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The Impact of the Material Support Bar

U.S. Refugee Admissions Program For Fiscal Year 2006 and 2007

Recommendations of
Refugee Council USA

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Women's Commission for Refugee Women & Children
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Front Cover: **Burmese refugees in Tham Hin Camp on the Thai Border (June 2006)**
Photo courtesy of Robert Carey, International Rescue Committee

Table of Contents

1 Executive Summary

It is the historic policy of the United States to admit refugees of special humanitarian concern, reflecting the country's core values and tradition of welcoming the oppressed. The partnership between private, non-profit agencies and the U.S. government to provide refugee protection overseas and to resettle refugees in the United States is now in its third decade. This long-standing collaboration has made the United States a world leader in refugee protection and has resulted in a unique and effective model for refugee resettlement. Since 1975 the United States has resettled over 2.6 million refugees.

In recent years the average number of refugees resettled has steadily declined, yet the widespread public commitment to the humanitarian principles enshrined in this program remains strong. Local citizens and organizations throughout the country stand ready to welcome persecuted refugees and provide them a safe haven.

The political will for restoring the U.S. Refugee Program following the events of September 11th was demonstrated well in Fiscal Year (FY) 2004 when the combined efforts of the Administration and Refugee Council USA (RCUSA) resulted in an 80 percent admissions increase over the previous year. The number of refugees admitted increased from 28,422 in FY03 to 52,868 in FY04 and topped 53,813 in FY05. Upon the introduction of new, more rigorous security standards, the U.S. Refugee Program was well on its way to recovery.

Today, however, a new challenge faces the program: thousands of refugees in need of protection are being denied access to asylum and resettlement in the United States due to the overly broad application of the material support ground of inadmissibility.[1] This statutory bar, greatly expanded by the USA PATRIOT Act of 2001[2] and the REAL ID Act of 2005,[3] has been interpreted to deny refugee protection to bona fide refugees and asylum seekers who have been coerced under extreme duress—including at gunpoint—to provide material support of as little as $1.00 to groups of two or more people deemed to have engaged in "terrorist activity" which is broadly defined. Under this expanded definition, even former U.S. allies and members of pro-democracy movements fighting repressive military regimes are also being denied admission to the United States.

The delay in addressing this issue has nearly shut down the U.S. refugee admissions program for Colombians. It has resulted in substantial processing delays and a 20 percent rejection rate for thousands of Burmese Karen in Thailand, bona fide refugees identified in October 2005 by the United States as in need of resettlement. Other populations now affected include Vietnamese Montagnards and Hmong—long time U.S. allies—as well as Cubans, Liberians, and Sudanese. Without a clear definition of terrorism or terrorist organization, the number of refugees in need of protection falling victim to this bar is growing.

Despite the Presidential Determination (PD) authorizing 70,000 refugee admissions for FY06, refugee arrivals in FY06 total only 31,912.[4] The low arrivals in FY06 and the anticipated even lower arrival numbers for FY07 are largely explained by the increased application of the material support bar to refugee admission. This is the most dangerous threat ever posed to the U.S. Refugee Program (USRP) since its inception.

The Council urgently recommends that a legislative remedy be found to address the unintended negative effects of the material support bar, to return the US Refugee Program to its regular level of operation, and to restore the position of the United States as the world's leader in refugee resettlement and protection. The coerced provision of material support under the threat of death or torture should

not be grounds for inadmissibility. The Council recommends that legislative reform address the context of armed conflict, the particular circumstances of an individual's actions, and the duress under which a person acted.

Until such legislation can be enacted, the Council supports the development and implementation of a legal interpretation and guidelines for the material support ground of inadmissibility that would exempt actions made under duress and that also excludes support to groups engaged in resisting oppressive regimes allied with the United States. The Council also supports exempting from the bar all refugees and asylum seekers who pose no discernible threat to the security of the United States and who are otherwise eligible for protection.

Once the unintended consequences of the material support bar are adequately addressed, the Council looks forward to working in partnership with the U.S. government to fully restore and expand refugee resettlement in the United States. As one of the world's foremost humanitarian nations, the United States must reassert its traditional commitment to refugee protection by fully funding the USRP, by increasing its collaboration with nongovernmental organizations (NGO), and by improving access to resettlement for vulnerable refugees.

2 Introduction: History of the U.S. Refugee Program

Refugees are persons who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country […]."[5] There are currently over 12 million refugees and asylum seekers around the world who have fled to neighboring countries to escape the risk of persistent discrimination, torture, and death.[6] The United States works with other governments and international and private organizations to protect refugees and strives to ensure that survival needs for food, health care, and shelter are met. The United States has been instrumental in alleviating the misery and suffering of refugees throughout the world.

Still, not all refugees are able to go home or find safety and security in the countries where they first seek refuge. Some refugees in need of protection for whom safe, voluntary repatriation or local integration is not possible are resettled to third countries, including the United States. It is the historic policy of the United States to admit refugees of special humanitarian concern, reflecting the country's core values and tradition of welcoming the oppressed. Following the admission of over 250,000 displaced Europeans from World War II, the first U.S. refugee legislation, the Displaced Persons Act of 1948, was enacted by the U.S. Congress. This legislation provided for the admission of an additional 400,000 displaced Europeans. Later laws provided for admission of persons fleeing Communist regimes including Hungary, Poland, Yugoslavia, the Soviet Union, Korea, China, and Cuba. Most of these waves of refugees were assisted by private ethnic and religious organizations in the United States through partnerships that formed the basis for the public/private cooperation that characterizes U.S. resettlement today.[7]

In 1975 the United States resettled hundreds of thousands of Indochinese refugees through an ad hoc Refugee Task Force with temporary funding. This experience prompted Congress to pass the Refugee Act of 1980, which incorporated the 1951 U.N. Refugee Convention and its 1967 Protocol definition of "refugee" and standardized resettlement services for all refugees admitted to the U.S. The Refugee Act provides the legal basis for today's Refugee Admissions Program and is administered by the Bureau of Population, Refugees, and Migration (PRM) of the Department of State (DOS) in conjunction with the Office of Refugee Resettlement in the Department of Health and Human Services (HHS) and offices in the Department of Homeland Security (DHS).

Each year, the President of the United States, after consulting with Congress and the appropriate agencies, determines the designated nationalities and processing priorities for refugee resettlement for the upcoming year. The President also sets annual ceilings on the total number of refugees who may enter the United States from each region of the world. Since 1975, the United States has resettled over 2.6 million refugees, with annual admissions ranging from a high of 207,000 in 1980 to a low of 27,110 in 2002.[8] The average number admitted annually since 1980 is 98,000.[9]

In recent years this average number has steadily declined, despite the fact that public commitment to the humanitarian principles enshrined in this program remains widespread and strong. Local citizens and organizations throughout the country stand ready to welcome the world's persecuted and provide them a safe haven. The political will for restoring the U.S. Refugee Program following September 11th was demonstrated well in FY04 when the combined efforts of the Administration and the Refugee Council USA resulted in an 80 percent admissions increase from the previous year, despite the introduction of rigorous new security standards. With the number of refugees admitted

increasing from 28,422 in FY03 to 52,868 in FY04 and reaching 53,813 in FY05, the U.S. Refugee Program was well on its way to recovery.

Today, however, a new challenge faces the program: thousands of refuges in need of protection are being denied access to asylum and resettlement in the United States due to the overly broad application of the material support ground of inadmissibility. This statutory bar, greatly expanded by the USA PATRIOT Act of 2001 and the REAL ID Act of 2005, has been interpreted to deny refugee protection to bona fide refugees and asylees who have been coerced under duress—including at gunpoint—to provide so-called material support to groups engaged in "terrorist activity."

Due to the unprecedented challenges posed by the material support bar to the USRP, this report will depart from its usual analysis of global admissions needs to focus instead on the issue of material support and its impact on key refugee populations. The Council believes that the pervasive influence of this recent threat to the refugee program is so severe that all other considerations of the future of the U.S. Refugee Program are secondary to the material support issue.

3 The Material Support Provisions

3.1 History of the Material Support Provisions

The growing problem of refugees being denied admission to the United States stems from provisions within the Immigration and Nationality Act (INA), the basic body of U.S. immigration law, that make any alien who has engaged in or afforded "material support" to terrorist activity inadmissible to the United States.[10] Before 1990 the INA did not have a terrorist ground of inadmissibility, only exclusion on security-related grounds. Amendments in 1990 added an inadmissibility ground for those engaged in terrorist activity.[11] The INA's definition of terrorism was further expanded in 1996 when Congress, in response to the World Trade Center and Oklahoma Federal Building bombings, enacted the Anti-Terrorism and Effective Death Penalty Act (AEDPA),[12] which sought to deter persons within the United States from providing material support to terrorist activity. The AEDPA initiated a process by which the United States could designate certain groups as foreign terrorist organizations (FTO) and make individuals who provided material support to such organizations ineligible for refugee or asylum status. For the purposes of immigration law, a foreign organization could only be considered a terrorist one if it had been officially designated as such by the Secretary of State in consultation with the Secretary of the Treasury and the Attorney General.[13]

The USA PATRIOT Act of 2001 significantly broadened the scope of the material support bar by expanding the definition of "terrorism," "terrorist activity," and "terrorist organization." The definition now includes support provided to groups that are not formally on the list of FTOs or designated as other terrorist organizations through publications in the Federal Register but are nonetheless deemed to be "terrorist organizations" due to their engagement in "terrorist activity" defined under the INA to include the use of any weapon or "dangerous device" with intent to endanger, directly or indirectly, the safety of one or more persons or to cause substantial damage to property.[14]

In 2005, the REAL ID Act further expanded the definition of "non-designated" terrorist organizations to include a "group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in" any form of "terrorist activity."[15]

The current material support provision renders any alien ineligible for entry into the United States if s/he has committed "an act that the actor knows, or reasonably should know, affords material support:

- for the commission of a terrorist act;
- to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;" or
- to a designated or non-designated terrorist organization.[16]

This definition is being interpreted by the relevant federal agencies to mean that a refugee can be excluded for admission to the United States for giving any kind of support, no matter how insignificant, to virtually any group of two or more people which has ever used armed force against anyone. Immigration judges and DHS officials now have the authority independent of other authority to identify a group as a terrorist organization and to bar a non-citizen from admission, refuge, or adjustment of status. In addition, the bar has been applied without taking into account the context of violence and an individual's particular circumstances, such as whether s/he acted in duress or in self-defense.[17]

3.2 Definition of Material Support

The current provision of the INA does not provide any exceptions for involuntary material support to terrorist organizations. Material support includes the provision of a "safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training."[18] In addition, U.S. courts have held that "material support" includes other types of support not enumerated in the provision.[19] In one case, the court found that providing food and setting up tents for a religious congregation, which may have included members of the religion's militant sect, constituted material support to a terrorist organization.[20]

3.3 Impact of Material Support Provisions on Refugees Overseas

The following cases illustrate examples of how the material support bar has been applied to exclude persons with compelling refugee claims:

During the civil war in Liberia, Liberians United for Reconciliation and Democracy (LURD) rebels came into the home of a woman, shot and killed her father in front of her and then raped her repeatedly. The rebels then abducted the woman, held her hostage, and forced her to perform a variety of household tasks, such as cooking and laundry. After several weeks in captivity, the woman escaped and made her way to a camp where she was granted refugee status. During her resettlement adjudication, the Department of Homeland Security considered the tasks she had performed for the rebels, such as laundry, as "material support" to a terrorist organization. The woman's resettlement case was put on hold.

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Sierra Leonean rebels attacked a woman and her daughter, who were repeatedly struck with machetes, raped, and held captive inside their own home. After the incident, the family fled the area and was granted refugee status and referred for U.S. resettlement. Their case is on hold on grounds that they provided housing—or material support—to rebels engaged in terrorist activity.

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One night four members of a paramilitary attacked the home of a young Colombian youth. He was kidnapped and forced to join a death march to a paramilitary encampment. During the march, the paramilitaries shot and killed many people, and the youth was often forced to dig the graves of the dead, knowing all the while that gravediggers were commonly shot in the back and left in the holes that they had just dug. Fortunately, with the help of his cousin, the youth escaped and was granted refugee status. He is barred from the U.S. resettlement program under the "material support" provision for digging graves for the paramilitary, a terrorist organization.

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As treasurer of her church women's group, a young woman collected donations to give to the poor. Three or four times a year the woman gave eggs, a half chicken, or rice to the Chin National Front (CNF). Once, when carrying collected donations for the building of a new church, the woman was stopped and searched by the Burmese military. They found the woman's donations and accused her of helping the CNF. She was badly beaten, knocked unconscious, and subsequently miscarried. Her pastor bribed the military to take her to the hospital instead of jail. When she was better she fled to Malaysia where she remains, ineligible for U.S. protection for providing support to the CNF.

The above examples are not exceptions but are increasingly the normal interpretation of the material support bar faced by refugees worldwide. Thousands of refugees in need of urgent protection are being put on hold for the U.S. Refugee Program due to the expanded definition and overly-broad application of the material support bar. This bar has in effect labeled refugees, who are the victims of rape, robbery, extortion, torture and mutilation, as terrorists.[21] Material support has been interpreted to deny refugee protection to people forced against their will to pay "taxes" to armed rebel groups; to individuals coerced to provide shelter to alleged terrorist groups often comprised of two or more persons; and those violently abducted and enslaved by warring factions that are not officially designated terrorist organizations.[22] In addition, refugees who have directly or indirectly supported a group that is associated with pro-democracy movements against dictatorial and repressive governments have also been rendered ineligible for protection and resettlement in the United States due to the material support bar.[23]

Ironically, for many of these refugees and asylees, the very treatment that forms the basis of their refugee or asylum claim—well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group—are now grounds for inadmissibility to the United States.

3.4 Application of Material Support on Asylum and Status Adjustment Cases

In addition to the overseas application of the material support bar, there has also been a domestic application. Today hundreds of affirmative asylum cases in the United States are also on hold until this issue is resolved, while asylum applicants whose cases are before the immigration courts are being ordered deported based on the material support bar. The applications of hundreds of resettled refugees eligible for adjustment of status to permanent residence have been put on hold as well.

The Department of Homeland Security has also interpreted material support to mean any support of any kind under any circumstances. In a recent case before the Board of Immigration Appeals (BIA) *Matter of S-K* DHS argued that Congress did not intend for the material support provision to include a *de minimis* (minimum) exception.[24]

The applicant argued that there must be a link between the provision of material support and the intended use of this support to further terrorist activity. The BIA concurred with the United Nations High Commissioner for Refugees' (UNHCR) advisory opinion that the term "material support" was not completely defined under the INA and that its meaning remained somewhat ambiguous. Nonetheless the BIA stated that there was no legislative history that indicated a limitation on the scope of the term. Rather, the statute clearly indicated that the only exception to the bar would be a showing by clear and convincing evidence that the person was completely unaware and should not reasonably have known that s/he was giving material support to an organization engaged in terrorist activity.[25]

In this case, the BIA held that the applicant's monetary contributions over a period of a year to a pro-democracy organization, the CNF, were in fact material support to a group that met the statutory definition of a terrorist organization. As such the applicant, who under normal circumstances would have been accepted, was barred from asylum and withholding of removal.[26]

It is important to note that the concurring opinion agreed that due to the broad nature of the law it must be concluded that the applicant indeed provided "material support;" yet noted that the applicant "posed no danger whatsoever to the national security of the U.S."[27] The opinion further stated

that by supporting the pro-democracy organization, the applicant actually acted in a manner consistent with U.S. foreign policy, but that the BIA had no choice but to apply the clear language of the material support statute. The opinion further recommended that DHS apply a waiver to the case.[28]

In the asylum case in the *Matter of R-K,* currently pending before the Board of Immigration Appeals, the immigration judge agreed with DHS that duress is not a defense to the material support bar, even when the person's life is at risk.[29] In this example, a Sri Lankan refugee was kidnapped by the Liberation Tigers of Tamil Eelam, which is designated by the United States as a foreign terrorist organization and forced to pay 50,000 rupees for his release. The immigration judge considered that his ransom payment constituted material support to a terrorist organization.

3.5 Definition of Terrorist Activity

Similar to "material support," the definition of "terrorist activity" has also been expanded by the PATRIOT Act of 2001. Enumerated "terrorist activities" now include the use or threat, attempt, or conspiracy to "use any dangerous device (other than for mere personal gain) with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property."[30] This could cover almost any attempt by two or more persons to commit a violent crime other than for mere personal gain.[31] The REAL ID Act further expanded the conduct that constitutes "engaging in a terrorist activity" to include such behavior as endorsing and/or espousing terrorist activity.[32]

In the S-K case mentioned above, the applicant argued that since the INA defined "terrorist activity" in part as an activity that is unlawful under the laws of the country where it is committed or under the laws of the United States, the CNF's actions were not unlawful under Burmese law given that it was an illegitimate government. In support of her position, the applicant pointed to testimony from the U.S. Assistant Secretary of State condemning the Burmese military and provided documentation from the DHS/Resource Information Center stating that it had no information that the CNF had engaged in terrorist activities.

The applicant also cited past BIA case law granting asylum to individuals who had attempted to overthrow dictatorial governments, arguing that the intent of the group seeking to effect change in a country must be taken into account in order to determine whether any resulting harm is persecution or terrorist activity.[33]

The BIA held that the S-K case was distinguishable from past case law precisely because of the new "terrorist activity" statutory language. The BIA further held that the definition of "terrorist activity" did not include an exception for justifiable force.

3.6 Definition of Terrorist Organization

In the context of the material support provision, the term "terrorist organization" also has an expansive meaning. Under the current definition, an individual who gave support to virtually any armed group can be excluded from entry into the United States, irrespective of whether or not the group has been officially designated a terrorist organization by DHS. If a group is not already designated as a terrorist organization, the material support bar allows individual DHS adjudicators and immigration judges to make a determination that it is one.

Under the expanded material support bar, terrorist organizations include those designated by the Secretary of State[34] and those organizations "otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security, as a terrorist organization, after finding that the organization engages in" certain enumerated terrorist activities.[35] In addition, a non-designated group of people can be considered a terrorist organization as well if it consists of "two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in" terrorist activities.[36]

The definition of "terrorist organization" that appears in the current law is based on the use of armed force by the organization and not the nature of the conflict.[37] The term applies equally to U.S. allies and opponents. There is thus no way to differentiate between Al-Qaeda, anti-colonial movements like Nelson Mandela's Africa National Congress, or current pro-democracy movements in Burma. Groups that may be or have been officially aligned with the United States, including those that have received official, public support from the United States, are now also considered "terrorist organizations" if they use or have used force against an established government.[38] For example, in the 1960s thousands of Cubans engaged in a CIA-backed guerrilla war against Fidel Castro in Cuba. Today, hundreds of these very people with links to the armed revolt are now being denied resettlement due to these broad provisions, despite the fact that their family members were resettled in the United States years ago.[39]

The statute defines terrorist activities so broadly that a group becomes a non-designated terrorist organization if it consists of more than one person who performs any one of the enumerated terrorist activities, including offering "material support." Though "members" of a terrorist organization are barred from admission to the United States, there is no clear delineation of what constitutes membership. Furthermore, organizations with armed subgroups are also deemed "terrorist," even if members engaging in noncombatant activities such as conscientious objection, peaceful protests, teaching, and education, are not aware of such actions.

The key problem with the provision is that it does not require analysis of the context in which the organization or group is operating. Some of these groups may indeed be defending themselves from persecution, crimes against humanity, or even genocide. Nonetheless, according to the broad definition of "terrorist organization," the members of the group, by virtue of their activities, are considered terrorists.

4 Failures of the Material Support Bar

4.1 The Issue of Duress

One of the largest problems arising under the material support bar is the failure to recognize an implicit defense for refugees who acted under duress or coercion. The Modern Penal Code,[40] state law, and the U.S. Supreme Court have all recognized the importance of a duress defense even when a criminal statute has been violated. Indeed, duress is a well-established principle of criminal law that stems from the rationale that people should not be punished for crimes committed involuntarily and that interpretation applies even though the criminal statute has no explicit exception for duress. Nonetheless, DHS has refused to recognize duress as a defense to the material support bar in the immigration context and applies the bar equally to terrorists and to victims of terrorism. If U.S. courts allow criminal defendants to plead a duress defense, it is only logical that refugees and asylum seekers who provide material support under duress should be afforded the same opportunity.

A duress defense is crucial to the material support problem because duress in the form of extortion by armed rebels is often the very basis of a refugee claim. Individuals forced to give money or provide assistance to armed groups under threat of death and/or severe bodily harm have a well-founded fear of persecution. Without a duress exception similar to what is recognized in the criminal context, refugees who have been coerced into giving material support to an armed rebel group or to a known terrorist organization are barred from accessing the U.S. resettlement program.

The failure to recognize a duress exception in the material support bar is also inconsistent with established international norms.[41] Germany, Australia, and the U.K., all allies in the U.S.' global anti-terrorism efforts, have recognized the defense of duress for non-citizens. The European Union and the International Criminal Court have also argued that duress is a necessary and viable defense. Moreover, a recent report by the European Legal Network on Asylum (ELENA) also argues that personal responsibility must be assessed in determining a refugee's affiliation with a terrorist organization. According to the report, Belgium, Denmark, the Netherlands, Switzerland, and the United Kingdom (U.K.) all focus on the individual's intent and actual role in regard to a terrorist organization's activities and argue that these principles should apply to non-citizens living in terrorist-dominated war zones.[42]

4.2 Additional Problems Arising Under the Material Support Bar

In addition to the issue of duress outlined above, the following problems also pose pressing concerns for refugees and asylum seekers:

- The statute adopts expansive definitions of "terrorism," "terrorist organization," and "terrorist activity"
- The statute does not explicitly take into consideration the political context of an organization's action
- Refugee and asylum cases are being adjudicated without regard for an individual's particular circumstances, personal responsibility, or the amount and nature of the support that was given
- The statute is being interpreted to allow no exception for justifiable force
- The statute does not exempt U.S. allies or groups that support the United States
- The bar is selectively applied in only the refugee/asylum context
- It provides no assessment of whether an individual poses a threat to national security

5 Examples of Refugee Populations Affected by the Material Support Bar

5.1 Colombian Refugees in Ecuador, Costa Rica, and Panama

Colombia continues to generate more refugees and displaced persons than any other country in the Western Hemisphere. In 2005 the civil war continued to uproot thousands of Colombians, bringing the total number of internally displaced to more than 2.9 million.[43] An additional 257,900 Colombians sought refuge in Ecuador, Costa Rica, Panama, Venezuela, and Canada.[44]

Ecuador hosts 46,900 Colombians refugees.[45] Many of these refugees face rising levels of physical insecurity, as the Colombian conflict has spilled over the porous border into Ecuador where both paramilitary and guerilla groups operate. Members of these armed groups often cross the border in direct pursuit of refugees who are viewed as "military targets" for annihilation. Assassinations and kidnappings of refugees occur regularly in Ecuador. The lack of police protection further exacerbates their precarious security situation. Like many refugees worldwide, Colombians are often viewed by the host community with great disdain and hostility, compounding their difficulty in accessing jobs, health care, housing, and educational opportunities. In addition, single women—who are often forced into prostitution and Afro-Colombians are particularly discriminated against and hence especially vulnerable. In these situations of insecurity and vulnerability, resettlement is for many the only viable option.

Costa Rica hosts over 12,000 Colombian refugees.[46] These refugees are also affected by the operation of illegally armed Colombian groups operating in the country. Refugees have been the victims of extortion, kidnapping, and shootings. According to UNHCR, these deteriorating conditions greatly impact the security of Colombians living in Costa Rica. Rising insecurity coupled with a lack of local integration options makes resettlement the only durable solution available to these refugees.

In Panama more than 800 Colombians have been living under a precarious temporary status for more than six years, without freedom of movement or the right to work. In the past, Panama has engaged in *refoulement* (forcible return) of Colombians. These refugees in Panama, like Ecuador and Costa Rica, are in need of urgent resettlement to the United States, as it serves as their only viable long-term solution.

Despite the increasing protection needs of Colombians throughout the region, the United States resettled fewer than 300 refugees in FY04 and only 150 were admitted in FY05. To date, the United States has admitted less than 50 refugees in FY06. The dramatic reduction of Colombian refugee admissions is due almost entirely to the problem of the material support bar. According to UNHCR, at least 70 percent of Colombian refugees—who would otherwise be suitable for U.S. resettlement referral—have been coerced under duress to make contributions to terrorist groups.

5.2 Material Support under Duress in Colombia

The United Self-Defense Forces of Colombia (AUC), the Revolutionary Armed Forces of Colombia (FARC), and the National Liberation Army (ELN) pervade nearly all aspects of Colombian life. It is common for these armed groups to demand "war taxes" from civilians, often made under threat of torture or death to oneself or a loved one. These taxes typically consist of money, farm animals, or goods from a shop or restaurant. Colombians understand the tax as involuntary, as regular payment ensures protection from violent reprisal from the armed group demanding it.[47] Those who refuse to pay—i.e. who refuse to offer material support to terrorist groups—are subjected to harassment, kidnapping, and murder.[48]

Due to the pervasiveness of armed groups in Colombia, many unavoidable daily activities by civilians constitute material support to terrorist groups under the new bar. Large regions of the Colombian countryside have been under de facto control of an armed group for years and even decades. In some instances, guerillas have run the schools, courts, and health centers, arrangements often sanctioned by the Colombian government.[49] "Affiliation with and support of "terrorist" organizations often results from the normal interactions necessary for survival, not from deliberate attempts to fund terrorist activity.

Many civilians living under the control of guerillas and paramilitaries in Colombia are victims of violent terror and persecution and are often forced to leave their homeland in search of security. Today, the U.S. government defines these victims of violence as terrorists inadmissible to the United States. As illustrated in the examples below, one survey concluded that in as much as 73 percent of the instances in which Colombian refugees provided "material support" to an armed group, they provided it under duress.[50]

5.3 Colombian Case Examples of Material Support under Duress

The case examples below are the stories of officially recognized refugees who were determined to have proven a well-founded fear of persecution. This well-founded fear of torture or death is today the basis upon which the United States is denying protection to refugees.

When one Colombian refused to pay the tax demanded by FARC, they burned down a factory he owned. Later the paramilitaries also approached him for "protection" money. When he refused, they kidnapped and raped his wife.

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Another Colombian refugee who lived in a village that was contested by two armed forces, the FARC guerillas and the AUC paramilitary, was forced to provide a tax to both the FARC and the AUC. Upon learning that the civilian man paid a tax to the rival group, the FARC commander arrived at his farm with 30 guerrillas and ordered the family to evacuate immediately or face death.

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One woman was held captive in her home for three days while FARC members occupied it and then kidnapped her husband at gunpoint. This refugee is barred from the U.S. resettlement program for providing housing—albeit under duress—to a terrorist group.

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A local taxi driver was forced on numerous occasions to drive men armed with machetes and rifles to their mountain encampments. The driver knew other men who were murdered for refusing to cooperate.[51] This refugee is barred from U.S. resettlement for providing transportation services to a known terrorist group under duress.

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A Colombian woman, a poor farmer from the southern part of the state, provided a glass of water to an armed member of the FARC. The next day, members of the paramilitaries confronted the woman and her husband, accusing them of supporting FARC with food and water. While explaining it was only a glass of water, the paramilitaries shot and killed the woman's husband.

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Paramilitaries forced a female shopkeeper to provide them with 60 scarves, gloves, and ski masks. The paramilitaries later gang-raped her, strapped meat to her, and fed her to a ferocious dog. She escaped and was granted refugee status.

The above examples indicate that many civilians living under the control of guerillas and paramilitaries in Colombia are victims of violent terror and persecution and are often forced to leave their homeland in search of security. Today, the U.S. government defines these victims of violence as terrorists and inadmissible to the United States.

The material support bar has shut down the entire Colombian refugee resettlement program to the United States. Victims of terror living without access to basic rights in countries of asylum are being victimized again by being falsely labeled as terrorists by the United States.

While UNHCR has been able to refer a small number of these refugees to other countries that do not exclude Colombians from resettlement, only the U.S. program has the capacity to meet the needs of Colombian refugees in the region. It is unreasonable to expect that neighboring countries, even through their best efforts, will be able or willing to absorb large numbers of displaced Colombians. If the United States is not a strong partner in responding to the displacement crisis in Colombia, the entire region will become increasingly volatile.

The Council strongly urges the Administration to not only restore access to protection for refugees and asylum seekers from Colombia but also to expand the program into Panama and Venezuela. In the meantime, due to the persistence of violence and displacement, the Council strongly recommends that the Administration grant Temporary Protected Status (TPS) to Colombians currently in the United States.

5.4 Burmese Refugees in Thailand

The journey of many Burmese refugees began in 1988, when they marched in protest of deteriorating economic conditions and demanded that the ruling military junta relinquish power. Soldiers responded by firing into unarmed crowds, killing and arresting thousands. Thousands more fled into the neighboring countries of Thailand, Malaysia, and India in search of asylum. These countries are not signatories to the 1951 Convention and 1967 Protocol and only offer temporary refuge.

Since the late 1980s the military regime in Burma has continued its brutal persecution of all opposing it, targeting religious and ethnic minorities in particular. A steady stream of refugees continues to leave Burma, renamed Myanmar by the military dictatorship in 1989. Today there are 470,900 Burmese refugees and asylum seekers living in Thailand.[52] Over 163,000 Burmese refugees have been confined to camps along the Thai-Burmese border.[53] An additional 200,000 are dispersed throughout Thailand without access to protection or humanitarian support.

In the aftermath of the Vietnam War, Thailand housed hundreds of thousands of refugees from Vietnam, Cambodia and Laos. Since that time, Thailand has continued to be a refugee hosting country. Today Thailand hosts three predominant ethnic groups from Burma: 200,000 Shan and 142,000 Karen and Karenni, most of whom are housed in nine camps administered by the Thai authorities along the Thai/Burma border.

Thailand is not a signatory to the 1951 Refugee Convention, so it has developed its own more limited criteria to define refugee status. Thailand considers only those fleeing from military fighting and political persecution to be refugees thus excluding from protection and assistance many oth-

ers who escape persecution based on race, religion, nationality, or ethnicity. Karen, Karenni and Shan ethnic minorities in Burma face continued persecution from Burma's military regime, including forced relocation, land confiscation, forced labor, extortion, arbitrary arrest, torture, rape and summary executions.

In light of the persecution of Burmese minorities, UNHCR presented a group referral to the USRP of approximately 9,000 Burmese refugees in Tham Hin Camp. The majority of refugees living in this camp are ethnic Karen minorities. Almost all of the refugees in Tham Hin fled from southeastern Burma, where the Karen National Union (KNU), a political and armed group that has been fighting for autonomy and recognition for decades, was largely in control. The Department of State characterizes the KNU as a "de facto" civilian government of the Karen people, resisting oppression of and seeking autonomy from the Burmese regime.[54] In 1997 the Burmese military launched an offensive against the KNU, killing and displacing thousands of ethnic Karen into the notoriously crowded camp of Tham Hin.

Fighting between Karen resistance and the Burmese military has been longstanding and widespread since the late 1940s. The KNU, the most recent incarnation of the resistance, urges political dialogue in pursuit of "[the Karen people's] own destiny, for equality, democracy and establishment of a genuine federal union."[55] In KNU controlled areas the organization traditionally filled numerous governmental functions, including health care, education, and jobs. It also served to protect civilians from human rights violations and persecution by the Burmese military.

The military junta that has ruled Burma since 1988 is widely acknowledged to be among the most repressive and brutal regimes in the world. President Bush has imposed trade and investment sanctions on the military regime in his campaign to press for democratic reforms.[56] More recently President Bush met with a leader of an opposition group in Burma, the Shan Women's Action Network (SWAN), and praised her dedication "to helping those who suffer under the military regime in Rangoon and to exposing the regime's abuses, particularly against women."[57] The President said he was very concerned about the human rights violations being committed by the military regime and wanted to know what more can be done to help the people.[58]

In light of the persistence of violence and oppression against ethnic Karen in Burma, coupled with the growing insecurity facing Karen refugees in Thailand, the State Department acted upon UNHCR's recommendation and accepted this group for U.S. resettlement processing in October 2005. After languishing in crowded camps without access to basic rights for almost a decade, approximately 9,000 Karen from Tham Hin were slated to arrive in the United States in FY06. Although a waiver of the material support provision has allowed the resettlement of some of the Tham Hin population, as discussed below, others in this group are still being denied resettlement. They would now be enjoying basic human rights such as freedom of movement, the right to gainful employment, and basic security if it were not for the material support bar that has denied them, as in the case of the Colombians, the immediate protection they desperately deserve.

5.5 Burmese Case Examples

Most Burmese Karen refugees were initially denied resettlement by the United States, because they provided support to ethnic organizations that opposed the repressive Burmese military authorities.

> *One man sought work as a teacher at a school that was overtaken by the Burmese government in 1960. The teacher was unhappy with the way in which the government ran the school and*

decided to relocate to a KNU controlled area in 1974. That same year he joined the KNU and underwent military training. He was only in the auxiliary army, as he continued to work as a teacher, and never engaged in any battles. When the Burmese military invaded the KNU controlled area in 1997, he fled to Thailand. The teacher was ineligible for resettlement due to his membership in KNU, a "terrorist organization."

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Another man joined the KNU in 1991 as a soldier. He received basic training but never engaged in battle. His duties involved working as a cook as well as farming and garden work along the border. He too is ineligible.

***

A 15-year-old youth joined the KNU in 1983 and worked as a guard for the military base but never carried a weapon or engaged in combat. As a peaceful member of a pro-democracy "terrorist organization," the man is inadmissible to the United States.

For the first time in the history of the USRP, a large group of refugees recommended for resettlement and accepted for processing were unable to access the program.

5.6 Limitations of Exercising Discretionary Authority in the Case of Tham Hin

In May 2006, U.S. Secretary of State, Condoleeza Rice, exercised discretionary authority that exempted the Burmese Karen residing in Tham Hin from the over-reaching effects of the material support bar.[59] This was the first time that the Administration used its discretionary authority to exempt bona fide refugees from the material support bar.

Unfortunately, the three cases exemplify Karen refugees in Tham Hin who remain *ineligible,* despite the exercise of discretionary authority. Twenty percent of bona fide refugees are excluded by the current material support bar for having received military training from the KNU or for having been actual soldiers, regardless of whether or not they participated in combat.

The material support bar grants discretionary authority to the Secretary of the Department of Homeland Security and the Secretary of State, after consultation with each other and the Attorney General, to "not apply [the bar] with respect to any material support an alien afforded to an organization or individual that has engaged in a terrorist activity."[60]

Likewise, upon consultation with one another and the Attorney General, the two Secretaries may also determine that an organization not be considered a "terrorist organization" "solely by virtue of having a subgroup" that fits the "terrorist organization" definition.[61]

In issuing the May 2006 discretionary authority for Karen refugees in Tham Hin Camp in Thailand, applicable only to a portion of people meeting the refugee definition and admissibility criteria under U.S. law, the Secretary of State noted that the population in question met all other requirements for U.S. refugee resettlement and posed no danger to the safety and security of the United States. The exercise of discretionary authority has recently been extended to Karen refugees in six more camps in Thailand.[62]

Processing of the *eligible* Tham Hin Camp residents began in June 2006. While the discretionary authority provided a short-term solution for refugees that would have otherwise already been reset-

tled and rebuilding their lives in the United States, it is not a permanent solution. The following sections demonstrate that the exercise of discretionary authority is an ineffective and insufficient solution to the material support bar, as it has left behind thousands of refugees who would have otherwise been resettled to the United States, vulnerable and unprotected.

5.6(a) Discretionary Authority Applies to Only a Portion of Refugees

Despite the exercise of discretionary authority, over 20 percent of those interviewed were denied resettlement after the first DHS Circuit Ride ending in late July 2006. These bona fide refugees not only met the guidelines of UNHCR, but they also met the requirements for U.S. refugee resettlement and posed no danger to the safety and security of the United States. Still, the material support bar is so broad and all-encompassing in nature that not even the exercise of discretionary authority was sufficient to help these refugees gain access to the resettlement program. They will be forced to languish in crowded camps with little hope for a peaceful and secure future.

5.6(b) Process Is Overly Time-Consuming

The Tham Hin refugee camp had already been identified by the Administration as a priority and had received significant public attention, yet the process took seven months from the point of identification and acceptance for processing to the issuance of the waiver. In the interim, refugees are forced to live in unsafe conditions and even under the threat of deportation to their countries of origin where they are likely to face further persecution.

5.6(c) Discretionary Authority Is Limited in Scope

The discretionary authority only applied to Karen Burmese living in one particular camp, Tham Hin, and therefore did not initially benefit Karen refugees residing in other camps and host countries.[63] It also did not benefit other similarly situated Burmese ethnic groups, such as the Chin.

5.6(d) Process Impedes Planning and Organization

The entire process suffers from a lack of clarity and predictability. It is essential that resettlement be based on a consistent and rational framework. Refugee processing agencies must know where and when they will be conducting interviews and preparing refugees for resettlement to the U.S. Overseas refugee processing requires significant advance planning and resource management that involves the U.S. Government, UNHCR, NGO partners, and the government hosting the refugees. Without any assurance that refugees identified for admission will actually be admitted, this planning cannot be done.

5.6(e) Process Increases Protection Problems for Excluded

The process can lead to increased protection problems for those who are rejected, as they have effectively been labeled as terrorists by the United States. Many host countries, already fatigued by refugee presence and politically opposed to their presence, can use this label as a justification for detention and/or deportation. If returned, the country of origin may justify further persecution with the rationale that the refugee in question has been deemed a supporter of terrorism by the United States. Resettlement to another country may also prove infeasible, as the third country would be reluctant to accept a refugee tainted by his or her rejection by the United States on terrorism-related grounds.

5.6(f) Process Is Resource Intensive

The bureaucratic nature of the process significantly increased administrative time dedicated to the caseload. More work was done to get the same results. If each future population requires discretionary authority, there will be a significant increase in administrative resources dedicated to this process—a process that will likely share the same outcome with groups processed through normal channels.

5.6(g) Process Lacks a Corollary for Asylum and Adjustment of Status

There are no parallel processes for asylum and adjustment caseloads. Currently there are an estimated 550 cases on hold in the affirmative asylum adjudication process on the basis of material support and related bars and an unknown number of cases being adjudicated in the context of removal proceedings. These cases include Colombians, Indians, Ethiopians, Nepalese, Philippines, and Sri Lankans. Also on hold for the same reason are approximately 700 status adjustment cases for refugees and asylees that have already been granted protection in the United States and have applied for permanent residence. There has been little progress to date on how to address these cases. The fact that hundreds of people classified as "terrorists" under the law continue to remain indefinitely in the United States until this issue is resolved is yet another indication that these individuals are not a security concern of the United States.

In sum, due to the substantial amount of time and resources necessary to implement discretionary authority, coupled with the fact that some refugees who have actively engaged in a struggle for their freedom are not eligible for the process, it is not a viable long-term solution to the problem of the material support bar. In light of urgent refugee protection needs and the U.S. commitment to saving victims of persecution, the exercise of discretionary authority is welcomed as only a necessary temporary solution.

5.7 Burmese Refugees in Malaysia Affected by Material Support[64]

In 2005 the Malaysian government began an aggressive crackdown on undocumented persons. More than 20 Rohingya refugees and 31 Chin refugees were deported to Burma between 2005 and 2006. Malaysia remains a precarious place in which to seek refuge. Burmese refugees living in both urban and rural areas face harassment, threats, and abuse at the hands of local police and unscrupulous employers. Resettlement remains the most feasible durable solution for Burmese refugees in Malaysia. This is especially the case for some 15,000 ethnic Chin who cannot locally integrate and cannot repatriate in the foreseeable future.

The ethnic Chin minorities are overwhelmingly Christian and have suffered severe religious and ethnic-based persecution by the Burmese army. The Chin State in northwest Burma borders India and suffers from heavy militarization. Burmese living in the Chin State suffer many forms of persecution by the Burmese authorities, including forced labor. The punishment for failing to complete assigned labor, falling asleep, or performing poorly includes fines, physical abuse, and detention.[65] The majority of Chin refugees in Malaysia come from Thantlang and Hakha Townships, two areas where the Chin National Army (CNA), a wing of the CNF, has a strong presence. The CNF and CNA were formed in 1988, the former of which is a member of the National Democratic Front (NDF), a coalition of ethnic armed opposition groups resisting Burma's military dictatorship.[66] The group claims to have two goals: the restoration of the right to self-determination to the Chin people and the establishment of a federal union in Burma based on principles of democracy and freedom.[67] The CNA is an armed wing of the CNF with a small membership. It does not control any territory and focuses its attacks on military targets.

The Burmese Chin refugees in Malaysia face an extremely precarious situation, as many of their homes are raided by the police and some are held in detention even though they have papers from the UNHCR proving their refugee status. In FY06 the United States agreed to resettle over 1,000 Burmese Chin refugees from Malaysia, of which the majority are now affected by the material support bar. UNHCR has since written to PRM stating that these cases would not be referred to the resettlement program out of concern that labeling them as material supporters of terrorism would further erode their protection in Malaysia. The fact that resettlement to the United States cannot be used as a key protection tool for the Burmese Chin refugees in Malaysia effectively increases the dangers they face on the ground.

The following is an example of a case UNHCR has elected not to refer to the United States:

> *An ethnic Christian Chin man lived on a farm with his parents in Burma. In 2001, the man went to India to sell cows. On his way home he encountered five CNA members. The CNA members instructed the man to deliver a letter to the chairman of his village. On his way home, the man was stopped by Burmese government troops who searched his bag and discovered the letter. The man was taken to a military camp for interrogation, where he was tortured and held for two months. His uncle paid a bribe to secure his release, which was contingent upon the man agreeing to report weekly to the camp. Upon his release, the man fled to Malaysia, as he feared that if he reported to the military camp he could again be tortured. This man is considered to have given material support—delivering a sealed letter the contents of which were unknown to him—to the CNA, a terrorist organization.*

This man, a victim of torture and terror, is now deemed inadmissible to the United States.

5.8 Burmese Refugees in India Potentially Thwarted by Material Support Bar

Today there are approximately 50,000 Burmese refugees living in India of which 1,500 live in Delhi. Of the Burmese in Delhi, less than 1,000 are currently recognized as refugees by UNHCR. These refugees have been living in a protracted situation since 1988 and continue to face serious social and economic problems. Most refugees are unable to meet basic needs, including rent, food, clothing, and transportation. They do not have access to gainful employment and face chronic harassment by local authorities and citizens. Most refugees live and work on the fringes of society and in conditions of desperate poverty.

It is possible that these deserving refugees in need of a durable solution may be barred from resettlement by the material support bar for providing support to one of the ethnic based pro-democracy organizations in Burma. Whatever the cause of delay, this group of Burmese refugees remains vulnerable and in need of protection.

5.9 Cuban Refugees Affected by the Material Support Bar

Over 6,000 Cubans were resettled in the United States in FY05 and similar numbers are expected for FY06. These refugees are comprised of individuals suffering targeted persecution from the government, largely because they are human rights activists and evangelical Christians. Despite the increase in Cuban refugee arrivals, over 160 cases comprised of 320 individuals have been placed on hold pending modification of the material support statute.

Shortly after Fidel Castro took power in 1959, some of his opponents known as *alzados en armas* (raised in arms) established themselves in the mountains of Escambray in Central Cuba. These *alzados* were trained and equipped by the United States and were central to the 1961 Bay of Pigs attack. Today, some 160 individuals who provided material support to them are inadmissible to the United States for their membership in and support of an organization fully equipped and backed by the U.S. government.[68]

Even though these refugees have clearly defined persecution claims and supported a "terrorist organization" backed by the United States over 40 years ago that no longer exists, the material support bar does not offer a time bar exception or statute of limitations. As such, women who brought food and medicine to their imprisoned *alzados* relatives, even if that family member is now deceased, are being denied access to the U.S. resettlement program.

5.10 Montagnard Refugee Allies in Vietnam and Cambodia Denied Admission

Many Vietnamese Montagnards fought alongside the U.S. forces during the Vietnam War and were then murderously oppressed by the Vietnamese government. During the war, the United States helped arm a Montagnard group called the United Front for the Liberation of Oppressed Races (FULRO), which continued to struggle for autonomy after the war ended. This group ceased to exist in 1992, when a band of nearly 400 fighters disarmed. At that time many were resettled in North Carolina.[69] Under the statute, FULRO has been labeled a terrorist organization, even though it has not been designated as such by the DOS. Some nine Montagnards from this group continue to await resettlement and have now been denied access to the program due to the material support bar. One such example includes a Montagnard man who joined FULRO in 1975 and helped support U.S. troops during the war:

> *The man was arrested after only a few months and was detained for two years. After his release, he began working for FULRO again, delivering messages to them while farming his own land in the meantime. He was arrested several times. When FULRO ceased to exist in 1992, the man started a new job as a logger in the forest. In 1996 the man received correspondence from friends in the United States requesting that he take up his old job collecting information regarding villagers that were opposed to the Vietnamese authorities. The man did as requested but after several more arrests he fled to Cambodia. This man has now been turned away from U.S. resettlement due to his membership in FULRO. Even though FULRO was supported by the United States and has never been designated as a terrorist organization by the State Department, this man is now seen as a terrorist under U.S. immigration law.*

Today the Montagnards are paying for their loyalty to the United States. The Montagnards fought alongside and in place of American servicemen, sacrificing their lives for the war effort. Due to their trust in and agreement to follow actions by the United States, the Montagnards have now been branded as terrorists or supporters of terrorism.

Interestingly, the laws and policies of the U.S. immigration system treat members of FULRO in the same way the Vietnamese did: as individuals who gave support to terrorist activities and should therefore be punished.

Montagnards in Vietnam and those who have fled Cambodia continue to be persecuted as ethnic and racial minorities as well as on religious grounds. Over 300 Montagnards have been imprisoned since

2001 due to their peaceful religious activities.[70] Under Vietnamese law, only those Montagnards who are members of government recognized churches are officially recognized as Christians. The rest are regarded as subversives and as such are subjected to harassment and persecution.[71]

Due to continued persecution of this group, it is essential that the material support bar and related bars be modified so that U.S. refugee allies in need of protection can be resettled.

5.11 Hmong Refugee Allies in Thailand Denied Admission

Many Hmong, like the Montagnards, are long-standing allies of the United States and are currently being denied protection. In 2004 an effort was made to resettle approximately 15,000 Lao Hmong residing in Wat Thamkrabok in Thailand. Only those individuals registered by the Thai authorities were eligible for consideration. The majority of those included in the registration were resettled in the United States by the end of 2005.

Unfortunately, some 5,000 people not present during the registration exercise were excluded from the process. If and when these refugees are considered for resettlement they will almost certainly be ineligible for the U.S. resettlement program—from which other Hmong recently benefited—due to the material support bar.

Currently 30 refugees are on hold. UNHCR estimates that 30–50 percent of the refugees at Wat Thamkrabok will not pass the overly expansive material support bar.

Hmong refugees in Thailand continue to live in makeshift homes without any protection from the Thai officials or UNHCR.[72] Recently, there have been reports of missing children who are suspected of being taken away from their families and trafficked. The security situation for these refugees is already dire and likely to worsen the longer they are required to wait.

5.12 Sub-Saharan African Refugees Affected by Material Support

The material support bar is increasingly affecting African refugees as well. The following cases are currently on hold due to the material support bar:

> *A Sudanese ethnic Dinka was taken prisoner by the Sudanese People's Liberation Army (SPLA), beaten, and enslaved. He escaped after a month and was then arrested by government forces who accused him of being a member of the SPLA. He was beaten again and held captive for several days. While the man was in detention, his wife was raped by security forces; she then fled the area. When the man was finally released, he attempted to search for his family. He was retaken by government forces but luckily escaped during a firefight. This time he was forced to flee the country, since both sides were looking for him. The man, a recognized refugee with a proven fear of persecution, is inadmissible to the United States, because he was forced to transport weapons for the SPLA under duress.*
>
> ***
>
> *A Somali woman's home was attacked by United Somali Congress (USC) members. They beat her husband, and when her daughter ran to her father pleading with the men to stop beating him, the men shot and killed both the woman's daughter and her husband. They blindfolded and handcuffed her son, looted the house of valuables, and took him away in a car. He was held*

for three months until his mother paid $2,000 for his release. One week after his release, the attackers returned to her house, beat them both, raped her, and told them to leave their house. They fled the country but were denied admission to the United States for giving personal valuables and ransom under duress to a terrorist group.

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A Sierra Leonean man was working as a mechanic when a group of heavily armed junta men came to his house and demanded that he provide them with transportation support. He refused, but the men took over his garage and said they would kill his family if he did not help them. He worked for them for two weeks, fixing cars. After two weeks, the group took the man and some of his family to another location, but during the move, Kamajor men attacked, and the man finally escaped with his family. The family was granted refugee status, but the case is on hold for material support—working as a mechanic for armed rebels under threat of violence and murder.

Due to the decentralized nature of conflicts in many African states coupled with rising levels of general insecurity throughout the continent, it is likely that an increasing number of bona fide refugees in need of protection will be deemed inadmissible to the United States unless the material support bar is modified.

6 Broader Implications of the Material Support Bar

The overly-broad nature of the material support bar affects not only refugees but also potentially every non-U.S. citizen who has provided any amount of goods or services, under any condition, to a "terrorist organization," defined as two or more armed individuals. Taken to its logical extent, the material support bar has the ability to gravely impact the entire immigration and visa system for business people, students, and tourists.

As is the case with refugees, it is likely that in the course of daily activities some global businesspeople, without intending to support terrorism, have given material support as now broadly defined to armed groups. Likewise, international students from countries in which there have recently been devastating wars are likely to have provided material support in the process of obtaining permits necessary to leave their countries to study abroad. Civilian tourists can be equally affected by the material support bar if they emanate from countries in which armed groups control vast areas of territory.

It should also be noted that if widely applied to all non-citizens, the material support bar has the ability to render inadmissible individuals involved in peaceful assemblies protesting human rights violations, including civil rights leaders and proponents of religious freedom. As the United States continues to encourage countries to become more democratic, barring admission to the United States to foreigners engaged in peaceful activities for democratic change goes against the welcoming spirit of our country and the very values for which the United States stands.

6.1 Impact of the Material Support Bar on Non-Citizens in the U.S. Military

The material support bar has additional unintended consequences that directly affect the U.S. military. Currently 60,000 immigrants serve in the U.S. Armed Forces, of which 23,418 are non-citizens and are thus subject to the material support bar not only for circumstances like those already described but for duty-related activity as well.[73]

For example, in 1997, the People's Mujahedin of Iran (PMOI) was listed as a foreign terrorist organization by the Secretary of State. The group remains on the list today, and the Department of Justice has been prosecuting and deporting persons proven to have provided material support to the PMOI. At the same time, the Department of Defense has designated Iraq-based members of the PMOI as "protected persons" under the Fourth Geneva Convention and is maintaining PMOI members at Camp Ashraf in Iraq. At Camp Ashraf, and in full awareness of the State Department's designation of the PMOI as a FTO, U.S. non-citizen military personnel provide "material support" to the PMOI through routine daily interactions and food and water provisions.[74]

Under the material support bar, non-citizen U.S. soldiers who have served at Camp Ashraf are inadmissible to and deportable from the United States. They can also be denied U.S. citizenship and other immigration benefits. In addition, all U.S. military personnel at Camp Ashraf can potentially be prosecuted criminally for providing "material support" to the PMOI. The laws against providing material support to terrorist organizations are being openly violated by Pentagon personnel.[75] This example further illustrates the problem with the overly broad definitions encompassed in the material support

bar. In this case, similar to some refugee situations, behavior officially authorized in support of U.S. military and foreign policy objectives is criminalized without exception.

Another example stems from DHS's admission during oral arguments before the BIA that the Iraqi national who provided vital information to the U.S. Marines who rescued U.S. soldier Jessica Lynch would be barred from entry under material support. Under the current definition of "terrorist organization," even the U.S. Marines themselves would qualify as a terrorist organization, because their activity was unlawful under Iraqi law during the U.S. occupation of Iraq, as they were fighting against an established government.[76]

As farfetched as these contradictions may appear, they are similar to what happened with the Burmese Karen refugees in Tham Hin Camp. On the one hand, they have long been provided humanitarian aid by the U.S. government and were selected by the State Department for resettlement. On the other hand, they were initially barred from admission by the Departments of Homeland Security and Justice.

7 The Need for a Legislative Remedy

An urgent legislative remedy is needed to restore the USRP to its regular level of operation and ensure its prominence, strength and example to the world in the coming years and decades. While the current waiver provision should be applied to refugees in the short term, it is not an adequate long term solution.

The first step in rectifying the unintended consequences of the material support and related bars is recognizing that safeguarding national security need not come at the expense of the U.S.' long-standing humanitarian commitment to refugees.

The *9/11 Commission Report* clearly demonstrates that none of the 9/11 terrorists were asylum seekers or refugees and makes no specific recommendations on changes needed in the asylum system. Furthermore, the 9/11 Commission affirmatively argues that,

> "Our borders and immigration system, including law enforcement, ought to send a message of welcome, tolerance, and justice to members of immigrant communities in the United States and in their countries of origin. We should reach out to immigrant communities. Good immigration services are one way of doing so that is valuable in every way—including intelligence."[77]

Excluding, monitoring, detaining and deporting persons on the basis of such broad interpretations of the material support bar wastes scarce resources, inflicts unjust harm on bona fide refugees, and betrays basic principles of due process and human rights.

It is therefore urgent that a legislative remedy be sought to address the overly expansive definitions in the material support and related bars.

7.1 Elements of a Legislative Remedy

Material support under the threat of death or torture should not be grounds for inadmissibility. If the relevant federal agencies will not adopt this interpretation of the current statute, an explicit statutory exception should be considered. Moreover, narrowly targeted legislation aimed at protecting refugees from being barred from this country must ensure that U.S. supported groups, and groups that support the United States, are not inadvertently labeled as terrorist organizations. The legislation must also protect refugees who were forced at threat of death or serious bodily injury to provide food, water, or shelter to armed groups from being labeled as supporters of terrorism and denied admission to the United States.

The Council recommends that legislative reform address the context of armed conflict, the particular circumstances of an individual's actions, and whether or not the person acted under duress. Support of or membership in organizations which are fighting tyrannical regimes and which pose no threat to the United States should also be addressed.

7.2 Short-Term Administrative Solutions

In the meantime the Administration can and should recognize and adjudicate duress cases upon concluding that the applicants have demonstrated that they meet the statutory definition of refugee.

Moreover, organizations that would neither be designated as terrorist organizations under Section 219 of the INA nor otherwise placed on the terrorist exclusion list should be granted a waiver similar to the Tham Hin Waiver applied to ethnic Karen in Thailand.[78] The Administration should not exclude people for support to or membership in organizations that it would never consider designated terrorist organizations (such at FULRO or the KNU). Activities in these groups fall within the scope of legitimate combat or self-defense and pose no danger to the security of the United States.

At a minimum the following refugees and asylum seekers should be immediately exempted from the material support bar to admission:

- Burmese supporters of the CNF/CNA
- Burmese supporters of the KNU
- Montagnards and Hmong who supported the U.S. Military during the Vietnam War
- Cubans who joined anti-Communist movements at the behest of the United States

This is but a partial list to which many other groups should be added in the immediate future.

The Council applauds the August 30, 2006 announcement that the Department of State has exercised discretionary authority so that Karen refugees in camps in Thailand who are provided access to the U.S. Refugee Admissions Program and who meet all other eligibility requirements for resettlement under the Administration's Refugee Admissions Program, including that they pose no danger to the safety and security of the United States, can resettle in the United States even if they have "provided material support" to the KNU.[79]

8 Increasing the Role of NGOs in Resettlement

The partnership between private, non-profit agencies and the U.S. government to provide refugee protection overseas and to resettle refugees in the United States is now in its 26th year. RCUSA and PRM have a shared commitment to strong leadership in protecting refugees. This includes expanding resettlement while managing the admissions program in a way that permits optimal planning and preparation in welcoming communities. Member agencies of RCUSA look forward to this continued public/private partnership to further develop the capacity of the USRP to respond quickly and effectively to the needs of refugees.

The effectiveness of this partnership is however greatly challenged by the material support bar which has stalled refugee arrivals. The President authorized the admission of 70,000 refugees to the United States for FY06. Instead, only 31,912 have been admitted to date.

The public/private relationship is further challenged by PRM's inability to put in place an adequate infrastructure that would allow refugees to be ready to travel at the beginning of each fiscal year. The difficulty in the management of the system has historically resulted in large numbers of refugees arriving in the last month of the fiscal year. In FY05, 20 percent of all refugees (11,000) arrived in September. The heavy rate of arrivals in one month creates challenges for local affiliates as they work to provide quality resettlement services to newly arrived clients.

To continue to fall short of the annual Presidential Determination sends a message to the international community that humanitarian concerns are not a U.S. priority. In light of the persistence of the material support bar and the continued inability to have large numbers of refugees ready to travel at the onset of each fiscal year, the increased role of NGOs in resettlement is needed more than ever. The Council offers the following recommendations as a way to enhance the USRP.

8.1 Augmenting UNHCR Referral Capacity

The State Department should continue to invest in UNHCR identification and referral capacity and encourage UNHCR to make resettlement a priority.

In order to facilitate this process, the Council recommends that the State Department encourage and support UNHCR to develop specific partnerships with resettlement NGOs to augment its outreach capacity.

One way to augment UNHCR's referral capacity is through the use of Targeted Response Teams (TRT). The State Department, in partnership with the NGO community, UNHCR and DHS, has historically utilized TRTs to travel to regions with the purpose of identifying particular refugee groups for resettlement and/or to assist in resettlement processing. Three TRTs were conducted in 2005: the first to Thailand and Malaysia; the second to Kenya and Tanzania; and the third to Krasnador Krai, Russia.

The Council encourages the State Department to continue to mobilize regular TRTs to assist in the identification of new refugee groups in need of resettlement to the United States.

8.2 Mobilization of Rapid Response Teams

Another way to enhance refugee access to resettlement is through the establishment and mobilization of rapid response teams, formalized structures with designated NGO staff devoted to identifying refugee populations for U.S. resettlement. The mission of these teams would be to engage expert NGO staff on a regular basis to analyze the resettlement needs of refugee populations around the world and to augment the capacity of UNHCR to make resettlement more accessible to deserving populations. These resettlement experts would help establish the initial processing mechanisms for identifying and referring cases for U.S. consideration. The Council commends the State Department for inviting NGO staff members to accompany government delegations overseas in TRTs.

The Council urges the creation and utilization of the more innovative tool of rapid response teams.

8.3 NGO Referrals

The Council applauds and encourages PRM in its efforts to engage some of the NGOs in specific regions to make resettlement referrals.

The Council recommends that greater use be made of this alternative point of access to the USRP and that NGOs everywhere be encouraged and facilitated in their efforts to refer refugees for resettlement consideration.

While it seems that PRM currently does not envision this as a major source of referrals, given the widespread limitations in UNHCR capacity to identify cases in need of resettlement, the potential scale of NGO referral programs should be reconsidered and augmented. The current initiative could produce even greater results if modifications to the program were made. One such modification would be greater use of NGOs with resettlement expertise in the overall coordination and training of NGOs involved in making referrals.

8.4 Reestablishing the Joint Voluntary Agency (JVA) Model

As PRM has moved in recent years to the "overseas processing entity" (OPE) model, it has sometimes relied on government personnel to conduct the processing work involved in refugee resettlement. Traditionally NGO processors have brought flexibility, cost effectiveness, expertise, and fluid connections to humanitarian services beyond what the U.S. Government is able to provide. NGOs, especially those with resettlement expertise, also provide important perspectives, resources, and advocacy to the process, which is now underutilized.

The Council recommends that the current OPE system utilize NGOs as preferred OPEs.

8.5 Need for Standard Operating Procedures in the Resettlement System

All U.S. federal agencies involved in refugee resettlement must ensure that every effort is made to build a strong processing system of travel-ready approved resettlement applicants into the outlying fiscal years. This strengthens the government's ability to protect refugees and meet its annual

resettlement targets. As David Martin recommended in his independent report and analysis of the U.S. Refuge Program, "PRM and DHS need to move away from ad hoc responses to problems by developing standard operating procedures governing all parts of the refugee admission process, with a checklist of cooperative steps […]."[80]

The Council continues to recommend that PRM front-load admissions and establish clear, integrated procedures to achieve them.

PRM has the budget authority to do this and should employ it in order to admit the maximum number of refugees possible and to avoid the chronic year-end admissions spikes, including the need for expedited assurances.

The Council recommends that expedited assurances only be employed in extraordinary circumstances.

Likewise, the Council continues to recommend that PRM manage the admissions system in such a manner as to have at any time three months worth of travel-ready refugees, including at the onset of each new fiscal year. The resettlement agencies are prepared to do what is necessary to help PRM manage the admission of the maximum number of refugees. In those instances when uncertainty about funding arises, it is nevertheless recommended that PRM proceed to prepare for the arrival of refugees in anticipation of securing the requisite funding needed to reach the Presidential Determination rather than to encumber the program with heavy arrivals in the final weeks of the fiscal year.

In the absence of a signed Presidential Determination at the beginning of a new fiscal year, the Council continues to call on the State Department to give high priority to avoiding a moratorium on arrivals while awaiting the President's signature.

The Council strongly supports Martin's recommendation of "an amendment [to] authorize the continuing admission of refugees at the beginning of the fiscal year whenever the Presidential Determination is delayed."[81]

8.6 Promoting Family Unity

Family reunification should be a key consideration in determining which refugees should be considered for resettlement in the United States. Family unity is a fundamental and universally recognized human right that applies to all individuals, regardless of their status. The P-3 category is dedicated to reunifying refugees with immediate family members already living in the United States, yet is limited to only a few nationalities. Since FY04 the P-3 designation has further been limited only to those refugee applicants whose family "anchor" entered the United States as a refugee or asylee.

The Council recommends that P-3 designations be applied to refugees of all nationalities and that the restrictions placed on eligibility for P-3 in FY04 are rescinded.

UNHCR considers family reunification to be one of the key elements of a referral for resettlement, but it does not have the capability for verification of family relationships. UNHCR continues to advocate that resettlement countries maintain the family reunification aspects of resettlement. In the absence of a universal P-3 designation in the United States, UNHCR must conduct individual Refugee Status Determinations (RSD) on close family members of U.S. citizens and legal residents who should be automatically eligible for U.S. consideration under P-3 designation.

The other means of reuniting with close family members is through filing an I-730 Form through the Visa 92/93 process. By statute, this is limited to the spouse or unmarried children under age 21 of refugees or asylees. This process, however, is also broken. Visas 92/93 involve processing by the U.S. Citizenship and Immigration Services' (USCIS) Service Center in Nebraska, followed by the State Department National Visa Center in New Hampshire, followed by either a State Department Consular Officer or USCIS Immigration Officer adjudication overseas.

While the Visa 92/93 is a much less complex adjudication than other refugee applications, and while simpler visa applications take weeks to process, the Visa 92/93 has been known to take years in many instances. The time it takes to process an I-730 means months and years that refugees must continue to live in their countries of persecution or in refugee camps, away from their spouse or parent. The visa 92/93 route, while theoretically an alternative to achieving family unity, is not a viable avenue to reuniting families because the system is cumbersome and time consuming.

In line with Martin's recommendation, the Council recommends that this process be streamlined and expedited, ensuring a greater arrival of bona fide refugees into the United States.[82]

Material support can further impede family unity, especially affecting children. When there are non-parental caregivers barred for material support or membership, it leaves the children either with a choice of remaining in a dire protracted situation or risk being separated from their guardians to be resettled in the United States.

The Council recommends that PRM and DHS establish safeguards to ensure that such children are protected, are not excluded from appropriate durable solutions, and not separated from immediate family.

8.7 Expanded Use of Priority Two Designation

The P-2 designation has provided an important avenue of protection for many "groups of special concern to the United States" over the years. It has allowed groups with compelling and similar refugee claims to access the USRP directly, without the need for an individual referral from UNHCR. This has resulted in timely and effective refugee access to durable solutions and huge savings in staff and resources for UNHCR.

In recent years the shift in refugee outflow trends from large populations in a limited number of locations to smaller groups in many diverse locations has put an enormous strain on the resources and infrastructure of UNHCR and the international humanitarian community. This has created lengthy backlogs in many locations for both refugee status determinations and resettlement referrals. These backlogs pose substantial obstacles for refugees attempting to access the U.S. resettlement program.

Alternative routes of access to the U.S. resettlement program must urgently be employed. Utilization of P-2 group designations should be enhanced to increase access to the U.S. program in light of the above challenges.

The above mentioned issues continue to hamper the refugee resettlement program. These chronic problems, coupled with the new problem of material support, have severely impacted admissions numbers and hampered the effectiveness of the program. Most importantly, refugees in need of protection are being denied opportunities to seek safety and security in the United States.

As Martin concludes in his recommendations for reforming the U.S. Refugee Admissions Program,

> "A sensible system that does not make it too hard to say yes to new priority categories for resettlement is absolutely essential to our post-Cold War refugee admissions program. Without the capacity to approve new resettlement initiatives nimbly, even expansive gains in operations, including in the security screening system, will not achieve significantly improved admissions. Without that capacity, we will also be unable to capitalize on genuine humanitarian opportunities that this new era presents."[83]

More than ever before, the increased use of NGOs in the identification and processing of refugees in need of resettlement is necessary to begin rebuilding the program. Increased attention toward the above recommendations would result in a larger number of refugees being able to access the resettlement program. These issues should be immediately addressed so that refugee admissions are streamlined and expedited especially in light of anticipated low arrival numbers in FY07 due to material support.

Refugee Council USA thanks the State Department for its continued diligence in responding to the admission crisis that began in 2002 and looks forward to working together to help solve the overarching problem of material support and its impact on the refugee resettlement program.

Appendices

Appendix 1: Refugee Council USA Background Information

The Refugee Council USA is a coalition of U.S. nongovernmental organizations focused on refugee protection. The Refugee Council USA provides focused advocacy on issues affecting the protection and rights of refugees, asylum seekers, displaced persons, victims of trafficking and victims of torture in the United States and across the world. Particular areas of concern are adherence to international standards of refugee rights, the promotion of the right to asylum, political and financial support for UNHCR, and the promotion of durable solutions, including resettlement to the United States.

The Refugee Council USA serves as the principal consultative forum for the national resettlement and processing agencies as they formulate common positions, conduct their relations with the U.S. Government and other partners, and support and enhance refugee service standards. Refugee Council USA consists of the following members:

American Refugee Committee International
Amnesty International USA
Center for Victims of Torture
Chaldean Federation of America
Church World Service/Immigration & Refugee Program
Episcopal Migration Ministries
Ethiopian Community Development Council
Hebrew Immigrant Aid Society
Hmong National Development
Human Rights First
International Catholic Migration Commission
International Rescue Committee
Jesuit Refugee Service/USA
Jubilee Campaign USA
Kurdish Human Rights Watch
Lutheran Immigration & Refugee Service
Mapendo International
Migration & Refugee Services/U.S. Conference of Catholic Bishops
National Alliance of Vietnamese American Service Agencies
Southeast Asia Resource Action Center
U.S. Committee for Refugees and Immigrants
Women's Commission for Refugee Women & Children
World Relief

Appendix 2: Glossary of Acronyms

AEDPA	Anti-Terrorism and Effective Death Penalty Act
AUC	The United Self-Defense Forces of Colombia
BIA	Board of Immigration Appeals
CNA	Chin National Army
CNF	Chin National Front
DHS	Department of Homeland Security
DOS	Department of State
ELENA	European Legal Network on Asylum
ELN	National Liberation Army
FARC	Revolutionary Armed Forces of Colombia
FSU	Former Soviet Union
FULRO	United Front for the Liberation of Oppressed Races
FTO	Foreign Terrorist Organization
FY	Fiscal Year
HHS	Department of Health and Human Services
INA	Immigration and Nationality Act
JVA	Joint Voluntary Agency
KNU	Karen National Union
LURD	Liberians United for Reconciliation and Democracy
NGO	Nongovernmental Organization
NDF	National Democratic Front
ODP	Orderly Departure Program
OPE	Overseas Processing Entity
P-1	Processing Priority One
P-2	Processing Priority Two
P-3	Processing Priority Three
PD	Presidential Determination
PMOI	People's Mujahedin of Iran
PRM	Bureau of Population, Refugees and Migration
SPLA	Sudanese People's Liberation Army
SWAN	Shan Women's Action Network
RCUSA	Refugee Council USA
ROVR	Resettlement Opportunities for Vietnamese Returnees
RSD	Refugee Status Determination
TPS	Temporary Protected Status
TRT	Targeted Response Team
UNHCR	United Nations High Commissioner for Refugees
U.S.	United States
USC	United Somali Congress
USCIS	U.S. Citizenship and Immigration Services
USRP	U.S. Refugee Program

Appendix 3: Immigration and Nationality Act, Section 101(a)(42)

The term "refugee" means: (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such circumstances as the President after appropriate consultation (as defined in Section 207 (e) of this Act) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this Act, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well-founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well-founded fear of persecution on account of political opinion.

Appendix 4: Relevant INA Sections Pertaining to Material Support[84]

Immigration and Nationality Act (INA) Sec. 212 [8 U.S.C. 1182]
Classes of Aliens Ineligible for Visas or Admission and Waivers of Inadmissibility

(a) Classes of Aliens Ineligible for Visas or Admission.—Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

• •

(3) Security and related grounds.—

(A) In general.—Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in—

(i) any activity (I) to violate any law of the United States relating to espionage or sabotage or (II) to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

(ii) any other unlawful activity, or

(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means, is inadmissible.

(B) Terrorist activities—

(i) IN GENERAL.—Any alien who—

(I) has engaged in a terrorist activity,

(II) a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv));

(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;

(IV) is a representative (as defined in clause (v)) of—

(aa) a terrorist organization (as defined in clause (vi)); or

(bb) a political, social, or other group that endorses or espouses terrorist activity;

(V) is a member of a terrorist organization described in subclause (I) or (II) of clause (vi);

(VI) is a member of a terrorist organization described in clause (vi)(III), unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;

(VII) endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization;

(VIII) has received military-type training (as defined in section 2339D(c)(1) of title 18, United States Code) from or on behalf of any organization that, at the time the training was received, was a terrorist organization (as defined in clause (vi)); or

(IX) is the spouse or child of an alien who is inadmissible under this subparagraph, if the activity causing the alien to be found inadmissible occurred within the last 5 years, is inadmissible.

(ii) EXCEPTION—Subclause (VII) of clause (i) does not apply to a spouse or child—

(I) who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or

(II) whom the consular officer or Attorney General has reasonable grounds to believe has renounced the activity causing the alien to be found inadmissible under this section.

(iii) TERRORIST ACTIVITY DEFINED.—As used in this Act, the term "terrorist activity" means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:

(I) The highjacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).

(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.

(III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18, United States Code) or upon the liberty of such a person.

(IV) An assassination.

(V) The use of any—

(a) biological agent, chemical agent, or nuclear weapon or device, or

(b) explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

(VI) A threat, attempt, or conspiracy to do any of the foregoing.

(iv) ENGAGE IN TERRORIST ACTIVITY DEFINED—As used in this chapter, the term "engage in terrorist activity" means, in an individual capacity or as a member of an organization—

(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;

(II) to prepare or plan a terrorist activity;

(III) to gather information on potential targets for terrorist activity;

(IV) to solicit funds or other things of value for—

(aa) a terrorist activity;

(bb) a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization;

(V) to solicit any individual—

(aa) to engage in conduct otherwise described in this subsection;

(bb) for membership in a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) for membership in a terrorist organization described in clause (vi)(III) unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization; or

(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training—

(aa) for the commission of a terrorist activity;

(bb) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;

(cc) to a terrorist organization described in subclause (I) or (II) of clause (vi) or to any member of such an organization; or

(dd) to a terrorist organization described in clause (vi)(III), or to any member of such an organization, unless the actor can demonstrate by clear and convincing evidence that the actor did not know, and should not reasonably have known, that the organization was a terrorist organization.

(v) REPRESENTATIVE DEFINED.—As used in this paragraph, the term "representative" includes an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity.

(vi) TERRORIST ORGANIZATION DEFINED—As used in clause (i)(VI) and clause (iv), the term 'terrorist organization' means an organization—

(I) designated under section 219;

(II) otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security, as a terrorist organization, after finding that the organization engages in the activities described in subclauses (I) through (VI) of clause (iv); or

(III) that is a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the activities described in subclauses (I) through (VI) of clause (iv).

• •

(d) Temporary Admission of Nonimmigrants

• •

(B)(i) The Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, or the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, may conclude in such Secretary's sole unreviewable discretion that subsection (a)(3)(B)(i)(IV)(bb) or (a)(3)(B)(i)(VII) shall not apply to an alien, that subsection (a)(3)(B)(iv)(VI) shall not apply with respect to any material support an alien afforded to an organization or individual that has engaged in a terrorist activity, or that subsection (a)(3)(B)(vi)(III) shall not apply to a group solely by virtue of having a subgroup within the scope of that subsection. The Secretary of State may not, however, exercise discretion under this clause with respect to an alien once removal proceedings against the alien are instituted under section 240.

Appendix 5: Summary of Material Support Changes to the Immigration and Nationality Act[85]

Pre-1996

- Created broad definition of "**terrorist activity**," including "the use of any explosive or firearm (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 property damage."
- Barred from refugee resettlement any person who provided "**material support**" to an organization engaged in "terrorist activity" (as broadly defined).

1996: Antiterrorism and Effective Death Penalty Act (AEDPA)

- Created definition of Foreign Terrorist Organization (FTO): (Later called a "Tier I" terrorist organization).
- Barred from refugee resettlement and asylum/withholding of removal any person who provided "**material support**" to an FTO.
- Barred from refugee resettlement any person who was a **member** of an FTO.
- More broadly, barred from asylum/withholding of removal any person who provided "**material support**" to an "organization engaged in terrorist activity."

2001: USA PATRIOT Act

- Created three tiers of "**terrorist organizations**:" Tier I defined as FTOs and Tier III defined as "a group of two or more individuals, whether organized or not, which engages in the activities described in subclauses (I), (II), or (III) of clause (iv) [*definition of 'engage in terrorist activities'*].*
- Barred from refugee resettlement and asylum/withholding of removal any person who provided "**material support**" to a Tier II or Tier III terrorist organization.
- Barred from resettlement **spouses and children of refugees** who were **members** of an FTO (Tier I) within past five years.
- Barred from asylum/withholding of removal any "arriving" asylum-seeker who was a **member** of an FTO.
- Established a **waiver** for the **material support** bar.

2005: REAL ID Act

- Barred from refugee resettlement and asylum/withholding of removal any person who was a **member** of a Tier II or Tier III terrorist organization as well as the **spouse and children** of members of Tier II or Tier III terrorist organizations within the past five years.
- Barred from refugee resettlement and asylum/withholding of removal any person who provided **material support** to a member of a terrorist organization (Tier I, II, or III)
- Established a **waiver** for **Tier III terrorist organization** determination if determination would be based solely on the activities of a subgroup.

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* An exception to the Tier III membership and material support bars existed in various forms over the years for those who could prove that they did not know that the organization was a terrorist organization or that any assistance provided furthered terrorist activity.

Appendix 6: Description of U.S. Refugee Processing Priorities FY06[86]

Priority one (P-1)

Priority one is reserved for individuals with compelling protection needs or those for whom no other durable solution exists and are identified and referred to the program by UNHCR, a U.S. Embassy, or a nongovernmental organization. It is important to note that this processing priority is available to persons of any nationality.

Priority two (P-2)

Priority two is used for groups of special humanitarian concern to the United States designated for resettlement processing. This includes specific groups (within nationalities, clans, or ethnic groups) identified by the Department of State, in consultation with the NGOs, UNHCR, DHS/USCIS, and other experts.

Former Soviet Union (FSU): In-country Jews, Evangelical Christians, and certain members of the Ukrainian Catholic or Orthodox Churches; preference among these groups is accorded to those with close family in the United States. P-2 groups of humanitarian concern outside the country of origin include Meskhetian Turks in Krasnador Krai, Russia.

Cuba: In-country processing with emphasis placed on human rights activists, former political prisoners, members of persecuted religious minorities, forced labor conscripts, persons deprived of their professional credentials or subjected to disproportionately harsh or discriminatory treatment resulting from their perceived or actual political or religious beliefs or activities, and persons who have experienced or fear harm because of their relationship—family or social—to someone who falls under one of the preceding categories.

Iran: Members of Iranian religious minorities primarily in Austria.

Vietnam: Includes persons eligible under the former Orderly Departure Program (ODP) and Resettlement Opportunity for Vietnamese Returnees (ROVR) programs. This will be expanded in FY06 to permit consideration of individuals who, due to no fault of their own, were unable to access the ODP program prior to its cut off date. This also includes Amerasian immigrants, whose numbers are counted in the refugee ceiling.

Priority three (P-3)

Spouses, unmarried children under 21, or parents of persons admitted to the United States as refugees or granted asylum, or persons who are lawful permanent residents or U.S. citizens and were initially admitted to the United States as refugees or granted asylum.

Appendix 7: Cumulative Summary of U.S. Refugee Admissions 1975–2005[87]

Fiscal Year	Africa	Asia	Europe	Former Soviet Union	Kosovo	Latin America/ Caribbean	Near East/ South Asia	PSI	TOTAL
1975	0	135,000	1,947	6,211	0	3,000	0	0	146,158
1976	0	15,000	1,756	7,450	0	3,000	0	0	27,206
1977	0	7,000	1,755	8,191	0	3,000	0	0	19,946
1978	0	20,574	2,245	10,688	0	3,000	0	0	36,507
1979	0	76,521	3,393	24,449	0	7,000	0	0	111,363
1980	955	163,799	5,025	28,444	0	6,662	2,231	0	207,116
1981	2,119	131,139	6,704	13,444	0	2,017	3,829	0	159,252
1982	3,412	73,755	11,109	2,760	0	580	6,480	0	98,096
1983	2,645	39,245	11,867	1,342	0	691	5,428	0	61,218
1984	2,749	51,978	10,096	721	0	150	4,699	0	70,393
1985	1,951	49,962	9,233	623	0	151	5,784	0	67,704
1986	1,322	45,482	8,503	799	0	131	5,909	0	62,146
1987	1,990	40,099	8,396	3,699	0	323	10,021	0	64,528
1988	1,593	35,371	7,510	20,411	0	2,497	8,368	733	76,483
1989	1,902	45,722	8,752	39,602	0	2,604	6,938	1,550	107,070
1990	3,453	51,598	6,094	50,628	0	2,305	4,979	3,009	122,066
1991	4,420	53,522	6,837	39,226	0	2,253	5,342	1,789	113,389
1992	5,470	51,899	2,915	61,397	0	3,065	6,903	882	132,531
1993	6,967	49,817	2,582	48,773	0	4,071	6,987	251	119,448
1994	5,860	43,564	7,707	43,854	0	6,156	5,840	0	112,981
1995	4,827	36,987	10,070	35,951	0	7,629	4,510	0	99,974
1996	7,604	19,321	12,145	29,816	0	3,550	3,967	0	76,403
1997	6,065	8,594	21,401	27,331	0	2,996	4,101	0	70,488
1998	6,887	10,854	30,842	23,557	0	1,627	3,313	0	77,080
1999	13,043	10,206	24,497	17,410	14,161	2,110	4,098	0	85,525
2000	17,561	4,561	22,561	15,103	—-	3,232	10,129	0	73,147
2001	19,021	3,725	15,777	15,748	—-	2,973	12,060	0	69,304
2002	2,548	3,525	5,439	9,963	—-	1,933	3,702	0	27,110
2003	10,717	1,724	2,525	8,744	—-	452	4,260	0	28,422
2004	29,125	8,079	489	8,765	—-	3,555	2,855	0	52,868
2005	20,749	12,071	11,316	—-	—-	6,700	2,977	0	53,813
TOTAL	184,955	1,300,694	281,488	605,100	14,161	89,413	145,710	8,214	2,629,735

Endnotes

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