that our government, Homeland Security, the intelligence agencies, are going to ensure that anybody who is a serious threat to this country is not going to be allowed in.

The issue here is one really of shifting the burden a bit. If you are part of a Secretary of State designated refugee group, then you should not have to prove individually that you have been persecuted. Under the current waiver process, there is still that individual determination that is made whether you are a legitimate part of that persecuted group.

But then after that, you still have to go through all of the rigorous steps that anybody else would have to go through to get in this country under refugee status.

So I appreciate your perspective there. I think we can actually work this out.

Senator FRANKEN. Right. Mr. Glickman, I heard a terrible story about an Ethiopian woman who was a client of a refugee agency group in my state. She was suffering from depression and post-traumatic stress disorder, which is common for people who have

been put through some of the awful things that asylum seekers have been put through.

While she was applying for asylum, she was detained for over a year in a prison where she literally never saw the outdoors and was commingled with the general convicted population.

Are these kinds of conditions common and what will this bill do to improve them?

Mr. GLICKMAN. Senator, I cannot speak to the overall set of circumstances here, but I can tell you that one of the issues that we have talked about are the issues of people who come here under various conditions and have no country.

They are stateless people. They may have been born into a place where there has been an evolution of management of that country. And they are totally lost. They are in an existentialist nightmare.

There are millions of stateless people worldwide, almost 12 million; but in the U.S., there are about 4,000. This woman may be in that status. I do not know.

And one of the things we are recommending in this legislation is these people get a path to residency and citizenship. I do not think there is anything terribly controversial about that, but that is a group of these people that you are talking about.

Senator FRANKEN. Well, let me ask Mr. Giantonio about that. Is this common, these kind of conditions, and would this bill do anything to address that?

Mr. GIANTONIO. Thank you, Senator. Our organization has worked in immigration detention since about 1993, and being detained in an immigration detention facility is one of the most difficult things that most people go through in their lives.

Even after having been traumatized in their own countries, they come into the United States seeking protection and they are retraumatized by being detained in jail-like conditions.

There are a few jails that we work in, one jail in northeast New York State, Clinton County Jail, and there are a couple—so to answer your question, yes. The bill would—one of the things that the bill would do is to codify the detention standards to put some teeth into detention standards, which are very much necessary, because what we have seen has really been a deterioration of conditions in jails.

There are a couple quotes that I have from a couple of our clients and this was—in 2008, we did a series of interviews with individuals, but we are always looking at detention conditions in our jails.

A couple of the quotes—"I did not eat for 3 days, could not talk and was crying all the time." Another person, "I was spitting blood for 3 days and never saw the doctor." Another person, "I was verbally abused when I did not feel well enough to clean my room."

We are all aware of the DHS reforms that Secretary Napolitano introduced last fall. And what I wanted to say here today, and I asked my colleagues, who actually work and do legal rights presentations in our jails, if they have seen any reform since last year and the question is a definitive, "No, we have not seen any reforms yet."

The conditions are terrible. The telephone systems are byzantine. Families are charged enormous amounts to be able to——

Senator FRANKEN. And will this bill address that?

Mr. GIANTONIO. The bill does address, again, putting teeth and codifying the detention standards.

Senator FRANKEN. Thank you. Advocates in my state have explained that refugees or applicants for asylum will often adopt distant relatives or even the children of neighbors, because war, famine or some other catastrophe has left these kids totally abandoned.

This bill allows those orphans and separated children to enter the country to join their adopted families. Mr. Giantonio, can you tell me about what is currently happening to these children?

Mr. GIANTONIO. Again, I think I will defer that question to Secretary Glickman.

Mr. GLICKMAN. And I am going to have to defer back to you, because I just do not know.

Mr. GIANTONIO. So the question is about—I will take a shot at it.

Senator FRANKEN. Well, my understanding is they are essentially being denied entry into the United States right now and that this will would help rectify that.

Mr. GIANTONIO. Senator, I am not prepared to respond to that, but I think that we could respond in writing sometime in the near future.

Senator FRANKEN. Thank you. Let me ask just a general question for Mr. Glickman. Do you think that on the whole, our current asylee and refugee system complies with our obligations under the International Covenant on Civil and Political Rights?

Under that law, we have an obligation to provide all non-citizens due process and fair deportation procedures.

Mr. GLICKMAN. I am certainly no legal expert in this area. As a personal matter, I think that we can improve upon the current situation that we are in.

I was just listening in your discussion before. I am recalling, from my old profession and your old profession, the movie "The Visitor." Do you remember that, with Richard Jenkins, about the young man who——

Senator FRANKEN. A great movie.

Mr. GLICKMAN. And it demonstrated——

Senator FRANKEN. We are not doing movie reviews here, but——

Mr. GLICKMAN. But it demonstrated the human side. The mother was an American citizen or she was a resident, she was here legally, and the conditions during the deportation process were very, very difficult, indeed.

But look, I think most of our folks who are administering these policies do the best that they can under the circumstances, but I think we can do better.

Senator FRANKEN. Well, thank you to all the witnesses. The record will remain open for a week, and this hearing is adjourned.

[Whereupon, at 11:17 a.m., the hearing was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Written Questions for Patrick Giantonio, Executive Director
Vermont Immigration & Asylum Advocates
From Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On "Renewing America's Commitment To The Refugee Convention: The Refugee Protection Act Of 2010"
May 26, 2010

Immigration Courts

1. **In his opening statement, Senator Sessions expressed concern about backlogs in the asylum adjudication system if the one year filing deadline were to be repealed. Do you believe that this would be the case? If the one year deadline is repealed, what impact, if any, do you foresee on the immigration courts and asylum office?**

Mr. Chairman, it is very clear that the immigration court system is presently close to a breaking point. What is also clear is that the one year filing deadline has substantially contributed to the current backlogs and burdens of the immigration court system by sending cases into the immigration courts that could otherwise be resolved by the Asylum Office and by adding a legal issue to be litigated before the court that is unrelated to the merits of the asylum claim. Anecdotally, many immigration judges agree that the one year filing deadline has contributed to the burgeoning number of matters that adds to their backlogs each year. These same judges also agree that repealing the one year filing deadline would definitely reduce the number of cases unnecessarily going before the courts, thereby having the cases adjudicated in a much more cost effective manner before the Asylum Office.

1. **Current EOIR Backlogs Due, in Part, to the One Year Rule**

The current backlogs of the immigration courts were recently highlighted in a report by the National Association of Immigration Judges (NAIJ), entitled *"Immigration Court Needs – Priority Short List of the NAIJ"*.(This report is submitted with these responses to the Committee.) This alarming report shows an immigration court system at a breaking point. The report states that immigration courts now handle more than 350,000 matters a year, with each judge averaging about 1,500 proceedings a year. This volume of cases is far larger than those of other federal adjudicators in administrative courts. Furthermore, according to NAIJ report, case backlogs have grown by 23 % in the last eighteen months, and by a staggering 82% over the last ten years.

It is indisputable that the one year filing deadline has needlessly contributed to the enormous burdens and backlogs on the immigration court system. The repeal of the one year rule would certainly reduce the number of matters adjudicated by the immigration court system, thus reducing the current backlogs. This benefit would not come at a cost of quality and integrity. The Asylum Office is staffed with officers specially trained in refugee and asylum law who adjudicate thousands of asylum cases per year. Repealing the one year deadline would allow these officers to make decisions based on the merits of the asylum claim, rather than forcing

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them to refer a meritorious case to the immigration courts, merely because of an arbitrary filing deadline.

2. Inefficiencies Created Needlessly by the One Year Rule and Fiscal Responsibility by Repealing It

The one year rule creates enormous inefficiencies in the system creating double work and expenses in both the Asylum Office and the EOIR.

Additionally, a great deal of time is wasted in immigration court with arguments between the applicant (with their counsel) and the Trial Attorney about the actual date of entry to try and ascertain if the applicant should be barred from asylum due to the one year bar. Repeal of the one year filing rule makes fiscal sense as claims would be adjudicated before the more streamlined and efficient Asylum Office rather than an expensive and resource intensive immigration court. The additional costs in an immigration hearing include: court appointed interpreters, Trial Attorneys, Court Clerks and costs related to the backlogs of the court. The Asylum Office was instituted to be a cost effective venue for adjudicating asylum cases. As stated earlier, the Asylum Officers are a highly trained corps and there would be no gaps in service or reduction of quality by adjudicating cases before the Asylum Office rather than the Immigration Courts. Conversely, the Asylum Office is equipped and designed specifically to review asylum cases – unlike the Immigration Courts which review and rule on many types of immigration matters.

3. **1990s Asylum Office backlogs, reforms and successful solutions**

The Asylum Corps and Office was developed 20 years ago as an effective and efficient system for adjudicating asylum claims. The Asylum Officers are trained in country conditions, international human rights law and national and international refugee law.
Soon after the Asylum Corps was instituted in 1990 through final regulations of the Refugee Act of 1980, the Asylum Office did experience a rise in numbers and backlogs. These backlogs were due to multiple factors such as a resources devoted to the screening of Haitian asylum-seekers at Guantanamo Bay as well as a lack of resources at the Asylum Office itself. The backlog of applications increased to over 150,000 by 1992. The Asylum Office witnessed a rise in fraudulent claims as work authorizations were granted when the applicants filed their claim.

In July of 1993, President George H.W. Bush mandated the Department of Justice to overhaul of the asylum system and to speed up the asylum process, eliminate the backlog of pending cases, and discourage abuse of the asylum process. Reform regulations were enacted on January 4, 1995 in order to accomplish these goals.

Some of those reforms which did reduce the Asylum Office backlogs included:

- Decoupling submission of an application and immediate employment authorization.
- Creating goals for Immigration Judges to decide cases within 180 days.
- Imposing penalties for filing fraudulent claims.

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4. Why There Will *Not* Be an Increase in Backlogs in the Asylum Office if the One Year Rule is Repealed

- It is important to note that the same reforms that reduced the backlogs in the Asylum Office in 1995 are still in place today. These provisions, such as the decoupling of the work authorization with submission of the claim, still deter the filing of frivolous or fraudulent claims.

- There is no indication that if the one year filing deadline was repealed, there would be a rise in the number of asylum cases. The number of asylum cases has dropped substantially since 1994, from a high point of 150,000 claims in 1992 to 22,930 claims in 2008.

- The repeal of the filing deadline would not, in itself, create any increase in the number of cases to the Asylum Office. Simply stated, the number of cases that are currently referred from the Asylum Office to immigration court due to the one year filing deadline could be first and fully adjudicated at the Asylum Office if the one year rule was repealed. Cases with other issues that prevented the Asylum Officer from granting asylum could still be referred to the immigration court.

5. Additional Considerations of Adjudicating at the Asylum Office Rather than Immigration Court

- The non adversarial setting in asylum interviews conforms to international norms and is especially more appropriate for cases where the individual has been tortured and is possibly suffering from the effects of Post Traumatic Stress. Also, the automatic assumption that a case filed after one year is less deserving of the non adversarial first round of adjudication is actually very damaging, since it is not uncommon that the reason for an applicant's delay in filling is directly related to the severity of the trauma and possible effects of Post Traumatic Stress which he/she suffered.

- The enactment of the one year filing deadline diverts time from judging the merits of an asylum claim at both the Asylum Office and in Immigration Court. Unfortunately, the one year filing deadline has resulted in thousands of cases being referred to a heavily overburdened immigration court system. Many Immigration Judges believe that enforcing the one year filing deadline is a threshold burden for asylum claims. Also, for many judges, the focus of an asylum hearing becomes the extraneous issue of when the person entered the United States, rather than examining the merits of the asylum claim.

- Reasons for late filing of an asylum application can be related to fear of revealing the basis of the persecution such as domestic or sexual abuse, sexual orientation, lack of counsel or reliable information, trauma related to torture, or loss of family members and home. Numerous cases illustrate that Immigration Judges do not recognize psychological issues such as avoidance symptoms and how they might affect late filing. It is widely understood by mental health experts that "delayed reporting" or "piece meal reporting" are well documented symptoms of an individual experiencing Post Traumatic Stress.

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Also, as we face constantly evolving law, the cases of some individuals whose current claims are based, for example, on gender or domestic violence, might not even realize that the standards and requirements of asylum include and protect them.

2. **Do you believe a significant new burden would be placed upon the immigration courts if arriving aliens who are denied parole are allowed to seek a custody hearing before an immigration judge?**

Mr. Chairman, allowing arriving asylum seekers to access custody hearings before an immigration judge would not add a significant new burden to the immigration courts. This basic due process safeguard is a crucial component in ensuring that asylum seekers are not subject to arbitrary and prolonged detention. In FY 2009 arriving asylum seekers represented less than 1% of the population in immigration detention but often spend months – and sometimes years – languishing in jails and jail-like facilities while their asylum cases are adjudicated.

According to statistics from the USCIS Asylum Division – the bureau of DHS that conducts credible fear interviews of asylum seekers in expedited removal – between November 2008 and December 2009, 1,193 "arriving" asylum seekers (*i.e.* those arriving at a port of entry) passed their credible fear interviews, meaning an officer specially trained in asylum law found there was a "significant possibility the alien could establish eligibility for asylum." After passing credible fear, asylum seekers subject to mandatory detention under expedited removal become eligible for release from detention on parole. During the same time period, ICE released on parole 325 arriving asylum seekers from detention. Therefore, nationwide during that 13 month period of time from November 2008 to December 2009, 868 arriving asylum seekers who would have benefited from a custody review were prevented from requesting that review by an immigration judge. Nationwide and annually, adding these additional cases to the court's bond docket is nominal, especially as bond hearings take a mere 15-30 minutes each.

According to statistics from the Department of Justice, nationwide in FY 2009, immigration judges completed 50,039 bond/custody determination hearings. Allowing arriving asylum seekers to also access this basic due process protection would have increased the total nationwide bond docket by less than 2% and less than .0025% of the total matters heard by the immigration courts. Furthermore, these are cases that are already in the immigration courts on a judge's docket, as these individuals are in proceedings for their asylum claims.

Legal Orientation Presentations

3. **I have long supported funding for legal orientation presentations, or LOPs. These are presentations that educate detained immigrants on their potential for legal relief. I requested $10 million for the program in Fiscal Year 2011, which would include $8 million for adult and $2 million for child-focused LOP programs. Your organization offers LOPs to detained immigrants in Vermont and New York. From your perspective, how do legal orientation presentations help asylum seekers and other immigrants? How do they help the immigration enforcement authorities and the immigration courts? Do you support nationwide expansion of LOPs?**

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Mr. Chairman, for the immigrants and asylum seekers that we serve in detention, the value and importance of information provided through legal orientation presentations cannot be overstated. LOPs are a vital and critically important asset for the detainees, their families and also the immigration detention and immigration court system.

Often, when someone is detained by ICE, they have little idea of what legal options are available to them. Sometimes, individuals don't even fully understand why they were arrested and detained. Information provided through LOPs helps a detained individual to understand possible options for relief from removal – or lack of options, if none exist.

Based on our detention work since 1993, we clearly understand the value of legal orientation presentations. We witness the relief experienced by detained individuals as they begin to understand the process and what legal options might be available to them. Our work in detention with Legal Orientation Presentations affects and informs not only the detainee, but also their family and broader community. Our organization's provision of LOPs has also been greatly appreciated by the enforcement agencies and jail staff. They realize the positive effects of detainees having access to information that can help inform and guide their decisions, as well as the possibility of connecting them with legal service providers and pro bono agencies.

The LOP provides basic, but critical legal information to detained immigrants and also helps to connect them with *pro bono* legal services. The LOP has received widespread praise from Immigration Judges for increasing efficiency and effectiveness in court proceedings. Immigration Judges have witnessed the increased ability of detainees to understand the court process and identify possible forms of relief for their case. I have personally heard from immigration judges that many judges find LOPs invaluable and that they should be made mandatory in all detention cites. It has also been found to reduce the average length of detention by 13 days per person offered an LOP. Those with potential relief can build a case and appear in court, but those who come to understand they have no potential for relief typically accept an order of deportation and depart the United States quickly. This saves the government unnecessary expenses and reserves the courts for the most meritorious cases.

Defensive Claims Before an Asylum Officer

4. **The Refugee Protection Act of 2010 requires that asylum seekers who pass an initial "credible fear" interview proceed to an interview with an asylum officer instead of being referred immediately to the immigration removal system. The bill would enable genuine asylum claims to be presented in a non-adversarial setting. However, any asylum seeker who is not granted protection by the asylum officer would be placed in removal proceedings and proceed to an adversarial hearing before an immigration judge. Do you support this change to law? How would this change affect your clients?**

Mr. Chairman, I support and welcome the section of the RPA that would develop parity systems for both arriving asylum seekers and those applying from within the United States.

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There should be no reason why arriving asylum seekers should be treated differently than those who file an affirmative claim from inside the United States. Once the asylum seeker has been able to establish credible fear, they should be scheduled for an asylum interview rather than immediately placed in immigration court proceedings. This would be better for the arriving asylum seeker, conforms to international preferences and norms for a non adversarial hearing and would be more efficient for the immigration courts, keeping thousands of cases out of an already over-burdened system.

Anyone who has represented an asylum applicant – or even been present as a translator or witness – in both an immigration court hearing and asylum interview, would attest to the notable difference between the two. An asylum interview is normally non-adversarial and relatively informal. Conversely, the immigration court forum is, by design, an adversarial forum. The immigration court's complex rules and often contentious environment should be reserved for cases that were referred to the court for reasons other than arbitrary time limits of the submission of the claim. This would also conform to international norms by providing asylum applicants with a non adversarial hearing.

As stated earlier, in light of the current backlogs and burdens on the Immigration Court system, it would help to reduce the burdens on the immigration courts by allowing arriving asylum seekers to have their case adjudicated before the Asylum Office first. The Asylum Office is best equipped to adjudicate asylum claims in a fair, efficient and non adversarial manner.

This makes fiscal sense, will be less traumatic for the applicants, and avoid unnecessary detention of asylum seekers.

REAL ID Credibility and Corroboration

5. **The REAL ID Act of 2005 raised certain standards for asylum applicants with regard to credibility and corroboration. The bill modifies this process slightly to give asylum seekers a fair opportunity to respond to requests for corroborating evidence, to clarify inconsistencies, and to provide additional evidence of the persecution they suffered. These changes will not encourage fraud or frivolous claims; they will simply ensure that no asylum seeker is denied the opportunity to present a full application for relief. How do the REAL ID standards affect genuine asylum seekers? Do you agree that the modifications in the bill will help restore fairness to the adjudication process?**

Mr. Chairman, I believe strongly that the modifications in the RPA that address certain standards introduced by the REAL ID Act related to requirements for corroborating evidence and inconsistencies in asylum claims ***will*** help to restore fairness in the adjudication process. I believe that these are sensible changes that will uphold the legal requirements for asylum but at the same time recognize the unique dynamics of adjudicating cases of individuals who still suffer the effects of Post Traumatic Stress resulting from torture and abuse.

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While it is generally understood that between 5% and 35% of refugees are survivors of torture, our case data at VIAA illustrates a much higher percentage for our asylum clients. More than 90% of our recent asylum clients are survivors of torture. Understanding that credibility is primary to an Immigration Judge or Asylum Officer approving an asylum claim, it is somewhat counter-intuitive to expect that an individual who is suffering from symptoms related to Post Traumatic Stress can always recount their stories of horrific rape, imprisonment or torture in a consistent fashion.

Mental health experts understand full well that it is common for individuals who experience symptoms related to Post Traumatic Stress to recount their traumatic events through "piece meal reporting." For example, one of our asylum clients retold the traumatic events of his story (which included months of detention and electric shocks, sexual abuse, beatings to the head, and water torture) in the comforting and supportive setting of a therapy session. Nonetheless, he was so psychologically and physically affected by the harsh memories that he had to be admitted to the Emergency Room for treatment.

One recent client of VIAA most likely would have presented inconsistencies in his initial application or testimony, leading to a negative credibility finding, if he had been unrepresented. The reason for this was that he did not equate his mistreatment by his government's military as torture. The arrests, beatings and horrible treatment that he experienced are what you would expect if you were arrested by the military in his country, he said.

In Vermont, we now couple psychological treatment/therapy with preparation for immigration court or asylum interviews. We do so with the goal of balancing the effects of Post Traumatic Stress and reducing the chances of presenting inconsistencies during testimony. This protocol has been quite successful in balancing and reducing the effects of Post Traumatic Stress during the asylum interview or court proceedings and we believe, helping to lead to a positive credibility finding and approval of asylum. It is important to note that we often also use expert psychological evaluations and testimony that help to identify and explain possible inconsistencies in the application or testimony. All of this takes a full legal team, with medical and psychological experts often devoting hundreds of hours to one single case. Services such as these are simply not available for many applicants and traumatized individuals presenting their case *pro se*. They face hurdles and barriers to stay on track, stay consistent and present their case in a credible fashion. This is due not to any lack of credibility on their part, but rather how their past trauma – the very trauma that makes their case compelling and approvable – affects their recounting of the story before authorities.

I welcome these sections of the Refugee Protection Act that enhance procedural fairness by requiring Immigration Judges to allow applicants to explain and clarify inconsistencies in testimony.

Detention of Asylum Seekers

6. **An asylum seeker who arrives at our borders and immediately requests protection is detained, even if she passes a "credible fear" interview conducted by Federal officials. I do not believe that we should detain such asylum seekers as if they were awaiting a criminal trial. I am also concerned about the cost of this detention at**

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more than $100 per person per day at taxpayer expense. How difficult is it for asylum seekers to find a lawyer and prepare an asylum claim when they are held in immigration custody? What are the hurdles that you must overcome as a legal aid provider when you accept the case of a detained asylum seeker?

Mr. Chairman, I also believe that we should not detain asylum seekers during the adjudication process. There are many reasons why it doesn't make sense - related to the health and welfare of the asylum seeker as well as the financial costs of detaining individuals, unnecessarily.

It is extremely difficult for a detained asylum seeker to find an attorney to represent them. This is underscored by recent statistics that illustrate that 84% of detained individuals are unrepresented. It is especially difficult for detainees to find legal representation if they do not have friends or family to make contact with attorneys or the financial resources to pay their fees.

Andrew Schoenholtz and Jonathan Jacobs (in their 2002 report The State of Asylum Representation) succinctly articulate the importance of representation during the asylum process:

"But how meaningful is a [asylum] process that, no matter how extensive and developed, leaves asylum seekers on their own to present their claims when only the experts understand how the process works and what the case law means."
They continue on to quote immigration court data that illustrates that represented asylum cases are 4 to 6 times more likely to be successful than *pro se* cases.

The percentage of non represented asylum seekers receiving favorable decisions while in detention is as low as 15%.

Attorneys are less likely to take a detained asylum case because of the enormous amount of work and costs that it adds to the case (and private attorneys would find it difficult to charge for all of the hours that the case takes – even if the client has the means to pay.)

Challenges for attorneys representing asylum cases in detention include the difficulty of preparing the individual for immigration court; accessing the client; travel time to the jail; having to work around the jail's schedule for visits and multiple hurdles such as having to rely on phone conversations for part of the legal work and a lack of available documents. Also, detained cases are on a fast track in immigration court, thereby compressing the schedule and leaving even less time for preparation when more time is actually called for while working with a detained client. It is also much more difficult to involve additional experts in the case such as psychological and country condition experts. The re-traumatizing effects of detention on torture survivors can inhibit the individual of presenting a consistent and coherent testimony.

The hurdles for an asylum seeker who is detained and without legal counsel are enormous. It is difficult enough for a *pro se* asylum applicant who is not detained to compile and present a thorough case. The hurdles for someone who is detained are all too often multiplied by lack of counsel, inability to access important documents, lack of contact with family members and critical witnesses, lack of legal resources and most importantly, the re-traumatizing effects of detention and of recalling torture and abuse. Yet another challenge is that the asylum application

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and accompanying documents must be submitted to the court in English.

7. **The bill instructs the Secretary of Homeland Security to promulgate regulations to authorize and promote the use of alternatives to the detention of asylum seekers, such as releasing them to church groups or nonprofit voluntary agencies. For those who would still be detained, the bill would guarantee access to legal and religious services, humane treatment in detention, and medical care where needed. These changes will reduce the detention of asylum seekers, offer them fundamental due process, and improve the conditions of their confinement in those cases where detention is appropriate. To her credit, Secretary Napolitano has expressed a commitment to reform of the immigration detention system. Have you seen improvements yet?**

Mr. Chairman, I also applaud Secretary Napolitano's expressed commitment to reform the immigration detention system – a system that is in desperate need of substantial reform. Also, I strongly believe that the promulgation of regulations that authorize and promote the use of alternatives to detention makes good sense – for asylum seekers, the immigration and asylum systems as well as for U.S. taxpayers.

Secure Alternatives to Detention Make Sense
There should be no argument about the fiscal advantages of secure alternatives to detention. Detention beds cost on average $100 per day, while secure alternatives cost on average $12 per day.

Additionally, secure alternatives to detention are not a new concept. The first and most comprehensive pilot program for alternatives to detention was called the Appearance Assistance Program. It was funded by the INS and designed and implemented by the Vera Institute for Justice from 1997 – 2000. Vera noted remarkable results in its findings. It reported appearance rates for asylum seekers of 97 percent. Another alternative to detention program was coordinated by Lutheran Immigration and Refugee Service (LIRS). LIRS also noted a 97 percent appearance rate.

Jail Conditions
In response your question about reform of detention conditions, to date, we have ***not*** witnessed any improvements in detention conditions in the primary county jail that we serve, Clinton County Jail in northeastern New York State.

The responsibility for maintaining adequate detention standards is confusing, diffused and disconnected. While we find our local ICE officials to be aware and responsive, violations in conditions continue due to a lack of enforceable detention standards, subcontracts with jails and enforcement agencies that deal primarily with individuals in criminal proceedings (such as the United States Marshall's Service.) At Clinton County Jail, as in many jails contracted by ICE, the populations are mixed and everyone is treated as a criminal.

Inadequate and Unresponsive Health Care:

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Health care in Clinton County Jail, as well as many other detention facilities around the United States, is still sub-standard and places the health and well being of detained individuals at risk. This can be underscored by these recent cases in Clinton County Jail:

* One female detainee, when arrested and detained in early May 2009, had just finished her thyroid medicine. Despite repeated requests, she did not see the doctor for over two weeks. Her thyroid condition is now much worse due to the lapse of treatment. (Her swollen throat is now quite noticeable.) She also worries about a growth on her back.

* Another female detainee who was arrested and detained in early May 2009, has serious asthma attacks. She was hospitalized for five days in January of this year for this condition. The doctors have told her that she could die from her condition. She must take Albuterol every six hours and use an inhaler between times. She did not have her medicine with her in jail and, according to fellow detainees, she still did not have it when she was transferred to another jail.

Byzantine Phone Systems:
The phone systems continue to be Byzantine. Making calls can both be difficult and expensive for family members, especially where only collect calls can be made. Calls can cost family members as much as $5 for the first minute (a connection charge), and a conversation for 18 minutes as much as $60 – an average of $3.30 per minute.

Little Access to Legal Resources
Whenever VIAA staff has asked detainees to try and access the "immigration law library", which exists in electronic form, in most cases, their requests have been dismissed. The few instances we have heard of when someone has successfully accessed the legal resources have been after the third or fourth request. These individuals have been both savvy and persistent – one of them was a journalist. No one has seen the "Know Your Rights" video, although jail staff insists that it exists within the jail via a television on a rolling cart.

Limited Access to Legal Counsel and Pro Bono Groups
While detainees held in Clinton County Jail (in northeastern New York State) are provided with the list of legal service providers, the lists are somewhat irrelevant in that while the detainees are held under the jurisdiction of the ICE Buffalo Field Office, many of them are held (especially during the critical early stages of their immigration proceedings) from 6 to 10 hours drive from most of those legal services and attorneys. This makes access to counsel almost impossible. In Clinton County Jail, VIAA is the only legal services provider that is available. It is quite rare for any other attorney to visit the jail.

Financial Costs of Detention
Regarding the financial costs of detention, according to a recent Human Rights First report on the detention of asylum seekers, ICE has spent approximately 300 million dollars to detain asylum seekers from 2003 – 2009.

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Terrorism-Related Bars to Admission of Refugees

8. **Some Senators have expressed concern that altering the terrorism-related bars to admission would make it more difficult for the United States government to exclude terrorists from the United States. Given your expertise in asylum law and your knowledge of the inadmissibility grounds of the Immigration and Nationality Act, do you agree that this would be the case? If the changes proposed by S.3113 are enacted, how would the U.S. government protect against the admission of terrorists to the United States?**

Mr. Chairman, altering the terrorism-related bars to admission would not make it more difficult for the United States government to bar terrorists from admission to the United States. Indeed, U.S. law has long barred – and would continue to bar – the following individuals from asylum and withholding of removal:

- People who engaged in or assisted in or incited the persecution of others (INA §208(b)(2)(A)(i));
- People who have been convicted of a particularly serious crime in the United States or have committed a serious non-political crime abroad (INA §208(b)(2)(A)(ii) and (INA §208(b)(2)(A)(iii));
- People who have engaged in terrorist activity (the current definition of this term is overbroad, but a narrower definition would have a proper place in immigration enforcement and be consistent with U.S. commitments to refugee protection)(INA §208(b)(2)(A)(v) and INA §212(a)(3)(B));
- People who are representatives of foreign terrorist organizations (INA §212(a)(3)(B)(i)(IV)); or
- People who otherwise pose a threat to the security of the United States (INA §208(b)(209A)(iv)).

Moreover, refugees seeking resettlement from overseas, and refugees and asylees applying for permanent residence after their arrival, can be denied based on provisions of the immigration law that bar – and would continue to bar – from the United States:

- People who are believed to be seeking to enter the U.S. to engage in unlawful activity (INA §212(a)(3)(A));
- People whose entry or proposed activities in the United States the Secretary of State believes would have potentially serious adverse foreign policy consequences for the United States (INA §212(a)(3)(C));
- People who have been members or affiliates of a totalitarian party (INA §212(a)(3)(D));
- People who have been involved in genocide, torture, or extrajudicial killings (INA §212(a)(3)(E));
- People who have been associated with a terrorist organization and intend to engage in activities in the United States that could endanger the welfare, safety, or security of the United States (INA §212(a)(3)(F));
- People who are believed to have trafficked in controlled substances or colluded with others in doing so (INA §212(a)(2)(C));

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- People who admit having committed a crime involving moral turpitude (INA §212(a)(2)(A));
- People who have sought to procure a visa or other immigration benefit or admission to the United States through fraud or willful misrepresentation of a material fact (INA §212(a)(6)(F));
- People who have encouraged or assisted another person in trying to enter the U.S. illegally (INA §212(a)(6)(E)); and
- People who have voted in violation of any Federal, State, or local law, have engaged in prostitution, have engaged or assisted in international child abduction, or are coming to the United States to practice polygamy (INA §212(a)(10)(D); INA §212(a)(2)(D); INA §212(a)(10)(C); INA §212(a)(10)(A)).

The Refugee Protection Act does not amend any of the above listed provisions, except by refining the overly broad elements of INA §212(a)(3)(B). Any individual whom the U.S. government has reasons to exclude — for example because the person may be coming to the U.S. to commit illegal acts; poses a threat to national security; has engaged in terrorist activity in the past or may do so here; or may engage in activities in the U.S. that would have potentially serious adverse foreign policy consequences for the U.S — is barred from admission to the U.S. under provisions of the INA that the Refugee Protection Act would leave undisturbed.

The only people the changes proposed by the Refugee Protection Act would affect are those who do not pose a threat to the U.S., have not engaged in any serious criminal activity, have never themselves engaged in illegitimate armed violence, and are inadmissible solely because they "supported" a group the U.S. has never listed or designated as a terrorist group. People who contributed or solicited funds or members for the commission of a terrorist activity or who voluntarily gave to actual terrorists would be excludable just as they are under current law. The changes proposed by the Refugee Protection Act would only apply to whose actions were coerced and/or whose connection to any acts of violence by others is remote, and who are themselves not a threat.

9. **In 2007, I worked with Senator Kyl to enact expanded discretionary authority to exempt certain individuals from the terrorist-related inadmissibility grounds. We hoped that this would result in an efficient process for evaluating cases, ensure that legitimate refugees and asylum seekers were not denied protection, and direct law-enforcement at actual threats. I have been informed that at least 6,700 refugees and asylees in the United States are waiting for their green cards or waiting for their spouses and minor children to join them in the United States because their cases remain "on hold" while the administration develops a process to consider their cases for exemptions. What more can the administration do to implement its exemption authority? Can the administration resolve these problems without a change to the statute?**

Mr. Chairman, the underlying problems the terrorism bars have created for thousands of refugees who have never engaged in acts of wrong doing are a result of overly broad statutory definitions

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that need to be refined in order to be most effective in achieving their objective of protecting the security and safety of the United States. Nevertheless, there are five actions the Administration can take to fully implement its exemption authority and mitigate the problems caused by these poorly crafted statutory provisions. Even if all these actions are taken, a statutory fix would still be needed in order to ensure that our country's terrorist exclusion laws target actual terrorists.

1. Review and revise current legal interpretations of the statute, specifically the interpretations of what constitutes "material support" and the definition of a "terrorist organization." Statutory interpretations should be brought into line with the purpose of the law, which was to exclude and deny relief to persons responsible for or supportive of terrorist acts, affiliated with or supportive of terrorist groups, and who are perceived to pose a terrorist threat to the U.S.
2. Authorize the issuance of exemptions to persons who had voluntary associations with Tier III groups on an individual, case-by-case basis considered under the "totality of the circumstances." The current approach, involving centralized review of each individual Tier III group before an individual who engaged in voluntary activities on behalf of a Tier III group can be granted an exemption, has proved to be entirely unworkable.
3. Extend procedures for issuing exemptions for material support provided under duress to those who are barred from admission under other terrorism-related grounds. For example, currently there are no procedures to issue exemptions to children forced to receive military training or engage in combat.
4. Exempt from terrorism grounds of inadmissibility all individuals previously granted status (including refugee or asylum status) who are seeking an immigration benefit, provided they meet certain requirements, including that they are not statutorily ineligible for an exemption, there is no reason to believe their activities were targeted at non-combatants, and they pose no danger to the safety and security of the United States.
5. Revise procedures for issuing exemptions to individuals in removal proceedings. DHS procedures require a person to have a final order of removal before USCIS can consider granting an exemption. This requirement is delaying consideration for exemptions for years and forcing applicants through multiple administrative appeals that would in many cases be unnecessary if a final order were not required before an exemption could be considered. Cases should be sent to USCIS for exemption consideration as soon as there are findings of eligibility for the underlying relief sought and those findings are final.

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SUBMISSIONS FOR THE RECORD

WRITTEN STATEMENT OF
THE ADVOCATES FOR HUMAN RIGHTS

SUBMITTED TO THE UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

FOR THE MAY 19, 2010, HEARING ON
"RENEWING AMERICA'S COMMITMENT TO THE REFUGEE CONVENTION:
THE REFUGEE PROTECTION ACT OF 2010"

The Advocates for Human Rights commends the Senate Committee on the Judiciary for conducting this hearing concerning America's commitment to the protection of refugees. The Advocates for Human Rights is a non-governmental, nonprofit organization dedicated to the promotion and protection of internationally recognized human rights. With the help of hundreds of volunteers each year, The Advocates investigates and exposes human rights violations; represents immigrants and refugees in our community who are victims of human rights abuses; trains and assists groups that protect human rights; and works through education and advocacy to engage the public, policy makers and children about human rights. The Advocates holds Special Consultative Status with the United Nations.

For over 25 years The Advocates for Human Rights has provided immigration legal assistance to asylum seekers in the Upper Midwest. Today The Advocates provides free legal services in approximately 500 cases each year, including asylum seekers who fear persecution if forced to return to their countries of origin and immigrant detainees who would otherwise be left without any access to counsel during removal proceedings.

Protection of refugees is among the United States' greatest accomplishments and highest responsibilities. Standing as a beacon of freedom and hope throughout the world, the United States puts our values into action each time we meet our obligations to protect victims of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Human rights defenders and democracy activists seek protection in the United States. So too do ordinary men, women, and children from around the world who find their lives and freedom endangered by repression and terror. At heart, refugee protection is about giving individual people the chance to rebuild their lives in safety and dignity.

The Advocates for Human Rights submits this Statement to highlight some of the failures of our current refugee and asylum law to protect the fundamental human rights of those seeking protection on our shores and to outline how the Refugee Protection Act addresses these problems.

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I. Introduction

The Refugee Protection Act promises meaningful reform of the U.S. refugee and asylum system to ensure that the United States meets obligations under the 1951 Convention.

International law recognizes that while the United States has the right to control immigration that right is tempered by its obligations to respect the fundamental human rights of all persons. With few exceptions, the United States may not discriminate on the basis of national origin, race, or other status. The United States' refugee and asylum system, while among the world's most generous, contains systemic failures to protect human rights. Some violations result from the statutory framework itself, while others are a matter of administrative policy or agency practice.

The United States asylum and refugee system fails to protect fundamental human rights to due process, fair deportation proceedings, freedom from arbitrary detention, humane detention conditions, freedom from *refoulement* to persecution or torture, and family unity. Problems with the asylum and refugee protection systems have resulted in denial of protection to bona fide refugees. The arbitrary one-year filing deadline for filing asylum claims, denial of protection against refoulement for those who have been convicted of minor crimes, and a sweeping definition of "material support" of "terrorist activities" have seriously undermined the United States' compliance with the obligations under the Refugee Convention.

The vast apparatus of the U.S. immigration system, including the oft-amended Immigration and Nationality Act and the bureaucracies which enforce, interpret, and administer the law, do not reflect the United States' commitment to human rights protection. As the United States implements existing laws and develops new statutes, regulations, and policies, it must turn to its international human rights obligations as the starting point for policy development. Without a commitment to human rights implementation at the core of immigration policy, the United States will continue to struggle to meet its obligation to ensure that the human dignity of every person within its borders is respected.

II. United States' Obligations Under the International Human Rights Framework

Pursuant to the International Covenant on Civil and Political Rights (ICCPR), non-citizens in the U.S. have a right to **due process and fair deportation procedures,**[1] including international standards on proportionality.[2] Non-citizens enjoy the right to private life guaranteed by ICCPR article 17.[3] Non-citizens also enjoy the right to freedom from discrimination under article 2 of the ICCPR and the obligations imposed by the Convention on the Elimination of all forms of Racial Discrimination (ICERD).[4]

Both the Universal Declaration of Human Rights and the ICCPR guarantee the right to **liberty and security of person**.[5] The ICCPR guarantees the right to life.[6] Further, no one should be subjected to arbitrary arrest or detention.[7] Non-citizens who are detained have a **right to humane conditions of detention,**[8] and are entitled to **prompt review of their detention by an independent court.**[9] **Detention of refugees and asylum seekers should be avoided** whenever possible; if refugees and asylum seekers must be detained, adequate safeguards should be in place to avoid arbitrary detention.[10]

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Pursuant to the international legal obligations undertaken by the U.S. government, individuals also have a right **to seek and enjoy asylum from persecution and protection from *refoulement*.**[11] Similarly, the Convention Against Torture prohibits a State from expelling, returning, or extraditing a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.[12]

Regardless of immigration status, individuals in the U.S. have a **right to family unity**."[13] In interpreting the obligations of the ICCPR, the Human Rights Committee has explicitly stated that family unity imposes limits on the power of States to deport.[14]

III. The Refugee Protection Act Addresses Key Failures of the U.S. Refugee and Asylum System to Respect Human Rights

Section 3 of the Refugee Protection Act would eliminate the arbitrary time limits on asylum applications.

United States law denies asylum to *bona fide* refugees who fail to file their asylum claims within one year of arriving in the United States.[15] This arbitrary deadline violates U.S. obligations under the Refugee Convention and Protocol. Rather than preventing fraud, which was the stated purpose behind the filing deadline,[16] in practice the deadline penalizes *bona fide* asylum seekers and disproportionately affects those most in need of protection,[17] including survivors of torture. Rushed asylum applications can lead to denials based on credibility, particularly for torture survivors who struggle with memory loss, Post-Traumatic Stress Disorder, depression, and other barriers to quickly applying for asylum.

Exceptions[18] to the one-year filing deadline are granted inconsistently.[19] For some asylum seekers, this means years of delay while their case is heard before an immigration judge; for others, it means denial of asylum. Most federal courts of appeal have held that they do not have jurisdiction to review determinations relating to the one year filing deadline for asylum applications.[20]

The Advocates for Human Rights represented a Guinean political activist who was detained for over two and one-half years and tortured by the Guinean government. Although he filed his application within one year of arrival and submitted some proof of the date he arrived in the United States, he could not prove his date of entry to the satisfaction of the immigration judge. He was denied asylum and ordered removed from the United States; he remains in the U.S. under an order of withholding of removal.

The Refugee Protection Act would eliminate the arbitrary one-year filing deadline for asylum applications and bring the United States into compliance with obligations under the Refugee Convention.

Section 4 of the Refugee Protection Act would protect victims of terrorism from themselves being defined as terrorists.

The USA PATRIOT Act of 2001[21] and the REAL ID Act of 2005[22] expanded the class of individuals who are inadmissible to the U.S. for having provided material support to a terrorist

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organization, rendering *bona fide* refugees and asylum seekers ineligible for protection.[23] The political activities which form the very basis of many refugees' claims for protection have, under U.S. law, now been defined as "terrorist activities" barring them from refugee status, asylum, family reunification, or permanent resident status.[24] Human Rights First, which has extensively documented the crisis created by the "material support" bar, cites numerous examples of denial of protection for *bona fide* refugees because of testimony they gave when seeking refugee or asylum status.[25]

Under U.S. immigration law, "terrorist activity" is extremely broadly defined.[26] That overbroad definition, combined with the creation of the so-called Tier III terrorist category,[27] and a definition of "material support" which the U.S. is applying to *de minimis* or coerced acts, has resulted in widespread denial or prolonged delay in protection of bona fide refugees.[28] While the law gives the Executive Branch of the U.S. broad discretion to waive application of the "terrorism"-related provisions of the immigration law to individual cases,[29] this approach turns eligibility for forms of protection mandatory under international law into a matter of executive grace for many applicants, and has failed to provide protection to several categories of individuals who should be protected under the Refugee Convention and Protocol. The practical implementation of the waiver authority has been extremely slow, and has yet to reach the large number of applicants who had voluntary associations with groups now considered to be "Tier III terrorist organizations."[30]

The Refugee Protection Act would ensure that bona fide refugees can find safe haven in the United States while excluding those who fall outside the scope of the Refugee Convention. The Refugee Protection Act would make important changes to current law, including excluding coerced activity from the definition of "terrorist activity," replacing the ill-crafted definition of "terrorist activity" currently found in the Immigration and Nationality Act with a definition that describes actual terrorist activity; and eliminating the Tier III terrorist group definition.

Section 5 of the Refugee Protection Act would protect vulnerable groups of asylum seekers.

U.S. asylum law has fallen out of step with the intent and obligations of the Refugee Convention. Recent developments, including the Board of Immigration Appeals' adoption of the requirement that "particular social groups" must be "socially visible" in order for its members to invoke refugee protection have created a definition rejected by the U.N. High Commissioner for Refugees, the body charged with implementation of the Convention. Changes made by Congress in the REAL ID Act also have brought the U.S. out of compliance with our refugee protection obligations and to well-established U.S. case law regarding an asylum seeker's burden of proof and corroboration of their claim. Other changes are necessary, including the creation of an exception for those coerced into participating in persecution, including children forcibly conscripted into armed conflict, to respond to the Supreme Court's decision in *Negusie v. Holder*, 129 S. Ct. 1159 (2009).

The Refugee Protection Act would make important technical corrections to the Immigration and Nationality Act to ensure that U.S. asylum protection remains consistent with our obligations under the Refugee Convention.

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Section 6 of the Refugee Protection Act would ensure fair deportation proceedings for asylum seekers.

While U.S. law provides that aliens in removal proceedings have "the privilege of being represented," representation must be "at no expense to the Government."[31] The United States' failure to ensure that all non-citizens have access to representation during their expulsion hearings violates ICCPR article 13. In 2008, approximately 57% of all removal cases completed were unrepresented.[32] According to a recent report of the American Bar Association, there is "strong evidence that representation affects the *outcome* of immigration proceedings."[33] Approximately 84% of detained cases were unrepresented.[34]

By permitting the Attorney General to appoint counsel in complex cases or in cases where individuals are unable to represent themselves, the Refugee Protection Act would significantly increase U.S. compliance with article 13 of the ICCPR. The Advocates for Human Rights regularly represents clients with Post-Traumatic Stress Disorder and other mental health impairments resulting from the torture or trauma which compelled them to seek asylum. These clients struggle to meet deadlines, keep appointments, recount their experiences, and gather evidence to prepare for their cases, and without representation these most vulnerable asylum seekers are significantly less likely to be able to obtain protection. In addition, The Advocates for Human Rights has represented clients with severe mental health and cognitive disorders who are unable to speak for themselves in removal proceedings. Under current law, however, immigration judges must deal with these most difficult cases *pro se* if a charitable agency is unable to provide free counsel.

The Refugee Protection Act would provide the Attorney General with the capacity to appoint counsel in complex cases where fair and expeditious adjudication requires representation. This provision would bring the United States into compliance with our obligation to provide fair deportation proceedings to everyone facing expulsion from our country.

Section 8 of the Refugee Protection Act would address the arbitrary detention of arriving asylum seekers.

Asylum seekers in the United States are subject to arbitrary detention in violation of article 9 of the International Covenant on Civil and Political Rights. The Immigration and Nationality Act's expedited removal system, which mandates detention of arriving asylum seekers and the practice of U.S. immigration authorities to continue the detention of many asylum seekers even after credible fear has been established, subjects thousands of people each year to arbitrary detention in the United States in violation of ICCPR article 9(1)[35]. The lack of access to court review of detention for asylum seekers violates ICCPR article 9(4)[36].

Arriving asylum seekers in expedited removal proceedings are subject to mandatory detention and may not be released while awaiting their initial "credible fear" review to determine whether they may apply for asylum before an immigration judge.[37] Following determination of credible fear, asylum seekers may be released on parole pending their asylum hearings before an immigration judge or while on appeal, but if the detaining authority (ICE) denies parole, the asylum seeker is prevented under regulations from having an immigration court assess the need

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for his continued custody.[38] ICE revised its parole guidelines effective January 2010, but ICE has not put these guidelines into regulations.[39]

Under the changes proposed by the Refugee Protection Act, asylum seekers who have established their identify will be released within seven days of a finding of credible fear of removal, unless the Department of Homeland Security can show that release of the asylum seeker poses a risk to public safety or that the asylum seeker is a flight risk. Importantly, the Refugee Protection Act would require the promulgation of parole regulations to help promote fair, uniform detention decisions for asylum seekers around the United States, regardless of the port of apprehension.

Section 10 of the Refugee Protection Act would ensure that asylum seekers are not detained under inhumane conditions.

Asylum seekers, like all people detained in immigration custody, are held in prisons, jails, and other prison-like detention facilities. Arriving asylum seekers are subject to mandatory detention during the expedited removal process, while many other asylum seekers are detained at the discretion of Immigration and Customs Enforcement.

In FY 2009, the United States detained an estimated 378,582 individuals in ICE custody, including those under ICE supervision.[40] Immigrant detainees are held in over 350 facilities around the United States,[41] operating variously by the U.S. Department of Homeland Security, state and local governments, and private prisons.[42] Virtually all immigrant detainees, including asylum seekers, are held in prison- or jail-like settings[43] which fail to adhere to guarantees in ICCPR articles 10(1) and 10(2)(a).[44] Immigrant detainees wear prison uniforms, are regularly shackled during transport and in their hearings, and are held behind barbed wire.[45] Depending upon where they are detained, they may not be permitted contact visits with family,[46] may be subject to degrading conditions including strip searches,[47] and may face barriers to communicating with their family, counsel, or other support systems.[48] Asylum seekers in detention may be held for prolonged periods of time without access to the outdoors.[49] Appropriate psychological and medical services for torture survivors are universally unavailable.[50] Asylum seekers and other immigrant detainees routinely are commingled with convicted people.[51] In August and October 2009, ICE announced plans to reform the immigrant detention system, but thus far there has been limited progress toward a shift to non-penal facilities in cases where detention is required.[52]

Highly publicized cases illustrate a systemic disregard for the rights to necessary medical care in detention, humane conditions of detention, and treatment respecting basic human dignity.[53] Between 2003 and April 2009, ICE reported over 90 deaths of non-citizens in their custody.[54] Shocking reports of the United States' failure to provide care to ill or injured persons in its custody abound.[55] Although the United States has adopted detention standards, the standards are not enforceable and have significant deficiencies in monitoring and oversight, little transparency, and no consequences for non-compliance with standards.[56] Reports indicate that the United States failed to report deaths in a transparent way.[57] Between 2007 and 2009, at least 26 reports on the failures of the U.S. immigrant detention system have been released.[58]

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A woman seeking asylum from Ethiopia, being treated for depression and Post-Traumatic Stress Disorder resulting from torture, was detained for over one year in Minnesota's Ramsey County Adult Detention Center following her asylum hearing in front of an immigration judge. While detained, she never saw the outdoors and was co-mingled with the general convicted population because the facility with which ICE contracts lacks the facilities.

The Refugee Protection Act would take steps to bring the U.S. into compliance with our international obligations by ensuring that all immigrant detainees would be held in conditions meeting minimum standards, including access to legal service providers, group legal orientation presentations, translation services, recreational programs, access to law libraries, working telephones, religious services, prompt case notification requirements, and other basics.

Section 14 of the Refugee Protection Act would eliminate the one-year waiting period for refugees and asylum seekers granted asylum to become Lawful Permanent Residents.

Under current law, refugees and people granted asylum must wait one year before filing applications for adjustment of status to lawful permanent resident. This arbitrary waiting period, a hold-over from the system in place prior to the enactment of the Refugee Act of 1980, stands in the way of expeditious integration and acquisition of citizenship by refugees, contrary to article 34 of the Refugee Convention.[59]

The current law presents a tremendous burden to asylum seekers granted asylum. For example, The Advocates for Human Rights represents a woman and her teen-age son who were granted asylum following her torture because of suspected opposition political activity. She and her son are now in the process of filing applications for permanent resident status at a cost of $1,010 each. This family, struggling to rebuild their lives, recently moved out of a homeless shelter after the woman found part-time work cleaning hotel rooms.

This fix would have an enormous impact on asylum seekers and refugees in Minnesota. It would shave years of unnecessary waiting time off our clients' ability to become U.S. citizens. It would also avoid processing of thousands of superfluous immigration applications every year by the overburdened U.S. Citizenship and Immigration Services and allow scarce free immigration legal services resources to be dedicated to other cases.

Section 17 of the Refugee Protection Act would help protect refugee families from unnecessary separation.

Current law violates U.S. obligations to respect and promote the unity of the family in violation of articles 17 and 23 of the ICCPR. Because of the prolonged time people may spend in refugee camps or seeking asylum, their children may have children of their own. Under the immigration law, these "derivatives" of "derivatives" are not allowed to accompany their parents to the US.

Particularly devastating to Minnesota's refugee population, on October 22, 2008, the United States stopped accepting all applications for the Priority 3 (P-3) refugee resettlement program, which gives certain refugees access to resettlement in the U.S. based on a family relationship with an individual permanently residing in the United States.[60] The suspension of P-3 refugee family unification followed mandatory DNA testing of applicants for resettlement which, according to the U.S., resulted in high rates of fraudulently-claimed family relationships.[61] In

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many refugee populations, children were taken into families in the midst of the violent civil crisis. When the families were able to resettle to the US, however, they were not able to bring these informally adopted children here because they do not meet statutory definition of a "child." These informally adopted children, taken into families because of humanitarian necessity, account for some of the failure rates in the DNA testing program.

One statement, given to The Advocates during the Liberian Truth and Reconciliation Commission's work in Minnesota, shows the chaos refugee families face: "All my family started to flee to different places. One brother fled to neighboring Guinea...My brother who stayed in Bomi County saw people in my brother's house and told them to leave and they just shot him. I had nine siblings. One brother was a diplomat in Sierra Leone. Another brother lived in New York. Another brother fled to Guinea – I think he is still there. My oldest brother has not been heard from up to today. He just disappeared from the face of the earth. We believe he is most likely dead. One brother fled to Ghana. He is still there today. My sister came here too...I have two siblings still in Liberia."

The Refugee Protection Act would address major problems identified in our extensive work with the Liberian community in particular and with other long-term refugee communities prevalent in Minnesota, including Hmong, Ethiopian, and Somali refugees.

IV. Conclusion

The Advocates for Human Rights thanks the Committee for the opportunity to provide this statement to the record. The United States, through the refugee and asylum system, provides an important safe haven to those fleeing persecution and torture from around the world. The Refugee Protection Act will strengthen that commitment.

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[1] International Covenant on Civil and Political Rights (ICCPR), art. 13, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976). *See also* UNHRC, *Report of the Special Rapporteur on the Human Rights of Migrants*, ¶ 12, U.N. Doc. A/HRC/7/12/Add.2, (Mar. 5, 2008) (*prepared by* Jorge Bustamante, Mission to the United States of America) (noting that the Human Rights Committee has interpreted the phrase "lawfully in the territory" to include non-citizens who wish to challenge the validity of the deportation order against them. The Committee has clarified: ". . . if the legality of an alien's entry or stay is in dispute, any decision on this point leading to his expulsion or deportation ought to be taken in accordance with article 13." and further: "An alien must be given full facilities for pursuing his remedy against expulsion so that this right will in all the circumstances of his case be an effective one").

[2] *Report of the Special Rapporteur on the Human Rights of Migrants*, *supra* note 1, ¶ 10.

[3] *Id.*

[4] ICERD, art. 1, ¶ 2 (providing for the possibility of differentiating between citizens and non-citizens); *but see* CERD, Gen. Rec. 11 (noting regarding the rights of non-citizens, art. 1, ¶ 2, must not detract from the rights and freedoms recognized and enunciated in other human rights instruments and "must be construed so as to avoid undermining the basic prohibition of discrimination"); Gen. Rec. 30, at ¶ 2 (noting that "Under the Convention, differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim").

[5] Universal Declaration of Human Rights (UDHR), art. 3, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948); ICCPR, *supra* note 3, art. 9.

[6] ICCPR, *supra* note 1, art. 6.

[7] UDHR, *supra* note 5, art. 9; ICCPR, *supra* note 1, art. 9(1) (stating no one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law); *id.* art. 9(2) (guaranteeing that anyone who is arrested shall be informed, at the time of

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arrest, of the reasons for his arrest and shall be promptly informed of any charges against him); *id.* art. 9(4) (requiring that anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful). *See also* UNHRC, Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention*, ¶ 67, U.N. Doc. A/HRC/10/21 (Feb. 16, 2009) (reminding states that the legality of detention must be open for challenge before a court and 2); UNHRC, Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention*, ¶ 52, U.N. Doc. A/HRC/7/4 (Jan. 10, 2008) (reminding states of the right of the detained to a prompt review).

[8] ICCPR, *supra* note 1, art. 7 (stating that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment); ICCPR art. 10(1) (requiring that all persons deprived of their liberty be treated with humanity and with respect for the inherent dignity of the human person); *id.* art. 10(2) (requiring that accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons).

[9] ICCPR, *supra* note 3, at art. 9(4).

[10] UNHCR, Exec. Comm., *Detention of Refugees and Asylum Seekers, Conclusion No. 44* (XXXVII) UN Doc. A/41/12/Add.1 (Oct. 13, 1986) (stating that "in view of the hardship which it involves, detention should normally be avoided" and sets out the limited accepted bases on which the detention of refugees or asylum-seekers may be justified, namely: to verify identity; to determine the elements of the claim; to deal with cases where refugees have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order. Those detained must have access to either an administrative or judicial review, an essential safeguard against arbitrary detention). *See also*, UNHCR, *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, Feb. 26, 1999.

[11] UDHR, *supra* note 5, art. 14; 1951 Convention relating to the Status of Refugees, art. 33(1) July 28, 1951, 189 U.N.T.S. 137 [*hereinafter* Refugee Convention] (stating that no State shall expel or return ("*refouler*") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion). *Id.* art. 31 (recognizing that refugees and asylum seekers may be forced by their circumstances to enter a country illegally in order to escape persecution, and providing that States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence).

[12] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3, *opened for signature* Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85 [*hereinafter* Convention Against Torture or CAT] (stating that for the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights).

[13] UDHR, *supra* note 5, art.16 (3); ICCPR, *supra* note 1, art. 23 (1), (3) (stating that the right of men and women to marry and found a family shall be recognized and that this right includes the right to live together); *id.* art. 17(1) (stating that "No one shall be subjected to arbitrary or unlawful interference with his privacy, family or correspondence . . . .").

[14] UNHRC, 7th Session, *Report of the Special Rapporteur on the Human Rights of Migrants*, ¶ 17, A/HRC/7/12/Add.2 (Mar. 5, 2008) (*prepared by* Jorge Bustamante).

[15] INA § 208(a)(2)(B).

[16] "We are not after the person from Iraq, or the Kurd, or those people. We are after the people gimmicking the system." 142 Cong. Rec. S4468 daily ed. (May 1, 1996) (statement of Sen. Simpson).

[17] "[T]he cases where there appears to be the greatest validity of the persecution claims—the ones involving individuals whose lives would be endangered by a forced return to their particular countries—are often the most reluctant to come forward. They are individuals who have been, in the most instances, severely persecuted [and] brutalized by their own governments. They have an inherent reluctance to come forward . . . before authority figures. Many of them are so traumatized by the kinds of persecution and torture that they have undergone, they are psychologically unprepared to do it" 142 Cong. Rec. S3282 daily ed. (April 15, 1996) (statement of Sen. Kennedy).

[18] INA § 208(a)(2)(D) (permitting grant of asylum filed more than one year after arrival only where the applicant can demonstrate (1) "changed circumstances which materially affect the applicant's eligibility for asylum," or (2) "extraordinary circumstances relating to the delay in filing the application").

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[19] *See* TAHIRIH JUST. CTR., PRECARIOUS PROTECTION: HOW UNSETTLED POLICY AND CURRENT LAWS HARM WOMEN AND GIRLS FLEEING PERSECUTION 33 (Oct. 2009).

[20] INA § 208(a)(3). Note that INA § 242(a)(2)(D), added to the INA by the REAL ID Act of 2005, provides courts with jurisdiction over all constitutional claims or questions of law notwithstanding other restrictions on review in the INA. *See Nakimbugwe v. Gonzales*, 475 F.3d 281 (5th Cir. 2007) (reversing BIA's timeliness finding because BIA misinterpreted the regulation regarding when a document is deemed filed); *Diallo v. Gonzales*, 447 F.3d 1274 (10th Cir. 2006) (reversing BIA's interpretation of INA § 208(a)(2)(B) for purposes of determining whether petitioner filed within one year); *Mabasa v. Gonzales*, 455 F.3d 740 (7th Cir. 2006) (finding jurisdiction to review allegation that BIA failed to provide meaningful review because BIA wrongly analyzed claim as extraordinary circumstances when it should have been analyzed as changed circumstances); *Wijono v. Gonzales*, 439 F.3d 868 (8th Cir. 2006) (recognizing that court can review due process violation, but finding claim not exhausted).

[21] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001) (adding a definition of "terrorist organization" consisting of three categories of armed groups, including Tier III organizations defined as any "group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in" "terrorist activity" as defined by the INA and defining "material support" to a "terrorist organization" as "terrorist activity" in its own right). *See* HUMAN RIGHTS FIRST, DENIAL AND DELAY: THE IMPACT OF THE IMMIGRATION LAW'S "TERRORISM BARS" ON ASYLUM SEEKERS AND REFUGEES IN THE UNITED STATES 21 (2009) [*hereinafter* DENIAL AND DELAY].

[22] Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Div. B, Pub. L. No. 109-13 (2005) (REAL ID Act) (expanding terrorism-related grounds of inadmissibility and deportation) According to Human Rights First, because of the interplay within the INA between the grounds of inadmissibility and deportation, "with the passage of the REAL ID Act, anyone described in *any* of the new long list of inadmissibility grounds at section 212(a)(3)(B) is now barred from all forms of refugee protection). *See also* DENIAL AND DELAY, *supra* note 21, at 22.

[23] The Human Rights Committee in its Concluding Observations noted at ¶ 17 that the Committee is concerned the USA PATRIOT Act of 2001 and the REAL ID Act of 2005 may bar from asylum and withholding of removal any person who has provided "material support" to a "terrorist organization", whether voluntarily or under duress. The Committee noted regret at having received no response on this matter from the State party. The Committee observed that the State party should ensure that the "material support to terrorist organizations" bar is not applied to those who acted under duress. UNHRC, *Concluding Observations of the Human Rights Committee: United States of America*, U.N. Doc. CCPR/C/USA/CO/3/Rev. 1 (Dec. 18, 2006).

[24] The following cases of The Advocates for Human Rights illustrate the "material support" problem: A Nepalese woman sought asylum in the US because Maoist insurgents had kidnapped her son. We had to advise her that she would be considered a "terrorist" under the material support guidelines because she paid the ransom for her son's release. A Zimbabwean man was granted asylum in August 2008 on account of imputed political opinion, because the Zimbabwean government suspected him of supporting the Movement for Democratic Change. He petitioned for his wife and children to join him in the US in September 2008. In June 2009, The Advocates for Human Rights received notice that the cases are on "hold" under INA section 212(a)(3) – security related bars. An Oromo man was granted asylum by the immigration judge on account of the persecution and torture he suffered at the hands of the Ethiopian government. He applied for adjustment of status, but his application was placed on hold because of his affiliation with the Oromo Liberation Front. In the fall of 2009, The Advocates for Human Rights was contacted by a therapist practicing in St. Paul who was worried that her Hmong clients, who were receiving that their applications for permanent residence or family reunification were "on hold" for material support of terrorism, could commit suicide

[25] DENIAL AND DELAY, *supra* note 21.

[26] Terrorist activity includes "any activity which is unlawful under the laws of the place where it is committed" and which involves any of a range of acts including "the use of any ... explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain), with the intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property." INA § 212(a)(3)(B)(iii)(V).

[27] Tier III terrorist organizations include any "group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in" "terrorist activity" as defined by the INA.

[28] *See generally* DENIAL AND DELAY, *supra* note 21.

[29] *See* 72 Fed. Reg. 9958 (Mar. 6, 2007) Notice of Determination.

[30] *Id.*

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[31] INA § 292. See also, ABA, Reforming the Immigration System, *supra* note 30, at 40 (noting that while courts may apply a case-by-case approach to determining whether the assistance of counsel would be necessary to provide fundamental fairness, under the United States Constitution's Fifth Amendment due process guarantee, appointment of counsel has been denied in every published case).
[32] REFORMING THE IMMIGRATION SYSTEM, *supra* note 31, at 39.
[33] *Id.*
[34] *Id.*
[35] Article 9, paragraph 1 of the ICCPR guarantees that "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." According to the Human Rights Committee, any period of detention must be open to periodic review. Even though an initial period of detention may not be arbitrary (e.g. if it was necessary to carry out identity, security or health checks), subsequent periods may breach article 9(1) of the ICCPR, that is, prolonged detention may be arbitrary. *See, e.g.*, *Spakmo v Norway*, HRC Case No. 631/1995, para. 6.3; HRC Concluding Observations on Japan (1998) CCPR/C/79/Add.102, para. 19 and Switzerland (1996) CCPR/C/79/Add.70.
[36] Article 9, paragraph 4 of the ICCPR provides that "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." Again, the HRC has held that an asylum seeker must have a right to challenge his or her detention in a court. Anything less than a court review is not satisfactory. *See, e.g.*, *Torres v Finland*, HRC Case No. 291/1988; *Vuolanne v Finland*, HRC Case No. 265/1987.
[37] INA § 235(b)(1)(B)(iii)(IV).
[38] *See* HUMAN RIGHTS FIRST, RENEWING U.S. COMMITMENT TO REFUGEE PROTECTION: RECOMMENDATIONS FOR REFORM ON THE 30TH ANNIVERSARY OF THE REFUGEE ACT (Mar. 2010) at 10 (noting that while Immigration Judges can review ICE's custody decisions for other immigrant detainees, they are precluded under regulatory language from reviewing the detention of "arriving aliens," a group that includes asylum seekers who arrive at airports and other U.S. entry points under regulations located primarily at 8 C.F.R. § 1003.19 and § 212.5, as well as § 208.30 and § 235.3). *See also* U.S. Comm'n on Int'l Religious Freedom, ICE Parole Guideline is an Important First Step to Fix Flawed Treatment of Asylum Seekers in the United States (Dec. 23, 2009) (noting low rates of release on parole and citing that New Orleans released only 0.5 percent of asylum seekers, New Jersey less than four percent, and New York eight percent following a finding of credible fear), *available at* http://www.uscirf.gov/index.php?option=com_content&task=view&id=2891&Itemid=126.
[39] U.S. Dept. of Homeland Security, Immigr. and Customs Enforcement, News Release: ICE issues new procedures for asylum seekers as part of ongoing detention reform initiatives (Dec. 16, 2009), available at http://www.ice.gov/pi/nr/0912/091216washington.htm.
[40] DR. DORA SHRIRO, U.S. DEPT. OF HOMELAND SECURITY, IMMIGR. AND CUSTOMS ENFORCEMENT, IMMIGRATION DETENTION OVERVIEW AND RECOMMENDATIONS (Oct. 6, 2009) at 2.
[41] *See* NAT'L IMMIGR. L. CTR., ACLU OF S. CAL., AND HOLLAND & KNIGHT, A BROKEN SYSTEM: CONFIDENTIAL REPORTS REVEAL FAILURES IN U.S. IMMIGRANT DETENTION CENTERS 4 (2009) [*hereinafter* A BROKEN SYSTEM].
[42] *See e.g.*, DETENTION WATCH NETWORK, ABOUT THE U.S. DETENTION AND DEPORTATION SYSTEM, *available at* www.detentionwatchnetwork.org/aboutdetention.
[43] SHRIRO, *supra* note 40, at 2.
[44] ICCPR, *supra* note 1, art. 10(1) (guaranteeing that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person); *id.* art. 10(2)(a) (providing that accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons).
[45] *See* Human Rights Advocates, Submission to the Human Rights Council, 11th Session, Agenda Item 3: Rights of Migrants.
[46] County jails holding immigrant detainees in Minnesota have "video visits" with family members, where detainees see and speak with their family members via closed circuit television.
[47] *See* A BROKEN SYSTEM, *supra* note 41, at 14-15.
[48] *See, e.g.*, KATHERINE FENNELLY AND KATHLEEN MOCCIO, U. OF MINN. HUBERT H. HUMPHREY INST. OF PUB. AFFAIRS, ATTORNEYS' PERSPECTIVES ON THE RIGHTS OF DETAINED IMMIGRANTS IN MINNESOTA (Nov. 2009).
[49] County jails, designed for short periods of detention, do not necessarily have outdoor recreation facilities. The Ramsey County Law Enforcement Center in St. Paul, Minnesota, has an average daily immigrant detainee population over 100. The facility has no outdoor recreation access. *See also* A BROKEN SYSTEM, *supra* note 41, at 21.

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[50] See Dana Priest & Amy Goldstein, *Caught Without Care*, THE WASH. POST, May 13, 2008 (reporting that suicide is the most common cause of death among detained immigrants with 15 of 83 deaths since 2003 the result of suicide and stating, "No one in the Division of Immigration Health Services (DIHS), the agency responsible for detainee medical care, has a firm grip on the number of mentally ill among the 33,000 detainees held on any given day, records show. But in confidential memos, officials estimate that about 15 percent -- about 4,500 -- are mentally ill, a number that is much higher than the public ICE estimate. The numbers are rising fast, memos reveal, as state mental institutions and prisons transfer more people into immigration detention"). *See also* PHYSICIANS FOR HUMAN RIGHTS, BELLEVUE/NYU CENTER FOR SURVIVORS OF TORTURE, FROM PERSECUTION TO PRISON: THE HEALTH CONSEQUENCES OF DETENTION FOR ASYLUM SEEKERS (2003), *available at* http://physiciansforhumanrights.org/library/documents/reports/report-perstoprison-2003.pdf.

[51] A client of The Advocates for Human Rights seeking asylum from Ethiopia and being treated for depression and Post-Traumatic Stress Disorder, was detained for over one year in the Ramsey County Adult Detention Center in St. Paul, Minnesota, following her asylum hearing in front of an immigration judge. While detained, she never saw the outdoors and was co-mingled with the general convicted population because the facility with which ICE contracts lacks the facilities.

[52] U.S. Dept. of Homeland Security, Immigr. and Customs Enforcement, Press Release: ICE Announces Major Reforms to Immigration Detention System (Aug. 6, 2009), *available at* http://www.ice.gov/pi/nr/0908/090806washington.htm; U.S. Dept. of Homeland Security, Immigr. and Customs Enforcement, Fact Sheet: ICE DETENTION REFORM: PRINCIPLES AND NEXT STEPS: Sec. Napolitano Announces New Immigration Detention Reform Initiatives (Oct. 6, 2009), *available at* http://www.dhs.gov/xlibrary/assets/press_ice_detention_reform_fact_sheet.pdf.

[53] The New York Times alone contained at least 25 reports of problems with conditions in detention, including deaths in detention, between 2005 and March 2010.

[54] Immigration and Customs Enforcement, List of Detainee Deaths Since October 2003, *available at* http://graphics8.nytimes.com/packages/pdf/nyregion/ICE_FOIA2.pdf.

[55] Nina Bernstein, *Hong Kong Emigrant's Death Attracts Scrutiny of U.S. Detention System*, N.Y. TIMES, Aug. 13, 2008 (reporting that "[i]n April, [Hiu Lui] Ng began complaining of excruciating back pain. By mid-July, he could no longer walk or stand. And last Wednesday, two days after his 34th birthday, he died in the custody of Immigration and Customs Enforcement in a Rhode Island hospital, his spine fractured and his body riddled with cancer that had gone undiagnosed and untreated for months.").

[56] *See* A BROKEN SYSTEM, *supra* note 41, at 4-5.

[57] Nina Bernstein, *Officials Hid Truth of Immigrant Deaths in Jail*, N.Y. TIMES, Jan. 9, 2010, *available at* http://www.nytimes.com/2010/01/10/us/10detain.html.

[58] *See* NAT'L IMMIGR. FORUM, SUMMARIES OF RECENT REPORTS ON IMMIGRATION DETENTION 2007-2009 (Feb. 2010), *available at* http://www.immigrationforum.org/images/uploads/DetentionReportsSummaries2007-2009.pdf

[59] Refugee Convention, art. 34, *supra* note 11.

[60] *See* U.S. DEPT. OF STATE, BUREAU OF POPULATION, REFUGEES, AND MIGRATION, FACT SHEET: FRAUD IN THE REFUGEE FAMILY REUNIFICATION (PRIORITY 3) PROGRAM, Feb. 3, 2009, *available at* http://www.state.gov/g/prm/rls/115891.htm.

[61] *Id.*

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The American Civil Liberties Union

Written Statement
For a Hearing on

"The Refugee Protection Act of 2010"

Submitted to the Senate Judiciary Committee

Wednesday, May 19, 2010

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Introduction

The American Civil Liberties Union (ACLU) is a nonpartisan public interest organization dedicated to upholding our constitutional and other legal protections. The Immigrants' Rights Project (IRP) of the ACLU engages in a nationwide program of litigation, advocacy, and public education to enforce and protect the constitutional and civil rights of immigrants. On behalf of the ACLU's hundreds of thousands of members, activists, and 53 affiliates nationwide, we would like to thank Chairman Leahy, Ranking Member Sessions, and the Judiciary Committee for the opportunity to submit a statement for the record for this hearing on "The Refugee Protection Act of 2010."

In honoring the thirtieth anniversary of the Refugee Act of 1980, the Refugee Protection Act (RPA) would help the United States fulfill its long-standing commitment to fair adjudication of refugee and asylum claims and humane treatment of noncitizens. Currently, the Immigration and Nationality Act (INA) falls short of realizing these ideals in several key respects. The RPA would provide increased due process to refugee and asylum claimants, reduce erroneous denials of relief, and improve the quality of representation of noncitizens in the nation's immigration courts. It would also enact urgently needed reforms to the immigration detention system. The ACLU strongly supports the RPA's changes.

The RPA ends unintended bars to protection for victims of persecution who were coerced by terrorists

Current law and government policy block refugees and asylum applicants from relief, without regard to their past persecution, if the government applies its broad definition of "material support" of terrorism. This is true even if the applicant's "material support" was minimal and provided under extreme duress, such as coercion at gunpoint. The scope of the "material support" bar to relief sweeps in applicants who oppose terrorism and who were victims of terrorists themselves. While rigid interpretation of "material support" started under the prior presidential administration, it has continued in the last two years despite growing recognition of the problem and an accumulating backlog of cases. There has been a collective, interagency failure in the executive branch to address the matter and the RPA is necessary to fill a gaping breach in the United States' fair and individualized adjudication of refugee and asylum claims.

By implementing an understanding of "material support" that strains both the concept of culpability and common sense, the Department of Homeland Security (DHS) has denied refugee and asylum applicants fair and individualized hearings in matters of life-or-death importance. For example, Baskaran Balasundaram, a 27-year-old Sri Lankan farmer, was granted asylum by an immigration judge based on persecution during the Sri Lankan civil war by both Tamil separatists, known as Tigers, and government forces. He was captured at gunpoint by the Tigers and they made it clear that if he did not follow orders, he would be killed. The Tigers showed their captives the body of a person who had refused their instructions as an example of the consequences that ensue. After escaping the Tigers, Balasundaram was detained by government forces for the first of several brutal interrogations. Army personnel beat him, hung him upside

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down, hit his back with barbed wire and put a bag doused with gasoline on his face until he could no longer breathe.

The immigration judge ruled that Balasundaram never "provided funds, transportation, a safe house, or anything else constituting 'material support' to the [Tigers]," but DHS appealed, arguing that he provided material support to the Tigers while in their captivity by following orders to prepare food for other detainees. He has been in immigration detention for 21 months. Asked what he would like to convey to the Judiciary Committee, Balasundaram said from his detention facility: "I would tell them, I won asylum from the judge. Why am I still here? I am no criminal. I told the truth. Why punish me for two years in jail? Some people don't tell the truth. I could have said only what the Sri Lankan government did to me. Then maybe I would be released. I told them the truth, what the Sri Lankan government did and what the Tigers did. I am being punished for this. I'm happy to be alive. But besides that, I'm very sad and scared to be in this place. I haven't spoken to my family in two years. This place is really bad. I am afraid I will never get out."

A second pending case further illustrates the problem: 27-year-old Somali applicant Abdala Warsame Abdille, despite being otherwise fully eligible for asylum, was detained for 20 months and denied relief despite the persecution he suffered. Abdille was advised by the immigration judge to apply for a waiver from DHS, a cumbersome and lengthy process during which detention continues and family reunification is postponed. DHS continues to oppose asylum because, the government argues, Abdille provided "material support" to terrorists when a militia kidnapped him, killed his cousin in front of him, and forced him to stand in a road holding a gun on threat of death until he was able to escape. Abdille sends this message to the Committee: "I suffered a lot from Al-Shabaab, who kidnapped me, tortured me, killed my cousin right in front of me, and killed my people. I was the victim of this group, I have no sympathy for them, and I never want to see them again. That's why I came to the U.S., so that I would escape them and would be able to live peacefully. I had nothing to do with them except that they were attacking me. I appeal to the Senate not to associate me with them."

The RPA would make clear that the INA's terrorist bar to refugee or asylee status was never intended to apply to cases like Balasundaram and Abdille, which wrongly transfer persecutors' culpability to their victims. Individuals who encounter terrorists in this fashion are a particularly vulnerable group for reprisals if returned to their countries of origin; the stakes and danger could not be higher. The RPA would release from limbo hundreds of applicants who are now stuck in an inefficient waiver review process that leads to prolonged isolation from American society and to long-term detention of applicants who have undisputedly suffered persecution. The RPA would also repeal the INA's un-American use of guilt-by-association to make spouses and children responsible for terrorist acts of their spouse or parent.

Aside from giving the same treatment to acts performed under duress as already exists in criminal law, the RPA remedies a catch-all provision in the INA that, in ad hoc fashion, adds countless loosely associated groups to the standing list of terrorist organizations designated by the U.S. government. Barring an applicant's eligibility for asylum based on "material support" provided to any group of two or more people "whether organized or not" that has used armed force is contrary to the principle that each refugee and asylum applicant is entitled to a fair and

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individualized hearing that takes account of all his or her circumstances. The government will retain complete authority to deny asylum based on national security or terrorist grounds, but this discretion will be implemented on a case-by-case basis by adjudicators when designated terrorist groups are not involved. Immigration judges will no longer be misguided by an unrealistic definition of informal terrorist groups that is impossible to apply consistently.

The RPA limits costly and inhumane detention of asylum seekers and establishes minimum detention standards

Instead of refuge, many seeking America's protection are greeted with prolonged detention in substandard conditions despite posing no risk of flight or danger to the community. The United Nations High Commissioner for Refugees has established that detention of asylum seekers should take place only in exceptional circumstances and urges states to employ alternatives to detention.[1] The RPA implements a DHS policy, announced in December 2009, to release asylum-seekers who have established a credible fear of persecution. It would also provide for alternatives to detention that ensure the presence of asylum applicants in immigration court while maximizing their supervised freedom to be with family members, receive medical treatment, and consult with legal representatives. Alternatives to detention are far less costly than incarceration, with alternatives costing $14 per person per day as compared to more than $100.[2]

According to medical experts, detention exacerbates the symptoms of trauma that travel with asylum-seekers. A leading study of 70 asylum seekers in immigration detention found high levels of psychological distress, which worsened during the course of detention.[3] Baskaran Balasundaram, whose case is discussed above, has a legal permanent resident sponsor in New York and no allegations supporting his continued detention. Yet he has been incarcerated for 21 months at enormous personal cost, and at great taxpayer expense, without any prospect of government-approved release. More than 300,000 detainees are confined annually in the immigration detention system.[4] As stated in an Immigration and Customs Enforcement report last year, when "[a]pproximately 1,400 non-criminal asylum seekers [were] detained daily," they "are dispersed to a number of locations, many of them an appreciable distance from the services and resources that they need."[5]

Detention facilities used by DHS have not withstood scrutiny for compliance with minimum conditions of care, including medical treatment. Prodded by an ACLU Freedom of Information Act lawsuit, the government revealed that more than 100 detainees have died in ICE

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[1] *See UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers.* (Feb. 1999), available at http://www.unhcr.org/3bd036a74.pdf

[2] Nina Bernstein, "Napolitano Outlines Ideas for Revamping Immigration Detention." New York Times (Oct. 6, 2009).

[3] *See* Physicians for Human Rights and Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers* (June 2003), available at http://physiciansforhumanrights.org/library/documents/reports/report-perstoprison-2003.pdf

[4] Dr. Dora Schriro, *Immigration Detention Overview and Recommendations.* (Oct. 6, 2009), 6, available at http://www.ice.gov/doclib/091005_ice_detention_report-final.pdf

[5] Id. at 27.

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custody since October 2003.[6] The RPA would establish binding standards to prevent recurrence of recent years' extensive rights violations in immigration detention facilities. One detainee, in whose case the government has acknowledged liability for medical negligence, testified before Congress prior to his premature death in 2008 at age 36 from the cancer that went untreated while he was in immigration detention. He advocated for legislation to repair the systemic problems that regularly lead to substandard medical care in immigration detention facilities, where more than a third of detainees have chronic medical conditions[7]: "Who knows how many tragic endings can be avoided if ICE will only remember that, regardless of why a person is in detention . . . they are still human and deserve basic, humane medical care."[8]

The RPA would require regulations to establish binding standards for immigration detention facilities. It would limit the use of solitary confinement, shackling, and strip searches, and codify basic norms regarding access to legal representation – which is vital because all but 16% of detainees lack legal representation[9] – recreation, translation, and religious services, as well as notice of transfers. These standards are all the more important because detention facilities to which detainees are frequently transferred are in remote areas that prevent detainees' communication with family and legal counsel. Pro bono counsel and legal services are much scarcer in these isolated locations.[10] The RPA would also require DHS to file a charging document in the immigration court closest to a non-citizen's apprehension point. Currently immigration enforcement practice fails to follow this simple procedure and thereby transfers detainees to locations far from their homes, families, and attorneys.[11]

By permitting the appointment of counsel in appropriate circumstances, the RPA would reinforce due process in the adjudication of immigration cases and improve the efficiency of adjudication

The RPA would authorize the Attorney General to appoint counsel for a noncitizen in removal proceedings where fair resolution or effective adjudication of the noncitizen's case would be assisted. The American Bar Association issued a report this year concluding that in immigration courts "[t]he lack of adequate representation diminishes the prospects of fair adjudication for the noncitizen, delays and raises the costs of proceedings, calls into question the fairness of a convoluted and complicated process, and exposes noncitizens to the risk of abuse and exploitation by 'immigration consultants' and 'notarios.'"[12] Moreover, asylum seekers who

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[6] Nina Bernstein, "Officials Hid Truth of Immigrant Deaths in Jail." New York Times (Jan. 10, 2010).
[7] U.S. Immigration and Customs Enforcement, "DRO: Detainee Health Care." (May 7, 2008), available at http://www.ice.gov/pi/news/factsheets/detaineehealthcare.htm
[8] Francisco Castañeda, Testimony to the House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law (Oct. 4, 2007), available at http://judiciary.house.gov/hearings/pdf/Castaneda071004.pdf
[9] American Bar Association Commission on Immigration, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases.* (2010), 5-8, available at http://new.abanet.org/immigration/pages/default.aspx
[10] Human Rights First, *U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison.* (2009), 9-10, available at http://www.humanrightsfirst.org/pdf/090429-RP-hrf-asylum-detention-sum-doc.pdf
[11] Human Rights Watch, *Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States.* (Dec. 2009), 17, available at http://www.hrw.org/en/reports/2009/12/02/locked-far-away
[12] *Reforming the Immigration System, supra*, at 5-8.

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have legal representation are three times as likely to be granted asylum.[13] In expedited removal cases the disparity is even more stark, as only 2% of unrepresented claimants were granted relief as opposed to 25% of represented claimants.[14] Each asylum case that is fairly and accurately processed from the start obviates the need for and costs of appeals, helping a crushingly overburdened immigration court system which completes close to 300,000 cases per year with only 230 judges.[15]

The ABA report emphasizes that increasing legal representation of noncitizens "would ameliorate the legal errors associated with pro se litigants. Increased representation . . . would also lessen the burden on immigration courts and facilitate smoother processing of claims. . . . [P]ro se litigants can cause delays in the adjudication of their cases and, as a result, impose a substantial financial cost on the government. . . . [E]nhancing access to quality representation promises greater institutional legitimacy, smoother proceedings for courts, reduced costs to government associated with pro se litigants, and more just outcomes for noncitizens."[16] Fair process is both due to noncitizens and more efficient for the system as a whole. The RPA's provision for appointment of counsel in appropriate cases would lead to benefits for all stakeholders in the immigration courts.

Conclusion

The ACLU applauds the Senate Judiciary Committee's discussion of the Refugee Protection Act and urges prompt action to pass this legislation. The RPA would improve due process in refugee and asylum adjudication, by ensuring fair and individualized assessment of claims. It would also guard against civil rights violations and inhumane treatment for noncitizens in immigration detention facilities, which have been rife with substandard conditions. On the thirtieth anniversary of the Refugee Act, this successor legislation is a fine tribute to enduring American values.

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[13] *U.S. Detention of Asylum Seekers*, *supra*, at 8.
[14] *Reforming the Immigration System*, *supra*, at 5-9.
[15] Id. at 2-16.
[16] Id. at 5-11.

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Statement of
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American Jewish Committee

Submitted on behalf of the American Jewish Committee to
The Senate Judiciary Subcommittee
on Immigration, Refugees and Border Security

Hearing on
Renewing America's Commitment to the Refugee Convention:
The Refugee Protection Act of 2010

May 19, 2010

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American Jewish Committee Statement on
The Refugee Protection Act of 2010 1

The American Jewish Committee (AJC) strongly supports the Refugee Protection Act of 2010 (S.3113), introduced on March 15, 2010, by Senators Patrick Leahy (D-VT) and Carl Levin (D-MI). The legislation marks the 30th anniversary of the Refugee Act of 1980, which established procedures for the United States to meet its obligations to refugees and asylum seekers under the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol.

From its founding in 1906, AJC has been a strong voice in support of fair and generous treatment of immigrants, participating actively in many of the major immigration debates of our time and supporting policies that assure that the United States fulfill its role as a haven for refugees fleeing persecution. The long experience of the Jewish people as refugees from many lands and in many periods of our history has made us acutely aware of the need for those fleeing persecution or extreme hardship to find refuge and safety in the United States. AJC believes that enforcement and border policies must be consistent with humanitarian values and with the need to treat all individuals with respect, even as they allow the United States to implement its immigration laws and identify and prevent the entry of criminals, and of persons who wish to do us harm or otherwise pose a risk to our national security.

The Refugee Protection Act of 2010 seeks to ensure that refugees and asylum seekers with *bona fide* claims are protected by the United States. Specifically, the bill would eliminate the requirement that asylum applicants file a claim within one year of arrival and reform the expedited removal process. The bill also seeks to reform the immigration detention system to ensure that asylum seekers and others have access to counsel, medical care, religious practice, and family visitation. Additionally, the bill would establish a nation-wide, secure "alternatives to detention" program and codify the current Department of Homeland Security policy that asylum seekers be considered for release ("parole").

Moreover, and importantly, the Refugee Protection Act would amend current law to ensure that asylum seekers and refugees are not unfairly denied protection and admission to the United States under the current overly broad definitions of "terrorist organization" and "terrorist activity," as set forth in the Immigration and Nationality Act (INA). AJC strongly supports effective enforcement tools that bolster our national security by identifying and preventing entry of those that would do us harm. However, changes in the law following the events of September 11, 2001, resulted in innocent activity, or coerced actions, being labeled as material support to terrorism, with the consequence that critical humanitarian protections have been denied or delayed for thousands of legitimate refugees and asylum seekers who pose no danger to the United States and who have committed no acts of wrongdoing. S.3113 would address this situation, while leaving in place provisions of law that prevent the granting of refugee or asylee status to those who do pose a threat to the United States or are guilty of terrorist acts.

As a faith-based organization, we call attention to the moral dimensions of public policy and pursue policies that uphold the human dignity of each person, all of whom are made *b'tselem elohim*, in the image of G-d. We engage the immigration issue with the

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goal of fashioning an immigration system that facilitates humanitarian protections in the interest of serving the dignity and rights of every individual, even as it safeguards our nation from those who would do us harm. It is our prayer that the legislative process will produce a just refugee system of which our nation of immigrants can be proud.

AJC appreciates the opportunity to submit this statement and welcomes your questions and comments.

CENTER FOR GENDER & REFUGEE STUDIES

STATEMENT FOR THE HEARING RECORD ON
"RENEWING AMERICA'S COMMITMENT TO THE REFUGEE CONVENTION:
THE REFUGEE PROTECTION ACT OF 2010"

BEFORE THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY,
MAY 19, 2010[1]

Introduction

The Center for Gender & Refugee Studies (CGRS), a non-profit organization based at the University of California, Hastings College of the Law, is the nation's leading organization supporting women asylum-seekers fleeing gender-related harm, at both the practice and policy levels. Each year, CGRS advises hundreds of attorneys representing asylum seekers with gender-based claims and tracks developments and decisions in gender-based cases at the immigration courts, Board of Immigration Appeals (BIA), and federal courts. CGRS founder and director, Karen Musalo, has litigated several of the most significant gender asylum cases of the last 15 years, including *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996), and *Matter of R-A-*, 22 I&N Dec. 906 (BIA 1999) (en banc), *vacated* 22 I&N Dec. 906 (A.G. 2001), *remanded*, 23 I&N Dec. 694 (A.G. 2005), *remanded* 24 I&N Dec. 629 (A.G. 2008). CGRS attorneys have published numerous articles on asylum claims generally, and gender claims specifically. Through its scholarship, expert consultation, national advocacy, and impact litigation, CGRS has played a central role in the development of refugee law and policy on a wide range of issues.

Congress enacted the Refugee Act of 1980 (Public Law 96-212) with the intention of bringing the United States into compliance with the United Nations Protocol relating to the Status of Refugees (606 U.N.T.S. 267, entered into force October 4, 1967) (1967 Protocol), which the U.S. ratified in 1968. Both the 1967 Protocol and United States law define a refugee as a person with a well-founded fear of persecution for reasons of, or on account of race, religion, nationality, membership in a particular social group, or political opinion.

The United States has a long tradition of providing refuge to those fleeing persecution. In recent years, however, restrictive laws and policies, as well as negative court decisions, have denied protection to many deserving individuals. The Refugee Protection Act of 2010 (S.3113) addresses many of these barriers and renews the U.S.'s commitment to safeguard refugees. While CGRS supports the Act in its entirety and encourages the Committee to endorse it, this statement focuses on three specific

[1] Statement submitted May 26, 2010.

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provisions, which address the greatest impediments to protection in cases of women fleeing gender-related harm: elimination of the one-year filing deadline in asylum cases, clarification of the standard for claims based on membership in a particular social group, and clarification of the standard and types of evidence required to establish nexus (the causal link) to a statutorily protected ground.

1) Elimination of the One-Year Filing Deadline

Background

Enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), the one-year deadline bars from asylum any individual who cannot prove by "clear and convincing evidence" that she filed for asylum within one year of arrival in the United States. 8 U.S.C. §1158(a)(2)(B). Congress's objective in passing the one-year deadline – also referred to as the "one-year bar" – was to prevent fraud, but Congress was equally concerned that "legitimate claims of asylum [not be] returned to persecution for technical difficulties."[2] As a result, Congress included exceptions to the bar in cases of changed circumstances or extraordinary circumstances related to the delay in filing. 8 U.S.C. §1158(a)(2)(D).[3] Congressional proponents of the bar also provided assurance that the provision could be reconsidered if it was not fairly applied.[4] The United Nations High Commissioner for Refugees (UNHCR)[5] has cautioned that the use of filing deadlines to bar asylum claims from consideration could result in returning refugees to countries where they would be persecuted, which violates the U.S.'s obligations under international law.[6]

Despite Congressional intent, the one-year deadline regularly results in *bona fide* refugees being denied asylum. Adjudicators frequently construe the exceptions to the bar narrowly and will not excuse failure to file within a year, even in cases where an applicant demonstrates the type of extraordinary circumstances specifically mentioned in the regulations, such as suffering from mental or physical disability, including the effects of past persecution. 8 C.F.R. §208.4(a)(5). Furthermore, because judicial review of these decisions is limited by statute, there is no corrective for misguided or improper decisions at the administrative level.

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[2] *See* Statement of Senator Orin Hatch, 142 Cong. Rec. S11838, S11840 (daily ed. Sept. 30, 1996), *cited in* Leena Khandwala et al., *The One-Year Bar: Denying Protection to Bona Fide Refugees, Contrary to Congressional Intent and Violative of International Law,* Immigr. Briefings, Aug. 2005, at 5.

[3] Although Congress did not define "changed" or "extraordinary" circumstances, federal regulations provide a non-exhaustive list of circumstances that may qualify as changed or extraordinary. 8 C.F.R. §208.4(a)(4), (5).

[4] *Id.*

[5] The U.S. Supreme Court recognizes the UNHCR as a guiding authority on the interpretation and application of the 1967 Protocol. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 437-39 n.22 (1987).

[6] *See Refugees without an Asylum Country*, United Nations High Commissioner for Refugees, Executive Committee 30th Session, 16 October 1979, No. 15 (XXX), available at: http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae68c960. The 1967 Protocol incorporated the provisions of the 1951 Refugee Convention and under Article 33 of the Refugee Convention, the U.S. may not "*refoule*" (return) a person to a country where her life or freedom would be threatened on account of a protected ground. *See* 1951 Convention relating to the Status of Refugees, 189 U.N.T.S. 150, Article 33.

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Refugees with claims based on domestic violence, rape, female genital cutting, forced marriage, and other gender-based harms may fail to file within one year of arrival for a number of legitimate reasons, such as suffering from a psychological disability - like Post Traumatic Stress Disorder (PTSD) - caused by their past persecution. Women and girls who have endured or fear gender-based persecution may hesitate to file for asylum because they fear being stigmatized (for having been raped, for example) or shaming their families, or because seeking asylum could mean severing relationships with family, where family members were abusers, or would feel disgraced upon disclosure of the facts. In addition, women who have suffered or who fear such harms may be poorly advised by attorneys that they do not qualify for protection because "there is no asylum" for victims of domestic violence or other gender-based harms. While these circumstances are presumably covered by the regulations' non-exhaustive list of exceptional circumstances, the bar is often applied to deny asylum to women who delayed filing for these or similar reasons.

L.R.'s Case – an Example of the One-Year Bar's Impact

Ms. L.R.,[7] a Mexican asylum seeker, was kidnapped, raped, and forced into a relationship with an abusive man. She suffered nearly two decades of horrific domestic violence, rapes, death threats, and harassment at his hands. After numerous unsuccessful attempts to seek protection from Mexican authorities, she fled to the U.S. She arrived on May 29, 2004 and filed for asylum on December 21, 2005, a year and a half later. Ms. L.R. explained to the immigration judge that she was unable to file earlier because she suffered from depression, stress, and nightmares, and was unable to think about her painful past.

She filed affidavits from two mental health experts, a clinical psychologist and a licensed social worker, both of whom diagnosed her with PTSD stemming from the extreme violence she experienced in Mexico, and one of whom characterized the PTSD as "severe and chronic." The experts determined that Ms. L.R. suffered anxiety, flashbacks, nightmares, sleeplessness, memory impairment, and difficulty concentrating. They found that she suffered intense psychological distress whenever exposed to cues that reminded her of the trauma, and that as a result, she actively avoided anything that recalled the abuse she had endured. The experts also determined that Ms. L.R. had a "foreshortened" sense of future that prevented her from thinking beyond surviving in the present – one day at a time - and from planning for the future. On the basis of these facts, they concluded that Ms. L.R.'s PTSD affected her ability to file for asylum within one year of arrival.

Ms. L.R.'s credibility was never questioned, and the immigration judge found that she had suffered "severe physical and sexual abuse." He accepted the expert diagnosis that

[7] The "L.R." case has been widely reported in the media because of the brief filed by the Department of Homeland Security in which it set forth its position that women who have been victims of domestic violence may qualify for asylum based on membership in a particular social group. *See e.g.* Julia Preston, "New Policy Permits Asylum for Battered Women," *The New York Times*, July 16, 2009.

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Ms. L.R. suffered from PTSD, and noted that one symptom associated with PTSD is avoidance of situations that trigger traumatic memories – such as the asylum process. Nonetheless, the judge concluded that her ability to work and care for her children undermined her argument that PTSD delayed her from timely filing, and he consequently refused to excuse her from the one-year deadline, thus barring her from asylum. The case is now back before the immigration court on remand from the BIA.

CGRS has been informed of numerous examples, similar to that in Ms. L.R.'s case, of immigration judges refusing to waive the bar in cases of PTSD where the applicant was able to function in daily life. The judges in these cases either substitute their own opinions for those of mental health experts and conclude that the women were not suffering from PTSD, or they disregard evidence that an important aspect of PTSD is the avoidance of "people, places, thoughts, or activities that bring back memories of the trauma,"[8] and rule that PTSD was not related to the delay in filing. These judges are subject to the "common" misperception that PTSD affects overall functioning, but this assumption "is not borne out by the medical evidence."[9] The immigration judge's decision in the L.R. case, as well as the decisions in the other cases described, demonstrate that despite the exceptions for changed or extraordinary circumstances, the application of the deadline frustrates Congressional intent to protect legitimate asylum seekers.

On remand, Ms. L.R. has an opportunity to re-litigate the one-year deadline. However, most women do not have a second chance. Some of them are simply denied protection and returned to the countries they fled. Ironically, some of them are granted withholding of removal or protection under the Convention Against Torture (CAT) - which require an applicant to show a 51% likelihood of persecution or torture, as opposed to the 10% chance of persecution required for asylum - clearly demonstrating these were not fraudulent claims, yet they are denied asylum simply because of their failure to timely file. Withholding of removal and CAT do not afford the benefits that asylum does, leaving such women in a state of legal limbo – with no path to lawful permanent residence or citizenship and no right to receive refugee benefits – and no right to bring a child or spouse to the U.S.

The Refugee Protection Act eliminates the one-year filing deadline, which would remove a significant obstacle to protection of women asylum seekers, and help ensure that the

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[8] *See* PTSD Patient Page 286 JAMA 630, 630 (2001); *see also* Diagnostic Manual, American Psychiatric Association, 309.81 Posttraumatic Stress Disorder (2000).

[9] Dr. Stuart Lustig, M.D., M.P.H., and an Assistant Professor of Psychiatry at the University of California, San Francisco who has published a number of articles on refugees and trauma, has trained Asylum Officers on issues related to diagnosing trauma in asylum seekers, and has been an invited speaker at the Annual Meeting of the National Association of Immigration Judges (NAIJ), submitted an affidavit in Ms. L.R.'s case specifically addressing the common misperception that the ability to work and care for one's children demonstrates that the individual should have been able to file for asylum. He explains that PTSD commonly causes people to avoid anything that reminds them of their trauma and may make them unable to participate in activities unrelated to immediate survival, such as seeking asylum, "while leaving intact their ability to function and survive on a day to day basis." Declaration of Dr. Stuart Lustig 3/29/2010, on file with CGRS.

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U.S. meets its obligation under international law not to return a refugee to a country where she would be persecuted on account of a protected ground.

2) Providing Much Needed Clarity and Consistency for Claims Based on Membership in Particular Social Group

Background

Women's claims for protection have often encountered a number of interpretive obstacles, one of them arising from the fact that "gender" is not one of the five enumerated grounds in the refugee definition. Since 1985, UNHCR has recommended that the "particular social group" ground could be the basis for claims where women are persecuted because of their gender.[10] In a landmark decision issued in 1985 and known as *Matter of Acosta*, the Board of Immigration Appeals (BIA) defined "particular social group" as a group of individuals who share a common characteristic that is immutable or so fundamental to identity or conscience that an individual should not be required to change, and recognized that sex is one such characteristic. (*Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985)).

Although *Acosta* was not a gender case, its social group ruling was to become the basis for subsequent positive developments in gender cases, such as the BIA's 1996 grant of asylum to Fauziya Kassindja, a Togolese woman who fled her country to escape female genital cutting (FGC). This seminal decision, known as *Matter of Kasinga*, recognized that women could qualify for refugee status based on violations of their fundamental rights (in this case FGC) and that gender could be a defining characteristic of a particular social group. (*Matter of Kasinga,* 21 I & N Dec. 357, (BIA 1996)).

However, the U.S. commitment to protecting women who flee serious human rights violations was brought into question by a 1999 BIA decision known as *Matter of R-A-*. (*Matter of R-A-*, 22 I&N Dec. 906 (BIA 1999) (en banc), *vacated* 22 I&N Dec. 906 (A.G. 2001), *remanded*, 23 I&N Dec. 694 (A.G. 2005), *remanded* 24 I&N Dec. 629 (A.G. 2008)). In that case, the BIA denied protection to Rody Alvarado, a Guatemalan asylum seeker who suffered extreme violence at the hands of her husband, in a situation in which neither the police nor the courts would extend her protection. Notwithstanding the precedent of *Acosta* and *Kasinga*, the BIA rejected Ms. Alvarado's social group, which was defined by her gender.

In response to sustained advocacy by women's rights, refugee rights, and immigrants' rights advocates, Attorney General Janet Reno intervened in the case. In 2000, the Department of Justice issued proposed regulations[11] to address the barriers that *Matter of R-A-* posed in domestic violence asylum claims based on membership in a particular social group. In 2001, A.G. Reno certified *Matter of R-A-* to herself, vacated the BIA's

[10] *See Refugee Women and International Protection*, United Nations High Commissioner for Refugees, Executive Committee Conclusion No. 39 (October 18, 1985).
[11] 65 Fed. Reg. No. 236, December 7, 2000.

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decision, and remanded the case to the BIA with an order to stay a decision until final regulations were issued.

In 2003, A.G. Ashcroft certified *Matter of R-A-* for review. Attorneys for the Department of Homeland Security (DHS) filed a brief to A.G. Ashcroft, setting forth the Department's official position that *Matter of Acosta*'s immutable or fundamental characteristics approach was the correct standard for evaluating social groups, and taking the position that under a fair application of the relevant law, Ms. Alvarado could demonstrate that she was a member of a particular social group defined in part by gender. A.G. Ashcroft ultimately returned the case to the BIA without issuing a decision, and ordered the BIA to continue staying the case for the issuance of final regulations.

The failure to decide R-A-, or to finalize regulations left great uncertainty regarding the viability of gender claims. Compounding this situation of legal limbo was the fact that beginning in 2006, the BIA imposed requirements making it more difficult to establish social group claims. It did this by explicitly departing from its earlier precedent in *Acosta*, and by ruling that a social group not only required immutable or fundamental characteristics, but a showing that the group has "social visibility" and particularity."[12]

***Matter of R-A-* Recent Developments**

In 2008, A.G. Mukasey certified *Matter of R-A-* for a third time. He lifted the stay and remanded the case because he believed that the BIA decisions requiring social visibility and particularity, in addition to immutable or fundamental characteristics, provided sufficient guidance for the BIA to rule absent final regulations.[13]

Matter of R-A- was ultimately remanded to the immigration court for additional evidence and argument. Soon after it was remanded, a brief submitted by DHS Headquarters in the case of an asylum seeker known as L.R. (discussed above) became public. Although the social group Ms. L.R. advanced before the immigration judge was similar to that in the 2004 DHS brief in *Matter of R-A-*, the local DHS attorney assigned to the case argued that the group did not meet the social visibility and particularity requirements. The immigration judge agreed. He ruled that the social group was not legally cognizable, and that in any event, Ms. L.R.'s partner did not abuse her because of her social group membership, and he denied the claim. While the case was on appeal to the BIA, President Obama took office and DHS Headquarters filed a brief setting forth the new position that Ms. L.R. and other victims of domestic violence may qualify for asylum based membership in a particular social group. Ms. L.R.'s case is now back before the immigration court.

The DHS brief in L.R. was instrumental to securing a grant asylum to Rody Alvarado and ending her fourteen year legal battle for protection.[14] However, the position taken by the

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[12] *See Matter of C-A-*, 23 I&N Dec. 951 (BIA 2006), *aff'd Castillo-Arias v. U.S. Att'y Gen.*, 446 F.3d 1190 (11th Cir. 2006).
[13] *Id.*; *see also* Matter *of S-E-G-*, 24 I&N Dec. 579 (BIA 2008).
[14] Ms. Alvarado was granted asylum by an immigration judge on December 10, 2009.

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local DHS attorney assigned to the L.R. case and the decision of the immigration judge demonstrate the problematic state of the law regarding social group and nexus, and the need for clear national guidance.

The Social Visibility and Particularity Requirements Pose Additional Challenges in Gender-Based Cases

BIA decisions on social visibility and particularity are inconsistent and difficult to follow. Some decisions treat visibility in the literal sense, insisting that individual members of the group must be identifiable as group members to complete strangers, while others require that the group be recognized or perceived as a group in society. In addition, BIA decisions often conflate social visibility and particularity with other elements of the refugee definition, such as whether the nexus (causal link) to a protected ground has been established, or whether an applicant has a well-founded fear of persecution.

Social visibility and particularity have served as an almost insurmountable barrier in cases of women seeking refuge from gender-based harm. Additional examples of women's cases denied under these requirements include:

- An immigration judge recently denied asylum to a Mongolian woman who suffered years of brutal domestic violence at the hands of her husband. The woman argued that she was persecuted based on membership in a social group that is identical to one of the groups advanced by DHS in the L.R. case. Nonetheless, the local DHS attorney argued that the group lacked social visibility. The immigration judge agreed and denied the case.

- An immigration judge denied protection to a Senegalese woman who fled an impending forced marriage to an abusive man many years her senior. The woman's religious and feminist beliefs clashed with the traditional religious beliefs and gender norms adhered to by her father and community. Her father mercilessly beat her whenever she expressed her beliefs in women's rights and her opposition to the marriage. The social group advanced in the case was very similar to the one approved by the BIA in *Matter of Kasinga*. Nonetheless, the immigration judge ruled that the group lacked social visibility because the woman failed to show "how Senegalese who do not know her personally will identify her" as a member of the group.

While some federal courts have adopted the social visibility and particularity requirements, the Seventh Circuit has rejected them as being illogical and contrary to BIA precedent. Writing for the court, Judge Posner criticized social visibility as simply making "no sense" because members of a group targeted for persecution "take pains to avoid being socially visible." He illustrated the absurdity of the requirement by pointing to social groups the BIA had previously approved whose members would not be individually identifiable, such as homosexuals who would "pass as heterosexual" to avoid

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persecution in a "homophobic society" and women who have not yet undergone female genital cutting, who "do not look different from anyone else."[15]

Furthermore, the BIA's own justificiation for the social visibility requirement – that it is consistent with UNHCR's guidelines on social group claims - is erroneous. While UNHCR's guidelines advise that groups perceived as groups by society may be social groups, this approach is an alternative to the immutable or fundamental characteristics test, not in addition to it,[16] and regardless, neither approach requires social visibility. The UNHCR has repeatedly clarified its position and has explicitly rejected the requirements of social visibility and particularity as inconsistent with the purpose and intent of the 1951 Refugee Convention and its 1967 Protocol,[17] but the BIA has continued to apply them.

The Refugee Protection Act addresses the problems created by social visibility and particularity, as well as the absence of binding guidance in claims based on membership in a particular social group. It does so by making statutory the BIA's definition of a "particular social group," which was articulated in *Matter of Acosta* and followed by the BIA for over twenty years, and was widely accepted by federal courts, the UNHCR, and foreign jurisdictions.

3) Providing Clear Guidance on how to Establish Nexus to an Enumerated Ground

Background

In 1991, the Supreme Court ruled that in order to establish nexus to one of the five statutory grounds for asylum, an applicant must present direct or circumstantial evidence of the persecutor's motive. (*INS v. Elias-Zacarias*, 502 U.S. 478, 482 (1991)). The BIA's decision in *Matter of Kasinga* looked to circumstantial evidence of social norms regarding FGC and gender roles to determine that Ms. Kassindja had a well-founded fear of FGC on account of her social group membership. However, the BIA's 1999 *Matter of R-A-* decision, in which it ruled that even if Ms. Alvarado was a member of a social group she was not harmed on account of such membership, failed to consider the societal context in which the abuse took place in determining nexus.

The DOJ in its Proposed Regulations of 2000 and the DHS in its 2004 brief to A.G. Ashcroft pointed out that decisions such as the BIA's in *Matter of R-A-* ignore the circumstantial evidence of patterns of violence against individuals similarly situated to

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[15] *See Gatimi v. Holder*, 578 F.3d 611, 615 (7th Cir. 2009); *see also Ramos v. Holder*, 589 F.3d 426 (7th Cir. 2009) (rejecting the particularity requirement).

[16] UNHCR Guidelines on International Protection, "*Membership in a particular social group," within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, U.N. Doc. HCR/GIP/02/02 (May 7, 2002), at paras 10-13.

[17] *See e.g. Brief of the United Nations High Commissioner for Refugees as Amicus Curiae in Support of the Petitioner, Valdiviezo-Galdamez v. Holder*, No. 08-4564 (A97-447-286), in the United States Court of Appeals for the Third Circuit, at 3-4, 8-10, *available at:* http://www.unhcr.org/refworld/category,LEGAL,UNHCR,AMICUS,,49ef25102,0.html.

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the applicant and the failure of the legal system to protect them. As the Proposed Regulations and the DHS briefs in both *Matter of R-A-* and L.R. recognize, an abuser may be motivated to target his victim because violence against women is pervasive and he knows he can abuse her with impunity.[18]

Courts have long understood the challenge asylum applicants face in demonstrating nexus because persecutors rarely articulate the reasons for their actions.[19] Despite this recognition, countless claims have been denied because adjudicators have rejected circumstantial evidence as insufficient to prove nexus. Nexus has been particularly problematic in women's cases - especially when the persecutor is a non-state actor - where judges are quick to dismiss gender-based harm as either a criminal or private act not motivated by a protected ground. CGRS has numerous examples of refugee claims based on rape, domestic violence, honor killing, forced marriage, and trafficking that were denied for failure to establish nexus to a protected ground, despite evidence presented of widespread discrimination and violence against women, as well as impunity for such violence.

Consistent with the Supreme Court's nexus analysis in *INS v. Elias-Zacarias*, the DOJ's Proposed Regulations of 2000, and the DHS briefs in *Matter of R-A-* and L.R., the Refugee Protection Act clarifies that either direct or circumstantial evidence – including evidence that the state or society tolerates persecution against individuals similarly situated to the applicant - fulfills the nexus requirement. This amendment would help protect women and girls who have endured or fear rape, domestic violence, or other gender-based harm by non-state actors who do not announce their motive.

Restore Asylum Eligibility for Cases in Which the Persecutor has Mixed Motives

Beginning in 1996, the BIA and federal courts recognized that asylum may be granted in cases where the persecutor has "mixed motives," as long as an enumerated ground is one of the reasons for persecution.[20] However, the REAL ID Act of 2005 raised the bar in mixed motive cases, requiring that a protected ground be "one central reason" for persecution. While the BIA has clarified that the mixed motive doctrine survived the REAL ID Act,[21] the interpretation and application of the "one central reason" language by the BIA and federal courts has virtually eliminated eligibility for asylum in mixed motive cases.[22] The "one central reason" language has been exceptionally problematic in gender cases, where, as discussed above, adjudicators are quick to dismiss gender-based persecution as a criminal act. The result has been that adjudicators regularly look to all

[18] UNICEF (and other leading authorities on violence against women) has long recognized that lack of legal protection is one of the causes of domestic violence and has urged states to end impunity for violence against women. *See e.g. Domestic violence against women and girls.* UNICEF, Innocenti Digest No. 6, June 2000 at 8.
[19] *See e.g. Garcia-Martinez v. Ashcroft*, 371 F.3d 1066, 1075 (9th Cir. 2004).
[20] *See e.g. Matter of S-P-*, 21 I&N Dec. 486, 494 (BIA 1996).
[21] *See In re J-B-N- & S-M-*, 24 I&N Dec. 208, 214 (BIA 2007).
[22] *See e.g., Parussimova v. Mukasey*, 555 F.3d 734, 740-41 (9th Cir. 2009) (holding that "one central reason" places a "more onerous burden" on an asylum applicant than the "at least in part" standard).

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the possible non-statutorily protected reasons for gender-based persecution to discount the statutory ground as not being "one central reason" for the persecution.

Examples of Women Denied Protection Because of Application of "One Central Reason" Language

- The immigration judge in the L.R. case acknowledged that Ms. L.R's abuser viewed her as property, but found that he beat her simply because he was a violent man, not because of her gender or status in the relationship. As a result, the judge ruled that Ms. L.R. failed to establish that her social group membership was a "central reason" for her persecution.

- An ethnic Russian woman who is a native and citizen of Kazakhstan, and who worked for an American company, was targeted by two Kazakhstani men while walking one day. The men harassed and insulted her, and told her she had no right to work for an American company. They kicked her, spat on her, called her a "Russian pig[]," and told her to get out of their country. Then they tore off her clothes and attempted to rape her. The woman sought asylum, arguing that she was persecuted on account of her Russian ethnicity. Her claim was denied by an immigration judge who ruled that she did not prove ethnicity was one central reason for her persecution. The BIA upheld the decision. On appeal before the Ninth Circuit, the court ruled that although the assailants were clearly aware of the woman's ethnicity and had hurled ethnic slurs at her during their attack, this evidence was insufficient to show that ethnicity was "a central motivating reason" for her attack.[23]

The Refugee Protection Act addresses the restrictive application of nexus demonstrated in the above examples, which denies protection to women like Ms. L.R., by clarifying that one of the five protected grounds must be a "factor" in the applicant's persecution or fear of persecution, rather than "one central reason" for it. It also reaffirms that an applicant who has suffered or fears persecution for both statutorily protected and non-protected reasons should qualify for asylum.

Conclusion

Despite the DHS brief in L.R. and the grant of asylum to Rody Alvarado, victims of gender-based persecution continue to face significant impediments to protection, such as the one-year bar, the problematic social visibility and particularity requirements, the restrictive application of a nexus analysis imposed by the "one central reason" requirement, and the lack of guidance regarding social group and nexus. The L.R. brief and decision in Ms. Alvarado's case are positive developments. However, they do not constitute legal precedent, but simply demonstrate DHS's recommended analysis. As a

[23] *Id.* at 742.

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result, there continue to be inconsistent decisions, with some judges granting asylum based on the framework set out in the L.R. brief, and others denying due to the lack of binding authority. Additionally, CGRS has been informed of a number of cases in which attorneys for DHS have either refused to acknowledge the existence of the April 2009 DHS brief in L.R, or have taken a position contrary to it. CGRS calls on the Senate Judiciary Committee to pass the Refugee Protection Act in order to ensure that the U.S. upholds its commitment to protect refugees like Ms. Alvarado and Ms. L.R.

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CHURCH WORLD SERVICE

May 19, 2010

Dear Members of the U.S. Senate and House of Representatives:

I am writing on behalf of Church World Service (CWS), a 64-year-old faith-based humanitarian organization, representing 36 Christian denominations and communions in the United States, to urge you to cosponsor and help enact S. 3113, The Refugee Protection Act, sponsored by Senator Leahy and Senator Levin. CWS is a partner in the U.S. Refugee Admissions Program, working with its 33 community-based affiliates and its member communions to welcome resettled refugees and help them adjust to their new lives in the United States.

Thirty years ago this past March, the United States Congress enacted into law The 1980 Refugee Act, landmark legislation that created the refugee resettlement program and thus instituted a way for the United States to protect some of the most vulnerable people in the world. This legislation embodied provisions that at the time were novel and created a program to meet the needs of refugees in the 1980s. Over the past thirty years, we as a country have grown in our understanding of the protection and assistance needs of refugees. It is now time to renew our commitment to refugees by enacting legislation that reforms the program to meet the needs of modern-day refugees and the communities that welcome them.

Given the importance of this task, Church World Service fully supports Senator Leahy's recently introduced Refugee Protection Act, which would significantly improve the treatment of asylum seekers and the refugee program in variety of ways. Specifically, the bill's call for expedited family reunification, entry of refugees as lawful permanent residents, annual updates of the reception and placement grant, reforms to the so called "material support bar", steps to even out the flow of admissions, and increasing the efficiency of the visa process would strengthen the refugee program and improve the lives of refugees and asylum seekers in the United States. We applaud Senator Leahy for introducing this legislation, and urge all members of the Senate to cosponsor it. We also urge members of the House to introduce a companion bill.

Thank you for your time and for considering how we can all act to improve the refugee program. We hope you will support and work to enact this very important piece of legislation.

Sincerely,

Erol Kekic
Director, Immigration and Refugee Program
Church World Service

Immigration and Refugee Program
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Senate Judiciary Committee Hearing on
"Renewing America's Commitment to the Refugee Convention:
The Refugee Protection Act of 2010"

Wednesday, May 19, 2010

Statement of U.S. Senator Russell D. Feingold

Thank you, Mr. Chairman, for proposing a bill that reinforces America's historic role as a place of sanctuary and protection for those fleeing persecution. I am proud to support the Refugee Protection Act of 2010, and I urge the Committee to support it.

This bill makes a number of much-needed and overdue changes to our refugee and asylum system. Under existing law, legitimate asylum applicants are unable to receive the protection of the U.S. if they fail to file their asylum application within one year of arrival. This sort of rigid, arbitrary deadline has resulted in thousands of meritorious asylum cases being denied. It has also forced immigration judges to spend countless hours assessing this threshold question, rather than focusing on the more essential question: Is this person fleeing political, religious, racial, or other persecution? It troubles me to think that we may have denied thousands of legitimate asylum seekers refuge in the U.S. merely because they did not speak English, did know how to apply for asylum, or were unable to find counsel to give them advice about how to stay in the U.S..

One young Eritrean woman was forced into military service in Eritrea, where she was tortured for her religious beliefs. She managed to escape and applied for asylum four months after she arrived in the United States, but her asylum claim was rejected because she did not have a passport that showed a date of entry. During her immigration trial, she submitted numerous affidavits and other evidence to show that she had been in the U.S. for less than a year, but the judge found that she had not definitively proven that she had filed her application on time. He told her that she fit the definition of a bona fide refugee, but he still issued an order of removal. She eventually managed to stay that order and was able to remain in the United States, but this story demonstrates the problem with existing law, which this bill will correct.

This bill also addresses a number of unintended consequences of the USA PATRIOT Act, which I have been working for years to address. Hmong refugees and asylees, many of whom are residents in Wisconsin, were unfairly characterized as providing "material support" for terrorism because the Hmong assisted the United States during the Vietnam war. The Hmong were finally granted a waiver in 2007, but there are many other groups and individuals that have been swept up in the overbroad definitions that currently exist in the Immigration and Nationality Act. This bill takes a step in the right direction by further narrowing the terrorism definitions to exclude coerced action (that is, action under duress) and by repealing a provision that made spouses and children inadmissible for the actions of their parent. These changes will ensure that refugees and asylum seekers are not unfairly denied protection from persecution, while also ensuring that those with real ties to terrorist organizations will continue to be denied entry to the U.S..

The Refugee Protection Act also significantly enhances detention conditions and provides for prompt and adequate medical treatment for detainees, which is long overdue. The number of

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immigrants detained in the U.S. every year is at an all time high, and over the last several years, we have heard several extremely appalling stories of deaths in immigration custody and failure to provide adequate medical treatment to individuals with obvious medical needs. More than 80 people have died in immigration detention over the last five years, nearly half of them under forty years old. This is unacceptable and is something we must change immediately.

I am also pleased that the Refugee Protection Act makes a number of changes to strengthen due process rights for asylum seekers and to improve access to counsel. I have long thought that we should be doing more to ensure that immigrants in detention have access to counsel, or at a minimum, some tools to be able to better represent themselves.

The changes proposed by the Refugee Protection Act strengthen our historic commitment to refugees and help ensure that the U.S. will always remain a safe haven for refugees and asylum seekers who have a credible fear of persecution in their home countries. I hope the Committee will act quickly to pass this landmark legislation.

Thank you.

Written Statement of Bill Frelick
Refugee Program Director, Human Rights Watch

United States Senate Committee on the Judiciary

"Renewing America's Commitment to the Refugee Convention: The Refugee Protection Act of 2010"

May 19, 2010

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"Renewing America's Commitment to the Refugee Convention: The Refugee Protection Act of 2010"
May 19, 2010
Bill Frelick

Mr. Chairman, we thank you for the opportunity to submit testimony for the hearing on "Renewing America's Commitment to the Refugee Convention: The Refugee Protection Act of 2010." We are grateful for your leadership on this issue and applaud you for introducing this important legislation. We are particularly pleased that this hearing is examining the extent to which US law fulfills the US commitment to implement the 1951 Refugee Convention. In our view, and as the following testimony will explain, current US law falls well short of US obligations as a party to the Refugee Protocol, through which the United States has committed itself to implementing the Refugee Convention.

Human Rights Watch endorses The Refugee Protection Act of 2010. The reforms contained within this important piece of legislation will bring the United States closer to upholding its human rights obligations towards asylum seekers, refugees, and other vulnerable non-citizens held in US immigration detention facilities.

Human Rights Watch is one of the world's leading independent organizations dedicated to defending and advancing human rights. Since 1997, we have investigated the treatment of vulnerable non-citizens held in immigration detention facilities throughout the United States, and have advocated for their rights, as well as for the rights of asylum seekers, refugees, and persons fearing return to torture. Our most recent critique of this area of US policy is "Costly and Unfair: Flaws in US Immigration Detention Policy," published in May 2010. This is part of our broader mandate to protect the human rights of all people worldwide by working to prevent discrimination, uphold political freedom, to protect people from inhumane conduct in wartime, and to bring offenders to justice. We investigate and expose human rights violations and hold abusers accountable. We challenge governments and those who hold power to end abusive practices and respect international human rights law.

The United States has a justifiably proud tradition of welcoming persons fleeing persecution and other vulnerable immigrants—a tradition that has been marred by some serious gaps and overly restrictive provisions in US law. This bill offers essential reforms aligned with that tradition, and with upholding standards of fair treatment for all.

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Without prejudice to the merits of other provisions of this important legislation, in this testimony, we would like to highlight several of the bill's provisions that address problems that have been of particular concern to Human Rights Watch.

Sec. 6: Effective Adjudication of Proceedings

In our view, the single greatest flaw in the US system with respect to refugee protection is the lack of a right to appointed counsel to indigent people who are faced with removal to their countries of origin in cases where they claim a fear of persecution or torture upon return. Academic studies have shown that only one in three affirmative asylum applicants has a legal representative and that asylum seekers referred through the affirmative process to immigration courts are six times more likely to be granted asylum if they have legal representation.[1] While the Refugee Protection Act of 2010 does not address this problem squarely, it does ameliorate this gap in protection by providing for the appointment of counsel in cases where the Attorney General determines that the fairness and accuracy of immigration and asylum hearings and results would be advanced by the appointment of counsel. While we would prefer a bill that would include a right of appointed counsel to all people faced with removal who are seeking asylum or other forms of protection, we are pleased that the Refugee Protection Act of 2010 advances this right considerably by providing appointed counsel for non-citizens who are at a particular disadvantage in presenting claims and asserting their rights, such as unaccompanied children and people with mental disabilities and mental illness. Human Rights Watch is currently researching the impact of mental disability and mental illness on the right to seek and enjoy asylum from persecution and shortcomings in the US system's ability to process these claims, and we anticipate being able to provide this Committee with our findings on this important matter later this year.

Sec. 3: Elimination of Arbitrary Time Limits on Asylum Applications

We particularly welcome the provision in the Refugee Protection Act of 2010 that would eliminate the one-year deadline on filing asylum applications. The bar to asylum for applicants who fail to lodge a claim within one year of arriving has resulted in asylum officers referring would-be asylum applicants directly to immigration court for removal proceedings without first considering the merits of their claims. The law makes exceptions to the filing deadline in cases of changed country conditions that would materially affect the asylum claim or extraordinary circumstances that prevented the timely filing of a claim. Such exceptions do not take into account the time it takes asylum seekers to gain sufficient understanding and confidence in the asylum system to come forward and to find free or low-cost legal representation.

From an international human rights perspective, the US one-year filing deadline is particularly problematic. Unlike nearly all other jurisdictions worldwide, which bar the return of **refugees** to places where their lives or freedom would be threatened, the nonrefoulement (or "withholding") provision of US immigration law (INA 241(b)(3)(A)) bars the removal of **"an alien"** to a country where his or her life or freedom would be threatened. The withholding standard in current US law is that

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the threat to life or freedom must be more likely than not. By contrast, Article 33 of the Refugee Convention specifically bars the return of "a refugee," which it defines as a person with a well-founded fear of being persecuted. US law applies the word and definition of "refugee" only to people who are granted the benefit of asylum or who are admitted to the United States as resettled refugees, but not to those protected under the withholding standard. This difference in language is a difference of life or death for refugees. It means that the United States permits refoulement, or returning refugees to persecution, who do not file paperwork before the one-year deadline and cannot meet the "more likely than not" withholding standard. The United States should not fail refugees, and its treaty obligations, for such arbitrary reasons. The reform in the Refugee Protection Act of 2010, while not going as far as we would like by bringing US law into conformity with the Refugee Convention, nevertheless would restore crucial protection to refugees who might otherwise face persecution simply for having missed a filing deadline.

Sec. 23: Protection for Aliens Interdicted at Sea

Related to the failure in US law to fully protect refugees from nonrefoulement, we welcome the provision in the Refugee Protection Act of 2010 that would create a uniform screening procedure for interdicted boat migrants, and, particularly that this provision uses the "well-founded fear" standard rather than "life or freedom would be threatened" standard for deciding who should not be returned. Current law permits the US Coast Guard to return refugees to persecution, in violation of Article 33 of the Refugee Convention. This provision would not only eliminate the current practice of nationality-based discrimination in the standards applied to Cubans versus Haitians and other nationalities, but would also prevent the extraterritorial refoulement of refugees who do not meet the standard that they more likely than not would face threats to their life or freedom if returned, despite having a well-founded fear of persecution upon return.

Sec. 14: Lawful Permanent Resident Status of Refugees and Asylum Seekers Granted Asylum

Human Rights Watch welcomes the provision in the Refugee Protection Act of 2010 that would allow refugees and asylees to become lawful permanent residents when they receive a grant of refugee or asylee status, rather than being required to wait for one year. Our December 2009 report, "Jailing Refugees: Arbitrary Detention of Refugees in the US Who Fail to Adjust to Permanent Resident Status," documented the tragic and bizarre US practice of throwing into jail refugees who the US government had brought to this country in order to protect because they had failed to adjust to lawful permanent resident status (LPR) after one year. Although the law is not applied uniformly, ICE interprets section 209(a) of the Immigration and Nationality Act as mandating detention of all refugees who have been in the US for 12 months who have not filed to adjust their status, until they have filed for adjustment and their applications have been adjudicated. In Arizona, where Human Rights Watch conducted most of its interviews, refugees were sometimes detained for several months in remote, desert locations, and in some cases for longer than a year, without being formally charged with any legal offense.

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The majority of resettled refugees interviewed by Human Rights Watch said that before their detention, they were unaware that they were required to file for adjustment of status. Most believed that filing for adjustment of status was optional, and were unaware of any potential legal repercussions for failure to file after one year. We encountered one such refugee, Joseph Kamara (we have changed his name to protect his identity), at the Pinal County Jail in Arizona. "My whole childhood was war," he told us. Joseph was born in Liberia. When he was nine years old he watched as "my mother was raped, my uncle was beheaded before me." In 2001, the US government, to its great credit, resettled Joseph in Oakland, California. Joseph wasn't aware of the requirement to adjust to LPR status or the consequences for failure to do so. "I thought I had a good status," he said. We witnessed the re-traumatization of this refugee in an Arizona jail. "You claim you are saving me from a war," he said. "Ten in a cell and we uses one toilet. That alone is really stressful for me." Although only a small number of refugees are jailed for this purpose, and the number appears to have decreased under the Obama administration, the detentions continue to be selective and arbitrary, and therefore a violation of international human rights law. We applaud you, Mr. Chairman, for providing a fix to this mindlessly bureaucratic policy that unnecessarily traumatizes refugees and their families, not to mention wasting the government's resources.

In "Jailing Refugees" we urged the US Congress to grant legal permanent residence to all recognized refugees in the US, given that their cases have already been considered in depth as part of the asylum or refugee resettlement process. Some might argue that the current law should remain unchanged because it gives US immigration authorities an opportunity to examine refugees after one year to see if they should be removed because of criminal behavior. We believe this concern is misplaced. Providing LPR status to refugees upon admission would still allow US immigration authorities to put criminals into removal proceedings. Under existing law, US immigration authorities have ample grounds for initiating removal proceedings against lawful permanent residents convicted of crimes and for detaining them during those proceedings.

Sec. 10: Conditions of Detention

We welcome the provision in the Refugee Protection Act of 2010 that would define the requirements for medical screening and treatment of detainees with medical needs. We documented this need in our March 2009 report, "Detained and Dismissed: Women's Struggles to Obtain Health Care in United States Immigration Detention." Abuses found in that report ranged from delays in medical treatment and testing in cases where symptoms indicated that women's lives and well-being could be at risk, to the shackling of pregnant women during transport, to systematic failures in providing routine care.

Certain themes arose again and again in our interviews with women in US immigration detention. They did not have accurate information about available health services. Care and treatment were often delayed and sometimes denied. Confidentiality of medical information was often breached. Women had trouble directly accessing facility health clinics and persuading security guards that

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they needed medical attention. Interpreters were not always available during exams. Security guards were sometimes inside exam rooms, invading privacy and encroaching on the patient-provider relationship. Some women feared retaliation or negative consequences to their immigration cases if they sought care. A few were not given the option to refuse medication or received other inappropriate treatment. Full medical records were not available when the detained women were transferred or released. Written complaints about medical care through facility grievance procedures went ignored. The list goes on. We welcome your attention to rectifying these grievous breaches in medical screening and treatment for immigration detainees.

We also commend you, Mr. Chairman for introducing some reasonable checks on ICE's currently unfettered discretion to transfer immigrant detainees far away from their attorneys, witnesses, and evidence, and family members. Our December 2009 report, "Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States," documents the deleterious impact of transfers to remote locations on detainees rights, particularly the disruption of attorney-client relationships and separation from families and communities of support. As we reported in "Locked Up Far Away," an attorney who represents immigrant detainees said:

> The transfers are devastating—absolutely devastating. [The detainees] are loaded onto a plane in the middle of the night. They have no idea where they are, no idea what [US] state they are in. I cannot overemphasize the psychological trauma to these people. What it does to their family members cannot be fully captured either. I have taken calls from seriously hysterical family members—incredibly traumatized people—sobbing on the phone, crying out, "I don't know where my son or husband is!"[2]

As our research has shown, 1.4 million detainee transfers have occurred between 1999 and 2008—revealing the widespread nature of this problem, which infringes upon immigrants' fundamental right to a fair trial in immigration court.

Sec. 11: Timely Notice of Immigration Charges

The provision in the Refugee Protection Act of 2010 that would require that the notice to appear, the charging document used in immigration proceedings, is filed in the court nearest to the location in which a non-citizen is apprehended by ICE, would help to establish fair trial standards in immigration court and curb the problem of detainees being transferred far away from attorneys, key witnesses, and evidence in their cases.

Sec. 4: Protection of Victims of Terrorism from Being Defined as Terrorists

Finally, Human Rights Watch wishes to voice our support for the provisions in the Refugee Protection Act of 2010 that would address the overly broad inadmissibility grounds under current law relating to material support for broadly defined terrorist activities. We note that this legislation would retain

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existing bars on admission of people who the US has reasonable grounds for regarding as a danger to the United States, including all the other grounds of inadmissibility in INA 212(a)(3)(B). We are pleased that the Refugee Protection Act of 2010 would create an exception to the material support bar for cases in which the activities were a result of coercion, and we support the bill's elimination of the Tier III category of terrorist group. This change will prevent innocent people, often the victims of terrorism themselves, from being wrongly branded as terrorists and denied admission and other essential protections. Given that the Tier III definition of a terrorist organization includes any group of two or more people, whether organized or not, that engages in broadly defined terrorist activities, it is likely that even US-supported insurgencies (or past insurgencies) in places such as Afghanistan, Iraq, and Burma would be covered. To date, waivers that are intended to prevent a denial of admissibility on material support grounds to refugees deserving of US protection have been piecemeal and insufficient. The law needs to be changed.

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[1] Andrew I. Schoenholtz and Jonathan Jacobs, "The State of Asylum: Representation: Ideas for Change," *Georgetown Immigration Law Journal*, vol. 16, summer 2002, p. 739.

[2] Human Rights Watch interview with Rebecca Schreve, immigration attorney, El Paso, Texas, January 29, 2009, reported in Human Rights Watch, *Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States*, December 2009, http://www.hrw.org/node/86789, p. 2.

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Testimony of Patrick Giantonio

Before the Senate Committee on the Judiciary

"Renewing America's Commitment to the Refugee Convention - The Refugee Protection Act of 2010."

May 19, 2010

I would like to give my deepest thanks to Senator Leahy and the Senate Judiciary Committee for inviting me to testify before you today. It is a great honor for me and for my organization, Vermont Immigration and Asylum Advocates, to be represented here and to testify in support of the Refugee Protection Act of 2010. This Bill, I believe, will usher in practical, secure and much needed changes to our refugee and asylum systems.

Vermont Immigration and Asylum Advocates – formerly Vermont Refugee Assistance – was founded in 1987. In 1993, VIAA began to provide legal services to immigrants and asylum seekers detained in county jails in Vermont. Since that time, VIAA has conducted hundreds of legal orientation presentations and provided legal assistance to thousands of detained and non-detained immigrants and asylum seekers. Last year, VIAA co-founded NESTT, or New England Survivors of Torture and Trauma Program. NESTT is now one of the Office of Refugee Resettlement-funded torture treatment programs. In 2009, VIAA provided legal assistance to 741 immigrants and asylum seekers from 101 countries.

Because the work of VIAA is primarily related to representing applicants for asylum and working with asylum seekers in detention, those are the elements of the proposed Bill that I will address here today.

On this 30th anniversary of the Refugee Act of 1980, it is an appropriate time to pause and reflect on just who these asylum seekers are and why we should care about them. It is also time to reaffirm our commitment to maintain an asylum system that welcomes those who have fled persecution and torture.

This was the case for one of our clients – a 29 year old mother of three from the Republic of Congo who was arrested, detained, accused of anti-government activities because of her ethnicity, tortured, and raped repeatedly by military officers for more than a year before escaping and finding her way to the U.S. to seek asylum.

Most of these individuals never planned or intended to come to the United States. Their path to security is often a frightening epic journey that leaves their loved ones and all they have known behind.

These are the asylum seekers that we are talking about and why the Refugee Protection Act of 2010 is important to pass and sign into law.

Regarding the One Year Filing Deadline:

Most individuals in this room will likely recall that the one year deadline to apply for asylum was enacted in 1996 with the primary intention of preventing fraud. At that time, members of

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Congress were concerned that individuals were filing fraudulent claims and then being granted work authorization while they waited years for their cases to be adjudicated. In addition, there were concerns about the substantial backlogs in the asylum system, which by 1994 had reached approximately 425,000 cases pending at the Asylum Office.[1]

Nonetheless, the legislative intent in 1996 was very clear that the one year filing deadline should not bar legitimate asylum applicants from receiving protection. In 1996, Senator Orin Hatch assured the Senate that, "I am committed to ensuring that those with legitimate claims of asylum are not returned to persecution, particularly for technical deficiencies. If the time limit is not implemented fairly, or cannot be implemented fairly, I will be prepared to revisit this issue in a later Congress."[2]

Even the legacy agency INS questioned the need for the one year rule when it was debated in 1996. By that time, the agency had implemented procedures that addressed issues of fraudulent applications, and imposed new restrictions on work authorization for asylum seekers. By 1996, the INS had also developed an expedited adjudication process for the immigration courts whereby Immigration Judges were given goals to attempt to rule on asylum cases within 180 days. By increased staffing and other reforms at the Asylum Office, the number of asylum claims had dropped from 122,589 applications in 1994 to 53,255 in 1995. New asylum claims had dropped from 127,129 in 1993 to 30,261 in 1999 – a 75% drop. Approval rates had risen from 15% to 38% in the same time period. Doris Meissner, INS Commissioner claimed the reforms as a "dramatic success" that had "fixed a broken system".[3]

Reasons for late filing of an asylum application can be related to fear of revealing the basis of the persecution such as domestic or sexual abuse, sexual orientation, lack of counsel or reliable information, trauma related to torture, or loss of family members and home. Numerous cases illustrate that Immigration Judges do not recognize psychological issues such as avoidance symptoms and how they might affect late filing. It is widely understood by mental health experts that "delayed reporting" is a well documented symptom of an individual experiencing Post Traumatic Stress. Also, as we face constantly evolving law, the cases of some individuals whose current claims are based, for example, on gender or domestic violence, might not even realize that the standards and requirements of asylum include and protect them.

The application of the one year rule has been rigid and led to a constellation of unintended consequences – for applicants and the asylum system. Despite exceptions for changed or extraordinary circumstances, thousands of meritorious asylum claims were denied simply because of not meeting the one year filing deadline. Since the passage of the 1996 law and the subsequent implementation of the one year filing deadline, asylum attorneys and advocates from around the United States have witnessed those who fled persecution and sought this country's protection returned into the hands of their persecutors. This is underscored by the findings by the Center for Gender and Refugee Studies, which reviewed case files for denials of asylum based on the one year deadline. Many of those who were denied asylum were then granted Withholding of Removal ("withholding") or protection under the Convention Against Torture (CAT), both of which require the applicant to meet a higher standard of proof than an asylum seeker. [4]

While someone who is granted withholding or CAT will not be returned to their home country (without going through additional proceedings *only* if country conditions in their home country

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change significantly and this is very rare), they still face legal and societal challenges in the United States. For example, they can never adjust their status to permanent resident or U.S. citizen, thereby undermining their integration into American society. They also cannot travel outside our borders and cannot bring family members to join them in the United States.

The enactment of the one year filing deadline diverts time from judging the merits of an asylum claim at both the Asylum Office and in immigration court. Unfortunately, the one year filing deadline has resulted in thousands of cases being referred to a heavily overburdened immigration court system. Many Immigration Judges believe that enforcing the one year filing deadline is a threshold burden for asylum claims. Also, for many judges, the focus of an asylum hearing becomes the extraneous issue of when the person entered the United States, rather than examining the merits of the asylum claim.

Recent alarming statistics highlighted in a report by the National Association of Immigration Judges (NAIJ), entitled *"Immigration Court Needs – Priority Short List of the NAIJ"*, shows an immigration court system at a breaking point. The report states that immigration courts now handle more than 350,000 matters a year, with each judge averaging about 1,500 proceedings a year. This volume of cases is far larger than those of other federal adjudicators. Furthermore, according to NAIJ report, case backlogs have grown by 23 % in the last eighteen months, and by a staggering 82% over the last ten years.[6]

It is undisputable that the one year filing deadline has been needlessly contributing to the enormous burdens and backlogs on the immigration court system.

The following are fundamental reasons to repeal the one year filing deadline:

- The reasons for which it was originally enacted in 1996 were fully addressed long ago by other procedures such as training in fraud detection for Asylum Officers, placing restrictions on employment authorization, and scheduling expedited immigration hearings.
- The original Congressional intent of the one year deadline has been violated by denying meritorious asylum cases, and returning *bona fide* refugees to the home countries.
- There are already fraud prevention components built into the asylum system such as the necessity that each applicant carries the burden of demonstrating a well founded fear of persecution and obtaining a positive credibility finding from the adjudicator. There are also serious penalties for filing a frivolous claim.
- The rule causes waste and inefficiency by placing even more burdens on an immigration court system that is already struggling to keep up with the caseload. Many of these asylum cases could be adjudicated more expeditiously and efficiently at the Asylum Office level. The Asylum Office was developed to adjudicate cases in an administratively efficient manner.
- The U.S. is in violation of its international obligations whenever it returns *bona fide* refugees to countries where they fear persecution.

Repealing the one year filing deadline would increase efficiency and save resources, increase the level of protection for asylum seekers and maintain the U.S. commitment not to return bona fide refugees to persecution.

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Protecting Certain Vulnerable Groups of Asylum Seekers

Social Visibility

The Immigration and Nationality Act establishes that a person is eligible for a discretionary grant of asylum if she or he has suffered past persecution or has a well founded fear of future persecution on account of their race, religion, nationality, membership in a particular social group or political opinion.[7]

Some of the most vulnerable asylum applicants seek protection and asylum on account of their membership in a particular social group – a group which due to the sensitive nature of the claim, does not always meet the standard of being "socially visible" that has been required by some recent Board of Immigration Appeals (BIA) decisions. The recent BIA decisions have imposed additional requirements such as "particularity" and "social visibility," which have been inconsistently applied and difficult to follow.

Imagine a case based on the threat of an honor killing because a woman wants to marry a person of her choice. Being "socially visible" could put her in even more danger.

As Judge Posner of the Seventh Circuit Court of Appeals recently observed, the "social visibility" requirement "makes no sense" because "if you are a member of a group that has been targeted for assassination or torture or some other mode of persecution, you will take pains to avoid being socially visible."[7]

The language of the Refugee Protection Act would return the requirements for the "social group" standard to the longstanding BIA precedent decision *Matter of Acosta,*[8] which defines "social group" as possessing the characteristics of being "fundamental and immutable."

Corroborating Evidence

The REAL ID Act of 2005 placed new burdens on asylum applicants to provide corroborating evidence when an Immigration Judge requests that evidence, even if the judge finds the applicant credible.

Most of the asylum seekers I represent are from Central Africa, and several are from the Democratic Republic of Congo, where war has been raging since the mid-1990s. Often, when people are fleeing war and turmoil, they are also leaving behind a tattered, scorched past. An environment such as this can make it extremely difficult for individuals to retrieve important documents and other corroborating evidence.

In some cases, Immigration Judges have denied asylum due to the requirement that applicants offer corroborating evidence, even where the applicant was not notified of the need for evidence or given the opportunity to try and obtain it. There have been denials even in cases where the Immigration Judge found the asylum applicant credible.

It is only reasonable that the applicant be notified if corroborating evidence will be required by the Immigration Judge, and that the applicant be given an opportunity to retrieve such documentation or provide good reasons why such documentation is unavailable. That is an important change to current law that would be made by the Refugee Protection Act.

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Explaining and Clarifying Inconsistencies in a Claim

In the adjudication of asylum cases, the credibility of the testimony of the applicant is of paramount importance to winning a favorable decision.

While it is generally understood that between 5% and 35% of refugees are survivors of torture, our case data at VIAA illustrates a much higher percentage for our asylum clients. More than 90% of our recent asylum clients are survivors of torture. Understanding that credibility is primary to an Immigration Judge or Asylum Officer approving an asylum claim, it is somewhat counter-intuitive to expect that an individual who is suffering from symptoms related to Post Traumatic Stress can always recount their stories of horrific rape, imprisonment or torture in a consistent fashion.

Mental health experts understand full well that it is common for individuals who experience symptoms related to Post Traumatic Stress to recount their traumatic events through "piece meal reporting." For example, one of our asylum clients retold the traumatic events of his story (which included months of detention and electric shocks, sexual abuse, beatings to the head, and water torture) in the comforting and supportive setting of a therapy session. Nonetheless, he was so psychologically and physically affected by the harsh memories that he had to be admitted to the Emergency Room for treatment.

In addition, traumatized individuals are not necessarily the best judges of what is most important to tell an adjudicator, or the best way to present their asylum claim. This is especially the case with asylum applicants who are unrepresented by attorneys or accredited representatives.

One recent client of VIAA most likely would have presented inconsistencies in his initial application or testimony, leading to a negative credibility finding, if he had been unrepresented. The reason for this was that he did not equate his mistreatment by his government's military as torture. The arrests, beatings and horrible treatment that he experienced are what you would expect if you were arrested by the military in his country, he said.

In Vermont, we now couple psychological treatment/therapy with preparation for immigration court or asylum interviews. We do so with the goal of balancing the effects of Post Traumatic Stress and reducing the chances of presenting inconsistencies during testimony. This protocol has been quite successful in balancing and reducing the effects of Post Traumatic Stress during the asylum interview or court proceedings and we believe, helping to lead to a positive credibility finding and approval of asylum. It is important to note that we often also use expert psychological evaluations and testimony that help to identify and explain possible inconsistencies in the application or testimony. All of this takes a full legal team, with medical and psychological experts often devoting hundreds of hours to one single case. Services such as these are simply not available for many applicants and traumatized individuals presenting their case *pro se*. They face hurdles and barriers to stay on track, stay consistent and present their case in a credible fashion. This is due not to any lack of credibility on their part, but rather how their past trauma – the very trauma that makes their case compelling and approvable – affects their recounting of the story before authorities.

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We welcome the sections of the Refugee Protection Act that enhance procedural fairness by requiring Immigration Judges to allow applicants to explain and clarify inconsistencies in testimony. These changes will lead to fair adjudication of asylum claims, upholding the standards and legal requirements while recognizing the reality of adjudicating the cases of traumatized refugees.

Efficient Asylum Determination Process for Arriving Asylum Seekers

Expedited Removal was included in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 with the intention of removing immigrants who arrive without proper documents. Under Expedited Removal, these individuals can be removed back to their home country without a hearing before an Immigration Judge. In order to ensure the United States is not returning refugees to persecution, an individual who expresses a fear of returning to their home country should be granted a "credible fear hearing". If the individual is found to have a credible fear, their case is then referred to an Immigration Judge for a full hearing on his or her asylum claim. Under current law, asylum seekers in Expedited Removal are subject to mandatory detention unless they are granted release on parole.

As underscored by a 2007 Report Card on the Expedited Removal Process by the U.S. Commission on International Religious Freedom (USCIRF)[9], there are numerous problems and issues related to the implementation of Expedited Removal. Some of these issues have led to the return to the home country of *bona fide* refugees.

One recommendation made in the original 2005 report by USCIRF that is also contained in the Refugee Protection Act, is for Asylum Officers to be able to grant asylum at the credible fear interview.

There should be no reason why arriving asylum seekers should be treated differently than those who file an affirmative claim from inside the United States. Once the asylum seeker has been able to establish credible fear, they should be scheduled for an asylum interview rather than immediately placed in immigration court proceedings. This would be better for the arriving asylum seeker and more efficient for the immigration courts, keeping thousands of cases out of an already over-burdened system.

Anyone who has represented an asylum applicant – or even been present as a translator or witness – in both an immigration court hearing and asylum interview, would attest to the notable difference between the two. An asylum interview is normally non-adversarial and relatively informal. Conversely, the immigration court forum is, by design, an adversarial forum. The immigration court's complex rules and often contentious environment should be reserved for cases that were referred to the court by an Asylum Officer.

We welcome the section of this Bill that would develop parity systems for both arriving asylum seekers and those applying from within the United States. This makes fiscal sense, will be less traumatic for the applicants, and avoid unnecessary detention of asylum seekers.

Also, while we welcome the current Department of Homeland Security (DHS) policy on the release and parole of asylum seekers, we fear that these advances could slip unless they are signed into law. This section of the RPA will help ensure that asylum seekers are released from

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detention once they have passed credible fear, established their identity, and shown that they are not a threat to security or at risk of flight.

We also encourage the Departments of Homeland Security and Justice to revise regulatory language (and/or Congress to enact legislation) to provide arriving asylum seekers and other immigrants in detention with the chance to have their custody reviewed in a hearing before an Immigration Judge. This would prevent the prolonged and unnecessary detention of asylum seekers at taxpayer expense.

Improvements in Detention Conditions

While the meteoric rise in the number of immigrants detained in the United States is troubling to most immigration advocates (from approximately 202,000 in 2002 to approximately 442,000 in 2009),[10] the unnecessary and prolonged detention of asylum seekers is even more disturbing.

Our organization, VIAA, has been providing legal services and conducting (non-federally funded) legal orientation presentations to immigrants and asylum seekers in Vermont since 1993 and in Northeast New York State jails since 2006. We have worked very closely with our local Immigration & Customs Enforcement (ICE) offices, Border Patrol, Customs and Border Protection and our local sheriffs who maintain the detention facility contracts. These relationships have ensured our agency's consistent and open access to these facilities. Our stakeholder partners in the legacy INS and subsequent ICE, as well as our local sheriffs, have stated very clearly over the years that they have witnessed the benefits of our presence and legal services in their jails. In addition, it has often been clear to many of our stakeholder partners – although they would normally be reticent to publicly state this – that there are sometimes abhorrent conditions within their own facilities.

The lack of legally enforceable immigration detention standards has created a detention environment that has resulted in many deaths, cost tax payers millions of unnecessary dollars, and created a monstrous and unwieldy system with little oversight.

According to a recent Human Rights First report on the detention of asylum seekers, ICE has spent approximately 300 million dollars to detain asylum seekers from 2003 – 2009. [11]

On May 11-14, 2008, *The Washington Post* ran a four-day exposé of the grossly inadequate health care in immigration detention centers and on August 18, 2009, *The New York Times* reported 104 deaths of immigrants held in ICE custody since October 2003. These articles illuminate systemic problems that have often led to unnecessary suffering and avoidable deaths. One of these deaths in detention, sadly, involved a detainee that was previously held in Vermont for 10 weeks in one of our county jails.

One of the most shocking statistics regarding individuals held in detention is that 84 percent are unrepresented.

I applaud the nationwide expansion of Legal Orientation Programs included in the Refugee Protection Act. The Legal Orientation Program is an effective initiative of the Executive Office for Immigration Review of the Department of Justice that is managed through a contract with the Vera Institute for Justice. The Vera Institute subcontracts with non-profit legal service

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providers to provide basic legal information to some of the 84 percent of detainees who are unrepresented.

The Legal Orientation Program (LOP) provides basic, but critical legal information to detained immigrants and also helps to connect them with *pro bono* legal services. The LOP has received widespread praise from Immigration Judges for increasing efficiency and effectiveness in court proceedings. Immigration Judges have witnessed the increased ability of detainees to understand the court process and identify possible forms of relief for their case. It has also been found to reduce the average length of detention by 13 days per person offered an LOP. Those with potential relief can build a case and appear in court, but those who come to understand they have no potential for relief typically accept an order of deportation and depart the United States quickly.

In the course of legal orientation presentations that VIAA staff provided for detained immigrants in Clinton County Jail (in northeast New York State) during 2008, we noted several compelling complaints about the harsh conditions and negligent provision of health services in the jail. Some detainees stated: "I did not eat for three days, could not talk; and was crying all the time." "I was spitting blood for three days and never saw the doctor." "I was verbally abused when I did not feel well enough to clean my room."

Byzantine phone systems and contracts with high-priced providers greatly limit detainee access to telephones, and can have the effect of restricting contact with legal counsel and family members. In addition, many jails have inadequately stocked legal libraries, or have law libraries that are poorly maintained and do not have trained staff or librarians. In one of the county jails that we serve, there is a computer with an electronic law library, but it is not offered and detainees cannot easily access it.

Based on our detention work since 1993, we clearly understand the value of legal orientation presentations. We witness the relief experienced by detained individuals as they begin to understand the process and what legal options might be available to them. Even individuals for whom there is no possible relief from removal can make better-informed decisions, often deciding to accept deportation. This saves the government unnecessary expenses and reserves the courts for the most meritorious cases.

The challenges for an asylum seeker who is detained and without legal counsel are enormous. It is difficult enough for a *pro se* asylum applicant who is not detained to compile and present a thorough case. The hurdles for someone who is detained are all too often multiplied by lack of counsel, inability to access important documents, lack of contact with family members and critical witnesses, lack of legal resources and most importantly, the re-traumatizing effects of detention and of recalling torture and abuse. Yet another challenge is that the asylum application and accompanying documents must be submitted to the court in English.

Most asylum applicants want to be active in their own defense. Detention severely limits their ability to be their own best advocate.

While proposed DHS detention reforms[12] will ideally result in much needed changes and a more efficient and humane immigration detention system, the establishment of enforceable standards,

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as proposed in the Refugee Protection Act, will codify and add enforcement mechanisms to the DHS reforms.

We applaud the Refugee Protection Act's effort to make necessary changes to the immigration detention system by requiring DHS to finally promulgate enforceable regulations and procedures for detention conditions. The Bill also establishes a detention commission to report on compliance with the regulations.

We also applaud the Bill's intention to expand the Legal Orientation Program, creating a nationwide program for group legal orientation presentations.

Secure Alternatives to Detention

The Refugee Protection Act requires the Secretary of Homeland Security to create a secure alternatives to detention program. This only makes good sense, both for the immigrant or asylum seeker, but also for the government and U.S. tax payer. I encourage you to do the math - detention beds cost on average $100 per day, while secure alternatives cost on average $12 per day.[13]

Secure alternatives to detention is not a new concept. The first and most comprehensive pilot program for alternatives to detention was called the Appearance Assistance Program. It was funded by the INS and designed and implemented by the Vera Institute for Justice from 1997 – 2000. Vera noted remarkable results in its findings. It reported appearance rates for asylum seekers of 97 percent. Another alternatives to detention program was coordinated by Lutheran Immigration and Refugee Service (LIRS). LIRS also noted a 97 percent appearance rate.[14]

ICE currently implements two supervised release programs, the Intensive Supervised Release Program and the Enhanced Supervision Reporting Program. These programs rely on electronic verification bracelets, home visits, phone check-ins and residence verification. These programs can currently supervise about five percent of the annual detention population.

Secure alternatives to detention, as defined in the Refugee Protection Act, offer a range of release options such as supervised release, or release on recognizance, as well as programs run by private, faith-based and non governmental groups.

A secure alternatives to detention program would save detention space for detainees who are a danger or a risk of flight, it would be more humane, and would ensure compliance with the conditions of release. Secure alternatives to detention should never, however, be a substitute for a fair adjudication and review process.

Closing

In closing, I believe that the changes proposed in the Refugee Protection Act represent a very sensible and comprehensive package of much needed changes to law that will restore *and* ensure integrity and true protection in our refugee and asylum systems. Maintaining integrity and efficiency in these systems should not be a Republican or Democratic issue. Our commitment to welcome refugees who have fled their homelands should also be non-partisan. By passing this Bill and offering fair treatment and safe haven to refugees, we can illustrate to the world and to our own citizens our strength, our confidence and our compassion. Ultimately, any changes

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should act to maintain and strengthen these cornerstones of America's immigration system. Most importantly, we should continue, through our laws and through our actions, to maintain the full intention and ability to be the spire of light that elicits hope and safety as we embrace and welcome the persecuted into our homes, our cities and our communities. Mr. Chairman and Committee members, I believe this Bill moves us forward, decidedly, towards achieving these goals.

Thank You.

End Notes:

1. *INS Finalizes Asylum Reform Regulations*, 71 INTERPRETER RELEASES 1577, Dec. 5, 1994.

2. 142 Cong. Rec. S11840 (Sept. 31, 1996)

3. By increased staffing and other reforms at the Asylum Office, the number of asylum claims had dropped from 122,589 applications in 1994 to 53,255 in 1995. William Branigin, *Year-Long Campaign Slashes New Claims by 57%*, WASH. POST, Jan. 5, 1996, at A2. New asylum claims had dropped from 127,129 in 1993 to 30,261 in 1999 – a 75% drop. *INS Announces Progress Five Years Into Asylum Reform*, 77 INTERPRETER RELEASES 186, Feb. 7, 2000. Approval rates had risen from 15% to 38% in the same time period. *Id.* Doris Meissner, INS Commissioner claimed the reforms as a "dramatic success" that had "fixed a broken system." William Branigin, *Year-Long Campaign Slashes New Claims by 57%*, WASH. POST, Jan. 5, 1996, at A2.

4. Musalo, Karen; Rice, Marcelle. Hastings International and Comparative Law Review, Summer 2008. Article. Center for Gender and Refugee Studies: The Implementation of the One-Year Bar to Asylum.

5. National Association of Immigration Judges. *Immigration Court Needs: Priority Short List of the NAIJ*. April, 2010

6. INA § 208, 8 U.S.C. §1158.

7. Gatimi v. Holder No. 08-3197 (7th Cir. Aug. 20, 2009)

8. 19 I&N Dec. 211 (BIA 1985).

9. United States Commission on International Religious Freedom. *Expedited Removal Study Report Card: 2 Years Later*. 2007

10. Human Rights First. *U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison*. 2009

11. Human Rights First. *U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison*. 2009

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12. U.S. Department of Homeland Security. Press Release. *Secretary Napolitano and ICE Assistant Morton Announce New Immigration Detention Reform Initiatives.* October 6, 2009; U.S. DHS. *ICE Detention Reform: Principals and Next Steps.* October 6, 2009.

13. Human Rights First. *U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison.* 2009

14. Human Rights First. *In Liberty's Shadow.* 2004

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Testimony Submitted by
Dan Glickman
President, Refugees International

To the hearing before the
U.S. Senate, Committee on the Judiciary
Wednesday, May 19, 2010

Introduction

Thank you, Chairman Leahy, for holding this important and timely hearing on renewing America's commitment to the Refugee Convention and on your legislation: the Refugee Protection Act of 2010. The United States has a treasured tradition of providing sanctuary and protection to people fleeing war, insecurity and persecution, and in the midst of so many security challenges around the world – from Burma, Afghanistan and Pakistan, to Iraq, Somalia, Sudan and Colombia. The United States is also more actively involved in reducing statelessness than ever before. I cannot think of a better time to discuss long overdue reforms to U.S. laws governing asylum, refugee resettlement, and persons who do not presently enjoy their fundamental right to a nationality.

I want to recognize the coalition of non-governmental organizations that worked over many years to encourage this legislation. Over thirty organizations and individuals have endorsed Senator Leahy's Refugee Protection Act of 2010, which is a testament to its urgency and comprehensiveness. I urge the Members of the Judiciary Committee to support and quickly pass the Refugee Protection Act of 2010 to ensure that one of our most honorable humanitarian traditions is upheld. In so doing the United States will continue to lead the world in refugee protection and stand as a powerful example to all, that our country remains a place of refuge for the world's most vulnerable to rebuild their lives and become productive members of society.

Overview of Refugee Situation Worldwide

During his Nobel Peace Prize acceptance speech in Oslo, President Obama acknowledged that in today's wars "many more civilians are killed than soldiers; the seeds of future conflict are sown . . . refugees amassed, and children scarred." As President Obama noted, we know that innocent people everywhere bear the burden of armed conflict. There are currently an estimated 15.9 million refugees worldwide. At the end of 2005 the number of refugees was at its lowest in almost a quarter of a century. The last four years have seen a sharp increase in the numbers of refugees as a result primarily of the violence in Iraq and Somalia, but also due to increasingly complex security challenges around the world.

Only one half of one percent of refugees are ever resettled anywhere and the United States is responsible for half of those resettlements. This is something of which to be both proud and troubled. I'm here today to say that with the right kind of internal security measures in place, we can continue to provide safe haven to the world's most vulnerable, to those whose homes have been pillaged and loved ones killed.

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Statelessness

I want to begin my testimony with the story of a woman who embodies one of the most compelling, least understood – and yet solvable – global issues of our time: statelessness. Stateless people are perhaps even more vulnerable than refugees due to their near-total lack of ability to exercise their human rights.

Tatianna is a 61 year-old mother and grandmother, a piano teacher who has lived in the United States for over 20 years. She was born in Russia during Soviet times and eventually moved to what is now Ukraine. In 1992, after being persecuted by the authorities for her political beliefs, she came to the United States with the younger of two sons and applied for asylum. Their case was denied in 1997. Following its independence Ukraine passed a law requiring people to have resided in Ukraine for two years following independence to be eligible for citizenship. Tatianna had fled before having lived in Ukraine for two years and she is therefore not recognized as a Ukrainian citizen. Russia doesn't recognize Tatianna as a citizen either because Russian nationality laws require individuals to have lived in Russia after the collapse of the Soviet Union, which Tatianna did not.

This means that the United States had nowhere to return Tatianna after denying her asylum claim. Tatiana and her son are stateless. No country recognizes Tatianna as a citizen. She has no nationality, and there is no legal pathway for her to acquire citizenship in the U.S. She lives in limbo and is unable to fully participate in society. She has no travel documents and no means to acquire them. She has been separated from some of her closest family members for decades. And although she and her son have paid taxes in the United States since they arrived 20 years ago, she is not eligible for social security. Tatianna must check in with the Department of Homeland Security (DHS) every month by telephone and every six months in person. She never knows what might happen when she goes to DHS and lives in fear that she could be arbitrarily jailed.

There are an estimated 12 million stateless people like Tatianna around the world. This number rivals the 15.9 million refugees globally, yet few people understand what it means to be stateless.

Stateless people are found everywhere. Among the most vulnerable groups are the Rohingya in Burma and throughout Asia, Bidoon in the Middle East, Roma in Europe, children of Haitian migrants in the Caribbean, individuals from the former Soviet Union, denationalized Kurds, some Palestinians, and certain groups in Thailand. Their status results from factors such as political change, border demarcation or secession, forced expulsion, discrimination, nationality based solely on descent, and laws regulating marriage and birth registration.

Since 2004, Refugees International has visited over a dozen countries to assess the situation of people who are stateless or at risk of statelessness. In the course of our ongoing advocacy, we have witnessed exemplary positive developments in some cases, and backward movement in others.

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In the United States there are an estimated 4,000 stateless people like Tatianna. Currently there is no pathway for stateless people in the United States to gain lawful status. Some administrative remedies such as work authorization may help stateless people, but they are still largely ignored and unable to fully participate in society. Chairman Leahy's Refugee Protection Act of 2010 is the first piece of U.S. legislation to attempt to comprehensively address this problem in our country and would allow Tatianna and others like her to apply for legal permanent residency here and obtain their right to a nationality.

I spoke to Tatianna earlier this week and she said "I have no rights, no voice. I'm nobody." Tatianna is far from nobody and I want to thank you for recognizing that and for your efforts to respond to this most vulnerable group of disenfranchised people in the United States. I encourage others to support Chairman Leahy's legislation.

Refugee Resettlement

Thirty years ago this year, the landmark Refugee Act of 1980 codified in law a system to identify and process refugees worldwide in need of third country resettlement. The law was drafted in the wake of large scale displacement in South East Asia and was modeled around that historical experience. It was also drafted in the spirit of bringing U.S. law into compliance with the principles outlined in the 1951 United Nations Convention and 1967 Protocol relating to the Status of Refugees. As a result and in that spirit, refugee arrivals averaged over 100,000 annually through the early 1990s. They then declined to only 68,925 in 2001 and then plummeted to 26,773 in 2002 due largely to the shift in security procedures and admission requirements after September 11, 2001. In 2009 the United States had the highest level of refugee admissions in a decade with a total of 74,602. I am pleased that our refugee resettlement numbers are growing again, but I believe that the United States, as the leading humanitarian actor in the world, can do better.

There are three more provisions of the Refugee Protection Act of 2010 that I want to address:

Authorization for the Secretary of State to Designate Certain Groups Eligible for Expedited Adjudication as Refugees

The first provision is the authorization for the Secretary of State to designate certain groups eligible for expedited adjudication as refugees, through expedited interviews and streamlined consideration for admission to the United States. It would also allow DHS to focus the refugee interview and adjudication process on admissibility and security issues rather than on re-establishing that each individual meets the refugee definition. In the words of Erika Feller, Assistant United Nations High Commissioner for Refugees (UNHCR), "the credibility of resettlement efforts depends on programs being balanced according to global needs and priorities."

Today the average refugee lives in exile for 17 years, without dignity, work, access to education or hope for a future. Two of Refugees International's advocates are currently in Djibouti, where 13,000 Ethiopian and Somali refugees have lived in a desolate desert camp for decades, largely

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forgotten by the international community. Often these refugees are born into exile in the camps and have little knowledge of the places from which their parents fled.

Now, for the first time since 2001, some refugees have the opportunity to access resettlement opportunities to the United States. This provision will help facilitate the process by ensuring that this group of refugees is admissible under U.S. law and meets the security requirements, preventing the waste of resources to re-establish what UNHCR has known for twenty years—that they are refugees in need of protection.

This authority would allow the United States to send a clear message to the world and to UNHCR about the refugee populations in particular need and of priority concern to the United States.

Protecting Victims of Terrorism from Being Defined as Terrorists:

The second provision I would like to discuss is designed to protect victims of terrorism from being defined as terrorists. It is critical for the U.S. Congress to address further the unintended consequences of the USA PATRIOT ACT for the protection of refugees and asylum seekers. Refugees International is grateful for past bi-partisan efforts to address this issue but more must be done. Section 4 of the Refugee Protection Act of 2010 would amend the law to exclude coerced activity from the definition of "terrorist activity" and further clarify the definition of the term so it does not include virtually all armed conduct. It would also repeal a provision that makes spouses and children inadmissible for the acts of a spouse or parent.

It is unacceptable that the law as it stands is denying entry and protection to thousands of refugee and asylum seekers with *bona fide* claims. These include some Iraqi groups who rose up against Saddam Hussein; Afghan mujahidin groups that fought the Soviet invasion in the 1980s with U.S. support; groups that have taken up arms against the Iranian government since the 1979 revolution; and members of the Movement for Democratic Change, the main political opposition to President Robert Mugabe of Zimbabwe.

There are countless examples of victims of terrorist acts and other forms of violence and persecution who are being denied safe haven in the United States because of current U.S. law. Refugees International advocates who travel the world often come across women and men who have been terrorized into giving what little they have to armed groups. That does not make them terrorists. As a former Member of Congress I understand the delicate balance between national security and our obligation to help the neediest. The security related grounds of inadmissibility in the Immigration and Nationality Act were enacted to protect national security and prevent individuals who have engaged in the most brutal acts, including terrorism, genocide, torture and crimes against humanity, from being granted admission to the United States. It was well intended. But we went overboard and now we know that we have further harmed people who have already been so damaged. I know that none of the Members of the Judiciary Committee intended for that to happen and I urge you to work with Chairman Leahy to amend these laws through the Refugee Protection Act of 2010.

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Updating the Reception and Placement Grants to Better Reflect the True Cost of Resettlement

Finally, one of the most critical parts of the resettlement process is the Reception and Placement process financed through the State Department's Bureau for Population, Refugees and Migration (PRM) and implemented by 10 voluntary agencies. These services are provided through a per capita grant used for two purposes: 1) to cover rent, security deposit, utilities, food and other necessary expenses to support refugees in the initial reception period, and 2) to fund resettlement workers around the country to provide pre-arrival services like locating housing for the refugee, receiving them at the airport, orienting them to their new community, facilitating health screenings for enrollment in school for refugee children, linking them to employment, setting them up with English programs, etc.

In 1975 the total grant for both the refugee and the resettlement worker was $565. Up until last year we were providing refugee resettlement grants of only $900. This means that over the course of 35 years, despite the increasing costs of resettlement, the impact of inflation, and the increased cost of living, the grant rose by less than $400. If we were to calculate the grant today based on need it would be around $2,200. Last year the grant was raised from $900 per capita to $1,800 per capita, for which we are grateful to Congress and PRM.

Section 21 of the Refugee Protection Act of 2010 would require the Secretary of State to conduct, on an annual basis, a review of the Reception and Placement grant amount to ensure that it reflects the actual costs of resettlement during the first 30-90 days. The Secretary would then notify Congress of any changes.

This is long overdue. For years we have accepted refugees into our country only to relegate them to poverty. This is wrong for us, it's wrong for our new neighbors, it's bad for the economy and it's bad for our reputation around the world when refugees communicate their situation to family members back home. I urge the Members of the Judiciary Committee to support this provision by supporting and passing the Refugee Protection Act of 2010. In so doing we can ensure that we give refugees a basic foothold from which to rebuild their lives and the basic protection we promised them when we agreed to offer them a durable solution from their plight as refugees.

Conclusion

The U.S. has a long and proud history of providing protection and long-lasting durable solutions to refugees, including Hmong refugees who fought with the United States in Vietnam, Soviet Jews, Iraqis who were displaced due to the U.S. led war, and many other populations in need of an opportunity to rebuild their lives. We have helped victims of rape and sexual violence, unaccompanied refugee children, the sick, the elderly, and those facing indefinite detention and the threat of forced return to the hands of their persecutors.

The provisions in the Leahy bill will help strengthen the Refugee Protection Act and ensure that the proud and historic U.S. traditions of refugee resettlement and providing basic protection for the world's most vulnerable are upheld.

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I want to close by recognizing the good work of Senators of both parties for ensuring that the steps we take to provide safe haven for refugees and asylum seekers with *bona fide* claims do not come at the expense of security here at home. But I also strongly believe that the protections granted in the Refugee Protection Act of 2010 do not come at the expense of national security. Rather I believe it will enhance our security and global standing by showcasing the compassion and justice on which the United States was founded.

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Written Testimony Submitted to the

Senate Committee on the Judiciary

"Renewing America's Commitment to the Refugee Convention: The Refugee Protection Act of 2010"

May 19, 2010

On behalf of:

The Hebrew Immigrant Aid Society (HIAS)

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HIAS Strongly Supports the Refugee Protection Act of 2010

The Hebrew Immigrant Aid Society (HIAS), the international migration agency of the American Jewish community, would like to thank Senators Patrick Leahy (D-VT), Carl Levin (D-MI), Daniel K. Akaka (D-HI), Roland Burris (D-IL), and Richard Durbin (D-IL) for introducing the Refugee Protection Act of 2010. The introduction of this legislation is a fitting tribute to the Refugee Act of 1980, which Congress enacted 30 years ago to ensure that the U.S. meets its obligations to refugees and asylum seekers under the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol.

HIAS believes that all refugees overseas and those who reach our shores should have access to a meaningful, humane, and professional refugee and asylum system. Any reluctance on the part of the United States to offer safe haven sends a dangerous message to countries around the world that are likely to follow our lead and further diminish refugee protection.

It is also important to remember that refugee protection does not end on the day asylum or refugee status is approved. Once here, the U.S. should make sure that refugees and asylees get the help they need to start their new lives in the United States. The Refugee Protection Act would go a long way towards ensuring that refugee families are reunited quickly and that refugees and asylees are able to integrate fully into U.S. society.

While the provisions of the Refugee Act have resulted in the protection of countless refugees and asylum seekers during the 30 years it has been in effect, in recent years, protections for asylum seekers have eroded. Laws have been enacted containing provisions that threaten the rights and safety of asylum seekers, including a harsh expedited removal system, arbitrary deadlines for filing asylum claims, and other limitations on asylum seekers' ability to obtain protection in the U.S. Even after asylum seekers have proven their credible fear of persecution, many are detained, and less restrictive alternatives to detention rarely are provided to asylum seekers who are found not to be threats to society.

The Refugee Protection Act proposes thoughtful and effective solutions to these problems and will ensure that fairness is restored to the asylum system. It would bring asylum and refugee processing up to date, informed by the country's 30 years of experience with these programs. In the 1990s, sweeping procedural reforms addressed the huge backlogs in asylum applications. The Refugee Protection Act takes these changes into account, eliminating the one-year filing deadline for asylum applications that was established as a response to the long delays that now are a thing of the past.

While HIAS supports the Refugee Protection Act in its entirety, we would like to express our appreciation for several provisions in particular that address problems caused by current law and procedures that have caused extreme and needless suffering for the refugees and asylum seekers we serve.

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Family Reunification

Family reunification, a cornerstone of the U.S. Refugee Admissions Program, has been eroded by overly restrictive policies that needlessly separate families. The Refugee Protection Act would make some modest yet important changes to current procedures that would help ensure that asylees and refugees are able to bring their spouses and minor children to safety in the United States.

In theory, refugees have two means of reuniting with family – the I-730 (family reunification) process and the Priority Three process. The I-730 process is available to the spouse and minor children of a refugee or asylee. The benefit of the I-730 process is that the family member is not required to wait for a visa to become available before joining their spouse or parent in the U.S. However, in order to benefit from the process, the family relationship must be in place at the time the petitioner was granted refugee or asylum status (marriage after the grant of asylum or refugee status confers no access to the I-730 process; a child conceived after the grant of asylum or refugee status is also ineligible). With few exceptions, the I-730 petition must be filed within 2 years of obtaining refugee/asylee status. Although designed to quickly reunite refugee families, the I-730 process can be slow and is highly restrictive.

The Priority Three process, which in theory prioritizes for refugee resettlement the close family members of certain refugees already in the U.S., has been totally non-functional for more than two years while the State Department has attempted to address integrity problems with the program. As a result, children, husbands, wives, and parents are trapped in dangerous situations and remain separated from their loved ones in the United States.

An example of the problems with the current refugee family reunification process is the case of Wesal Adam, a Darfuri girl who languished in a displaced person camp in Sudan without her parents until she was four years old. Wesal's father, Motasim Adam, was a human rights activist who openly spoke out against the ruling regime and Janjaweed Arab militia that carried out the genocide in Darfur. Motasim's political opinion ultimately forced him to flee his home country and seek asylum in the United States in 2002, before Wesal was born. Motasim later learned that his wife, Wejdan Saleh, was in a refugee camp in Chad. Motasim visited Wejdan in Chad, and Wejdan became pregnant. She returned to Sudan to give birth to their daughter, Wesal, in August 2004. Motasim filed the I-730 petition with the Department of Homeland Security (DHS) so that his wife and daughter could join him in the U.S. Motasim's wife was authorized to enter the U.S. in November 2006. However, because then 2-year-old Wesal was conceived after Adam was granted asylum, her application to accompany her mother was denied.

Because living in displaced persons' camps is particularly dangerous for women, the family had to make the gut-wrenching decision to leave their daughter in the camp with a family friend, with the expectation that she would join them shortly. Wejdan emigrated to the U.S., and joined her husband in New York.

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The separation that was expected to last for months lasted for years. After years of desperately trying to bring Wesal to the U.S., Wesal was finally granted humanitarian parole, an extraordinary measure used by DHS in only the most compelling cases, and joined her family in New York in 2008 at the age of 4.

The Refugee Protection Act would amend the INA to permit the admission of the children of a refugee's spouse or child as derivative refugees themselves – a small change that would have a big impact on refugee families who under current procedures face needless separation.

Expedited Removal

Because asylum seekers are fleeing persecution, they frequently arrive at U.S. ports of entry without appropriate entry documentation. Those individuals detected by immigration officials from the DHS Bureau of Customs and Border Protection (CBP) are placed into the "expedited removal" process – a system legislated in 1996 to quickly remove arriving aliens without involving an immigration judge, while allowing those who have a fear of return to pursue an asylum claim. The asylum procedures for aliens with such a fear of return, however, are unnecessarily expensive, cumbersome, and adversarial.

The Refugee Protection Act would preserve expedited removal while improving the asylum procedure for arriving asylum seekers through a more efficient and appropriate process. It would allow a trained asylum officer to make an asylum determination through a non-adversarial interview – just as asylum officers are already authorized to do for asylum seekers who have already made an entry into the United States. This would be a significant improvement over the current system for arriving aliens seeking asylum, in which an asylum officer's authority is limited to making a "credible fear finding" to refer the asylum seeker to a relatively expensive, lengthy and adversarial removal proceeding before an immigration judge and against a Homeland Security trial attorney.

Detention of Asylum Seekers

Among the most egregious problems in the current asylum system, identified by the U.S. Commission on International Religious Freedom (USCIRF), is the unnecessary detention of asylum seekers. International standards make clear that asylum seekers should not be detained, except when absolutely necessary, and that any detention should be in the least restrictive setting possible. However, in the United States, detention is automatic for arriving asylum seekers. Asylum seekers are held in jails or jail-like facilities that are inappropriate. These conditions create a serious risk of psychological harm, particularly for torture-survivors.

The Refugee Protection Act would ensure that asylum seekers are not held in detention if they do not pose a risk of flight, are danger to the community, and if they pass the credible fear interview. It also provides asylum seekers access to Immigration Judges to review DHS's detention decisions.

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Terrorism Related Inadmissibility Grounds/ Material Support

The security related grounds of inadmissibility were enacted in 2001 to protect the national security interests of the United States and prevent individuals who have engaged in acts of terrorism, genocide, torture or other crimes against humanity from being granted admission to the United States. In addition, law and policy changes have tightened the categorical disqualification from asylum and refugee protection of those who would pose a danger to the United States and have greatly enhanced security reviews in the asylum and refugee admissions process. Unfortunately, legitimate policies designed to bar the admission of terrorists are resulting in the denial of protection to bona fide refugees and asylum seekers who are unfairly labeled as "terrorists" when many are in fact victims of terror.

In 1906, Tuvia Bielski was born into a Jewish family of peasant farmers in Eastern Poland. His life completely changed with the Russian occupation of Poland, and later, the German advancement. When the Nazis began the mass executions of Jews in 1941, slaughtering Bielski's parents and other relatives in the ghetto, Tuvia Bielski fled to the nearby forest with his three brothers. What began as a gathering of family, developed into a well-organized partisan unit. Hundreds of Jews who escaped the mass killings and deportations joined up with the Bielski otriad (partisan detachment) and participated in countless acts of resistance and rescue. Benjamin Dombrovsky was the head of the demolition unit in the Bielski detachment and was resettled in the U.S. by HIAS in 1949.

Currently, any group of two or more people who engage in "terrorist activity" is prohibited from attaining asylum in the U.S. Astonishingly, under today's laws, Tuvia Bielski and Benjamin Dombrovsky, along with their families and the countless other Jews who bravely resisted Nazi terror and saved thousands of Jews from certain death, or provided assistance to the Partisans in their fight against the Nazis, would have faced exclusion when they sought refuge in the U.S. Under the current terrorism definitions, these heroes would be branded as "terrorists" because they illegally engaged in armed conflict. In an absurd twist, America's anti-terrorism laws are now being used to deny protection to refugees fleeing some of the most brutal regimes and violent conflicts on earth.

In recent years, due to the unduly broad definition of "terrorist activity" and the expansive interpretations adopted by DOJ and DHS, victims of oppression seeking protection have been unjustly labeled supporters of "terrorist organizations" or participants in "terrorist activity." As a result of these laws, thousands of legitimate refugees and asylum seekers—who pose no danger to the United States and who have committed no acts of wrongdoing—have been labeled "terrorists" and had their applications for protection denied or delayed.

In 2007, recognizing that legitimate refugees were being denied access to protection because of the broad terrorist-related inadmissibility grounds, Congress gave the Administration broad authority to issue exemptions and admit those who should not be considered to be terrorists. This did not solve the problem, and more than 6,700 refugees,

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asylees, and asylum seekers remain "on hold"—waiting for asylum, green cards, or to be reunited with their spouse or minor children.

The Refugee Protection Act would clarify the definition of terrorist activity, create an exception for material support provided as a result of coercion, and eliminate the overly broad definition of terrorist group. The Refugee Protection Act would not compromise our nation's security, and the tools needed to fight terrorism would remain intact. The Refugee Protection Act would help to ensure that the label of "terrorist" is no longer applied to those who are the victims of oppression and persecution.

Expedited Processing

The U.S. Resettlement Program lacks an efficient method to address the processing needs of refugees in protracted situations. While UNHCR recognizes the needs for resettlement to strategically address protracted refugee situations in cases where the population cannot repatriate or integrate into the country of first asylum, USCIS circuit rides frequently result in high denial rates when interviewing long staying refugees. Often, refugees in protracted situations have been out of their country of persecution for so long that they have difficulty articulating their fear of return at a level of specificity sufficient to pass their refugee interview. This is often the case for refugees who left their country when they were young children or who were born in a refugee camp. One example is the group of Burundians who have been in Tanzania since 1972.

An estimated 250,000 or more Darfuri refugees are struggling to survive in an area of eastern Chad that is riddled with violence, with about 60% of these refugees being women and children. The majority of the refugees in Chad fled because of brutal ethnic cleansing conducted by the Janjaweed militia in the Darfur region of Sudan during 2003 and 2004. Conditions in the Chadian camps are especially bad for women and girls, who are plagued by the threat of rape. Perpetrators range from being nearby villagers and members of the Chadian National Army to family members, other refugees and even staff of humanitarian organizations, whose job it is to provide assistance and support." For the past several years, HIAS has been serving these Darfuri refugees and advocating for their resettlement.

The Refugee Reform Act would authorize the Secretary of State to designate populations of humanitarian concern for expedited resettlement interviews, who have no viable options for integrating locally and cannot return home. It would then allow DHS to use their interview time more efficiently by focus on admissibility, security issues and detect family relationship fraud during the refugee interview and adjudication, and less time re-establishing what the State Department has already determined- that the group to which the person belongs cannot safely return home. Refugee status would be determined by establishing membership in that group. This would greatly aid populations like the Darfuri refugees. The streamlining of processing procedures and shortening of interview times would ultimately save the government money.

Protection for Asylum-Seekers Interdicted at Sea

Of longstanding concern to HIAS is U.S. policy towards asylum seekers interdicted on the high seas as they make their way towards the U.S. Jews are sensitive to the issues

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confronting boat people, as they still remember the Saint Louis being turned away from the United States in 1939, resulting in the return of Jews to Nazi-controlled Europe.

In the wake of the political unrest that followed the September 1991 coup against President Aristide, thousands of Haitians fled the country by boat. On May 24, 1992, President George H.W. Bush reacted by issuing Executive Order 12807 -- the ``Kennebunkport Order" -- declaring that U.S. obligations under the Refugee Convention do not extend outside U.S. territory and that all Haitians interdicted by the Coast Guard were to be repatriated. Between 1982 and 2009, the U.S. Coast Guard stopped—or "interdicted"—114,716 Haitians on their way to the United States. The U.S. Coast Guard does not require interpreters during all interdiction procedures. Therefore, except for the Haitians who physically or verbally resist the Coast Guard's efforts to repatriate them, referred to as the "shout test," it is U.S. policy to return all Haitian boat migrants without any asylum screening whatsoever.

Not all asylum seekers escaping by boat are subject to this policy, known as the "shout test." Cubans are provided information in Spanish informing them that they can raise concerns about their return. Chinese are given a questionnaire asking about their reasons for leaving their country. It is indefensible that Haitians are given unequal opportunity to express a fear of persecution based solely on who they are and the fact that they are from Haiti. Under our country's international treaty obligations, as a signatory of the Refugee Convention, the United States is obliged to ensure that all asylum-seekers interdicted at sea, including Haitians, are entitled to receive protection. The Refugee Protection Act would require DHS to develop policies that would be effective, just, and consistent to ensure refugee protection in the course of interdiction and rescue operations.

Affording refugees the opportunity to seek safe haven in the United States has been a fundamental component of the American humanitarian tradition and international human rights principles, and is a reflection of the Jewish tradition of "redemption of the captive." HIAS long has supported asylum as a key element of refugee protection, advocated for just and compassionate asylum and refugee policies, and urged the government to devote sufficient resources to successfully fulfill the crucial undertaking of protecting the persecuted. For these reasons, HIAS supports the Refugee Protection Act and again thanks the co-sponsors for promoting fair and humane asylum and refugee laws that meet today's needs.

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Statement of
Mary Meg McCarthy, Executive Director
Heartland Alliance's National Immigrant Justice Center

Senate Committee on the Judiciary

"Renewing America's Commitment to the Refugee Convention: The Refugee Protection Act of 2010"

Wednesday May 19, 2010

I. Introduction

Heartland Alliance's National Immigrant Justice Center (NIJC) commends Senators Patrick Leahy (D-VT) and Carl Levin (D-MI) for introducing the Refugee Protection Act of 2010 (S. 3113). NIJC also welcomes the support of co-sponsors Senators Daniel Akaka (D-HI), Richard Durbin (D-IL), and Roland Burris (D-IL). We appreciate the opportunity to submit a statement on this important issue.

The bill's introduction coincided with the 30th anniversary of the Refugee Act of 1980, a landmark piece of legislation that made the United States a beacon of hope for men, women, and children fleeing persecution in foreign lands. Unfortunately, over the past 30 years the legal protections for refugees in the United States have been significantly weakened. Refugees and asylum seekers today face a broken system of laws that frequently results in needless delay, unnecessary detention, and deportation to countries where they face persecution, torture, or death. Enactment of the Refugee Protection Act of 2010 would go a long way toward restoring the United States as a human rights leader and a welcoming nation for those fleeing danger. The Refugee Protection Act would also bring the United States into compliance with our obligations under the United Nations Protocol Relating to the Status of Refugees (Refugee Protocol).

NIJC is a non-governmental organization based in Chicago and dedicated to safeguarding the rights of noncitizens. NIJC advocates for immigrants, refugees, and asylum-seekers through direct legal representation, policy reform, impact litigation, and public education. NIJC and its *pro bono* partners provide legal representation to approximately 10,000 individuals annually, including low-income immigrants, refugees, victims of human trafficking, unaccompanied minors, and asylum seekers. Since its founding 25 years ago, NIJC has developed the largest *pro bono* network in the United States, totaling more than 1,000 attorneys from the nation's leading law firms.

NIJC's experience in asylum issues derives from direct experience providing assistance to individuals fleeing persecution. NIJC's Jeanne and Joseph Sullivan Project for Protection of Asylum Seekers provides free legal representation to asylum seekers fleeing persecution in their homelands. NIJC's National Asylum Partnership on Sexual Orientation serves immigrants seeking asylum based on persecution related to their sexual orientation, gender identity, or HIV status.

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NIJC endorses the Refugee Protection Act of 2010. This legislation includes many provisions that would ensure the protection of vulnerable individuals seeking asylum, including codification of parole guidance for arriving asylum seekers, creation of a nationwide "alternatives to detention" program, and elimination of the one-year asylum application deadline.

Our statement today, however, will focus on the following five sections of the bill: Elimination of Arbitrary Time Limits on Asylum Applications (Section 3); Protecting Victims of Terrorism from Being Defined as Terrorists (Section 4); Effective Adjudication of Proceedings (Section 6); Scope and Standard for Review (Section 7); and Conditions of Detention (Section 10).

II. Elimination of Arbitrary Time Limits on Asylum Applications (Section 3)
Under current law, asylum seekers may be denied asylum even for meritorious claims if they have not filed for asylum within one year of entry into the United States. 8 U.S.C. 1158(a)(2). Under this provision, individuals who suffer from Post-Traumatic Stress Disorder, or who are simply ignorant of the requirement, must be denied asylum without regard to the merits of their claims, if they cannot fit into either of two narrowly-interpreted waiver provisions. This affects thousands of asylum-seekers every year, including NIJC clients:

- The Jimenez Viracacha family fled Colombia due to political persecution. Consumed by fear from their ordeal, the family kept to themselves, and did not know about the one-year requirement. They failed to file for asylum within one year, but did seek asylum promptly after the peace process in Colombia collapsed. The immigration judge granted the family withholding of removal, finding that they had met the higher standard for that relief (a 50.1% likelihood of persecution if deported), but denied the family asylum due to their failure to file within one year of arrival. NIJC appealed the case to the Seventh Circuit arguing that the family fell under one of the exceptions, but the Seventh Circuit is in the majority of circuits which find no jurisdiction to consider waiver eligibility. *Jimenez Viracacha v. Mukasey, 518 F.3d 511 (7th Cir. 2008), cert. denied, 129 S. Ct. 451 (2008).*

Although withholding of removal may protect some refugees from persecution, it also leaves them in a permanent limbo. Without asylum, the family is ineligible to obtain lawful permanent residence status. Without permanent resident status, the children are not eligible for student loans to attend college in this country. Under the Refugee Protection Act of 2010, legitimate asylum seekers and their families would no longer be prevented from gaining protection and lawful status in the United States. By eliminating the one-year deadline under 8 U.S.C. § 1158(a)(2), the Refugee Protection Act will give asylum-seekers an opportunity to have their claims approved or denied based on the merits of the claim, rather than on the arbitrary basis of whether they have formally sought asylum within a year of arrival.

III. Protecting Victims of Terrorism from Being Defined as Terrorists (Section 4)
Currently asylum seekers and refugees who flee to the United States to escape persecution and torture in their native countries face barriers to obtaining protection due to the so-called "terrorism bars" of 8 U.S.C. § 1182(a)(3)(B). Under this provision, the Department of Homeland Security (DHS) and the Department of Justice (DOJ) have found asylum seekers and refugees ineligible for protection in the United States despite the fact that they were forced,

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under severe duress, to participate in the activities of alleged terrorist organizations. DHS and DOJ have also barred asylum seekers from protection if they participated in pro-democracy organizations that supported activities many years after the asylum seekers left the group or because they belonged to pro-democracy groups that were part of a broad coalition that included groups involved with violence. The agencies have further relied on 8 U.S.C. § 1182(a)(3)(B) to bar the spouses and children of these individuals.

At present, DHS and DOJ have asserted that over 25 of NIJC's clients are inadmissible under 8 U.S.C. § 1182(a)(3)(B). Because of the terrorism bar charge, these individuals are unable to move forward with their lives, integrate into U.S. society, and face long-term separation from their families, who often remain in extremely dangerous situations in their home countries. NIJC clients affected by the current terrorism bar legislation include:

- "Solomon,"[1] a 58-year-old Ethiopian man who was involved with the Coalition for Unity and Democracy (CUD), a coalition of Ethiopian pro-democracy political parties. Solomon viewed the CUD as an entirely peaceful party and never participated in or knew of any violent activities related to the CUD. In 2005, government officials arrested Solomon and detained him for two months, during which they frequently beat and tortured him. After his release, Solomon fled to the United States, where he applied for and received asylum in 2007. However, when Solomon filed petitions to bring his wife and three children to the United States, he was told that their petitions were placed on hold because, according to DHS, Solomon may be inadmissible due to his prior involvement with the CUD. DHS asserts that the CUD is a "Tier III" or undesignated terrorist organization. The petitions remained on hold for three years, during which time Solomon's wife was arrested and interrogated regarding Solomon's activities and she and the children had to live in hiding, separated from Solomon. After advocacy by NIJC, USCIS finally granted the petitions for Solomon's wife and children in 2010, three years after applying.

- "Agnes" is a 31-year-old woman from Uganda. When she was 29 years old, her father, an officer in the Ugandan military, kidnapped her and took her to the camp of the Lord's Resistance Army (LRA), a group designated as a terrorist organization by the United States. At the camp, Agnes's father offered her as a wife for Joseph Kony, the leader of the LRA. Over a week, Kony and his guards raped Agnes multiple times and detained her in a prisoner's pen with other men and women who had been beaten and mutilated. Agnes was repeatedly ordered to join the LRA and she consistently resisted, until her father told her she must join or die. Three days after she agreed with her father's order, Agnes managed to escape from the camp during an LRA raid. After returning to her home, Ugandan paramilitaries arrested, tortured, and raped Agnes because they believed she held pro-LRA sympathies. Agnes fled Uganda and went to the United States, where she applied for asylum. During her immigration court proceedings, the Immigration and Customs Enforcement (ICE) trial attorney accused Agnes of having provided material support to the LRA and asserted that she was barred under the law from obtaining asylum.

[1] All client names have been changed to protect identity.

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Under the Refugee Protection Act of 2010, these legitimate asylum seekers and their families would no longer be prevented from gaining protection and lawful status in the United States. The Refugee Protection Act removes the statutory provision that bars spouses and children from status in the United States simply by virtue of their familial relationship to an individual who might be inadmissible under 8 U.S.C. § 1182(a)(3)(B). The Refugee Protection Act also amends the "material support" provision of 8 U.S.C. § 1182(a)(3)(B) to exempt individuals who coerced to provide support for terrorist organizations.

As it currently exists, 8 U.S.C. § 1182(a)(3)(B) prevents legitimate asylum seekers and refugees who have suffered immense persecution and face certain death in their home countries from obtaining the protection in the United States. This is not what Congress intended. The Refugee Protection Act amends 8 U.S.C. § 1182(a)(3)(B) so that bona fide asylum seekers who pose no danger to the United States and have had no involvement with violent activities remain eligible for the protection they need and deserve.

IV. Effective Adjudication of Proceedings (Section 6)

The Refugee Protection Act would permit the Attorney General to appoint counsel in cases where appointed counsel would contribute to the fair resolution or effective adjudication of the case. In 2009, NIJC, along with a number of other human rights organizations, filed a Petition for Rulemaking with the Department of Justice to authorize immigration judges to appoint counsel where it is necessary to ensure fundamental fairness.[2]

Representation by counsel is critically important in immigration cases, where the complexity of immigration law can be overwhelming for noncitizens to navigate. Counsel is especially important for vulnerable noncitizens, including children and individuals with mental impairments. The situation of NIJC client "Maleah" illustrates the problems that arise for vulnerable individuals in proceedings:

- "Maleah," a 50-year-old native of the Philippines and mother of three children, lived in the United States as a lawful permanent resident since 1990. In October 2008, she was detained by following two minor convictions. She had suffered depression for years and had been under regular care of a doctor, but that care ended once she was in ICE custody. Suffering from severe depression exacerbated by her detention, and unable to understand the full nature of the proceedings against her, Maleah appeared at her immigration hearing without a lawyer. The judge did not tell Maleah that she had the right to seek free legal assistance from a legal aid organization before he ordered her removal. Several days after the hearing, Maleah met attorneys from NIJC during a "know your rights" presentation in the detention facility. By the time the attorneys agreed to represent Maleah a few days later, she had already been transferred from Chicago to El Paso, Texas, and was about to be deported. The attorneys convinced a judge to stop the deportation and allow Maleah to reopen her case. Over the next six months, the attorneys helped Maleah gather the evidence she needed to demonstrate she was eligible to remain in the United States. In August 2009, the court reinstated Maleah's permanent resident status and she was released from detention.

[2] The petition is available on-line at http://www.immigrantjustice.org/news/litigation/petition-apptcounsel.html.

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Under the Refugee Protection Act, an immigration judge could appoint counsel in cases such as Maleah's, where fundamental fairness requires representation by counsel. In addition to protecting constitutional due process rights, this provision would also increase the efficiency of immigration court proceedings. As the Executive Office for Immigration Review has commented, "Non-represented cases are more difficult to conduct. They require far more effort on the part of the judge." The Refugee Protection Act would increase the efficiency and fairness of court proceedings.

V. Scope and Standard for Review (Section 7)

The Refugee Protection Act would restore judicial review to ensure fair and reasonable adjudication of asylum claims in a manner consistent with principles of administrative law. Currently, many noncitizens cannot seek judicial review of adverse immigration decisions, due to jurisdiction-stripping provisions added to the statute by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) and REAL ID Act (1995). The lack of review is particularly troubling given the serious concerns advocates have raised about the ability of the immigration court system to adjudicate cases competently. Several U.S. Circuit Courts of Appeals have found that current immigration court practice has "fallen below the minimum standards of legal justice."[3]

In its recent decision in *Kucana v. Holder* (558 U.S. ___ (2010)), the U.S. Supreme Court ruled that noncitizens seeking to reopen their removal orders have a right to judicial review if their motion to reopen is denied. The Court applied the long-standing presumption in favor of judicial review of administrative actions, reaffirming that only clear and convincing evidence of congressional intent to deny review will suffice to insulate agency action from scrutiny. The Court noted that Congress had explicitly limited review in many other contexts, but had not done so here.

NIJC welcomes the Refugee Protection Act's provisions that will restore judicial review over asylum denials based on lack of corroboration of asylum claims. By permitting judicial review to these vulnerable individuals, the Refugee Protection Act reaffirms our country's commitment to basic standards of fairness and due process.

VI. Conditions of Detention (Section 10)

The Refugee Protection Act would require the government to create and maintain minimum standards of care for immigrant detainees. Currently, Immigration and Customs Enforcement (ICE) detains 30,000 noncitizens a day. ICE's detention authority is civil in nature. The purpose of immigration detention is to ensure that noncitizens appear for court hearings and removal; ICE does not have penal detention authority.

Despite the civil nature of immigration detention, however, many noncitizens are held in worse conditions than those experienced by convicted criminals. Although ICE has some guidelines on the treatment of detainees, these guidelines are based on a penal model and are not legally enforceable. ICE detains noncitizens in remote facilities, far from family or access to counsel, and often without access to adequate medical care. Since 2003, more than 111 noncitizens have

[3] *Benslimane v. Gonzales*, 430 F.3d 828, 829-830 (7th Cir. 2005) (citing to decisions by the Second, Third and Ninth Circuit Courts of Appeals, which criticized the Board of Immigration Appeals and the immigration courts).

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died in detention, some from chronic illnesses for which they did not receive appropriate treatment, others from suicide.

The conditions of immigration detention facilities are particularly inhumane for vulnerable populations such as asylum seekers, most of whom have fled brutal persecution in their home countries. Many detained asylum-seekers have physical injuries, as well as serious psychological issues related to their persecution, which frequently go untreated while they remain in detention for long periods, waiting to have a hearing on their asylum case. The situation of "Susan," an asylum seeker currently detained by ICE in Illinois, illustrates the need for adequate and appropriate standards of care in detention:

- "Susan" is a transgender individual who became HIV positive after being gang raped several years ago. When ICE first detained Susan, jail staff immediately began to mock her and humiliate her for being transgender, using homophobic slurs and calling her "trash." When she complained about her treatment, staff placed her in solitary confinement in retaliation. Throughout her detention, she was not allowed to speak to other detainees and had limited privileges. Jail staff also physically abused and humiliated her by forcefully grabbing her breasts. Susan reported her abuse to ICE officers, but her complaints went unanswered by officials until extensive advocacy by Susan's attorney, in partnership with NIJC.

Under the Refugee Protection Act, the Secretary of Homeland Security would be required to promulgate legally binding regulations to establish conditions of detention that would ensure a safe and humane environment. The Act includes statutory language that specifically requires ICE to provide adequate medical care; access to counsel, including group legal orientations; access to visitation for family and religious visitors; adequate telephone access, including reasonable phone rates; and limitations on the use of shackling, strip searches and solitary confinement. In addition, the Act would require compliance with the Prison Rape Elimination Act, which would ameliorate some of the obstacles faced by detainees seeking redress for, and protection from, egregious forms of abuse by detention center staff and other inmates.[4] These protections will help ensure that the basic human rights of noncitizens in immigration detention are respected.

VII. Conclusion

Based on our extensive experience representing noncitizens, including asylum seekers and refugees, in immigration proceedings, NIJC applauds the introduction of the Refugee Protection Act of 2010. This legislation would eliminate current legal barriers in the United States which limit compliance with obligations under the Refugee Protocol. We urge members of Congress to enact this important legislation, which is critical to ensuring that the United States upholds its commitment to fairness and due process and continues to be a welcoming nation for individuals fleeing danger and persecution.

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[4] Earlier this month, NIJC urged the Attorney General to adopt the national standards developed by the National Prison Rape Elimination Commission, particularly for individuals held in immigration detention. NIJC's letter is available on-line at http://www.regulations.gov/search/Regs/home.html#documentDetail?D=DOJ-OAG-2010-0001-0449.

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Statement of Human Rights First

United States Senate Committee on the Judiciary
"Renewing America's Commitment to the Refugee Convention:
The Refugee Protection Act of 2010"

May 19, 2010

Human Rights First applauds the Senate Judiciary Committee for holding a hearing on the Refugee Protection Act of 2010 and for shining a light on the serious problems in the U.S. refugee and asylum systems. In particular, we commend Chairman Leahy for his leadership in championing this important piece of legislation and urge the Senate to take further steps toward passing the Refugee Protection Act and restoring our nation's commitment to protect vulnerable refugees

Since 1978, Human Rights First has worked to protect and promote fundamental human rights and to ensure protection of the rights of refugees. We accomplish this objective by ensuring that refugees have access to asylum, by advocating for fair asylum procedures, by pressing for U.S. compliance with international refugee and human rights law, and by helping individual refugees to win asylum through our *pro bono* asylum legal representation program. Human Rights First and our volunteer lawyers have helped victims of political, religious, and other persecution from Burma, China, Colombia, Congo (DRC), Iraq, Zimbabwe, and many other countries gain asylum and protection from persecution in this country. Our asylum advocacy is informed by the experiences of our refugee clients and their *pro bono* lawyers.

Introduction

The United States has a long history of providing refuge to victims of religious, political, ethnic, and other forms of persecution. This tradition reflects a core component of this country's identity as a nation committed to freedom and respect for human dignity. Thirty years ago, when Congress passed the Refugee Act of 1980, with strong bi-partisan support, the United States enshrined into domestic law its commitment to protect the persecuted, creating the legal status of asylum and a formal framework for resettling refugees from around the world. To this day, the Refugee Act remains a symbol of this country's unified commitment and humanitarian leadership in addressing the plight of persecuted and displaced people around the world.

In the intervening years, the United States has granted asylum and provided resettlement to thousands of refugees who have fled political, religious, ethnic, racial, and other persecution. These refugees have come from Burma, China, Colombia, Liberia, Iran, Iraq, Rwanda, Russia, Sierra Leone, Sudan, and other places where people have been persecuted for who they are or what they believe. Many were arrested, jailed, beaten, tortured, or otherwise persecuted due to their political or religious beliefs, or their race, ethnicity, or other fundamental aspect of their identity. Over the years, these refugees and their families have been able to rebuild their lives in safety in the United States.

Over the past fifteen years, however, the United States has faltered in its commitment to those who seek protection. A barrage of new statutory provisions, policies, and legal interpretations have undermined the institution of asylum in the United States and led the United States to deny asylum or other protection to victims of persecution. These obstacles include:

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- A filing deadline and other barriers that have limited access to asylum for genuine refugees;
- The rapid escalation of immigration detention and the failure to provide crucial due process safeguards to prevent detention from being arbitrary or unnecessary;
- Expansive bars to admissibility and flawed legal interpretations that have mislabeled refugees as supporters of "terrorism";
- Flawed interpretations of the "particular social group" and "nexus" requirements of the refugee definition; and
- Maritime interdiction procedures that lack effective safeguards to ensure that the United States is not returning refugees to persecution.

The Refugee Protection Act includes provisions to address these obstacles as well as other necessary fixes to the asylum and resettlement systems. The Refugee Protection Act would restore – and renew – not only our commitment to protect the persecuted but also our moral authority to lead the global community in addressing the plight of persecuted and displaced people around the world.

The Refugee Protection Act Eliminates the Asylum Filing Deadline

The asylum filing deadline bars a refugee from asylum if he or she cannot demonstrate by "clear and convincing evidence" that the asylum application was filed within one year of arrival in the United States, absent changed or extraordinary circumstances. In the 13 years since the deadline went into effect, more than 79,000 asylum applicants have had their cases rejected by U.S. asylum adjudicators under the deadline, as detailed by Human Rights First in a March 2010 briefing paper.[1] The Refugee Protection Act would eliminate the deadline so that bona fide refugees with well-founded fears of persecution are not denied asylum because of a technical requirement.

There are many reasons why a refugee might file a request for asylum protection more than a year after arriving in the United States. Many asylum seekers do not speak English, have suffered physical or emotional trauma, and struggle upon arrival simply to meet their basic needs. Some potential applicants might not understand asylum law procedures or even know they are eligible for asylum. Others may face delays in securing counsel given the lack of government-funded representation and the limited availability of *pro bono* representation.

Recognizing these realities, when Congress instituted the deadline in 1996, leaders emphasized that it should not disqualify bona fide refugees.[2] Sen. Orrin Hatch, one of the main proponents of the deadline,

1 HUMAN RIGHTS FIRST, RENEWING U.S. COMMITMENT TO REFUGEE PROTECTION: RECOMMENDATIONS FOR REFORM ON THE 30th ANNIVERSARY OF THE REFUGEE ACT (2010) [hereinafter Human Rights First 30th Anniversary Recommendations], available at http://www.humanrightsfirst.org/asylum/refugee-act-symposium/30th-AnnRep-3-12-10.pdf.

2 While some proponents of the deadline in 1996 argued that it would help curb fraud, the deadline has actually prevented legitimate refugees from receiving asylum. Moreover, the asylum system has other checks and mechanisms tailored to identify fraud. Asylum applications and testimony are provided under penalty of perjury; applicants who provide false information can be prosecuted and permanently barred from receiving any immigration benefits in the future; original documents submitted as evidence regularly undergo forensic testing to help identify document fraud; and the Department of Homeland Security subjects asylum applicants – as it does all potential immigrants to the United States – to extensive security procedures, including FBI biometric (fingerprint) testing and identity checks through multiple intelligence databases.

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promised, "[I]f the time limit and its exceptions do not provide adequate protections to those with legitimate claims of asylum, I will remain committed to revisiting this issue in a later Congress."[3]

The filing deadline is also inefficient for the government. It diverts time and resources at both the Asylum Office and the Immigration Courts – time that could be spent assessing the merits of asylum cases rather than litigating technicalities relating to the filing deadline. The deadline also shifts the cases of asylum seekers – including many genuine refugees – into the Immigration Court system. Furthermore, the deadline undermines governmental interests in promoting integration; while some refugees found to be ineligible for asylum under the deadline are eventually extended a limited protection from removal (withholding of removal), these refugees are not afforded the ability to bring their children and spouses to the United States or to become lawful permanent residents or citizens.

In other cases, refugees who have well-founded fears of persecution but cannot meet the higher standard under U.S. law for withholding of removal are ordered deported back to their countries of persecution under the one-year bar. While the differing standards have a long history under U.S. law, this anomaly can lead the United States to deport back to persecution refugees with well-founded fears of persecution – including in cases implicating the asylum filing deadline. Moreover, the exceptions to the deadline - for changed or extraordinary circumstances – have not prevented legitimate refugees with well-founded fears of persecution from being denied asylum in the United States.

Through its research and *pro bono* legal representation of asylum seekers, Human Rights First has learned of many cases of genuine refugees who have had their asylum requests rejected, denied, or significantly delayed due to the filing deadline. For example:

- A young woman from Eritrea who had been tortured for her Christian beliefs was denied asylum, even though she faced a probability of persecution meriting withholding of her removal, after an Immigration Court ruled that she had not shown that she had filed within a year of her arrival.

- A Burmese student who fled to the United States after being jailed for several years for his pro-democracy activities was denied asylum, even after he was found to face a clear probability of persecution meriting withholding of his removal.

A filing deadline that prevents asylum cases from being adjudicated on their merits is inconsistent with U.S. commitments under the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Refugee Protocol, to which the United States became a party in 1968. The UNHCR Executive Committee, of which the United States is a member, has confirmed that failure to comply with technical requirements such as filing deadline "should not lead to an asylum request being excluded from consideration."

The Refugee Protection Act Provides Safeguards Against Unnecessary and Inappropriate Detention

In an April 2009 report,[4] Human Rights First found that over 48,000 asylum seekers were held in detention between 2003 and April 2009 at a cost of over $300 million. Asylum seekers arriving at a U.S. airport or border point in search of this country's protection – are detained in jails or jail-like facilities with inadequate procedural safeguards. If an Immigration and Customs Enforcement (ICE) officer denies

3 142 CONG. REC. S11492 (daily ed. Sept. 27, 1996) (statement of Sen. Hatch).

4 HUMAN RIGHT FIRST, U.S. DETENTION OF ASYLUM SEEKERS: SEEKING PROTECTION, FINDING PRISON (2009), available at http://www.humanrightsfirst.org/pdf/090429-RP-hrf-asylum-detention-report.pdf.

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parole, the decision cannot be appealed to a judge – even an Immigration Judge. In fact, these asylum seekers are not given access to Immigration Court custody hearings, a basic due process safeguard that would help protect asylum seekers from being unnecessarily detained for months or years. The lack of prompt court review is not only inconsistent with U.S. traditions of fairness, but it is also inconsistent with U.S. commitments under the Refugee Protocol and prohibitions against arbitrary detention under the International Covenant on Civil and Political Rights (ICCPR), as detailed in Human Rights First's report. The Refugee Protection Act would remove barriers that prevent this group of asylum seekers from receiving prompt review by the Immigration Courts of detention decisions so that they are not subject to prolonged and unnecessary detention.

Human Rights First has documented the cases of many refugees who were subsequently granted asylum by the United States but were not provided with Immigration Court custody hearings and were held in U.S. immigration detention for prolonged periods of time, such as:

- A Baptist Chin woman from Burma was detained in an El Paso, Texas, immigration jail for over two years.

- A Tibetan man, who was detained for more than a year and tortured by Chinese authorities after putting up posters in support of Tibetan independence, was detained again for 11 months in a New Jersey immigration detention facility.

While DHS and ICE have announced plans to reform some aspects of the highly flawed immigration detention system, they have not yet committed to work with the Department of Justice to change the regulatory language that deprives arriving asylum seekers of access to Immigration Court custody hearings. Reforms to ICE's own parole procedures that went into effect in January 2010, while a welcome improvement, did not address the lack of prompt independent court review of ICE's detention decisions or help address the lack of compliance with Article 9(4) of the ICCPR.

The Refugee Protection Act Protects Refugees from Inappropriate Exclusion

U.S. immigration laws have for many years barred from the United States people who pose a danger to our communities, threaten our national security, or who have engaged in or supported acts of violence that are inherently wrongful and condemned under U.S. and international law, even if they have a well-founded fear of persecution and otherwise qualify as refugees under U.S. immigration law. These important and legitimate goals are consistent with the U.S. commitment under the Refugee Convention and its Protocol, which exclude from refugee protection perpetrators of heinous acts and serious crimes, and provide that refugees who threaten the safety of the community in their host countries can be removed.

Over the past eight years, however, the provisions of the immigration law relating to "terrorism" – as that term is defined in the Immigration & Nationality Act (INA) – have undergone rapid legislative expansion. While these provisions were intended to target people who threaten U.S. national security and those who have engaged in or supported acts of wrongful violence, the statutory language for several of these provisions has been written so broadly, and the Departments of Homeland Security and Justice have interpreted and applied them so expansively, that in recent years thousands of refugees – who do not pose a danger to the United States and have not committed any acts that should bar them from protection under the Refugee Convention – have had their applications for asylum, permanent residence, and family reunification denied or delayed.

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As detailed by Human Rights First in two reports – one issued in 2006 and the second issued just six month ago[5] – thousands of refugees who were victimized by armed groups, including by groups the United States has officially designated as "terrorist organizations," have been treated as "supporters of terrorism." In addition, any refugee who ever fought against the military forces of an established government is being deemed a "terrorist" even if that government was a repressive regime that was brutally persecuting its people.

These provisions are being applied to many refugees who were associated with groups that the U.S. government does not consider to be "terrorist organizations" in any other context. As a result, refugees who pose no threat to the United States, and are not guilty of any conduct for which the United States would legitimately want to exclude them, are being denied the protection they need or are unable to obtain permanent residence or reunite with their spouses or children. Any non-citizens who *do* pose a threat to the United States or who *are* guilty of actual terrorist acts or other crimes are *already covered* by other provisions of the immigration law, so that the "Tier III" definition (essentially any group of two or more people who use a gun or other weapon for purposes other than financial gain) is being used overwhelmingly against people who were not its intended targets. In fact, many of the refugees affected by the "Tier III" definition's over-breadth were involved only in peaceful political activity in connection with groups that are now deemed to be "terrorist organizations" for immigration-law purposes. Examples of organizations that have been labeled "Tier III" organizations include: groups that fought the ruling military junta in Burma and were not included in the 2007 legislation that removed the Chin National Front and other Burmese insurgent groups from the scope of the Tier III definition; the Democratic Unionist Party and the Ummah Party, two of the largest democratic opposition parties in Sudan, many of whose members were forced to flee the country in the years after the 1989 military coup that brought current President Omar Al-Bashir to power; and virtually all Ethiopian and Eritrean political parties and movements, past and present.

The federal immigration agencies charged with applying these laws have also been interpreting all these provisions in very expansive ways. The immigration law's "material support" bar, for example, is being applied to minimal contributions, to people who were forced to pay ransom to armed groups, to doctors who provided medical care to the wounded in accordance with their medical obligations, and to persons who engaged in other forms of lawful activity. These interpretations have exacerbated the impact of the law's overbroad definitions.

The Secretaries of State and Homeland Security have discretionary authority to decline to apply these "terrorism"-related provisions in individual cases, and for nearly five years, this has been the Administration's primary approach to addressing these problems. Unfortunately, as detailed in Human Rights First's reports and an April 2010 letter to DHS Secretary Janet Napolitano and Attorney General Eric Holder from Human Rights First and 23 other refugee advocacy organizations, this approach is not working. The Refugee Protection Act clarifies the definition of terrorist activity, creates an exception for material support provided as a result of coercion, and eliminates the immigration law's "Tier III" category of terrorist organizations.

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5 HUMAN RIGHTS FIRST, ABANDONING THE PERSECUTED (2006), available at http://www.humanrightsfirst.info/pdf/06925-asy-abandon-persecuted.pdf; HUMAN RIGHTS FIRST, DENIAL AND DELAY: THE IMPACT OF THE "TERRORISM BARS" ON ASYLUM SEEKERS AND REFUGEES IN THE UNITED STATES (Nov. 2009), available at http://www.humanrightsfirst.info/pdf/RPP-DenialandDelay-FULL-111009-web.pdf; See also Human Rights First 30th Anniversary Recommendations at note 1.

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The Refugee Protection Act Clarifies "Social Group" Basis for Asylum

The Refugee Protection Act would also clarify the "particular social group" basis and "nexus" requirements for asylum so that the asylum requests of vulnerable individuals, including women fleeing honor killings, domestic violence, and other gender-based persecution, are adjudicated fairly and consistently. As a result of a ten-year delay in resolving these issues, asylum applicants have been denied protection and returned to the hands of their persecutors, or have remained in legal limbo, postponing their ability to reunite with their children and bring them out of harm's way.

Under decisions issued by the BIA in 2007 and 2008, asylum applicants who base their claim on their membership in a particular social group, in addition to providing evidence that the members of the group share a common immutable characteristic, have also been required to show that the group is both "discrete" and visible to society at large such that they can be distinguished from others in the eyes of the persecutor.[6] Reversion to the BIA's long-established and well-regarded *Acosta* standard would eliminate the need for a particular social group be "socially visible" – a requirement that is posing severe obstacles to a broad range of meritorious asylum claims, and has been criticized by federal court judges such as Judge Posner of the Seventh Circuit Court of Appeals, who recently observed that "if you are a member of a group that has been targeted for assassination or torture or some other mode of persecution, you will take pains to avoid being socially visible."[7]

The Refugee Protection Act Ensures Protection in Maritime Interdiction

The United States currently does not have effective, fair, transparent, and non-discriminatory interdiction standards to guide its actions and ensure compliance with its commitments under the Refugee Protocol and other human rights conventions. The Refugee Protection Act would require DHS to develop uniform policies to identify asylum seekers interdicted at sea and ensure protection in the course of interdiction and rescue operations.

U.S. interdiction policies are flawed for all who attempt to come to the United States by sea – Haitians, Cubans, Chinese, and others. But they are particularly flawed for Haitians. Haitians are not informed, either in writing or verbally, that they can express any fear or concern about repatriation. By contrast, Cubans are at least told that they can raise any concerns with a U.S. officer. The United States also does not require that Creole-speaking officers or translators are present during interactions with Haitians. As a result, if a Haitian migrant should want to advise a Coast Guard officer about a fear of return, the migrant may not be able to communicate verbally with the officer. This non-process is known as the "shout test" – because the only way for a Haitian migrant to communicate a fear of return (which might lead a U.S. officer to refer the migrant for a screening interview with an Asylum Officer) is to shout or wave his or her hands or somehow make a fear of return known by physical action. Without effective communication, there can be no assurance that a refugee would be able to communicate his or her fears of return to U.S. officials conducting interdiction or rescue operations.

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6 Matter of A-M-E- & J-G-U, 24 I. & N. Dec. 69 (BIA 2007); Matter of S-E-G-, 24 I. & N. Dec. 579 (BIA 2008).

7 Gatimi v. Holder, 578 F.3d 611, 615 (7th Cir.2009) (Posner, J.).

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May 25, 2010

The Honorable Patrick Leahy
Chairman, U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Leahy,

Immigration Equality is a national organization that works to end discrimination in U.S. immigration law, to reduce the negative impact of that law on the lives of lesbian, gay, bisexual, transgender (LGBT) and HIV-positive people, and to help obtain asylum for those persecuted in their home country based on their sexual orientation, transgender identity or HIV-status. Immigration Equality was founded in 1994 as the Lesbian and Gay Immigration Rights Task Force. Since then we have grown to be a fully staffed organization with offices in New York and Washington, D.C. We are the only national organization dedicated exclusively to immigration issues for the LGBT and HIV-positive communities. Over 15,000 people subscribe to our monthly e-newsletter, and nearly 20,000 unique visitors consult our informational website each month. Our legal staff answers more than 1,500 queries annually from individuals throughout the entire U.S. and abroad via telephone, email and in-person consultations. The Immigration Equality Action Fund is the policy arm which advocates for specific legislative change.

We applaud Senator Leahy for convening the hearing on this bill and for his leadership as the original Senate sponsor of the Refugee Protection Act of 2010.

One Year Filing Deadline

The one year filing deadline creates an arbitrary limitation on the ability of individuals, especially LGBT and HIV-positive people, to apply for and receive asylum in the United States.[i] Many LGBT and HIV-positive people do not know that they can file for asylum based on their sexual orientation, gender identity, or HIV-status and thus often miss the one year filing deadline. Because of this, many legitimate asylum-seekers are placed in removal proceedings and cannot obtain relief because they cannot meet the greater burden under the definition of withholding of removal. Moreover, those who are able to meet this higher standard, are left in a state of permanent legal limbo, never able to improve their status, never able to travel abroad, and thus often never again able to see family members who cannot get visas to the U.S., but whom they could have visited in third countries.

> *"Marianna," a transgender woman from Brazil, filed for asylum more than one year after entering the U.S. and was referred to Immigration Court. While her case was*

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pending, she married a U.S. citizen disabled, veteran in Florida and he filed a spousal petition for her. Because the state they lived in saw their marriage as same sex, her husband's application on her behalf was rejected. When he died last year, Marianna could not even mourn properly as she fought to remain in the U.S. where she would be free from persecution. Through the help of a pro bono attorney, she was able to get withholding of removal, but she knows she will probably never see her Brazilian family again.

"Abdul" a gay man from Bangladesh won withholding of removal after having escaped his country when the local imam issued a "fatwa" or death sentence against him when his homosexuality was discovered. He didn't know that his sexual orientation could be a ground for asylum and did not file for asylum until he was placed in removal proceedings. He prevailed on his withholding case but was denied asylum because of the one year deadline. Although Abdul had no criminal history, after winning his case, he has been required to have regular check-ins with a deportation officer. Since an applicant who "wins" withholding is simultaneously ordered removed, Immigration and Customs Enforcement can require him to attend these check-ins indefinitely.

"Martina," a lesbian from Eastern Europe was granted withholding of removal as part of a "plea bargain" between her attorney and the attorney from Immigration and Customs Enforcement. Martina missed the one year deadline because her attorney had filled out her asylum application form incorrectly and the Service Center returned the application. The Immigration Judge mistakenly advised Martina that she could adjust her status to legal permanent resident if she found an employer sponsor. Martina would not have accepted this status if she had understood the limbo it would leave her in.

Given the above, we welcome the changes proposed in Section 3, "Elimination of Arbitrary Time Limits on Asylum Applications." This section provides an efficient and effective solution to the one-year bar and its negative impact on LGBT and HIV-positive asylum-seekers.

Release of Asylum Seekers and Judicial Review of Custody Determination

The detention of asylum-seekers and their inability to have Immigration and Customs Enforcement's ("ICE's") decision to detain them reviewed by an Immigration Judge presents a serious impediment to the fair and just adjudication of their asylum applications.[ii] This is of particular concern for LGBT and HIV-positive asylum seekers who face further discrimination, harassment, and even abuse at the hands of other detainees, guards, and ICE officers while in detention. The trauma and stress created by detention has led to disastrous results for LGBT and HIV-positive asylum-seekers, including giving up their claims to asylum, withholding of removal or relief under the Convention against Torture and accepting an order of removal just so that they can be released from immigration detention.

" Ahmed," a gay man from Morocco had been repeatedly raped and tortured when his family discovered his sexual orientation. He had very compelling evidence to prove his claim for relief in Immigration Court, including the eye-witness account of his U.S.-

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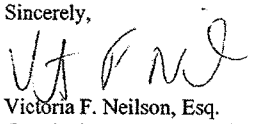
citizen sister. However, Ahmed instructed Immigration Equality to withdraw his applications for relief upon discovering that he was likely to spend many months in immigration detention during the pendency of his case. A protracted and indeterminate detention was more than Ahmed, as a victim of torture, could endure.

Therefore, we gladly support the new policies and procedures created by Section 8, "Efficient Asylum Determination Process and Detention of Asylum Seekers." In particular, we find the shift to a presumption of release instead of detention for asylum seekers who have established their identity and passed a credible fear interview, and the right to review of ICE's detention determination by an Immigration Judge. This section provides a fair and effective solution to the problems currently created by the detention, without judicial review, of asylum seekers.

Conclusion

Immigration Equality would like to thank Senator Leahy for introducing the Refugee Protection Act of 2010 and express our support of its passage. This Act offers an opportunity to correct several of the injustices our current asylum and detention system imposes on LGBT and HIV-positive asylum seekers and therefore re-establish the United States as a safe haven for those fleeing persecution and torture throughout the world.

Sincerely,



Victoria F. Neilson, Esq.
Legal Director, Immigration Equality Action Fund

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[i] *See* Neilson, Victoria; Morris, Aaron. New York City Law Review, Summer 2005. Article. The Gay Bar: The Effect of the One-Year Filing Deadline on Lesbian, Gay, Bisexual, Transgender, and HIV-Positive Foreign Nationals Seeking Asylum or Withholding of Removal. 8 New York City Law Review 233 (Summer 2005).

[ii] *See* Human Rights First. *U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison*, pp. 42-45. 2009.

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Written Statement for the Record

Submitted by
The International Rescue Committee

To
The Senate Judiciary Committee

For the Hearing
"Renewing America's Commitment to the Refugee Convention: The Refugee Protection Act of 2010"

May 19, 2010

I. INTRODUCTION

The International Rescue Committee (IRC) is a global humanitarian organization present in 42 countries worldwide and 22 cities in the United States, providing emergency relief and post-conflict development and helping refugees and people uprooted by conflict and disaster to rebuild their lives. Since its inception, IRC has been involved in virtually every major refugee crisis and resettlement initiative around the globe.

In the United States, IRC helps refugees resettle and become self-sufficient in their adopted country. In the last 10 years, IRC has provided resettlement support to over 77,000 refugees and asylees in the U.S., including 11,500 in 2009 alone. Much of this work is carried out as a public-private partnership with U.S. federal and state government offices. IRC assists refugees to become integrated into their new communities, focusing on housing, job placement, and employment skills and facilitating access to healthcare, education, English-language classes, and community orientation. In addition, the IRC resettlement network is recognized by the U.S. Department of Justice Board of Immigration Appeals to provide comprehensive immigration services to refugees and asylees, helping them on the path to permanent residence and U.S. citizenship.

The International Rescue Committee requests the Senate Judiciary Committee to current gaps in the U.S. asylum and refugee protection policies. We welcome the introduction of the Refugee Protection Act (S. 3113) as a way to repair many of these We believe this measure would improve existing asylum policies and ensure that more people who need and deserve U.S. protection can benefit from it. It would also make

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discrete yet long overdue improvements in the support provided to refugees newly the United States.

II. TERRORIST RELATED INADMISSABILITY GROUNDS (TRIG)

The USA Patriot Act and the Real ID Act expanded the definition of terrorism to prohibit anyone who has provided "material support" to terrorists from being admitted to the United States. These provisions were meant to protect America from genuine terrorist threats. However, the overly broad expansion of terrorism and terrorist activity definitions has led to unintended consequences for individuals fleeing persecution whom the U.S. has a proud history of protecting. As a result, thousands of legitimate refugees and asylum seekers who pose no threat to the United States are denied the protection they need or are unable to reunite with their family members in the U.S. or become lawful permanent residents.

Although the Administration has taken steps to address certain aspects of the problem, these changes are not sufficient and are not being implemented in an effective manner. Refugees continue to be denied protection as result of being labeled as members of a so called "Tier III terrorist organization." Tier III is defined as any group of two or more people who engage in activity that the law defines as terrorist, but that is so sweeping it includes Iraqis who fought against the Saddam Hussein regime (even those who fought alongside Coalition forces in 2003), groups that fought against the Burmese military junta and Afghans who fought the Soviet forces with U.S. support in the 1980s.

In many cases the overly broad legal definitions have undermined the goals U.S. foreign, security, and humanitarian policies try to achieve – refugees brutalized by terrorist groups and forced to provide them with support often under gun point have been labeled "terrorists." Examples of refugees who have been labeled "terrorists" include a young girl from the Democratic Republic of Congo who was kidnapped at the age of 12 and used as a child soldier and a man from Burundi who was robbed by armed rebels of four dollars and his lunch.

Prior to adoption of these problematic "material support" provisions, U.S. law already provided numerous bars to admission to ensure that anyone who has committed criminal or terrorist acts does not enter the United States. In addition, every refugee and asylum seeker undergoes rigorous security background checks against multiple databases.

We believe that a legislative solution is necessary to address this problem. While the Secretary of Homeland Security has the authority to exempt individuals from bars to admission and refugee protection relating to "material support" and "terrorism," the implementation of this authority has been slow and ineffective. More than 6,700 refugees, asylees, and asylum seekers' cases remain on "hold" with no prospects for resolution.

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III. ADJUSTMENT TO PERMANENT RESIDENCE FOR REFUGEES AND ASYLEES

Under current law, refugees resettled in the United States must apply to adjust to lawful permanent resident status after one year of presence in the U.S. Similarly, an individual granted asylum must wait one year before applying to adjust status. While initially contemplated as a means to provide a final opportunity to review eligibility of refugees and asylees for admission, this requirement has been rendered redundant by a much more thorough and efficient system of background and national security screenings to which refugees and asylees are now subject prior to entering the U.S. or being granted asylum. This requirement now only represents a burden for refugees who have already undergone extensive background checks, a waste of DHS resources which must go toward processing thousands of adjustment applications annually, an obstacle to refugees' ability to secure employment, and has resulted in some instances to the unnecessary detention of refugees.

In 2005, the U.S. Department of State's Bureau of Population, Refugees, and Migration commissioned Dr. David Martin to carry out a comprehensive study of the processes for admitting and resettling refugees in the United States. In this study, Dr. Martin explored the issue of refugee adjustments to lawful permanent residence after one year of physical presence in the U.S. and conducted interviews with representatives from DHS. He concluded that due the narrowed gap between inadmissibility and removal grounds since the passage of the 1980 Refugee Act, "a refugee who commits a crime of virtually any degree of seriousness within the first year of admission would be fully subject to removal, even if initially admitted as an LPR [lawful permanent resident]." This provision wastes resources by having DHS adjudicate thousands of applications a year while adding nothing to enhance national security. Furthermore, filing a lengthy application places an additional unnecessary burden on refugees and resettlement agencies, requiring time and resources that could be better used to assist refugees in other critical need areas.

Currently, upon arrival in the U.S., refugees are given an I-94 Arrival/Departure Record, a paper card stamped at the port-of-entry to indicate admission as a refugee for an indefinite period of time, and an Employment Authorization Document (EAD), which documents a refugee's authorization to work but which is valid for only two years. Not surprisingly, I-94s and EADs are a source of confusion for many employers, landlords, DMV employees and social service providers who are much more familiar with the I-551 Permanent Resident Card (or "greencard"). Refugees are often denied needed jobs, licenses/IDs or services because of the ambiguity of their immigration documents.

When refugees arrive in the United States, they face multiple challenges in adjusting to radically new way of life. Refugees are counseled on the need to adjust status after one Some neglect to do so, often because working full time they do not have the time. This

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some cases resulted in arrest and detention of refugees until the adjustment process is completed.

Admitting refugees to the U.S. as lawful permanent residents and allowing asylees to apply for LPR status immediately after being granted asylum would facilitate the process of integration while eliminating redundancy and conserving valuable resources.

IV. FAMILY REUNIFICATION

Gaps in current U.S. law result in the following unfortunate situations whereby families are separated in the process of resettlement to the United States:

- the child of a resettled refugees' spouse is unable to join parents in the U.S. This can happen in instances of rape of the spouse or of conception of the child after the admission of the principal refugee applicant parent. Because the law only permits the principal refugee to bestow derivative status on spouses and unmarried children under 21 if the relationship existed at the time of the principal's admission to the U.S., the spouse of the principal, since she is not a principal applicant herself, cannot bring her child to join her if the child was conceived after her husband's admission to the U.S.
- a child who has been separated from his or her biological or adoptive parents cannot be resettled with the refugee who has been taking care of him/her and on whom s/he is socially and economically dependent. While it is not uncommon for children in refugee settings to be separated from their biological parents due to violence, turmoil and death, U.S. law does not recognize them as children for immigration purposes if they have not been legally adopted.

- separated families in cases where a resettled refugee or asylee failed to file a following-to-join petition for derivative family members within the required two years. Current regulations require that a refugee or asylee file the asylee/refugee relative petition within two years of arriving in the U.S. or being granted asylum. This has resulted in many cases of long-term separation of parents and children. Examples include a refugee learning that his child who was abducted is alive only after the two year deadline has passed, or an asylee torture survivor whose Post-Traumatic Stress Disorder prevented him for many months from being able to hold a job, and who feared he would be unable to care for his family. While exceptions can be granted, the criteria are very narrow.

Family unity is a core American value and guiding principal of U.S. immigration law policy. Refugees and asylees have already suffered tremendous physical and emotional trauma. Separation from family not only leaves unaccompanied refugees vulnerable in

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countries of persecution and first asylum, but also interferes with the process of and poses significant challenges for those trying to rebuild their lives in the United

V. RECEPTION AND PLACEMENT GRANT

The State Department's Population, Refugees, and Migration (PRM) bureau finances Reception and Placement (R&P) services for refugees through a grant awarded to ten resettlement agencies. The grant is used for two purposes:

1) it is meant to cover rent, security deposit, utilities, food and other expenses to support the refugee for the first 30 days in the U.S.

2) the R&P grant funds resettlement agencies to provide services including locating housing, reception at the airport, orientation to the community, facilitation of health screening, enrollment of children in school, enrollment for public services, and referral to employment and English language programs for refugees.

The grant helps ensure a smooth transition period for refugees until they are able to earn a paycheck or enroll and benefit from HHS/Office of Refugee Resettlement (ORR) and state funded programs that provide longer-term employment and adjustment services.
The Reception and Placement grant was $565 in 1975, and thirty-four years later had been increased only to $900. This number did not reflect increases in the cost of living or inflation, or real needs of refugees and resettlement agencies during the initial resettlement period.
On January 1, 2010, the Administration increased the Reception and Placement grant to $1800 per capita. This increase has greatly alleviated the challenges refugees and resettlement agencies face in ensuring that refugees receive the support they need to begin their path to self-sufficiency.

To avoid a situation where this crucial grant once again falls behind the cost of living, IRC recommends an annual review and, if warranted, an adjustment of the amount provided to take into account cost of living and inflation.

VI. CONCLUSION

The Refugee Protection Act of 2010 addresses the gaps in U.S. protection systems outlined above. The International Rescue Committee encourages the Senate Committee on Judiciary to support this legislation and continue to focus attention on improving the U.S. refugee and asylum policies. Thank you for your consideration of our views.

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KHRW **Kurdish Human Rights Watch, Inc.**
A Non Profit Humanitarian Organization

May 17, 2010

The Honorable Senator Patrick Leahy
Chairman, U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Leahy,

As a community based, voluntary resettlement organization dedicated to the protection of refugees, and asylees in United States and the internally displaced persons (IDPs) in Iraq, we are writing to express our support for the Refugee Protection Act of 2010 (S. 3113). Many countries look to the United States as a leader in providing safe haven to refugees and asylum seekers. This legislation addresses areas of the U.S. refugee program and asylum laws and system in urgent need of improvement.

The importance of a robust U.S. refugee resettlement program and a fair, efficient, and humane asylum process cannot be overstated. Over the years, the United States has granted asylum and provided resettlement to millions fleeing persecution. These refugees and asylees have come from Burma, Colombia, Liberia, Iran, Iraq, Rwanda, Bosnia, Russia, Sierra Leone, Sudan, Cambodia, Laos, and Vietnam, and other places where people have been persecuted for who they are and what they believe. The U.S. refugee program and asylum system are cornerstones of the American ideal to provide safety for the most vulnerable. Unfortunately, in many key areas, the United States is faltering in its commitments, programs have become outdated, and the challenges facing today's refugees and asylum seekers in the United States are daunting.

This year, the United States celebrates the 30th Anniversary of the Refugee Act of 1980, the bipartisan bill that established the legal framework for the refugee and asylum systems. As the U.S. government reflects upon its accomplishments and commits itself to fixing identified problems, the Refugee Protection Act offers a set of practical solutions that would reduce inefficiencies, avoid redundancies, and improve the United States ability to provide protection to refugees and asylum seekers in a timely, effective and humane manner.

This bill would help to ensure that the United States reaffirms its commitment to be a worldwide leader in protecting those fleeing persecution. We thank you for introducing the Refugee Protection Act and offer our support to help ensure that it is enacted promptly.

Sincerely,

Dr. Pary Karadaghi
President

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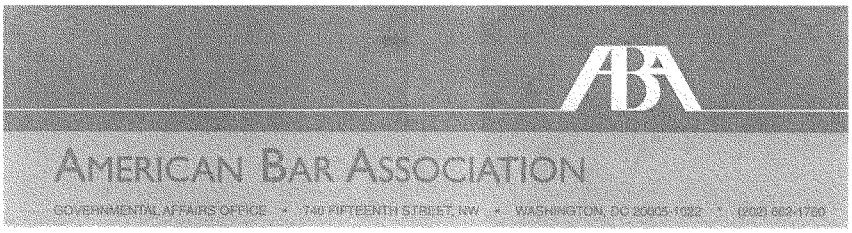

Statement of

CAROLYN B. LAMM

submitted on behalf of the

AMERICAN BAR ASSOCIATION

to the

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

for the hearing on

"Renewing America's Commitment to the Refugee Convention: The Refugee Protection Act of 2010"

May 19, 2010

Chairman Leahy and members of the Committee:

As president of the American Bar Association (ABA), I appreciate this opportunity to express our support for the Refugee Protection Act of 2010. The ABA is deeply committed to ensuring that foreign nationals in the United States receive fair treatment under the nation's immigration laws and historically has emphasized access to legal protection for refugees, asylum seekers, torture victims, and others deserving of humanitarian refuge. The Refugee Protection Act would implement critical improvements to U.S. refugee and asylum policies, and we urge the Senate to pass this legislation as soon as possible.

The American Bar Association is the world's largest voluntary professional organization, with a membership of nearly 400,000 lawyers, judges and law students worldwide. The ABA continuously works to improve the American system of justice and to advance the rule of law in the world. Through its Commission on Immigration, the ABA advocates for modifications in immigration law and policy; provides continuing education to the legal community, judges, and the public; and develops and assists the operation of *pro bono* representation programs, with a special emphasis on the needs of the most vulnerable immigrant and refugee populations.

The Refugee Protection Act would modify and improve a number of U.S. immigration laws and practices that create major barriers to refugee access. Many of the bill's provisions are consistent with recommendations in a recent ABA report, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases.*[1] While space constraints prevent us from commenting on every provision of the bill, we would like to take this opportunity to highlight several important issues.

Removing Arbitrary Obstacles to Asylum: the One-Year Application Deadline

One major obstacle for asylum seekers who enter the U.S. is the requirement that applicants file their claims within one year of arrival in the country. Department of Homeland Security (DHS) data show that this procedural requirement prevents a large number of asylum seekers from asserting substantive claims of persecution. Since the imposition of the one-year deadline in late 1998, U.S. asylum officers have initiated removal proceedings for asylum applicants in more than 35,000 cases—without any consideration of the merits of their claims—solely because of the applicants' inability to file or to prove that they filed within one year of arriving in the country. An unknown number of refugees, after learning that they have missed the one-year deadline, do not file asylum claims at all. Denying a substantive hearing to so many people with potential claims of persecution in their home countries is simply unacceptable.

Genuine refugees often have good reasons for failing to file their claims immediately or soon after arrival. Many refugees are traumatized. Language barriers, as well as lack of familiarity with the law, also hinder prompt applications. Perhaps most importantly, asylum seekers experience great difficulty in finding legal representation. Presenting the significant issues in

[1] The full report and executive summary are available at http://new.abanet.org/immigration/pages/default.aspx).

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order to have an asylum application properly considered on its merits is extraordinarily difficult without help from a lawyer or another professional who specializes in asylum law. Two out of three asylum seekers lack representation in the first instance.

As a result of the deadline, people with legitimate reasons for failing to apply within one year are placed in legal proceedings in which their only chance of avoiding removal to the country of persecution is to qualify for "withholding of removal," which requires them to establish a far greater likelihood of risk than would have been required to win asylum in the first instance. Those who are unable to meet this very high standard are expelled from the U.S. simply because they did not meet an arbitrary deadline. Those who do qualify for withholding can remain in the U.S., but are denied the right to become permanent residents or citizens and to bring their spouses or minor children to join them here.

If an asylum system is effective, the imposition of time limits is not needed to control abuse. The U.S. system, in particular, includes appropriate protections and is not subject to significant abuse, and arbitrary mechanisms aimed at controlling abuse are not needed. In fact, there is no evidence that the imposition of arbitrary time limits decreases abusive claims. On the other hand, it is clear that such restrictions limit the access of bona fide claimants to a decision on the merits of their claims. The Refugee Protection Act will address this serious problem by eliminating the one-year time limit for filing an asylum claim.

Ensuring an Effective and Humane System of Immigration Detention

In recent years the number of individuals in immigration detention, many of whom are asylum seekers, has increased significantly. The Refugee Protection Act would provide important protections for asylum seekers and help to ensure an effective and humane system of immigration detention by providing for prompt and reviewable parole determinations, full implementation and enforcement of detention standards, and secure alternatives to detention for those individuals who are eligible.

For over two decades, the ABA has recommended detaining asylum seekers only in extraordinary circumstances, and in the least restrictive environment necessary to ensure appearance at court proceedings. The loss of liberty has punitive effects and works to undercut rights on many levels, including the right to counsel. Furthermore, the impact of detention is particularly negative for certain vulnerable groups, such as asylum-seekers and victims of crime suffering from trauma and fearful of government authority, and those with physical or mental conditions that may be exacerbated by the lack of adequate medical care.

Detention also imposes a significant financial burden on the public; the federal government spent over $1.7 billion on immigration detention in 2009. Efficient and effective use of scarce public resources should be directed toward detaining only those who pose a threat to public safety or national security, or who present a substantial flight risk. Persons who do not meet those criteria should be released under appropriate conditions to ensure compliance with their immigration proceedings. The Refugee Protection Act will accomplish this goal by codifying the current parole policy and by implementing a secure alternatives to detention program nationwide.

Alternatives to detention offer the prospect of a considerable cost savings. The cost of detention is approximately $100 per day per person, while alternatives programs can cost as little as $12

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per day. Experience has shown that alternatives programs, designed and implemented appropriately, can be extremely effective. A pilot alternatives program coordinated by the Vera Institute of Justice between 1997 and 2000 resulted in a 93% appearance rate for asylum seekers in the program, at about half the cost of detention. Aside from the issue of the cost-effectiveness, utilizing alternatives in appropriate cases also serves to increase access to legal representation and access to critical support services for asylum seekers awaiting determination of their case.

For those individuals who are detained, it is essential to provide uniform and consistent standards to ensure that facilities housing immigration detainees are safe and humane. During the late 1990s, the ABA and several other organizations worked with the government to develop standards to govern the conditions for those in immigration detention. The ICE National Detention Standards encompass a diverse range of issues, including access to legal services. While the development of the Detention Standards was a positive step, it has become apparent that ICE's inspection process alone is not adequate to ensure facilities' full compliance. The ABA regularly receives reports from attorneys representing detained immigrants and direct letters and phone calls from detained immigrants around the country that indicate serious, continuing problems with detention facility conditions including: inadequate or prohibitively expensive access to telephones, including for calls to pro bono or retained counsel; inadequate access to legal materials; and delayed or denied medical treatment.

The Refugee Protection Act will address this problem by requiring that detention standards be strengthened and promulgated into legally enforceable regulations. We are especially pleased to note the emphasis on improving legal access standards and the bill's requirement that ICE detention facilities be located close to communities where there is a demonstrated capacity to provide free or low-cost legal representation. Currently, many immigration detention facilities are located in remote areas of the country. While this creates serious barriers to detainees who have retained counsel because of travel costs and other logistical difficulties, it is an even more serious problem for detainees who are unrepresented and need access to pro bono immigration services, which often are not available in these remote locations. While the government must understandably give consideration to the cost of detention bed space, such interests should not trump the detainees' due process right to counsel. As noted below, the ability to secure legal representation has a tremendous impact on the likelihood of success in many cases for asylum seekers.

Enhancing Access to Counsel and Legal Information

A hallmark of the U.S. legal system is the right to counsel, particularly in complex proceedings that have significant consequences. Meaningful access to legal representation for persons in immigration proceedings is particularly important. The consequences of removal can be severe, resulting in violence and even death for those fleeing persecution. Yet immigrants have no right to appointed counsel and must either try to find lawyers or represent themselves. Legal assistance is critical for a variety of reasons, including a lack of understanding of our laws and procedures due to cultural, linguistic, or educational barriers. Statistics show that asylum seekers and others who have legal representation are significantly more likely to succeed in their immigration cases.

The Refugee Protection Act would authorize the Attorney General to appoint a lawyer to represent an alien in removal proceedings if the fair resolution or effective adjudication of the

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proceedings would be served by the appointment of counsel. There are classes of vulnerable persons for whom it is particularly important to ensure appropriate legal representation for the duration of their cases, including unaccompanied alien children and mentally ill and disabled persons. These persons may lack the capacity to make informed decisions on even the most basic matters impacting their cases and are not in a position to determine on their own whether they might qualify for relief. In fact, they may not be able even to understand the nature of, much less be able to meaningfully participate in, their immigration proceedings. However, the particular vulnerabilities of these persons also make it difficult to impossible for them to obtain counsel on their own.

Beyond the obvious interest of affected noncitizens, legal representation also benefits the government and the administration of justice through improved appearance rates in court, fewer requests for continuances, and shorter periods in detention at significant financial savings. It also deters frivolous claims. Above all, increased representation serves the government's interest in seeing that its decisions in these consequential cases turn on U.S. legal standards and merit, and not on a noncitizen's income or ability to retain private counsel.

For those who are unable to obtain counsel, one of the ways that detained immigrants can be provided with information about the legal process is through the Legal Orientation Program (LOP). The LOP is administered by the Department of Justice's Executive Office for Immigration Review, which funds nonprofit organizations to provide services at detention facilities around the country. These services include group legal rights presentations, individual orientations, self-help workshops, and pro bono referrals. The ABA has provided LOP services at the Port Isabel Detention Center in South Texas since the inception of the program, and more recently at San Diego Contract Detention Facility, and can unequivocally attest to the benefits that these programs bring both to detainees and the immigration court system.

In addition to ensuring more fair and just outcomes, the LOP contributes to immigration court efficiency and may result in savings in detention costs. A study by the Vera Institute of Justice indicates that cases for LOP participants move an average of 13 days faster through the immigration courts. Immigration judges report that respondents who attend LOP appear in immigration court better prepared and are more likely to be able to identify the relief for which they may be eligible, and not to pursue relief for which they are ineligible. Because cases for LOP participants move through the immigration courts more quickly, time spent in detention may be reduced and detention costs saved. The LOP facilitates immigrants' access to justice, improves immigration court efficiency, and saves government resources. The Refugee Protection Act's expansion of this program is a wise investment of government resources.

Conclusion

The United States has historically served as a leader in global efforts to ensure the protection of refugees. However, laws and policies adopted over the past fifteen years have served to seriously undermine meaningful access and protections for refugees and asylum seekers in our country. As we celebrate the 30th Anniversary of the Refugee Act of 1980, it is time to renew our commitment to fulfilling the letter and spirit of our obligations under the 1951 Refugee Convention and restore our position as a beacon of hope to so many suffering persecution around the world. The Refugee Protection Act of 2010 will accomplish these goals, and the ABA strongly supports its enactment.

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Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
May 19, 2010

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On "Renewing America's Commitment To The Refugee Convention:
The Refugee Protection Act Of 2010"
May 19, 2010

Earlier this year, we marked the 30th anniversary of the Refugee Act. In the years since that landmark legislation was enacted, the law has evolved in ways that place unnecessary and harmful barriers before genuine refugees and asylum seekers. That is why I introduced the Refugee Protection Act of 2010, S.3113. It will bring the United States into compliance with the Refugee Convention, and will restore our Nation as a beacon of hope for those who suffer from persecution around the world. I thank Senators Levin, Durbin, Akaka and Burris for joining as cosponsors.

I supported the Refugee Act in the 96th Congress, and voted for it when it passed the Senate. When the Senate debated the bill, Senator Ted Kennedy spoke of its dual goals -- to "welcome homeless refugees to our shores," thereby embracing "one of the oldest and most important themes in our Nation's history," and to "give statutory meaning to our national commitment to human rights and humanitarian concerns." We lost Senator Kennedy last year, but we can honor his memory and one of America's greatest traditions by carrying forward the mantle of refugee protection.

The Refugee Protection Act of 2010 corrects misinterpretations of law that limit access to safety in the United States for asylum seekers. The legislation contains provisions from a bipartisan bill I introduced in the 106th and 107th Congresses to correct the harshest and most unnecessary elements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. That law had tragic consequences for asylum seekers. Finally, our current proposal modifies the immigration statute to ensure that innocent persons with valid claims for protection are not unfairly barred from the United States by laws enacted after September 11, 2001, to prevent terrorists from manipulating our immigration system. It corrects the law without diluting the bars to admission for dangerous terrorists and criminals.

In the years since the Refugee Act was enacted, over 2.6 million refugees and asylum seekers have been granted protection in the United States. I am proud that my home state of Vermont has long assisted asylum applicants with their requests for protection and welcomed refugees through

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resettlement programs. More than 5,300 refugees have been resettled in Vermont since 1989, from countries as diverse as Burma, Bhutan, Somalia, Sudan, Bosnia, and Vietnam. One of our witnesses today is Patrick Giantonio, Executive Director of Vermont Immigration and Asylum Advocates. He is one of the many Vermonters who devote countless hours to help victims of persecution win protection and build new lives in our state and our country. We cannot thank you enough for your dedication to these exceptionally worthy individuals.

I also welcome Dan Glickman, who was recently appointed the President of Refugees International. I had the honor of working with Dan when he was a member of the House of Representatives, when he served as Secretary of Agriculture in the Clinton administration, and more recently at the Motion Picture Association of America. Dan has devoted years of his life to fighting hunger and advocating for underserved populations. Now he is taking on a new challenge in protecting refugees around the world.

Our third witness, Igor Timofeyev, served as the Special Adviser on Refugees and Asylees at the Department of Homeland Security during the Bush administration. We welcome him, and look forward to hearing from all three witnesses on the key reforms to our refugee laws that are contained in the Refugee Protection Act.
It is time to renew America's commitment to the Refugee Convention, and to bring our law back into compliance with the Convention's promise of protection. Our Nation is a leader among the asylum-providing countries. Our communities have embraced refugees and asylum seekers, welcoming them as Americans. Our laws should reflect America's humanitarian spirit.
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May 18, 2010

The Honorable Patrick Leahy
Chairman, U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Leahy,

As 86 faith-based, human rights, legal services and refugee assistance organizations and 97 individual asylum law practitioners, pro bono attorneys, law professors and other experts committed to the protection of refugees and asylum seekers, we are writing to express our support for the Refugee Protection Act of 2010 (S. 3113). Many countries look to the United States as a leader in providing safe haven to refugees and asylum seekers. This legislation addresses areas of the U.S. refugee program and asylum laws and system in urgent need of improvement.

The importance of a robust U.S. refugee resettlement program and a fair, efficient, and humane asylum process cannot be overstated. Over the years, the United States has granted asylum and provided resettlement to millions fleeing persecution. These refugees and asylees have come from Burma, Colombia, Liberia, Iran, Iraq, Rwanda, Russia, Sierra Leone, Sudan, Cambodia, Laos, and Vietnam, and other places where people have been persecuted for who they are and what they believe. The U.S. refugee program and asylum system are cornerstones of the American ideal to provide safety for the most vulnerable. Unfortunately, in many key areas, the United States is faltering in its commitments, programs have become outdated, and the challenges facing today's refugees and asylum seekers in the United States are daunting.

This year, the United States celebrates the 30th Anniversary of the Refugee Act of 1980, the bipartisan bill that established the legal framework for the refugee and asylum systems. As the U.S. government reflects upon its accomplishments and commits itself to fixing identified problems, the Refugee Protection Act offers a set of practical solutions that would reduce inefficiencies, avoid redundancies, and improve the United States ability to provide protection to refugees and asylum seekers in a timely, effective and humane manner.

This bill would help to ensure that the United States reaffirms its commitment to be a worldwide leader in protecting those fleeing persecution. We thank you for introducing the Refugee Protection Act and offer our support to help ensure that it is enacted promptly.

Sincerely,

NATIONAL ORGANIZATIONS

The Advocates for Human Rights

African Services Committee

*Institutional affiliation listed for identification purposes only. 1

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American Civil Liberties Union

American Immigration Lawyers Association

American Jewish Committee

American-Arab Anti-Discrimination Committee (ADC)

Amnesty International USA

Arab American Institute

Arab Community Center for Economic & Social Services (ACCESS)

Asian American Justice Center (AAJC)

ASISTA Immigration Assistance

Center for Gender and Refugee Studies

Center for Victims of Torture

Chaldean Federation of America

Church World Service

Episcopal Migration Ministries

Ethiopian Community Development Council

Friends Committee on National Legislation

Hebrew Immigrant Aid Society

Human Rights First

International Rescue Committee

Jewish Alliance for Law and Social Action

Jubilee Campaign USA

Kids in Need of Defense (KIND)

Kurdish Human Rights Watch, Inc. (KHRW)

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Immigration Equality Action Fund

International Institute

Lawyers' Committee for Civil Rights

Liberty in North Korea | LiNK

Lutheran Immigration and Refugee Service

The National Advocacy Center, Sisters of the Good Shepherd

National Center for Transgender Equality

National Council of La Raza

National Immigration Forum

National Immigrant Justice Center

National Network for Arab American Communities (NNAAC)

Physicians for Human Rights

Rabbis for Human Rights-North America

South Asian Americans Leading Together (SAALT)

Tahirih Justice Center

UNITED SIKHS

U.S. Committee on Refugees and Immigrants (USCRI)

U.S. Conference of Catholic Bishops

Women of Reform Judaism

Women's Refugee Commission

World Organization for Human Rights USA

World Relief

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Christian Church (Disciples of Christ), Refugee and Immigration Ministries

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www.lirs.or

Statement of Lutheran Immigration and Refugee Service Submitted to the Senate Committee on the Judiciary for the May 19, 2010 Hearing: "Refugee Protection Act of 2010"

Lutheran Immigration and Refugee Service (LIRS) applauds the introduction of the Refugee Protection Act of 2010 (S. 3113) and calls on all members of Congress to support this important legislation. Introduced by Senator Leahy (D-VT) and co-sponsored by Senators Levin (D-MI), Durbin (D-IL), Akaka (D-HI) and Burris (D-IL), the bill would ensure that the United States continues to uphold its commitment to protecting refugees, asylum seekers, children and other vulnerable migrants who arrive on U.S. shores in search of protection.

The Refugee Protection Act of 2010 would ensure a proper welcome for refugees arriving to the United States from overseas. The bill would regularly update a per capita grant that provides refugees with financial and case management support as they begin to rebuild their lives in the United States. LIRS assists thousands of refugees every year, resettling to the United States in fiscal year 2009 nearly 11,000 refugees. In a 2009 report, *The Real Cost of Welcome: A Financial Analysis of Local Refugee Reception*, LIRS drew attention to the need for increasing the per capita grant. In January 2010, the government announced it would double the per capita grant. While the per capita grant increase is a welcome step, the bill would require that the grant keep pace with cost of living and inflation increases.

The legislation would also help protect family unity for separated children. When in the best interests of the children, the bill would allow migrant children who have been separated from their parents to reunify with refugee family or friends who have been acting as their caregivers. LIRS provides specialized foster care services for refugee children and places unaccompanied minors with licensed and trained foster families. LIRS recognizes the significant challenges children face when separated from their parents and supports the inclusion of this provision as it would ensure that vulnerable migrant children continue to receive the loving care they need.

Finally, the Refugee Protection Act of 2010 calls for much needed reforms to the immigration detention system. The bill would expand cost effective alternative to detention programs to asylum seekers and would provide released individuals with case management services and referrals to community-based legal and social service providers. It would also require that migrants who must be detained have access to counsel, medical care, religious practice, and visits from family. In fiscal year 2009, the federal government incarcerated over 380,000 immigrants. In fiscal year 2011, the federal government plans to spend nearly $2 billion to detain 430,000 immigrants. For many years, LIRS has raised concerns about government reliance on the use of immigration detention and called for the expansion of alternative to detention programs that ensure the appearance of released individuals at their immigration proceedings. In February 2007, LIRS released a joint report, *Locking Up Family Values,* which highlighted the

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imprisonment of families and recommended the release of asylum seekers who do not present a flight risk or pose a threat to the community. The detention reforms included in the bill are a welcome step towards ensuring fairness, dignity and respect for all who arrive to the United States.

Since 1939, LIRS has assisted and advocated on behalf of refugees, asylum seekers, unaccompanied children, migrants in detention, families fractured by migration and other vulnerable populations. LIRS is the national agency established by Lutheran church bodies in the United States to carry out the churches' ministry with uprooted people and provides services to migrants and refugees through over 60 legal and social service partners. LIRS is a cooperative agency of the Evangelical Lutheran Church in America, the Lutheran Church-Missouri Synod and the Latvian Evangelical Lutheran Church in America, whose members comprise over 7 million congregants nationwide.

If you have questions about this statement, please contact Eric B. Sigmon, Interim Director for LIRS Washington Office, 202/626-7943, esigmon@lirs.org.

The LIRS news release on the refugee per capita grant can be found here:
http://www.lirs.org/site/apps/nlnet/content2.aspx?c=nhLPJ0PMKuG&b=5544305&ct=7872763

The joint LIRS family detention report, *Locking Up Family Values*, can be found here:
http://www.lirs.org/atf/cf/%7Ba9ddba5e-c6b5-4c63-89de-91d2f09a28ca%7D/LOCKINGUPFAMILYVALUES.PDF

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Testimony of
Migration and Refugee Services
United States Conference of Catholic Bishops

United States Senate Committee on the Judiciary
"Renewing America's Commitment to the Refugee Convention:
The Refugee Protection Act of 2010"

May 19, 2010

Migration and Refugee Services of the U.S. Conference of Catholic Bishops (MRS/USCCB) is the resettlement arm of the U.S. Catholic bishops and the largest resettlement agency in the United States, helping to resettle more than one-quarter of the refugees brought to the United States each year. Through more than 100 dioceses across the country, we provide much needed transitional and long-term support to refugees entering the United States, with the goal of helping them gain self-sufficiency in a short time period.

We are guided by the teachings of the Catholic Church, which calls upon all to welcome newcomers with dignity and respect. MRS/USCCB applauds Senator Patrick Leahy (D-VT) for his introduction of the Refugee Protection Act of 2010 (S. 3113) and offer our support for the legislation.

As we celebrate the 30th anniversary of the Refugee Act of 1980, which established the legal framework for the refugee and asylum systems, it is appropriate that we look toward making improvements to those systems based on our three decades of experience. While much has been done to protect and serve refugees and asylum seekers in the intervening years, current policies and practice fall short of our international obligations and our moral responsibility.

The importance of a robust United States refugee resettlement program and of a fair, efficient, and humane asylum process cannot be overstated. Since the passage of the Refugee Act thirty years ago, approximately 500,000 people have been granted asylum and 2.8 million refugees have been resettled in the United States from nearly every corner of the globe.

The U.S. Refugee Program and asylum system are cornerstones of the American ideal to provide safety for the most vulnerable, and in doing so provide protection and the opportunity for people from around the world to build new lives in this country after fleeing persecution. While we celebrate the many successes of our asylum and refugee programs, the 30th anniversary of the Refugee Act provides an important opportunity to

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reassess the program and make needed changes. As the refugee resettlement program has changed little during the past 30 years, it is high time we make long-overdue improvements and ensure that we can continue to offer protection and support to the world's most vulnerable individuals.

As the U.S. government reflects upon its accomplishments and commits itself to fixing identified problems, the Refugee Protection Act offers a set of practical solutions that would reduce inefficiencies, avoid redundancies, and improve the United States' ability to provide protection to refugees and asylum seekers in a timely, effective and humane manner. This bill would help to ensure that the United States reaffirms its commitment to be a worldwide leader in protecting those fleeing persecution.

The Refugee Protection Act includes a number of key improvements to the resettlement program and asylum system. While the following list of issues does not represent the totality of our interests with respect to this legislation, we would like to highlight several provisions which will better enable the U.S. refugee resettlement program and the asylum system to function smoothly and fairly and to best offer protection to those it is intended to serve.

Protection of Refugee Families
Of great concern to MRS/USCCB are the protection of children and the strengthening of families. Section 17 of the Refugee Protection Act would help facilitate the reunification of refugee families and protect refugee children in a number of ways, including by enabling the spouse or child of a refugee to bring their children to the United States when they accompany or follow to join the spouse or parent who was originally awarded refugee status.

Current law does not allow a derivative's child to be admitted as a refugee, yet, given the long waits and often unsafe conditions that many derivative applicants and their children face in camps overseas, the United States should provide this group protection. This bill would also help children who were orphaned or abandoned by their blood relatives and are living in the care of extended family, friends, or neighbors who are granted admission to the United States as refugees or asylees.

Where it is in the best interest of such a child to join that refugee or asylee in the United States, this section creates a mechanism whereby they may be admitted. Over the course of our many years of serving unaccompanied and separated refugee children, we know just how crucial it is to have the best possible care situation for a child who has suffered persecution and the loss of family members.

Protecting Victims of Terror from Being Defined as Terrorists
We support Section 4 of the legislation, which would ensure that asylum seekers and refugees are not barred from admission to the United States under an overly broad definition of terrorist organizations and terrorist activities in the Immigration and Nationality Act (INA).

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The U.S. Catholic bishops appreciate and support the responsibility and obligation of our government to protect the American public from terrorist attacks or other hostile actions. We believe, however, that this goal can be achieved without harming individuals who are not a security threat and are in need of protection from those groups or individuals who are indeed threats to our country and others.

Since September 11, 2001, changes in the law have resulted in innocent activity and coerced actions being labeled as material support for terrorism, a determination that can render genuine refugees ineligible for protection in the United States. The security related grounds of inadmissibility contained in INA §212(a)(3) were enacted to protect the national security interests of the United States and prevent individuals who have engaged in acts of terrorism, genocide, torture or other crimes against humanity from being granted admission to the United States.

In our view, the current definitions of terrorism and terrorist activity within the INA are overly broad and are resulting in unintended consequences for refugees and asylum seekers who are themselves fleeing terrorism and persecution. For example, an individual who was forced to give a glass of water or a cup of rice to an armed group classified as a terrorist organization would be inadmissible to the U.S. resettlement program. Instead of protecting our country from terrorists, these laws are punishing victims of terrorism.

Lawful Permanent Resident Status of Refugees and Asylum Seekers Granted Asylum

Section 14 of the bill would enable refugees and asylees to become lawful permanent residents (LPRs) when they receive the grant of refugee or asylee status. Current law requires both to wait for one year before adjusting to LPR status. This modification to current law would save taxpayer dollars by eliminating the cost of processing refugee LPR applications and running security and background checks on persons who passed the same checks one year earlier.

It will also enable refugees and asylees to integrate into American communities more fully and efficiently than if they are forced to wait a full year before applying for a green card. By providing refugees LPR status, or "green cards", upon arrival, this provision would improve the reception refugees receive; reduce confusion with employers, landlords, and social service providers; and improve the refugee resettlement process as a whole.

Elimination of Arbitrary Time Limits on Asylum Applications

In Section 3 the bill would eliminate the one-year time limit for filing an asylum claim. In many cases, refugees or asylum-seekers are unable to obtain documentation or legal assistance to meet the required deadline, or they simply are unaware of the deadline. This prevents many from receiving protection they deserve.

The stated intent of Congress in enacting the one-year deadline was to prevent fraud, not to deprive *bona fide* applicants from securing protection under our laws. Yet, even when

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the deadline was originally enacted, problems related to fraud had been resolved through administrative reform implemented by the INS, which opposed the implementation of an application deadline.

Since the one-year deadline was enacted in 1996, and despite exceptions available in the law for extraordinary or changed circumstances that may prevent the timely filing of an application, many asylum seekers with genuine claims have been denied protection. For instance, many adjudicators do not allow an exception for those who have suffered severe psychological trauma prior to entering the United States. Eliminating the one-year filing deadline would enable adjudicators to evaluate individual cases on their merits rather than on largely arbitrary time limits.

Secure Alternatives Program and Conditions of Detention
This legislation goes on to establish standards and requirements for detention facilities and requires DHS to promulgate regulations and procedures to enforce the detention requirements, including the establishment of a detention commission to report on compliance. Large numbers of detainee deaths, including several high profile cases, have drawn attention to the urgent need for enforceable minimum standards governing the conditions of detention and the treatment of detainees.

In addition, the rapid expansion of immigration detention involving privately contracted facilities and state and local jails has underscored the need to move away from a sprawling criminal model and toward a civil model of detention. Enacting standards and requirements would ensure that immigrants are not held in the same conditions as criminals with whom they may be housed.

The legislation also establishes a nationwide program for group legal orientation presentations, and requires the Secretary of Homeland Security to establish a secure "alternatives to detention" program. Alternatives to detention are a pressing need for vulnerable populations and those who pose no risk of flight or harm to the community. Detention can exact a high toll on individuals and families, and even affect the legal and parental rights of detained immigrants. Alternatives programs have been shown to be effective and offer cost savings to U.S. taxpayers. For these reasons, we strongly support Sections 9 and 10 of this bill.

Authority to Designate Certain Groups of Refugees for Consideration
Section 20 of S. 3113 would authorize the Secretary of State to designate certain groups as eligible for expedited adjudication as refugees. The authority would address situations in which a group is targeted for persecution in their country of origin or country of first asylum and the Secretary wishes to expedite refugee processing for humanitarian reasons.

In addition to enhancing security and the efficiency of the refugee adjudication process, the provision would bolster the U.S. Refugee Admissions Program's efforts to assist refugees who have no realistic prospects of return to their homes or integration in their countries of first asylum, but who have been outside of their countries of persecution for

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so long that they may have difficulty articulating the conditions in their home country to a degree sufficient to meet current adjudication standards.

Over 200,000 Eritreans, for example, have languished in Sudan and Ethiopia for 40 years, while nearly 150,000 Sudanese in the Great Lakes region sit for 25 years now with no durable solutions in sight. This provision would also assist children and others who are known to be vulnerable and have difficulty expressing their own refugee claims.

The program would not be limited to refugees in protracted situations but could also help other groups of vulnerable refugees designated by the Secretary of State, in particular those whose country conditions and persecution claims are similar and well-understood.

Update of Reception and Placement Grants
Section 21 of the Refugee Protection Act would ensure regular updating of the per capita grant administered by the Department of State. This grant provides refugees with financial and case management support upon arrival.

When a refugee is resettled in the United States, the federal government provides financial support that help refugees find housing, place their children in school, enroll in ESL classes, and take other initial steps toward building a new life in the United States.

Early in 2010, the per capita grant level was increased, but prior to 2010 the per capita level had not kept pace with inflation. For years it was set at a level so low that refugees were effectively consigned to poverty upon arrival in the United States, and resettlement agencies were barely able to offset the cost of basic support services to the refugees by raising additional funds.

To ensure that the per capita amount does not fall behind the minimum level required for basic needs, this legislation would require that the per capita amount be adjusted on an annual basis for inflation and the cost of living.

Protections for Aliens Interdicted at Sea
We applaud Section 23 of the legislation, which would require DHS to develop uniform policies to identify asylum seekers interdicted at sea and ensure protection in the course of interdiction and rescue operations.

Protection of Stateless Persons in the United States
Finally, the Refugee Protection Act would enable *de jure* stateless persons (those individuals who are not considered to be citizens under the laws of any country) who are present in the United States to gain lawful status in the United States. Individuals in such circumstances do not have a country and therefore cannot be returned anywhere. They are ineligible for lawfully recognized status in the United States based on the fact that they are stateless. Section 24 would make such persons eligible to apply for conditional lawful status if they are not inadmissible under criminal or security grounds and if they pass all standard background checks. After one year in conditional status, *de jure* stateless persons would be eligible to apply for lawful permanent status.

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In conclusion, the important improvements and expanded protections included in the Refugee Protection Act of 2010 make it an essential piece of legislation which is crucial to bringing the U.S. refugee program and asylum system up to date and ensuring that our nation serves those in need of protection while keeping our country safe.

The U.S. Conference of Catholic Bishops supports these much needed changes and looks forward to being better able to serve those newcomers we welcome to the United States each year.

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Protecting Immigrant Women and Girls Fleeing Violence

Written Statement for the Record
Testimony of Layli Miller-Muro, JD, MA
Executive Director
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Hearing on:
"RENEWING AMERICA'S COMMITMENT TO THE REFUGEE CONVENTION: THE REFUGEE PROTECTION ACT OF 2010"

Senate Committee on the Judiciary
May 19, 2010

Introduction

Chairman Leahy and Members of the Committee, thank you for convening this hearing on the Refugee Protection Act of 2010, and for the opportunity to share the Tahirih Justice Center's ("Tahirih") perspectives on critical reforms needed to US asylum laws and policy. Tahirih deeply appreciates the Committee's work to promote human rights and strongly supports the Refugee Protection Act of 2010; we look forward to further opportunities to assist the Committee as it considers this important legislation.

Tahirih is a national legal advocacy organization with offices in Falls Church, VA, Houston, TX, and Baltimore, MD, that provides free legal representation to women and girls fleeing human rights abuses such as domestic violence, rape, human trafficking, female genital mutilation, torture, "honor" crimes, and forced marriage. Since 1997, through direct services and referrals, Tahirih has assisted over 10,000 women and children. Rooted in our direct services experiences, Tahirih's national advocacy initiatives seek systemic change to ensure the long-term protection of women and girls from violence.

As a student attorney I helped litigate the 1996 Board of Immigration Appeals (BIA) case, *Matter of Kasinga*, which set national legal precedent by granting asylum to a young woman from Togo fearing female genital mutilation. This compelling case and the overwhelming needs of women in similar circumstances inspired me to found Tahirih. Since its inception, Tahirih has worked to further articulate and assure the availability of asylum in the United States for vulnerable women and girls fleeing gender-based persecution. Tahirih's efforts have intensified in recent years in response to a disturbing stagnation and even some regression in the United States' treatment of gender-related claims. Tahirih's report, *Precarious Protection: How Unsettled Policy and Current Laws Harm Women and Girls Fleeing Persecution* (October 2009; available at www.tahirih.org/2009/10/asylum-report) calls attention to how the chronic lack of clarity and coherence in the field of "gender-based asylum law," together with harsh laws and policies of general application to all asylum seekers, can prevent women and girls from finding the protection they need and deserve in the United States.

Tahirih therefore welcomes the Refugee Protection Act of 2010 as a much-needed measure to set the United States back on track as a world leader in the protection of all

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those who seek safe haven from persecution. We strongly support the bill as a whole, but for the purposes of this statement, we focus below on what the bill would do to address three of the most acute challenges that women asylum seekers face in the United States today:

- **The lack of a coherent definition as to what constitutes a "particular social group."** In the absence of "gender" as one of the five grounds (race, religion, nationality, membership in a particular social group, and political opinion) expressly protected from persecution under US law,[1] cases involving gender-related persecution are often based on the "particular social group" ground. The classic, clear BIA definition of "particular social group" established in 1985 in *Matter of Acosta*[2] has been muddied in recent years with the BIA's addition of further murky requirements that have, moreover, been inconsistently applied, resulting in adjudicators' unjust denials of protection to women asylum seekers, among other groups.

  Section 5, Subsection (a) of the Refugee Protection Act of 2010 codifies the BIA's straightforward Acosta *definition of "particular social group," and rejects additional nebulous requirements.*

- **The lack of clear guidance as to how the requisite "nexus" may be shown.** An asylum seeker must show that her well-founded fear of persecution is "on account of" one of the five protected grounds. However, it is unclear what kinds of evidence can demonstrate this nexus where the persecutor is a non-State actor, as is often the case where gender-related persecution is involved. Adjudicators' uncertainty can result in unjust denials of women's claims.

  Section 5, Subsection (b), Paragraph 4 of the Refugee Protection Act of 2010 codifies draft regulations proposed by the Department of Justice in 2000, to make clear that evidence that the State, legal or social norms tolerate such persecution against persons like the applicant may establish the requisite nexus.

- **The steep procedural hurdle posed by the one-year filing deadline.** All asylum seekers must file an application within one year of their arrival in the United States, or they are barred from asylum.[3] Exceptions (for "changed" or "extraordinary" circumstances) exist, but have proven unworkable, and many asylum seekers have been unjustly denied protection. For many reasons, the filing deadline has a particularly harsh impact on women and girls.

  Section 3 of the Refugee Protection Act of 2010 eliminates this arbitrary time limit and returns adjudicators' focus to the actual merits of the application for protection.

Below we expand upon the reasons that these reforms proposed in the Refugee Protection Act of 2010 are so vitally necessary, and the ways in which women and girls are harmed by the *status quo*.

The Pervasive Lack of Coherence and Clarity in "Gender-Based Asylum Law" Denies Women and Girls Protection from Persecution

The first two challenges outlined above are directly attributable to the United States' failure, in the nearly 15 years since the BIA decided *Matter of Kasinga*,[4] to resolve key questions raised by gender-related claims through clear and authoritative guidance. Without a proper analytical framework to apply to such claims, immigration judges, government attorneys, and advocates have been left to navigate unfamiliar terrain on their own, with vastly divergent—and often unjust—results around the country.

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The BIA's own rulings have been inconsistent. Despite granting asylum based on female genital mutilation in 1996, the BIA rejected other gender-related claims in 1999: one based on a fear of "honor" killing;[5] the other, in a case known as *Matter of R-A-*,[6] based on severe domestic violence. These decisions called into question the scope of protection under US asylum law for women fleeing gender-based persecution.

Past attempts to bring coherence to this field of law through the judicial or regulatory channels have proven fruitless. In fact, in the years that followed the BIA's 1999 decision in *Matter of R-A-*, we have witnessed seemingly endless rounds of procedural ping-pong in gender-based asylum cases—appeals up through the BIA, Circuit Courts, and even the Supreme Court, followed by remands all the way back to the trial court, and sporadic interventions by the Attorney General—without definitive resolution. Draft regulations, first proposed by the Department of Justice (DOJ) in 2000, remain unfinished. Only this past December—*14 years* after she first went before an immigration judge—did the applicant in *Matter of R-A-* finally win asylum. However, because the decision was made at the trial court level, it does not bind other adjudicators. We still have no new precedent-setting decisions from the BIA indicating how far its holding in *Matter of Kasinga* extends to protect women fleeing gender-based persecution.

At present, in fact, all we have are agency half-measures, followed inconsistently by the agency itself. In both *Matter of R-A-* in 2004,[7] and in a different domestic violence-based asylum case, *Matter of L-R-*, in 2009,[8] the Department of Homeland Security (DHS) filed legal briefs setting forth a framework in which women fleeing domestic violence, depending on the facts of the case, may qualify for asylum under the "particular social group" ground. Yet despite these apparently official positions, and despite the fact that DHS did not contest the recent grant of asylum in *Matter of R-A-*, Tahirih and other advocates continue to meet opposition by DHS attorneys to domestic violence-based asylum cases. Some DHS attorneys have even challenged advocates' introduction of DHS's own brief from *Matter of L-R-*, and characterized the legal framework DHS advances therein as inapplicable to other cases.

In addition, over the years that *Matter of R-A-* was pending at the BIA, appeals presenting similar issues were likewise placed on hold, including a number of Tahirih cases. The BIA has recently begun remanding these cases back to immigration court for further fact development and legal briefing—but without any further guidance for advocates or adjudicators as to what standards they should apply. Frustrated immigration judges are encouraging applicants to appeal their decisions in the hope of obtaining clarifying guidance. Women fleeing domestic violence and other forms of gender-based persecution continue to encounter a legal environment that is unclear and unstable.

Because so many gender-based asylum claims hinge on the applicant's "membership in a particular social group" or whether she can demonstrate "nexus" where a non-State actor is her persecutor, the related amendments in the Refugee Protection Act of 2010 would provide critical clarity to this field of law.

Demonstrating "Membership in a Particular Social Group"

In its 1985 decision *Matter of Acosta*,[9] the BIA held that particular social groups are comprised of individuals who share a common characteristic that members of the group either cannot change, or should not be required to change, because it is fundamental to their individual identities or consciences.[10] The BIA arrived at this definition by interpreting particular social group in line with the other protected grounds—race,

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religion, nationality, and political opinion—all of which concern characteristics that are either immutable or fundamental to an individual's identity, and as such, warrant protection from persecution.

For 20 years, the BIA adhered to this clear and straightforward standard. But beginning in 2006, the BIA and some federal circuit courts began to layer an additional murky requirement referred to as "social visibility" on that core *Acosta* standard.[11] The BIA's imposition of "social visibility" is burdensome in all particular social group cases but seems particularly at odds with cases involving gender-based persecution such as domestic violence. Oftentimes, the nature of the harm and even the victim herself may be purposely shielded by the persecutor from the public eye—in fact, forcing her to be invisible. The very form of persecution she suffers may restrict her public movement and hide her social identity.[12] Even in cases not involving domestic violence, requiring a particular social group to be socially visible is problematic because, "if you are a member of a group that has been targeted for assassination or torture or some other mode of persecution, you will take pains to *avoid* being social visible."[13]

Moreover, it is often difficult to discern just what the BIA intends by the term "social visibility." A frustrated judge on the Seventh Circuit Court of Appeals recently lamented that the BIA has been wildly inconsistent, recognizing some particular social groups without reference to social visibility, but also "refusing to classify socially invisible groups as particular social groups [ ] without repudiating the other line of cases."[14] In 1996, for example, in *Matter of Kasinga*, the BIA recognized a social group consisting of "young women of the Tchamba-Kunsuntu Tribe who have not had [female genital mutilation], as practiced by that tribe, and who oppose the practice";[15] yet in 2007, in a case called *Matter of A-T-*, the BIA rejected a group based on its supposed lack of "social visibility" consisting of "young Bambara women who oppose arranged marriage."[16]

By restoring the straightforward Acosta *definition as the standard to establish a "particular social group," without additional requirements, the Refugee Protection Act of 2010 would rescue this area of asylum law from confusion. The amendment also ensures that particular social group claims, including gender-based claims, receive the same consideration as claims arising under the other protected grounds (race, religion, nationality, and political opinion).*

Showing the "on account of" connection, or "nexus," between the persecution and a protected ground

Varying widely, adjudicators have, at times, taken an overly narrow approach to analyzing whether this "nexus" element is met. This can lead to an unfair denial of gender-related claims in particular: the types of harms women suffer may be perceived as reflecting purely "personal" motives (especially where the persecutor is a family member); chalked up as purely criminal acts; or ascribed to culture or tradition.

The BIA's narrow analysis of nexus was a key factor in its 1999 denial of asylum to the applicant in *Matter of R-A-*, who based her claim on more than a decade of brutal domestic violence and her government's failure to protect her.[17] In its 2000 draft regulations, DOJ clarified that nexus could be established by either "direct or circumstantial evidence."[18] In a statement released with those regulations, DOJ criticized the BIA's mischaracterization of domestic violence in *Matter of R-A-* as "private acts of violence."[19] Importantly, DOJ acknowledged:

> *"that certain forms of domestic violence may constitute persecution, despite the fact that they occur within familial or intimate relationships . . . The proposed rule recognizes that such patterns of violence are not private matters, but rather should be addressed when they are supported by a legal system or social norms that condone or perpetuate domestic violence."*[20]

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The legal system and social norms often act as co-conspirators in furthering the persecution faced by Tahirih's clients. The refusal by the State and society to intervene where violence against women is at issue demonstrates that a woman is persecuted "on account of" her gender. When a woman is sold into marriage by her family and is forcibly returned by police after she runs away; when police arrest and beat her for refusing to stay with her abusive husband; when the authorities refuse to get involved when a woman is threatened with death by her male relatives in the name of family "honor"; when police decline to investigate or prosecute "honor" killings of women and girls; when a girl's family subjects her to female genital mutilation and then forces her to marry a man who beats and rapes her daily; or when the police call the abuse "normal" behavior for a husband and a woman cannot leave because divorce in her country is illegal—then the State and society are complicit in the persecution. Asylum adjudicators should be legally bound to consider such vitally relevant contextual evidence, but under current law, they are not.

By codifying the draft regulations proposed by DOJ in 2000, the Refugee Protection Act of 2010 clarifies that the requisite nexus may be established through either "direct or circumstantial evidence," such as evidence that legal or social norms tolerate the persecution at issue. This amendment would enable claims brought by women facing gender-based persecution to be evaluated on par with claims brought by political activists, religious dissidents, or ethnic minorities who face persecution from which they likewise cannot find protection in their own countries.

The One-Year Filing Deadline Denies Protection to Women and Girls Fleeing Persecution

Congress enacted a filing deadline in 1996 that bars individuals from seeking asylum unless they file within one year of arrival in the United States.[21] The bar was intended to prevent fraudulent asylum applications made to delay deportation, and was never intended to deny safe haven to legitimate asylum seekers.

Fourteen years later, it is clear that the imposition of a filing deadline has a dramatic negative impact. The deadline has created terrible inefficiencies in a system that is already notoriously overloaded, as cases that would have been granted by asylum officers at an initial interview, but-for filing deadline issues, are being needlessly referred to immigration judges for further proceedings. According to a 2008 GAO report, in fact, in a seven-year period asylum officers referred about *64,000 cases* based in part on the filing deadline.[22] The sheer time it takes adjudicators to investigate compliance with this technicality or determine eligibility for an exception (perhaps 20 minutes' worth of a one-hour asylum interview) also burdens the system.

Most importantly, the filing deadline has resulted in unjust denials of asylum to bona fide applicants with compelling claims. While Congress, clearly recognizing there could be many justifiable reasons that an individual might not file within a year of arrival, enacted a non-exhaustive list of exceptions, adjudicators have narrowly construed the filing deadline and restrictively applied the exceptions. Since these are discretionary judgment calls, there are few "checks" in the system to catch and reverse grave injustices.

The cases below expose how the filing deadline can force dramatically different results for two women despite their nearly identical experiences of sustained and brutal persecution. Both cases present a compelling case for the US' protection and compassion, but only one of these women truly received justice.

> ***"Aida."*** *Aida's mother beat her, and her mother's boyfriend sexually assaulted her. When she was 13, Aida was effectively given to her abusive husband Juan, who was twenty-seven years her senior and a high ranking army officer in her home country, in return for financial support that he provided to her family. Juan raped her*

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frequently and inflicted on her a wide range of abuse, much of it learned in the military, including: throwing boiling water on her, gouging her with fence wire, burning her with a branding iron, and rubbing salt in open wounds. When she was 15, Juan discovered she was pregnant and he beat her belly until she aborted twins; later, he tried to have her killed. In 2002, after nearly 11 years of abuse, Aida fled to the United States.

Aida did not file for asylum until 2007. Despite waiting nearly six years to file, Aida was granted asylum. Her attorneys successfully argued that she had established "extraordinary circumstances" for not filing within one year, in the form of "serious illness or mental or physical disability, including any effects of persecution or violent harm suffered in the past." Aida's application for asylum included a lengthy psychological evaluation performed by a psychologist who is a domestic violence expert, diagnosing Aida with severe Post-Traumatic Stress Disorder (PTSD). In time, Aida can apply for permanent residency and eventually, citizenship.

***"Lina."** Lina's mother beat her, took her out of school in the third grade and threw her out of the house while Lina was still a child, leaving her homeless. She moved around many times, giving birth to two children by age 17. She met Oswaldo, a soldier in the military, who later became a policeman. The abuse began immediately after they moved in together and included: violent rapes, banging her head into cinder blocks, whipping her with cables and wires, dragging her through the streets by her hair, and military torture techniques. Lina tried to escape with another man she hoped would protect her. Oswaldo tracked them down, beat them and took Lina back with him. When she gave birth to the other man's child, Oswaldo took the baby from her and gave it away. In 2000, after 11 years of abuse, Lina fled to the United States. When she sent for her children, Oswaldo came with them and tried to kill Lina.*

Lina did not file for asylum until 2007. Because she did not file within one year of her arrival, and the Immigration Judge did not find that she had established "extraordinary circumstances," Lina was granted only "withholding of removal," not asylum. As in the case of Aida, Lina's attorneys argued that her failure to file within one year was due to the psychological effects of her past persecution. The psychologist in her case found that Lina suffered from depression, nightmares, that she avoided thinking and talking about her past trauma, and that she showed suicidal tendencies. But the Immigration Judge concluded that because Lina was capable of arranging for her children to escape from their home country, she was likewise capable of timely applying for asylum. Because Lina was granted withholding of removal, her children did not receive legal status and face the possibility of deportation, and Lina can never become a permanent resident or citizen.

Women asylum seekers fleeing gender-based persecution such as domestic violence, female genital mutilation, forced marriage, and "honor" crimes often have particular complications that delay their applications and place them at greater risk of being denied asylum due to the one-year bar,[23] including:

- Women may not have a support network here that can advise and assist them in seeking asylum, especially when the persecution the woman fears is a harmful traditional practice inflicted and sanctioned by her own family or community. The very fact that she has defied the practice and is seeking refuge in the United States may put her at risk for community retribution.

- Women may also understandably hesitate to take the drastic step of applying for asylum—since in gender-based cases this often means not only severing ties with one's country, but also with one's family and community—until it is absolutely clear that the danger they face (e.g., the threat of a forced marriage or female genital mutilation) will not pass and they have no other choice.

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- Women do not know that asylum offers protection to victims of gender-based persecution. If they are aware of "asylum" at all, women often think of it as a form of protection reserved for victims of political persecution or religious or ethnic oppression, and may not realize that the kinds of harm they suffered could make them eligible for asylum.

By eliminating the arbitrary one-year filing deadline for asylum claims, the Refugee Protection Act of 2010 restores adjudicators' focus to the actual merits of the applicant's claim for protection, and removes one of the major barriers that women asylum seekers currently face to obtaining justice and safety in the United States.

We are grateful for this opportunity to share Tahirih's perspectives and experiences with the Committee. Many of the observations above are elaborated more fully in Tahirih's *Precarious Protection* report (available at www.tahirih.org/2009/10/asylum-report), which also examines how detention policies and conditions and the expedited removal process harshly impact women asylum seekers. For additional questions about other challenges that women and girls face in the US asylum system, or about how reforms in the Refugee Protection Act of 2010 would ensure that they are given safe haven rather than returned to face persecution, please do not hesitate to contact Tahirih. Thank you.

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[1] Immigration and Nationality Act [hereinafter "INA"] §101(a)(42), 8 USC §1101 (a)(42).
[2] Matter of Acosta, 19 I. & N. Dec. 211 (BIA 1985).
[3] INA § 208(a)(2)(B).
[4] Matter of Kasinga, 21 I. & N. Dec. 357 (BIA 1996).
[5] *See* Matter of A- [number withheld] (BIA August 20, 1999), *cited in* Stephen M. Knight, *Seeking Asylum from Gender Persecution: Progress amid Uncertainty*, 79 Interpreter Releases 689 (May 13, 2002), at 694.
[6] Matter of R-A-, 22 I. & N. Dec. 906, 922 (BIA 1999; Att'y Gen. 2001; BIA 2005; BIA 2008)
[7] Department of Homeland Security's Position on Respondent's Eligibility for Relief (Feb. 19, 2004), submitted in *Matter of R-A-*, 22 I&N Dec. 906 (A.G. 2008, BIA 2005, A.G. 2001, BIA 1999), available at http://cgrs.uchastings.edu/documents/legal/dhs_brief_ra.pdf.
[8] Department of Homeland Security's Supplemental Brief, submitted to the BIA in *Matter of L-R-*, (Apr. 13, 2009), available at http://graphics8.nytimes.com/packages/pdf/us/20090716-asylum-brief.pdf. This case has since been remanded to immigration court.
[9] Matter of Acosta, 19 I. & N. Dec. 211 (BIA 1985).
[10] *Id.* at 233.
[11] *See* Lisa Frydman Covers Recent Developments in Domestic Violence-Based Asylum Claims, 2009 Emerging Issues 4075 (Lexis-Nexis: July 27, 2009)
[12] *See* Fatma E. Marouf, *The Emerging Importance of "Social Visibility" in Defining a "Particular Social Group" and Its Potential Impact on Asylum Claims Related to Sexual Orientation and Gender*, 27 Yale L. & Pol'y Rev. 47, 94-98 (Fall 2008).
[13] Gatimi v. Holder, No. 08-3197 (7th Cir. August 20, 2009) (Posner, J.), at 7 (emphasis added).
[14] *Id.*, at 8.
[15] Matter of Kasinga, 21 I. & N. Dec. 357, 358 (BIA 1996).
[16] *See* Matter of A-T-, 24 I. & N. Dec. 296, 303 (BIA 2007).
[17] *See* Matter of R-A-, 22 I. & N. 906, 916 (BIA 1999; Att'y Gen. 2001),
[18] US Dep't of Justice, Immigration and Naturalization Services, 65 Fed. Reg. 76588-98, (proposed December 7, 2000), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2000_register&docid=00-30602-filed.pdf.
[19] *See* 22 I. & N. at 922.
[20] US Dep't of Justice, INS, *Questions and Answers on the R-A- Rule* (December 7, 2000), at 4, *available at* http://www.uscis.gov/files/pressrelease/R-A-Rule_120700.pdf.
[21] INA § 208(a)(2)(B).
[22] US Government Accountability Office, *US Asylum System: Significant Variation Existed in Asylum Outcomes Across Immigration Courts and Judges*, GAO-08-940 (September 2008), at 58, *available at* http://www.gao.gov/new.items/d08940.pdf.
[23] A Canadian court that recently reviewed US and Canadian case law and anecdotal evidence from advocates concluded that the one-year filing deadline can have a particularly serious impact on refugee women with gender-based claims, and that exceptions under the deadline may not assist women fleeing domestic violence and other forms of gender-based persecution. *See Canadian Council for Refugees v. Canada* (2007 FC 1262) IMM-7818-05, 29 November 2007, at 69.

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NATIONAL ASSOCIATION OF IMMIGRATION JUDGES

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IMMIGRATION COURT NEEDS: PRIORITY SHORT LIST OF THE NAIJ

April 2010

1. The Number 1 short-term problem is the urgent need for more judges.

Immediate hiring of more Immigration Judges is essential to alleviate the stress caused by overwork, which leads to many problems that undermine the optimal functioning of the Immigration Court system. Former Attorney General Gonzales acknowledged this problem in 2006 following a comprehensive review by the Department of Justice ("DOJ") of the Immigration Courts, but nevertheless contributed to its perpetuation. Since the lack of judicial capacity was identified and despite a recommendation that 40 more judges be added to the existing corps, the Courts have not had meaningful additions to judge capacity. Figures show that there were 230 Immigration Judges in August of 2006, including several with full time administrative duties. It was not until April of 2009, when ten new Immigration Judges were brought on board, that the number of Judges finally exceeded that level, reaching the present total of 239, hardly a significant increase. Moreover, the DOJ has repeatedly failed to keep pace with an annual 5% attrition rate for Immigration Judges. Meanwhile, case backlogs have grown by 23 % in the last eighteen months, and a staggering 82% over the last ten years. The docket strain on Judges is overwhelming: in fiscal year 2009, it is estimated that about 229 Immigration Judges were responsible for completing over 350,000 matters during the fiscal year, which averages more than 1500 completions per judge per year.

The Fix:

a. **Fill vacancies promptly**, preferably with candidates who possess strong immigration law or judicial backgrounds and who will be able to "come up to speed" quickly.

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b. **Institute senior status** (through part-time reemployment or independent contract work) for retired Immigration Judges. In the National Defense Authorization Act for FY 2010, Public Law 111-84, Congress facilitated part-time reemployment of Federal employees retired under CSRS and FERS on a limited basis with receipt of both annuity and salary. Assuming the Act's applicability to retired Immigration Judges, reemployment would provide an immediately available pool of highly trained and experienced judges who could promptly help address pressing caseload needs in a cost-efficient manner.

2. The Number 2 problem is the persistent lack of resources to help judges perform their jobs adequately in light of changing expectations by the federal courts and frequent changes in the law which have pushed the system to the breaking point. This problem can expeditiously be resolved.

Public confidence that the Immigration Courts are functioning properly and fulfilling their stated mission of dispensing high quality justice in conformity with the law can only be assured by giving judges the tools to do their jobs properly. Currently, complex and high stakes matters, such as asylum cases which can be tantamount to death penalty cases, are being adjudicated in a setting which most closely resembles traffic court. Providing increased resources to improve the quality of the performance of the Immigration Courts is the only realistic way to earn and retain public confidence in this system. It is also widely believed that it would have the enormous collateral benefit of reducing the number of immigration cases that are appealed to the federal circuit courts of appeals.

The Fix:

a. **Provide the Courts with adequate support staff and tools:** that is, sufficient law clerks (at least a 1/2 ratio of law clerks to judges), bailiffs, interpreters, laptops, and off-site computer access.

b. The problem with inadequate hearing transcripts is so pervasive that **court reporters should be used instead of tape recorders**. Even the long-awaited digital recording equipment is unlikely to produce the necessary high-quality transcripts needed, as voice recognition software is unsuitable for use with diverse speakers, particularly with accents, and the varied foreign language terms that are frequently encountered in the Immigration Court setting.

c. **Written decisions should become the norm,** not the exception, in a variety of matters, such as asylum cases, cases involving contested credibility determinations, and cases that raise complex or novel legal issues. The present system relies almost exclusively on oral decisions rendered immediately after the conclusion of proceedings while written decisions are the exception to this rule. These oral decisions are no longer adequate to address the concerns raised by Federal courts of appeals regarding the scope and depth of legal analysis. Immigration Judges should be provided the necessary resources, including judicial

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law clerks and sufficient time away from the bench, to issue written decisions where they deem it appropriate.

d. **Provide for meaningful, ongoing training** for judges, with time provided off the bench to assimilate the knowledge gained, to implement the lessons learned and to research and study legal issues.

3. The Number 3 problem is actually the most important, overarching, and durable priority for our nation's Immigration Courts: the need to provide an enduring institutional structure which will ensure judicial independence and guarantee transparency. Resolution of this problem will require more time to implement.

The current structure is fatally flawed and allows for continuing new threats to judicial independence, a condition exacerbated by current U.S. Department of Justice policies and practices. This problem manifests itself in several ways -- from unrealistic case completion goals to an unfair risk of arbitrary discipline for judges.

The Fix:

a. **Remove the Executive Office for Immigration Review ("EOIR") from the U.S. Department of Justice** and the oversight of the Attorney General who has broad prosecutorial authority in the realm of terrorism, which is inappropriate, as terrorism issues are being increasingly raised in immigration court proceedings. The NAIJ firmly believes the time has come to establish an Article I Immigration Court.

b. **Amend the definition of "immigration judge"** in the Immigration and Nationality Act ("INA"), §101(b)(4), to achieve the above and to guarantee decisional independence and insulation from retaliation or unfair sanctions for judicial decision-making.

The following statutory definition (or something close to it), in lieu of the extant definition, is recommended:

> The term "immigration judge" means an attorney appointed under this Act or an incumbent serving upon the date of enactment as an administrative judge qualified to conduct specified classes of proceedings, including a hearing under section 240 [of the INA]. An immigration judge shall be subject to supervision of and shall perform such duties as prescribed by the Chief Immigration Judge provided that, in light of the adjudicative function of the position and the need to assure actual and perceived decisional independence, an immigration judge shall not be subject to performance evaluations. Immigration judges shall be held to the ethical standards established by the American Bar Association Model Code of Judicial Ethics. No immigration judge shall be removed or otherwise subject to disciplinary or adverse action

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for judicial exercise of independent judgment and discretion in adjudicating cases.

c. **Provide a transparent complaint process** for parties and the public which does not cut-off or supplant the legitimate appeals process, but rather addresses the rare instances of problems with intemperance or unethical behavior. The judicial discipline and disability mechanism enacted by Congress for the Federal judiciary could serve as a model. See 28 U.S.C. §§ 351-364. Judicial accountability, with transparent standards and consistent procedures, promotes judicial independence.

d. **Eliminate the current system of "case completions goals" and "aged case" prioritization** because it is fundamentally flawed. There are so many priorities assigned that judges, who are those in the best position to manage their dockets effectively, have lost the ability to do so. The statute should be amended to eliminate the asylum clock (180-day requirement to adjudicate), as there is no evidence to show this system has reduced abuses or improved service to the public. Rather the asylum clock has been manipulated and distorted. Case completion goals have not been aspirational, as they were alleged to be when implemented, nor have they been tied to resource allocation, which is the only legitimate function they might serve. Instead, with every case a priority, the stress on judges has reached unbearable levels, contributing greatly to questionable conduct in court and arguably fostering ill-conceived decision making. Cases should be decided in accordance with due process principles. If case processing is taking too long, more judges should be hired.

Recommended References to Consult

An Urgent Priority: Why Congress Should Establish an Article I Immigration Court, 13 Bender's Immigration Bulletin 3 (2008).

Burnout and Stress Among United States Immigration Judges, 13 Bender's Immigration Bulletin 22 (2008).

Inside the Judges' Chambers: Narrative Responses from the National Association of Immigration Judges Stress and Burnout Survey, 23 Georgetown Immigration Law Journal 57 (Fall 2008 CQ ed.) <https://articleworks.cadmus.com/geolaw/zs900109.html>.

A System at Its Breaking Point, article published in the Daily Journal on August 29, 2008.

Immigration Crackdown Overwhelms Judges, radio program All Things Considered, National Public Radio, February 9, 2009.

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Burnout, Stress Plague Immigration Judges, article published in the National Law Journal, July 13, 2009.

Immigration Judges Seek Article I Status, article published in the National Law Journal, August 10, 2009.

Lawyers Back Creating New Immigration Courts, article published in the New York Times, February 8, 2010.

"Oversight of the Executive Office for Immigration Review" Hearing Before the House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugee, Border Security and International Law, September 23, 2008.

Backlog in Immigration Cases Continues to Climb (3-12-10) <http://trac.syr.edu/immigration/report/225/>.

Immigration Courts: Still a Troubled Institution (6-30-09), <http://trac.syr.edu/immigration/reports/210/>.

Backlogs in Immigration Courts Expand, Wait Times Grow (6-18-09), <http://trac.syr.edu/immigration/reports/208/>.

Bush Administration Plan to Improve Immigration Courts Lags (9-8-08), <http://trac.syr.edu/immigration/reports/194/>.

Improving the Immigration Courts: Efforts to Hire More Judges Falls Short (7-28-08), <http://trac.syr.edu/immigration/reports/189/>.

Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases
American Bar Association Commission on Immigration, February, 2010
<http://new.abanet.org/Immigration/Documents/ReformingtheImmigrationSystem ExecutiveSummary.pdf>.

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STATEMENT FOR THE RECORD FROM PHYSICIANS FOR HUMAN RIGHTS

U.S. Senate Committee on the Judiciary

Senator Patrick Leahy, Vermont, Chairman, Presiding

"Renewing America's Commitment to the Refugee Convention: The Refugee Protection Act of 2010"

May 19, 2010

Physicians for Human Rights (PHR) is pleased to support the goals and swift passage of the Refugee Protection Act, S. 3113. The Act extends and creates key protections that guarantee that US law respects the human rights of vulnerable, persecuted persons who seek our assistance.

PHR particularly supports adoption of the following vital reforms contained in the legislation:

- **Section 3:** Elimination of the one-year deadline for filing for asylum, which is particularly pernicious for survivors of torture and trauma;
- **Section 4:** Amendments to "material support to terrorism" -related provisions to eliminate applicability to individuals whose activities were coerced or performed under duress;
- **Section 6:** Grant to the Attorney General of authority to appoint counsel for incompetent and severely mentally ill noncitizens in removal proceedings, as well as for other individuals when representation would promote efficient Immigration Court adjudications;
- **Section 8:** Elimination of mandatory detention of arriving asylum seekers which harms the health of those who are traumatized, instituting a preference for parole of asylum seekers who demonstrate a credible fear of persecution;
- **Section 9:** Creation of community-based alternatives to detention programs based upon case-management models that meet the needs of immigration enforcement as well as former detainees;
- **Section 10:** Codification of enforceable minimum immigration detention standards, including the right to free, comprehensive, timely medical screening and care.

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As an organization that mobilizes health professionals to advance human rights, dignity, and justice, Physicians for Human Rights has long had a particular interest in protecting the health and safety of survivors of persecution and other immigrants in held in detention in the US. Health professional members of PHR have evaluated the mental and physical health of detained and non-detained indigent asylum seekers and torture survivors through PHR's Asylum Network since 1992.

In the course of its work with victims of persecution and torture, PHR has developed very serious concerns about the expansion of immigration detention for individuals in deportation ("removal") proceedings.

The scope and quality of immigration detention health care has not kept pace with the expansion of detention. Since the early 1990s, the number of noncitizens detained daily by the Immigration and Naturalization Service/Department of Homeland Security has grown from about 6,000 to 33,000, due to laws that mandate detention of broad classes of people without regard to their individual circumstances. Among these detainees are a significant number of survivors of trauma who seek protection. According to a recent report by Human Rights First, over 48,000 asylum seekers were detained during the six-year period from 2003 to 2009. While the average length of stay in detention for all noncitizens is 30 days, the last available figures on the average length of detention for asylum seekers and torture survivors, whose detailed claims for relief require extended administrative adjudication, range from 47 to 109 days depending upon the procedural status of the asylum claim. The ACLU has recently identified immigrants with mental illnesses who were held in detention for as long as 5 years.

PHR is gravely concerned about ongoing harm to health and human rights posed by serious flaws in the immigration detention health care system. These problems have been spotlighted over the past three years in reports by human rights organizations and investigative journalists. Shortcomings also have been uncovered by the US Department of Homeland Security's Office of Inspector General, as well as DHS's own staff. Health problems in immigration detention include:

- Treatment and preauthorization protocols that place procedural and substantive barriers to obtaining care for chronic and emerging conditions.

- Impaired quality of care from a system that requires health professionals to take into account multiple non-medical considerations in approving or denying requested interventions, including whether an individual is likely to be deported in the near future.

Detention health care must promote detainee health, not rapid deportation. Numerous high-profile cases over the past several years demonstrate the urgent need to reform immigration detention health care to focus on conserving or restoring health, instead of merely maintaining a noncitizen in a fit state to be deported. Detainees who have endured needless suffering through the current system's "treat for deportation" philosophy include Hiu Lui Ng, who was accused of faking illness, refused a wheelchair, and dragged to a

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vehicle in shackles as he deteriorated rapidly from terminal cancer that attacked his back and spine.

A number of families have even lost loved ones to avoidable deaths through this system, including the family of Francisco Castaneda, a Salvadoran detainee whose cancer could have been found and treated a year sooner if detention health officials had responded to providers' orders for a biopsy.

Alternatives to detention should be the rule, not the exception. PHR's report *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers* (2003), http://physiciansforhumanrights.org/library/documents/reports/report-perstoprison-2003.pdf, found that the mental and physical health of asylum seekers progressively declined the longer they were in detention. Particularly vulnerable people suffer acutely in an environment that is designed for a punitive purpose. In recognition of this fact, survivors of persecution and torture must not be subjected to detention in prison-like facilities unless they present an articulable danger to public safety and security.

US law must focus on protection of the most vulnerable. In the three decades since enactment of the Refugee Act of 1980, US policy toward immigrant survivors of human rights abuses has suffered serious erosion. PHR believes that:

> ***Particularly vulnerable individuals should not be excluded from applying for asylum by procedural bars.*** The one-year deadline for applying for asylum after entering the US unjustly prevents legitimate asylum seekers from obtaining the protection to which they are entitled. A large number of noncitizens who miss the one-year application deadline do so because of after-effects of the trauma that caused them to flee to the US in the first place. Many others who miss the deadline are unaware of their ability to petition for asylum – a particular problem among LGBT applicants – or receive bad advice from unlicensed immigration law advisors.
>
> ***Victims of violence should not be treated as perpetrators by operation of US law.*** The gradual expansion of anti-terrorism law since the 1990s has resulted in thousands of asylum seekers being at risk of exclusion from US protections, even when no rational person would deem the particular individual to be a terrorist. Applications for US protection that are currently "on hold" due to allegations that a person supported terrorists include the matter of a Colombian doctor who, on one occasion, treated three wounded guerillas brought to the emergency room where he was on duty. Thereafter he was threatened by rebels at gunpoint for having complied with a law requiring him to report suspicious injuries to the government. Forced to flee to the US for his safety, his asylum claim may be barred due to the overly-broad application of material support exclusion provisions.

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PHR Supports the Refugee Protection Act's Restoration of Human Rights Principles to US law. Human rights principles affirmed in both US domestic law and treaties to which the US has adhered direct that:

- Persons with a well-founded fear of future persecution or torture may not be endangered by forcible return;
- Individuals may not be arbitrarily incarcerated; and
- Detained individuals must be treated humanely and with respect for their dignity.

In addition, the UN High Commissioner for Refugees has declared in Guidelines for implementation of the Refugee Convention and Protocol that,

> Where there are monitoring mechanisms which can be employed as viable alternatives to detention, (such as reporting obligations or guarantor requirements) ... these should be applied first [before detention] unless there is evidence to suggest that such an alternative will not be effective in the individual case.

PHR supports the Refugee Protection Act because it would effect faithful implementation of these human rights obligations of the US.

By eliminating unnecessary bars to obtaining asylum and providing for the possibility of government-provided counsel in the most compelling cases, the Refugee Protection Act would make significant strides in ensuring that the US never violates the central principle of non-refoulement. The Act's expansion of parole and community-based secure release programs will help guarantee that vulnerable survivors of abuses are not unnecessarily or arbitrarily detained while their cases are pending, and that they receive assistance with complying with immigration proceedings that maintains and respects their dignity and humanity. Creation of legally binding detention standards will for the first time meaningfully prevent substandard medical care and other conditions of confinement that have caused the impermissible suffering, and even death, of far too many immigration detainees.

The Refugee Protection Act contains reforms that are essential to ensuring that the US meets its human rights obligations in welcoming, processing, and resettling asylum seekers. PHR urges the Senate to swiftly enact S. 3113.

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Refugee Women's Network, Inc.
Supports the **Refugee Protection Act** of 2010

Refugee Women's Network, Inc. (RWN) was founded in 1995 by refugee women fleeing persecution in Africa, Asia, Eastern Europe, and the Middle East.

They have gone on to start businesses that create jobs for others and revenue for cities and civic organizations that help other refugees, immigrants, and underserved Americans. The thousands of refugee and asylee women in our national network are proof that refugees and asylees go on to be valuable members of society.

Therefore we support the Refugee Protection Act of 2010, especially the following provisions:

1. Expanded protections for refugees and asylees escaping harm,
2. Mechanisms for family reunification,
3. More humane treatment and options for persons in asylum proceedings and detention,
4. Quicker integration with their new American communities, and
5. Adjustment of the per capita refugee resettlement grant level annually for inflation and the cost of living to prevent refugees from falling into poverty.

RWN urges comprehensive immigration reform that meets all of the following criteria:

1. An emphasis on **family unification**, including same sex partners and their children.
2. Increased **pathways to citizenship** for immigrants who are currently in the United States.
3. Increased **protections for women experiencing violence** and crime so they can take steps, such as leaving their abusers in the home or at work, without jeopardizing their immigration status.
4. **Ending unjust deportations** and separation of families

Beyond the Refugee Protection Act of 2010, RWN also urges the passage of:

1. **End Racial Profiling Act**, which provides vital protection from police profiling based on race, religion, national origin and ethnicity. It will prohibit racial profiling in law enforcement at the federal, state and local level; monitor law enforcement tactics; and provide a mechanism to receive and contend with complaints of racial profiling.
   - RWN supports ERPA because racial profiling is a violation of human rights in that people are judged solely on their outward appearance, not their behavior. RWN has urged our national constituency to share their stories of racial profiling with the Americans for Civil Liberties Union.
   - More information is available at www.RightsWorkingGroup.org.
2. **DREAM Act**, which provides temporary residency for six years for undocumented immigrant minors so that they may attend college or serve in the US military, after which

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they will be granted permanent residency and a path to citizenship. These children are out of status due to the actions of others, not their own. The US is their home and needs their skills and intellect to help build and defend the country.

3. Legislation mandating **binding detention standards**. Detention is conducted by a patchwork of public and private agencies with different operational standards and a lack of consistent oversight. This leads to mistreatment and human rights violations. RWN calls for enforceable detention standards that are applied uniformly and other binding administrative requirements that mandate that people in detention have more humane conditions and treatment, including access to legal, social, spiritual, health care and other vital services.
   - RWN supports binding detention standards because our constituents include women who are asylees who have been held in detention as the legal system rules on their fate. Asylees are fleeing persecution just as refugees are but are petitioning for refuge and safety after arriving in the US. Already having experienced imprisonment and persecution that caused them to flee, it is unconscionable that they are retraumatized while in the US. Protections, especially for women in the detention system, are needed.
   - More information at www.DetentionWatchNetwork.org

About Refugee Women's Network, Inc.

RWN is a national nonprofit organization that builds on refugee and immigrant women's strengths, skills, and courage to promote self-sufficiency and integration with their new American communities. Programs include leadership development, health promotion, microenterprise, advocacy, and a national conference.

Our constituents are refugee and immigrant women in 30 states, originally from 40 countries in Asia, Africa, the Middle East, the Americas and the Caribbean, and Europe.

Since 1995, RWN has campaigned for social change. Our focus areas and activities include:

1. **Ending violence against women**. Current activities include serving on advisory committees regarding the intersection of domestic violence intervention and immigrant rights, for example Project Connect in Georgia, and United for Safety, which addresses the issue of domestic violence between same sex partners.
2. **Advocacy against discrimination faced by immigrants and refugees**. Current activities include urging constituents to tell their stories about ethnic and racial profiling. RWN is also an active member of the Georgia Coalition of Refugee Stakeholders and the Georgia Immigrant and Refugee Rights Coalition.
3. **Advocacy against unjust deportations and separation of families**. Current activities include educating constituents and policy makers about the issue of unjust deportation.

RWN's advocacy is guided by the United Nation's Convention on the Elimination of Discrimination against Women (CEDAW) and urges the US to ratify CEDAW.

For more information about RWN, please visit our website at www.riwn.org or contact
D. BryAnn Chen (Ms.), Executive Director
404-299-0180 x 224

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Statement of Support

The Refugee Protection Act of 2010

Survivors of Torture, International ("Survivors") is a non-profit organization providing holistic torture treatment services to individuals who fled incidents of torture in their home countries and who are now residing in San Diego County in California. Our mission is to assist survivors to overcome the trauma they have endured so that they may thrive as members of their new American communities. We provide our services through our staff and a network of professionals—doctors, lawyers, psychologists, psychiatrist, dentists, mental health counselors, interpreters and others—we recruit and train to serve our clients at low-cost or pro bono rates.

At Survivors, we are fortunate to watch and participate in the human renewal that the Refugee Act makes possible. Every day, bit by bit, we see our clients recover their confidence in the decency of others, regain their sense of personal dignity, and contribute to their new community. But we also observe an alarming number of instances in which our current refugee and asylum systems fail to fulfill their mission.

We strongly support passage of the Refugee Protection Act of 2010. In addition to improving our refugee and asylum systems overall, there are a number of ways that we believe the Act would contribute to protection and healing of torture survivors specifically. We especially welcome these changes in the San Diego, California area, one of the principal resettlement points for refugees and asylum seekers coming to the United States. For the purposes of this statement, we wish to highlight three aspects of the Act that we believe will make major differences for our clients:

- **Elimination of the Arbitrary One-Year Asylum Filing Deadline**

Current law demands that individuals seeking asylum in the United States apply within one year of their arrival in the country or lose the opportunity altogether. This arbitrary and unnecessary deadline fails to take into account the realities of human response to trauma.

Upon reaching safety, many of our clients' primary hope is to leave the past behind. What they have endured is a source of nightmares, flashbacks, deep distress and pain. Applying for asylum would require pouring over these details intensively, publicly, and with the terrifying risk of being returned home should a judge disbelieve the story. Moreover, many refugees flee under emergency circumstances, often leaving loved ones and possessions behind. They do not plan to stay in the United States longer than absolutely necessary. Applying for asylum is not, there-

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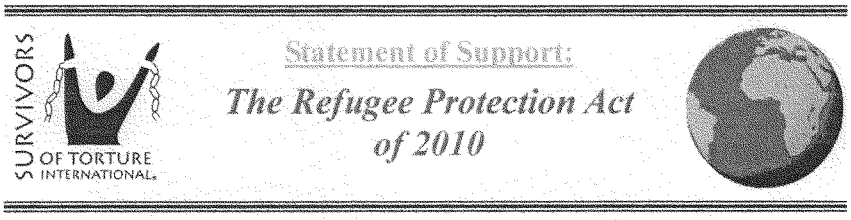

-fore, high on the list of immediate priorities.

Elimination of the one-year filing deadline would remove this arbitrary aspect of asylum adjudication and refocus adjudication onto the point that matters: the merits of the claim.

Clarification of Terrorism and Material Support Bars to Admission

Current law has resulted in a wildly exaggerated definition of material support for terrorism that blurs the distinction between perpetrators and victims, and too often bars innocent people from obtaining the protection they deserve as a result. Consider the case of one of our clients, a man from an East African country who languished for over a year in immigration detention while appealing a judge's decision to deny him asylum.

Members of a group that the U.S. State Department lists as a terrorist organization approached the client and a relative, demanding that they join up. When both initially refused, the group shot and killed the relative in front of our client, who then agreed to do what he was told. The group gave him a machine gun, but no bullets, and told him to stand in the middle of a road (he managed to escape shortly thereafter). For this action, the judge determined the client had lent material support to terrorist and did not deserve asylum.

Clarification of the proper interpretation of what terrorism and material support really mean is essential to distinguishing and protecting victims from perpetrators.

Reform of Reception and Placement Grant Calculations

San Diego is a major refugee resettlement destination. According to State Department data, since 2007 California has resettled more Iraqis than any other state; indeed San Diego County alone has resettled more Iraqis than any other state. Local service providers become a major player in helping newly arriving refugees to adapt and thrive in their new communities, but under the current system, local resources are not sufficient to meet the needs. The availability of ESL classes is an excellent example. The San Diego Union Tribune recently reported that Iraqi refugees in San Diego County are facing lengthy waiting lists to enroll in ESL classes.

The Act would implement regular review of the Reception of Placement Grant calculations to help ensure that resettlement communities are receiving the resources they need to assist refugee to adapt and thrive in their new homes.

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Statement of

IGOR V. TIMOFEYEV

Before the Committee on the Judiciary
United States Senate

Hearing on

Renewing America's Commitment to the Refugee Convention:
The Refugee Protection Act of 2010

Wednesday, May 19, 2010
Dirksen Senate Office Building, Room 226
Washington, D.C.

Chairman Leahy, Senator Sessions, Members of the Committee:

Thank you for the opportunity to appear before you today as you examine "The Refugee Protection Act of 2010," introduced by Chairman Leahy, and the United States' policy and procedures with respect to admission and protection of refugees and asylees.

From February 2006 to October 2008, I served as the Special Advisor for Refugee and Asylum Affairs at the Department of Homeland Security ("DHS"). I was the first holder of that position since its establishment as part of the reforms recommended by the United States Commission on International Religious Freedom. For most of that time, I also served concurrently as a Director of Immigration Policy at DHS. In these capacities, I advised the DHS leadership on refugee, asylum and immigration issues, and coordinated the Department's policy in the area of asylum and refugee protection.

Prior to my work at DHS, I served as an associate legal officer to the President of the United Nations International Criminal Tribunal for the Former Yugoslavia. In that capacity, I advised the president and judges of the Tribunal on appeals involving issues of international humanitarian and criminal law. I am currently an attorney in private practice, specializing in appellate and international litigation. I wish to add that I am appearing before the Committee in my personal capacity, and that my testimony should not be attributed to my law firm.

The United States, as a nation founded by immigrants, has a long and proud history of welcoming individuals who sought to escape political, religious, or ethnic persecution in their own countries. One of the origins of our nation is the search of the Pilgrims and Puritans for religious safe haven in the early-to mid-1600s. This legacy endured throughout our country's history, as refugees continued to arrive, and find welcome, in the United States in ever-increasing numbers.

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Indeed, I am proud to count my own family as a part of this heritage. My great-grandfather and his family arrived in the United States around the turn of the Twentieth Century as Jewish immigrants from Russia, seeking to escape then-rampant anti-semitism. My immediate family and I made a similar journey about a century later, when two decades ago we left the then-Soviet Union and made the United States our new home.

The United States' commitment to the protection of individuals fleeing persecution is not only our enduring heritage, it is also our legal obligation. In 1967, the United States became a party to the United Nations Convention Relating to the Status of Refugees, which is the main multilateral agreement outlining the international refugee protection regime. The Refugee Convention established certain responsibilities and expectations from participating states with respect to the treatment of refugees and asylum-seekers. The Refugee Act of 1980 incorporated the essential requirements of the Refugee Convention into the U.S. domestic legislation, creating the domestic refugee and asylum resettlement systems. Historically, the United States has been the largest recipient of refugees in the world, accepting more refugees than all other countries combined.

We must remain a welcoming home to refugees and asylum seekers from around the world. But we must also be cognizant of the important role that the immigration law plays in our counter-terrorism and immigration enforcement efforts. In recognition of the unfortunate realities of today's dangerous world, it is essential that immigration law provides agencies in the executive branch with the flexibility necessary to deny admission to the United States, or to deny protection once inside the country, to dangerous individuals, such as individuals who support terrorist organizations.

Further, the Executive must be able to remove expeditiously from the United States individuals who are here illegally and who do not have a valid protection claim. While the removal process must have appropriate legal guarantees, the legal requirements must not be so onerous as to make that process unnecessarily extended or unmanageable. A removal process that severely constrains immigration enforcement or imposes additional burdens on already-overburdened immigration courts and judicial system is not a process that can operate with integrity.

Finally, we should ensure that our refugee program has the flexibility necessary to account for unexpected events, such as a sudden deterioration in refugee situation in a specific area of the world, volatile security situations, and restrictions imposed by other countries on the U.S. refugee program's processing abroad.

In my view, many provisions of the proposed legislation would deprive the Executive of the necessary flexibility and discretion in these areas. Some provisions would do so directly, by codifying measures that the Executive has already implemented or can implement within the existing legislation, thereby making it impossible for the agencies to amend these measures as circumstances warrant. Other provisions would do so indirectly, by imposing additional procedures and requirements on the already burdened immigration enforcement system. In my testimony, I will focus on the following examples: (a) the changes to the terrorism inadmissibility provisions; (b) the codification of existing regulations and imposition of new

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requirements with respect to detention and removal procedures; and (c) the additional requirements pertaining to the U.S. refugee program.

Changes to the Terrorism Inadmissibility Provisions

The Immigration and National Act ("INA") currently makes individuals who are members of, or provide material support to, individuals or organizations that engage in terrorist activities inadmissible into, or removable from, the United States, and makes these individuals ineligible for most immigration benefits. INA § 212(a)(3)(B), 8 U.S.C. § 1182(a)(3)(B). The INA defines both the terrorist activity and the provision of material support to terrorists or terrorist organizations broadly. For example, in addition to the organizations formally designated as "terrorist organizations" by the United States government – so-called "Tier I" and "Tier II" organizations, *see* INA § 212(a)(3)(B)(vi)(I)-(II) – the INA provides that any organization of two or more individuals that engages in specific activity prohibited by the INA constitutes an "undesignated" terrorist organization, *id.* § 212(a)(3)(B)(vi)(III). These organizations are commonly referred to as "Tier III" organizations.

The prohibited activities range from the planning of terrorist acts, to solicitation of funds for terrorist activity, to the provision of material support to terrorists. *Id.* § 212(a)(3)(B)(iv). The material support is defined similarly broadly, ranging from the provision of chemical and biological weapons, to the provision of funds or training, to the provision of a safe house. *Id.* § 212(a)(3)(B)(iv)(VI). The statute does not contain exceptions for material support provided under duress. The statute does, however, authorize either the Secretary of State or the Secretary of Homeland Security, in consultation with each other and with the Attorney General, to waive most of these inadmissibility bars. INA § 212(d)(3)(B)(i). Over the past five years, both Secretaries have exercised this waiver authority with respect to several groups of applicants for refugee and asylum status, as well as with respect to individual applicants.

The proposed legislation will alter this statutory scheme in two ways. First, Section 4(4) of the proposed bill will eliminate the Tier III concept altogether. As a result, only organizations formally designated by the Executive as Tier I or Tier II organizations will be considered as terrorist organizations under the immigration law, and only individuals belonging to, or providing support to, these organizations will be subject to the terrorism inadmissibility provisions. In my view, this alteration would unnecessarily restrict the Executive's ability to respond to the rapidly mutating nature of terrorist groups. Many terrorist organizations form, break down, and re-group without giving notice to the outside world, and their exact identity may not become known to the United States government until well after the fact. A formal designation process, therefore, would not be able to keep up the pace with the shifting identities of the terrorist world.

There are, of course, groups that have been encompassed within the Tier III designation whose activities do not prose a threat to the United States. Indeed, some of these groups have engaged in these activities in order to defend themselves against oppressive foreign regimes, and in some instances have done so with the encouragement of the United States. The existing waiver authority allows the Executive to exempt both members and supporters of these organizations from the terrorism inadmissibility bars, and the Executive has exercised this

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authority with respect to at least a dozen organizations since 2006 to the present. This waiver authority was first exercised by Secretary of State Rice in May 2006 with respect to Burmese Karen refugees in the Tham Hin camp in Thailand. In October 2009, Secretary of State Clinton and Secretary of Homeland Security Napolitano jointly exercised this authority with respect to three Iraqi groups (the Iraqi National Congress, the Kurdistan Democratic Party, and the Patriotic Union of Kurdistan).

Second, Section 4(3) of the proposed bill will exempt from the definition of material support under the INA any activity committed under duress. No one disagrees that, when appropriate, individuals who are coerced – often by brutal and life-threatening means – into providing material support should not be subject to the statutory bar. Yet, such authority already exists under the current legislation. Indeed, the Executive has exercised it on numerous occasions. Currently, individuals who provided material support under duress to Tier I, II, or III groups, as well as their spouses and children, are eligible for a waiver. Importantly, unlike the proposed bill, the waiver authority permits the Executive to impose additional restrictions on these exemptions, such as the requirement that the applicant had not participated in, or provided material support to, activities that targeted noncombatant civilians. The existing waiver process also permits the Executive to obtain, where necessary, an all-source evaluation of the group to which the applicant provided support, and of its aims and methods, including its coercion techniques. In addition, the existing waivers provide adjudicators with discretion to evaluate the totality of the applicant's circumstances when deciding whether to grant an exemption.

In sum, the main changes that the current bill proposes with respect to the INA's terrorism inadmissibility provisions can already be accomplished under the existing legislation. In that way, the proposed bill is different from the last bi-partisan legislative reform of these provisions – the Consolidated Appropriations Act of 2008 ("CAA"). Prior to the CAA, the Executive's waiver authority was limited. The CAA extended that authority to nearly all terrorism-related bars under INA § 212(a)(3)(B), with only few exceptions.

The waiver authority is often criticized as being slow and cumbersome. That criticism is, in part, true. With respect to the initial exercises of the waiver authority, the Executive did proceed cautiously as it was establishing the waiver process, in order to take into account national security interests and counter-terrorism efforts. Today, that process operates more smoothly, but it can – and should be – improved, particularly with respect to individuals in immigration court proceedings. To the extent the speed of the waiver process remains a problem, however, it is a problem amenable to an administrative solution.

Requirements with Respect to Detention and Removal Procedures

Several of the proposed bill's provisions will impose specific standards or procedures with respect to immigration detention and removal operations. Many of these provisions are commendable goals, such as the provisions seeking to ensure quality medical care for individuals in immigration detention or the provision seeking to establish a functioning program of secure alternatives to detention. I question, however, whether it is advisable to codify many of these standards and procedures in legislation, as opposed to leaving them subject to administrative guidelines.

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The immigration detention and removal process is both lengthy and expensive. The Executive agencies charged with overseeing this process – the Immigration and Customs Enforcement within DHS and the Executive Office for Immigration Review within the Department of Justice – must strive to make this process better managed and more efficient. They must do so while ensuring that individuals subject to that process are treated appropriately and receive necessary procedural protections. But the procedures accompanying the detention and removal process must take account of the limited resources available to immigration enforcement and immigration courts.

In that respect, Section 8's codification of DHS's current parole policy for detained individuals and the requirement that DHS and DOJ issue regulations establishing parole criteria would limit the Executive's flexibility to modify – and further improve – the parole policy in light of its experience. The current parole policy was promulgated only in December 2009, and did not go into effect until January 2010 – only five months ago. DHS should be given the opportunity to evaluate the effectiveness of that policy – specifically, whether individuals released on parole return for their immigration court hearings and, if their claim for relief is unsuccessful, comply with removal orders. Crystallizing this recent policy in binding legislation and regulations is premature.

I also recommend that the Committee give serious consideration to Section 8(3)'s requirement that the parole determinations be reviewable by immigration judges. As a recent report by the American Bar Association, *Reforming the Immigration System*, demonstrates in detail, the immigration court system is currently understaffed and is operating under a crushing case-load.[1] Overwhelming the immigration court system further would not promote the efficiency or enhance the reputation of the removal process.

For a similar reason, I would advise careful consideration of Section 7(2)'s introduction of a more permissive standard of review of removal orders under INA § 242(b)(4), 8 U.S.C. § 1252(b)(4). The current standard of review contained in INA § 242(b)(4) requires that a reviewing court of appeals treat the immigration court's findings of fact as "conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." The standard of review proposed in Section 7 would replace that requirement with a more lenient "abuse of discretion" standard. This change would likely increase the workload both of immigration courts and of federal courts of appeals.

Requirements Pertaining to the U.S. Refugee Program

Finally, I would like to comment briefly on two additional provisions of the bill, which seek to alter the existing system of refugee processing. The first provision is Section 18's requirement that the Executive treat the annual Presidential determination under INA § 207,

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[1] American Bar Association, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Proceedings: Executive Summary* (2010), *available at* www.abanet.org/media/nosearch/immigration_reform_executive_summary_012510.pdf.

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8 U.S.C. § 1157, as to the number of refugees that the United States may admit as a fixed admissions goal rather than, as in existing practice, an admissions ceiling.

I share fully the legislation's objective to admit into the United States as many individuals deserving protection as possible. The high number of refugees that the U.S. admits annually is an important demonstration of our enduring commitment to refugee protection. I question, however, whether transforming this goal into an inflexible numerical quota is desirable. By treating the annual Presidential refugee determination as a rigid goal – and by mandating annual report as to how closely, percentage-wise, the Executive has come to meet this quota – the legislation would limit the Executive's ability to respond to unanticipated refugee crises around the globe. The Executive should be free to allocate a certain portion of the numerical amount set by the President as a "reserve," in order to react appropriately to unexpected humanitarian emergencies. Moreover, the ability of U.S. refugee officers to process refugee applicants depends, in some measure, on the security situation in places where refugee interviews are conducted and on the willingness of host countries to cooperate with the U.S. refugee program. A strict legislative quota fails to take account of these contingencies.

Secondly, I do not view as necessary Section 20's proposed authority for the Secretary of State to designate certain groups for expedited adjudication as refugees. Again, I applaud the aim of making sure that particularly vulnerable populations are processed as expeditiously as possible. The Executive, however, already possesses the ability to prioritize specific groups whose resettlement is made paramount by humanitarian or national interest considerations. There is no reason the Executive cannot accomplish what Section 20 is designed to do within the existing parameters of the U.S. refugee program.

Conclusion

The hearing the Committee holds today is yet another testament of the importance that the United States accords to its moral and legal obligations to serve as a safe haven to individuals fleeing persecution. I applaud Chairman Leahy's leadership in this area and his determination to ensure that our refugee and asylum programs best serve these important goals. As we strive to maintain and improve these programs, however, we should do so in a way that does not limit the Executive's ability to adjust these programs as required by circumstances. This is particularly important given the close interrelationship of these programs with the issues of national security and immigration enforcement.

I thank the Committee for the opportunity to share some of my thoughts on these important issues, and I would be pleased to answer any questions Members of the Committee may have.

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UNHCR
United Nations High Commissioner for Refugees
Regional Representation in Washington

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10/LG/104

May 17, 2010

The Honorable Patrick Leahy
Chairman, U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: The Refugee Protection Act of 2010 (S. 3113)

Dear Senator Leahy:

I am writing to commend your initiative in introducing the Refugee Protection Act of 2010, which if enacted would positively affect asylum-seekers, refugees and stateless individuals. The Office of the United Nations High Commissioner for Refugees (UNHCR) supports this legislative proposal and its goal of enhancing the consistency of United States law with international standards of protection for asylum-seekers, refugees and stateless individuals.

As you are aware, UNHCR is formally mandated by the United Nations General Assembly to ensure international protection to refugees, asylum-seekers and other persons of concern and to assist governments in identifying and implementing durable solutions on their behalf. [1] UNHCR shares its support of the Refugee Protection Act of 2010 in the exercise of its supervisory responsibility as provided in Article II of the 1967 Protocol relating to the Status of Refugees ("1967 Protocol") to which the United States is a party. UNHCR's supervisory duties include advising governments on legislation and providing technical input into draft language affecting refugees and asylum-seekers. UNHCR is also mandated by the United Nations General Assembly to prevent and reduce statelessness around the world.

UNHCR is pleased that the legislation specifically addresses several issues affecting the adjudications of asylum claims that have long been of concern to UNHCR. For example, the Act would eliminate the arbitrary one-year bar for filing an asylum application, which has served as an unnecessary impediment to individuals receiving full protection when they clearly meet the refugee definition. It also provides clear guidance on application of several elements of the refugee definition. In particular, it clarifies the requirements for establishing asylum eligibility on the ground of "membership in a particular social group," which has recently been interpreted in a manner that is inconsistent with the language and intent of the 1951 Refugee Convention and 1967 Protocol, to more fully ensure that those whose fear of harm is based on a fundamental or immutable characteristic are protected.

[1] Statute of the Office of the United Nations High Commissioner for Refuges, U.N.Doc. A/RES/428(V), Annex, PP1, 6 (1950).

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UNHCR

The Act also authorizes government-appointed counsel in some cases, which is essential to an asylum-seeker's ability to effectively present a claim. The legislation extends the benefit of first instance, non-adversarial adjudications by asylum officers to all asylum-seekers who demonstrate a credible fear of persecution or torture and to all children seeking asylum. In UNHCR's view, non-adversarial proceedings are a more appropriate and effective means of assessing asylum and refugee claims.

The Act also includes several provisions regarding the detention of asylum seekers, a practice that is particularly concerning to UNHCR. Under international standards, asylum-seekers should not be detained unless absolutely necessary and for a minimum period, given the negative psychological effects and the impact on an asylum-seeker's ability to fully access the asylum adjudications process. We are pleased that the Department of Homeland Security (DHS) has committed to a comprehensive detention reform process, and view this legislation as complementary to that effort. For instance, the legislation provides for independent Immigration Judge review of any decision to detain an asylum-seeker who has met the credible fear standard. It also requires DHS to create a broad range of alternatives to detention programs, including referrals to community-based programs that are more appropriate for many asylum-seekers.

With regard to asylum-seekers who are subject to expedited removal, the Act contains a provision to ensure that the asylum safeguards are more fully implemented by requiring the recording of secondary inspection interviews. This safeguard provides critical protection against erroneous removals of refugees to persecution.

The Act includes several provisions designed to enhance family reunification and integration for asylum-seekers and refugees into the United States leading to increased stability for them and their families. For example, if these provisions are enacted, refugees and asylum-seekers may obtain lawful permanent resident status more quickly. The Act also improves the current law by ensuring that a child can accompany his or her parent when that parent is benefiting from the following to join process. It further protects refugee and asylum-seeking children by providing enhanced guidance on the treatment of orphaned and separated refugee children.

Finally, the Act includes the first comprehensive solution for *de jure* stateless individuals in the United States. By offering a permanent lawful status to stateless individuals with the opportunity to gain citizenship, they can travel outside of the United States to visit loved ones, they will no longer face onerous reporting requirements, and they will no longer fear prolonged detention while the U.S. government tries to find a country willing to take them.

Thank you again for your commitment to refugees, asylum-seekers and stateless individuals. Please let me know if my office can provide any assistance in your efforts to secure passage of this important legislation.

Sincerely,

Michel Gabaudan
Regional Representative

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STATEMENT FOR THE CONGRESSIONAL RECORD IN SUPPORT OF

the Refugee Protection Act of 2010 (S. 3113)

May 25, 2010

The U.S. Commission on International Religious Freedom (USCIRF) applauds the Senate Judiciary Committee for its hearing on the Refugee Protection Act of 2010 (S. 3113). This legislation is vital to ensuring that asylum seekers are treated with dignity, and that they are not erroneously returned to their countries of origin where they may face persecution. USCIRF supports the provisions in the bill that deal with the Expedited Removal process, detention and asylum.

S. 3113 would address many glaring problems in the Expedited Removal process and in the detention of bona fide asylum seekers identified by USCIRF in its 2005 *Report on Asylum Seekers in Expedited Removal* and its 2007 follow-up report. Congressional action is now needed, as unfortunately many of the problems that USCIRF has identified continue to exist today.

The Study identifies serious flaws in the Expedited Removal process that place asylum seekers at risk of being returned to countries where they may face persecution and mistreatment while in detention. To address these concerns, USCIRF issued recommendations, none of which require congressional action, to agencies in the Departments of Homeland Security (DHS) and Justice (DOJ). The recommendations were developed to help protect U.S. borders and ensure fair and humane treatment for *bona fide* asylum seekers, two goals of the 1996 immigration reform law that established the Expedited Removal procedure. Recommendations include increased coordination among agencies that implement expedited removal; increased alternatives to detention or detention in non-jail-like facilities; increased opportunities for pro bono counsel for asylum seekers; and increased quality assurance procedures.

Five years after the release of the Study, and despite DHS announcements that it will reform its immigration detention system and increase parole opportunities for identified asylum seekers, thousands of asylum seekers are detained under prison-like conditions. Such confinement is unnecessarily severe. Problematically, the use of detention has increased in recent years. Additionally, inconsistencies in asylum case adjudication continue, despite

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USCIRF recommendations to improve quality assurance procedures. While DHS has announced some efforts to reform its immigration detention policies, much needs to be done to reform the U.S. detention system.

Given the sorry state of the current detention system and the fact that many of DHS's detention reform plans are general, legislation like the Refugee Protection Act of 2010 and continued hearings like the May hearing held by the Senate Judiciary Committee are necessary to continue to highlight the problems, and actually bring about much-needed change. S. 3113 is vitally needed because, among other provisions, it would:

- Require the referral of asylum seekers to an asylum officer for a credible fear interview and, if credible fear is found, for an asylum interview;
- Codify current DHS parole policies that asylum seekers be considered for release and requires DHS to issue regulations establishing parole criteria;
- Establishes a secure nation-wide "alternatives to detention" program;, and
- Ensures asylum seekers access to counsel, religious practice, medical care, and visits from family.

These are important first steps to achieving the goal of treating asylum seekers fairly and humanely as well as reaffirming the leading role that the United States long has played in providing safe haven to those seeking freedom and safety on our shores.

USCIRF is an independent, bipartisan U.S. federal government commission. USCIRF Commissioners are appointed by the President and the leadership of both political parties in the Senate and the House of Representatives. USCIRF's principal responsibilities are to review the facts and circumstances of violations of religious freedom internationally and to make policy recommendations to the President, the Secretary of State and Congress.

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