

Vetting Refugees:

Is Our Screening Process Adequate, Humane, and Culturally Appropriate?

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In his March 6, 2017 memorandum on heightened screening and vetting, President Donald Trump called for the implementation of “protocols and procedures ... [to] enhance the screening and vetting of applications for visas and all other immigration benefits, so as to increase the safety and security of the American people.”¹ A letter signed the same day by Attorney General Jeff Sessions and Secretary of Homeland Security John Kelly described the need for “a thorough and fresh review of the particular risks to our nation’s security from our immigration system.”² The letter also called for a “temporary pause on the entry of nationals from certain countries.”³

Yet, as President Trump acknowledged in his Feb. 16, 2017, press conference, the United States already has robust procedures in place to vet refugees and asylum seekers.⁴ Any changes to the asylum and refugee processing system should thus promote the rule of law, safeguard the consistent application of screening measures, and ensure the fair and equitable treatment of applications for protection, without regard to an individual’s country of origin. The March 6, 2017 Executive Order, “Protecting the Nation from Foreign Terrorist Entry into the United States,” however, attempts to suspend the refugee resettlement program and reduce the number of refugees admitted to the United States in direct contravention of U.S. legal and moral obligations to protect those fleeing persecution and fearing return to torture.

This article first provides a brief history of this country’s long-standing commitment to refugee protection. Next, it describes the legal standard applied in determining whether an individual is eligible for refugee protection, including bars to protection under U.S. law. The article then provides an overview of the extensive screening procedures already in place to address national security concerns.⁵ Finally, the article concludes with a discussion of challenges related to credibility and corroboration, including issues with trust, translation, trauma, time, resources, and other hurdles, all of which must be considered as part of any effort to change the system.

History and Context of the U.S. Asylum and Refugee Admission System

The United States has long provided protection to refugees fleeing human rights abuses from around the world. After World War II, Congress enacted the Displaced Persons Act, which provided for the admission of hundreds of thousands of displaced Europeans. Throughout the Cold War, the United States responded on an ad hoc basis to refugee crises in Cuba, Southeast Asia, and Eastern Europe.⁶ In 1980, the Refugee Act established a “permanent and systematic procedure for the admission to this country of refugees of special humanitarian concern to the United States” and provided “comprehensive and uniform provisions for the effective resettlement and absorption of those refugees who are admitted.” In doing so, Congress emphasized that “it is the historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands.”⁷

The Refugee Act incorporated key provisions of international refugee law from the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol on the Status of Refugees,⁸ including the international definition of “refugee” and the non-refoulement obligation, which provides protection against return.⁹ In addition to creating a uniform overseas processing system for admission of refugees, the act also set forth provisions for the establishment of a domestic asylum system, such that individuals already in the United States who fear return to their home countries would also have a mechanism for applying for protection.¹⁰

Prior to the Refugee Act, the United States limited the admission of refugees based on geographical and ideological preferences. Specifically, the United States required refugees to show that they fled either a Communist country or a country in the Middle East.¹¹ The Refugee Act repealed such ideological criteria in an effort to eliminate the influence of foreign policy and politics over decisions regarding refugee status.¹² As Sen. Edward Kennedy, who introduced the legislation, explained, the act “gave new statutory authority to the United States’ long-standing commitment to human rights and its traditional humanitarian concern for the plight of refugees around the world.”¹³ Legislative history, including the 1979 Senate and 1980 House reports, makes clear that the act aimed to reform the ad hoc approach the United States had taken to refugee admissions in order to “establish a more uniform basis for the provision of assistance to refugees.”¹⁴

The U.S. Supreme Court relied on this history in *INS v. Cardoza-Fonseca*, noting: “If one thing is clear from the legislative history of the new definition of ‘refugee,’ and indeed the entire 1980 act, it



is that one of Congress' primary purposes was to bring United States refugee law into conformance with the 1967 United Nations Protocol Relating to the Status of Refugees ... to which the United States acceded in 1968.¹⁵ The Board of Immigration Appeals (BIA), in *Matter of S-P-*, similarly observed that the Refugee Act brought the U.S. "definition of 'refugee' into conformity with the United Nations Convention and Protocol Relating to the Status of Refugees and, in so doing, g[a]ve 'statutory meaning to our national commitment to human rights and humanitarian concerns."¹⁶

Despite the legislative intent of the Refugee Act, in the 1980s, political and foreign policy considerations continued to strongly influence certain decisions concerning refugee status,¹⁷ leading to a 1991 settlement agreement reached in the case of *American Baptist Churches (ABC) v. Thornburgh*. In that agreement, the Department of Justice and legacy Immigration and Naturalization Service agreed that under both the statute and the regulations, "foreign policy and border enforcement considerations are not relevant to the determination of whether an applicant for asylum has a well-founded fear of persecution...." The settlement underscored that "whether or not the United States government agrees with the political or ideological beliefs of the individual is not relevant to the determination of whether an applicant for asylum has a well-founded fear of persecution ... [and that] the same standard for determining whether or not an applicant has a well-founded fear of persecution applies to Salvadorans and Guatemalans as applies to all other nationalities."¹⁸

The terms of the *ABC* settlement agreement are still relevant 25 years later. Indeed, polarized discussions about national security and admission of refugees and asylum seekers are at the forefront of the public debate today. Nonetheless, prominent government officials have repeatedly voiced the belief that providing refuge to those fleeing persecution is not only integral to fulfilling this country's humanitarian obligations, but also to advancing strategic U.S. interests "by supporting the stability of our allies and partners that are struggling to host large numbers of refugees." Indeed, officials have emphasized that, contrary to common perception:

Refugees are victims, not perpetrators, of terrorism. Categorically refusing to take them only feeds the narrative of ISIS that there is a war between Islam and the West, that Muslims are not welcome in the United States and Europe, and that the ISIS caliphate is their true home. We must make clear that the United States rejects this worldview by continuing to offer refuge to the world's most vulnerable people, regardless of their religion or nationality.¹⁹

As Barbara Strack—the Refugee Affairs Division chief at the U.S. Citizenship and Immigration Services' (USCIS) Refugee, Asylum, and International Operations (RAIO) Directorate—noted in written testimony submitted to the Senate Committee on the Judiciary, Subcommittee on Immigration and National Interest, in October 2015: "the United States has a proud and long-standing tradition of offering protection, freedom, and opportunity to refugees from around the world who live in fear of persecution."²⁰

The Legal Process and Standard for Asylum and Refugee Protection

The international refugee definition governs claims for protection adjudicated both domestically and overseas. Different processes apply

if a person seeks a referral for refugee status from outside the United States, as opposed to those who are already in the United States and apply for asylum.²¹ Under the 1980 Refugee Act, the president, in consultation with Congress, determines the number of refugees that may be admitted through the overseas resettlement process each year.²² The number varies from year to year. In FY 2016, for example, 84,995 refugees were admitted to the United States; for FY 2017, the number was set at 110,000.²³ Since the passage of the act, the United States has resettled more than 3 million refugees.²⁴ In addition, over half a million people have been granted asylum in the United States in that same period.²⁵

Under U.S. law, a refugee is defined as:

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....²⁶

As noted above, U.S. refugee law provides that foreign policy concerns, including whether an "applicant [for asylum or refugee status] is from a country whose government the United States supports or with which it has favorable relations" and whether the U.S. government "agrees or disagrees with the political or ideological beliefs of the individual," are inappropriate in decision-making.²⁷

An applicant for refugee status or asylum bears the burden of proof of establishing that he or she meets the refugee definition. An applicant need not have suffered persecution in the past to qualify as a refugee: "In either the asylum or refugee context, an applicant can show he or she is a refugee based solely on a well-founded fear of future persecution without having established past persecution."²⁸

Credibility and Corroboration

USCIS RAIO training materials for officers who conduct eligibility determinations for refugee and asylum status instruct that "credible testimony alone may be sufficient to meet the applicant's burden" and note that officers have "a duty to elicit sufficient testimony to make the determination whether the applicant is eligible for asylum or refugee status."²⁹

Refugee division and asylum officers may request corroborating documentation where it is reasonably available.³⁰ They must, however, consider the context and circumstances of each applicant's case in doing so. For example, the USCIS training materials emphasize that a female applicant "might not have access to identity documents or other documentary proof of her claim," where "women in the applicant's country may not be afforded full rights of citizenship, or an applicant's means of support may have been dependent upon a male relative who had control over any documents pertaining to the female applicant." As the training materials note, "it may be unreasonable to expect a woman from a refugee-producing country to have documentation of sexual violence she suffered. Because of strong cultural stigma attached to rape, 'women survivors of sexual violence often are reluctant to seek medical assistance or to file police reports."³¹

Additionally, in accordance with the guidance set forth in the UN High Commissioner for Refugees (UNHCR) Handbook, refugee

and asylum officers are required to consider each applicant's fear in light of that person's background "since psychological reactions of different individuals may not be the same in identical situations. One person may have strong political or religious convictions, the disregard of which would make life intolerable; another may have no such strong convictions."³² The RAIIO training materials underscore that while a "genuine fear of persecution must be the applicant's primary motivation in seeking refugee or asylum status," "it need not be the only motivation."³³

Eligibility and Bars

Under the Immigration and Nationality Act (INA), a "well-founded fear" means a "reasonable possibility" or a 1-in-10 chance of persecution,³⁴ which can be inflicted at the hands of either a state or a non-state actor the state is unable or unwilling to control.³⁵ It is not, however, necessary that an applicant seek government protection where doing so would be futile or dangerous.³⁶

In *Matter of S-A-*, for example, the BIA found a failure of state protection where a young Moroccan woman testified and presented country conditions evidence demonstrating that contacting government authorities about her father's abuse would have proven ineffective and dangerous. In that case, the BIA granted the young Moroccan asylum, finding that the beatings and burns her father inflicted "arose primarily out of religious differences between her and her father, i.e., the father's orthodox Muslim beliefs, particularly pertaining to women, and her liberal Muslim views ... [that] differed from those of her father concerning the proper role of women in Moroccan society."³⁷

The Refugee Act excludes from the refugee definition "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."³⁸ In addition, under U.S. law, individuals who are deemed a danger to the community or a threat to national security are barred from asylum or refugee status. For example, statutory amendments to the INA bar individuals who have engaged in terrorist activity or provided material support to terrorism or terrorist activity, defined broadly, as the use of any "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."³⁹ Under the INA, individuals convicted of a particularly serious crime in the United States or who have committed a serious nonpolitical crime may not be eligible for asylum.⁴⁰

The Security Screening Process for Asylum Seekers and Refugees

Asylum seekers who meet the legal requirements for protection are subject to a rigorous security screening process, including thorough vetting by the Department of Homeland Security (DHS) and other agencies. Biographical data is screened against the Central Index System, which identifies whether immigration authorities have previously encountered the applicant; the National Counterterrorism Center's database of terrorism-related intelligence; the Customs and Border Protection (CBP) law enforcement and national security databases, which contain records relating to terrorists, wanted people, and people of interest to law enforcement; the Immigration and Customs Enforcement database; and the Department of State database. The FBI and DHS conduct name and fingerprint checks, which include identity confirmation and terrorist watch list checks;

biometrics are also checked against the Department of Defense's biometric and watch list system.⁴¹

Refugees who are resettled to the United States are "subject to the highest degree of security screening and background checks for any category of traveler to the United States."⁴² Prominent former government officials, including Secretaries of State Henry Kissinger and Madeleine Albright, among others, emphasized in a December 2015 letter to members of Congress that refugees resettled to the United States through the U.S. Refugee Admissions Program "are vetted more intensively than any other category of traveler."⁴³ Refugees are "interviewed several times over the course of the vetting process, which takes 18-24 months and often longer," and national and international intelligence agencies check fingerprints and other biometric data against terrorist and criminal databases.⁴⁴

Government officials cite the "extensive," "redundant," and "careful" security-focused system for screening refugees.⁴⁵ A number of different international intelligence and law enforcement agencies are involved in the overseas refugee screening process, including "the National Counterterrorism Center, the Department of Defense, and Interpol, which have extensive databases on foreign fighters, suspected terrorists, and stolen, false, and blank passports from Syria, Iraq, and elsewhere."⁴⁶ USCIS initiates biometric checks to retrieve any criminal history and prior immigration data for refugees who are considered for resettlement, as well as to check for any national security concerns and matches it with biometric data collected by the Department of Defense in conflict zones.⁴⁷

Additionally, Syrian refugee cases are specifically subjected to an enhanced review process.⁴⁸ As part of that enhanced review, the DHS-USCIS Office of Fraud Detection and National Security works to identify fraudulent claims⁴⁹ and "engages with law enforcement and intelligence community members for assistance with identity verification and acquisition of additional information."⁵⁰

At multiple stages throughout the overseas screening and admission process, refugees are checked against watch list information contained in the State Department's Consular Lookout and Support System, and Security Advisory Opinions are sought from law enforcement and intelligence agencies.⁵¹ The National Counterterrorism Center conducts Interagency Checks for all refugees who fall within a certain age range, irrespective of nationality, and additional "recurrent vetting" checks are conducted before the applicant travels to the United States.⁵² Once refugees are brought to the United States, CBP officials conduct further screenings as well.⁵³ Applications may be subject to the Controlled Application Review and Resolution Process (CARRP) if "any national security concerns are raised, either based on security and background checks or personal interviews or testimony."⁵⁴

Recommendations for Culturally Appropriate and Trauma-Sensitive Refugee Screening

Prominent bipartisan government officials, advocates, and scholars alike have emphasized that the United States has an obligation to stand by its "tradition of openness and inclusivity" in welcoming refugees and asylum seekers.⁵⁵ However, lack of resources, a daunting case backlog, and other constraints present obstacles to fulfilling this obligation.⁵⁶ Decisions regarding asylum or refugee status eligibility may be fraught with, *inter alia*, cultural misunderstandings and translation errors, among other problems, leading to mistrust and miscommunication.⁵⁷

Numerous studies have documented the persistence of “refugee roulette”—disparities in decision-making, depending on the adjudicator.⁵⁸ Indeed, a recent study by the Transactional Records Access Clearinghouse found that “the outcome for asylum seekers has become increasingly dependent upon the identity of the immigration judge assigned to hear their case.”⁵⁹ In order to improve its decision-making process, the Department of Justice implemented implicit bias training for employees.⁶⁰ Advocates have called upon the DHS to institute a similar mandatory training for its officials, as well.⁶¹

The USCIS training materials include important guidance on cultural sensitivity and the effects of trauma, emphasizing the challenges that officers may face in evaluating credibility. In particular, those materials note the “differences and norms governing women’s behavior, as well as the effects of trauma, may present special difficulties in evaluating credibility of female asylum and refugee applicants.” The training materials explain that effects of trauma—including reluctance to discuss sexual harm, particularly for female applicants with a male officer or interpreter, as well as limitations on access to information, due to social constraints, gender roles, and education level—may impede an applicant’s ability to “clearly express her claim, ... creating the false impression that she is being evasive.”⁶²

The training materials also note that “demeanor is often an unreliable and misleading indicator of credibility,” particularly in cases involving torture or sexual violence, since “while some individuals who have been tortured become emotionally overcome when recalling their ordeals, others may exhibit no emotion at all.” RAIIO further instructs that “in some cultures, keeping the head down and avoiding eye contact are signs of respect ... and should not be viewed as indicators of lack of credibility.”⁶³

The RAIIO materials include detailed modules on interviewing torture survivors, working with interpreters, conducting a non-adversarial interview, and handling cross-cultural communication—but, given the significant backlogs facing officers and the pressures to make and write up decisions, this guidance may be insufficient. Although the RAIIO materials discuss the need for a trauma-sensitive and culturally appropriate approach to interviewing applicants for refugee status and asylum, officers may not have the time to follow the guidance in a system hampered by limited resources.

As a retired immigration judge recently commented, given the pressures inherent in an overloaded system, it is inevitable that “the quality of justice erodes over time.”⁶⁴ Immigration judges suffer from high burnout rates.⁶⁵ Adjudicators thus require greater resources, including additions to the refugee and asylum officer corps and the immigration courts, to ensure fair and consistent eligibility determinations.⁶⁶

Conclusion

The United States has always had vital strategic as well as humanitarian reasons for granting protection to people fleeing persecution. In keeping with this long-standing commitment, the United States should continue to ensure that asylum seekers and refugees are treated in a humane, culturally appropriate, and trauma-sensitive manner, regardless of their country of origin or religion. Thorough vetting procedures and programs, such as the enhanced review processes and CARRP, should not be applied in a discriminatory manner that disadvantages Syrian refugees and others who come from predominantly Muslim countries. As U.S. government officials and advocates have repeatedly emphasized, U.S. interests are best

served by a fair and equitable asylum and refugee resettlement system that fosters goodwill internationally and stability in regions, such as the Middle East, that are overburdened by refugees.



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Endnotes

¹Donald J. Trump, *Implementing Immediate Heightened Screening and Vetting of Applications for Visas and Other Immigration Benefits* (Mar. 6, 2017).

²Letter from Jefferson B. Sessions III, U.S. Att’y Gen., and John F. Kelly, U.S. Sec’y of Homeland Sec., Dep’t of Homeland Sec., to Donald J. Trump, U.S. President (Mar. 6, 2017).

³*Id.*

⁴Luqman Adeniyi, Rachel Cao, Mack Hogan, Mike Juang, & Natalia Wojcik, *Read the Full Transcript of Trump’s First Solo Press Conference*, CNBC (Feb. 16, 2017, 4:51 PM), www.cnbc.com/2017/02/16/click-for-a-full-transcript-of-trumps-first-solo-press-conference.html.

⁵As part of its Syrian Refugee Resettlement Project, the Harvard Immigration and Refugee Clinical Program is issuing a report that addresses the vetting and screening process more fully. See *Clinical Program Receives Grant From Milstein Foundation to Launch Syrian Refugee Resettlement Project*, HARV. L. TODAY (June 10, 2016), today.law.harvard.edu/clinical-program-receives-milstein-foundation-grant-launch-syrian-refugee-resettlement-project.

⁶U.S. Dep’t of State, *History of U.S. Refugee Resettlement* (June 2015); Anastasia Brown & Todd Scribner, *Unfulfilled Promises, Future Possibilities: The Refugee Resettlement System in the United States*, 2 J. MIGRATION & HUMAN SEC. 101 (2014).

⁷Refugee Act of 1980, Public Law 96-212, 94 Stat. 102, § 101(a) (1980).

⁸July 28, 1951, 189 U.N.T.S. 150. The United States is bound by Articles 2 through 34 as a party to the 1967 Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6224, 606 U.N.T.S. 267.

⁹For an overview of the history of the 1980 Refugee Act, see generally Deborah E. Anker & Michael H. Posner, *The Forty Year Crisis: A Legislative History of the Refugee Act of 1980*, 19 SAN DIEGO L. REV. 9 (1981).

¹⁰Refugee Act of 1980, Public Law 96-212, 94 Stat. 102, §§ 207-08 (1980).

¹¹Act of Oct. 3, 1965, Pub. L. No. 89-236, § 203(a)(7), 79 Stat. 911, 913. See Ira J. Kurzban, *A Critical Analysis of Refugee Law*, 36 U. MIAMI L. REV. 865, 868-69, n.22 & n.23 (1982); Anker & Posner, *supra* note 9, at 10-13; David A. Martin, *Reforming Asylum Adjudication:*

On Navigating the Coast of Bohemia, 138 U. PA. L. REV. 1247, 1250-61 (1990); Recs. & Stat't of Admin. Conf. of the United States, 54 Fed. Reg. 28970, at 28971 (July 10, 1989) (codified at 1 C.F.R. § 305.89-4).

¹²*Compare* Act of Oct. 3, 1965, Pub. L. No. 89-236, § 203(a)(7), 79 Stat. 911, 913:

Aliens who satisfy an Immigration and Naturalization Service officer at an examination in any non-Communist or non-Communist-dominated country, (A) that (i) because of persecution or fear of persecution on account of race, religion, or political opinion they have fled (I) from *any Communist or Communist-dominated country or area*, or (II) from any country within the general area of the *Middle East*, and (ii) are unable or unwilling to return to such country or area on account of race, religion, or political opinion.... (emphasis added)

with Refugee Act of 1980, Public Law 96-212, 94 Stat. 102 (1980):

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*.... (emphasis added).

¹³Edward M. Kennedy, *Refugee Act of 1980*, 15 INT'L MIGRATION REV. 141, 142-43 (1981).

¹⁴H.R. Rep. No. 96-781, at 1-2 (1980) (Conf. Rep.); S. Rep. No. 96-590, at 1-2 (1980) (Conf. Rep.). *See also* Rep. for the S. Comm. on the Judiciary, 96th Cong., upon formation of the Select Comm'n on Immigr. & Ref. Policy 1, 100-09 (Comm. Print 1979). Brown & Scribner, *supra* note 6, at 106 ("The ad hoc nature of refugee resettlement and the de facto development of distinct resettlement programs that coincided with influxes of new refugee populations fostered inconsistencies in the program. For example, voluntary agencies resettling Soviet refugees were eligible for a stipend of \$1,100 dollars per refugee that was to be matched by \$1,100 dollars in private money, whereas agencies resettling Indochinese refugees were eligible for a \$500 dollar stipend with no match required. In testimony before the US Senate Committee on the Judiciary in 1979, former Senator Dick Clark—then newly appointed United States Coordinator for Refugee Affairs—expressed the need for a permanent and consistent refugee policy to replace what he characterized as an inadequate 'patchwork of different programs that evolved in response to specific crises.'") (internal citations omitted).

¹⁵*INS v. Cardoza-Fonseca*, 480 U.S. 421, 436-37 (1987) (internal citation omitted).

¹⁶*Matter of S-P*, 21 I. & N. Dec. 486, 492 (1996) (quoting S. Rep. No. 256, 96th Cong., 2d Sess. 1, 4, reprinted in 1980 U.S.C.C.A.N. 141, 144).

¹⁷8 C.F.R. § 208.7 (1980); 8 C.F.R. § 208.10(b) (1980). *See* Arthur C. Helton, *Final Asylum Rules: Finally*, 67 No. 27 INTERPRETER RELEASES 789, 792-93 (July 23, 1990) ("The State Department's participation

in the asylum process has been a recurring issue in inter-agency deliberations."); *see also* Deborah Anker, *Determining Asylum Claims in the United States: A Case Study on the Implementation of Legal Norms in an Unstructured Adjudicatory Environment*, 19 NYU J. L. & SOC. CHANGE 433 (1992).

¹⁸The lawsuit in *American Baptist Churches v. Thornburgh*, was based on widespread discrimination against asylum applicants from Guatemala and El Salvador, the majority of whom were denied asylum, in stark contrast to the majority of applicants who fled Communist countries. 760 F. Supp. 796, 799 (N.D. Cal. 1991).

¹⁹Human Rights First, *At Least 10,000*, Appendix, Letter to members of Congress 17 (2016), www.humanrightsfirst.org/sites/default/files/HRFReportAtLeastTenThousand-final.pdf (last visited Apr. 13, 2017).

²⁰Written Testimony of Barbara L. Strack, Chief, Refugee Affairs Division, Refugee, Asylum, and International Operations Directorate, U.S. Citizenship and Immigration Services, and Matthew D. Emrich, Acting Associate Director, Fraud Detection and National Security Directorate, U.S. Citizenship and Immigration Services, *Hearing on "Refugee Admissions, Fiscal Year 2016" before The Senate Committee on the Judiciary, Subcommittee on Immigration & The National Interest* (Oct. 1, 2015), available at www.uscis.gov/tools/resources/hearing-refugee-admissions-fiscal-year-2016-senate-committee-judiciary-october-1-2015-chief-refugee-affairs-division-barbara-l-strack-and-acting-associate-director-matthew-d-emrich (last visited Apr. 13, 2017).

²¹For a discussion of the differences between refugees and asylees, *see* USCIS, *Refugees & Asylum*, U.S. CITIZENSHIP & IMMGR. SERVS. (Nov. 12, 2015), available at www.uscis.gov/humanitarian/refugees-asylum (last visited Apr. 13, 2017) ("Refugee status or asylum may be granted to people who have been persecuted or fear they will be persecuted on account of race, religion, nationality, and/or membership in a particular social group or political opinion... You may seek a referral for refugee status only from outside of the United States... You may apply for asylum in the United States regardless of your country of origin or your current immigration status.").

²²INA § 207(a)(2), (b) ("Except as provided in subsection (b), the number of refugees who may be admitted under this section in any fiscal year after fiscal year 1982 shall be such number as the President determines, before the beginning of the fiscal year and after appropriate consultation, is justified by humanitarian concerns or is otherwise in the national interest.... (b) If the President determines, after appropriate consultation, that (1) an unforeseen emergency refugee situation exists, (2) the admission of certain refugees in response to the emergency refugee situation is justified by grave humanitarian concerns or is otherwise in the national interest, and (3) the admission to the United States of these refugees cannot be accomplished under subsection (a), the President may fix a number of refugees to be admitted to the United States during the succeeding period (not to exceed twelve months) in response to the emergency refugee situation and such admissions shall be allocated among refugees of special humanitarian concern to the United States in accordance with a determination made by the President after the appropriate consultation provided under this subsection.").

²³*U.S. Refugee Admissions Program*, U.S. DEP'T OF STATE, [WWW.STATE.GOV/J/PRM/RA/ADMISSIONS/INDEX.HTM](http://www.state.gov/j/prm/ra/admissions/index.htm) (last visited Apr. 13, 2017).

²⁴U.S. Dep't of State, *History of U.S. Refugee Resettlement* (June 2015).

²⁵Eleanor Acer & Tara Magner, *Restoring America's Commitment to Refugees and Humanitarian Protection*, 27 GEO. IMMIGR. L.J. 445, 446 (2012-13). During 2014, 23,533 people were granted asylum in the United States. More recent statistics are not available. DHS Office of Immigration Statistics, *Annual Flow Report: Refugees and Asylees* (2016).

²⁶INA § 101(a)(42)(A). For an in-depth analysis of U.S. asylum law, see DEBORAH E. ANKER, *LAW OF ASYLUM IN THE UNITED STATES* (2016).

²⁷U.S. Citizenship & Immgr. Servs., *Decision Making Training Module*, RAO COMBINED TRAINING COURSE 11 (May 16, 2013), www.uscis.gov/sites/default/files/USCIS/About%20Us/Directorates%20and%20Program%20Offices/RAIO/Decision%20Making%20LP%20%28RAIO%29.pdf.

²⁸*Id.*

²⁹*Id.*

³⁰*Matter of S-M-J*, 21 I. & N. Dec. 722 (BIA 1997).

³¹U.S. Citizenship & Immgr. Servs., *Gender-Related Claims Training Module*, RAO COMBINED TRAINING COURSE 43 (Oct. 16, 2012), www.uscis.gov/sites/default/files/USCIS/About%20Us/Directorates%20and%20Program%20Offices/RAIO/Gender%20Related%20Claims%20LP%20%28RAIO%29.pdf.

³²*Id.* at 12 (quoting UN HIGH COMM'R FOR REFUGEES, *HANDBOOK ON PROCEDURES & CRITERIA FOR DETERMINING REFUGEE STATUS UNDER THE 1951 CONVENTION & THE 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES* ¶ 40 (2011)).

³³*Id.* at 10-11.

³⁴See *INS v. Cardoza-Fonseca*, 480 U.S. 421, 438-41 (1987) ("In interpreting the Protocol's definition of 'refugee' we are further guided by the analysis set forth in the Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status*. The Handbook explains that 'in general, the applicant's fear should be considered well-founded if he can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable to him for the reasons stated in the definition, or would for the same reasons be intolerable if he returned there.'") (internal citations omitted). *Matter of Mogharrabi*, 19 I. & N. Dec. 439, 445 (BIA 1987).

³⁵See ANKER, *supra* note 26, at ch. 4. See, e.g., *Crespin-Valladares v. Holder*, 632 F.3d 117, 128-29 (4th Cir. 2011) ("[P]ersecution under the INA encompasses harm inflicted by either a government or an entity that the government cannot or will not control ... whether a government is unable or unwilling to control private actors ... is a factual question that must be resolved based on the record in each case.") (internal quotation marks omitted).

³⁶*Matter of S-A*, 22 I. & N. Dec. 1328, 1335 (BIA 2000). See also *Gender-Related Claims Training Module*, *supra* note 31, at 33.

³⁷*Matter of S-A*, 22 I. & N. Dec. at 1335-36.

³⁸Refugee Act of 1980, Public Law 96-212, 94 Stat. 102 § 201 (1980); INA § 101(a)(42)(A). The definition of refugee has since been amended to include the following language: "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." INA § 101(a)(42)(A).

³⁹Acer & Magner, *supra* note 2, at 453. See also U.S. Citizenship & Immgr. Servs., *Mandatory Bars to Asylum and Discretion*, ASYLUM OFFICER BASIC TRAINING (2009).

⁴⁰U.S. Citizenship & Immgr. Servs., *Mandatory Bars to Asylum and Discretion*, *supra* note 39.

⁴¹*Vetting, Security and Fraud Screening in Asylum Process: Issue Brief*, HUMAN RIGHTS FIRST (Dec. 4, 2015), www.humanrightsfirst.org/resource/vetting-security-and-fraud-screening-asylum-process.

⁴²The U.S. Refugee Admissions Program priorities are as follows:

- Priority 1: UN High Commissioner for Refugees, U.S. Embassy, or specially trained nongovernmental organization identified cases, including persons facing compelling security concerns, women-at-risk, victims of torture or violence, and others in need of resettlement
- Priority 2: Groups of special concern identified by the U.S. refugee program (e.g., Bhutanese in Nepal)
- Priority 3: Family reunification cases (i.e., spouses, unmarried children under 21, and parents of persons lawfully admitted to the U.S. as refugees or asylees or persons who are legal permanent residents or U.S. citizens who previously had refugee or asylum status).

U.S. CITIZENSHIP & IMMGR. SERVS., *REFUGEE SECURITY SCREENING FACT SHEET* (Dec. 3, 2015), www.uscis.gov/sites/default/files/USCIS/Refugee%20C%20Asylum%20C%20and%20Int%27I%20Ops/Refugee_Security_Screening_Fact_Sheet.pdf (hereinafter "USCIS FACT SHEET").

⁴³Human Rights First, *At Least 10,000*, *supra* note 19. See also Testimony of Anne C. Richard, Assistant Secretary, Bureau of Population, Refugees, and Migration, *Statement Submitted for the Record to the Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Human Rights* (Jan. 7, 2014), available at 2009-2017.state.gov/j/prm/releases/remarks/2014/219388.htm (last visited Apr. 13, 2017).

⁴⁴*Id.*

⁴⁵Statement of Leon Rodriguez, Director, U.S. Citizenship & Immgr. Servs., Dep't Homeland Sec., *The Syrian Refugee Crisis and Its Impact on the Security of the U.S. Refugee Admissions Program Before the H. Comm. On the Judiciary*, 114th Cong. (2015), available at judiciary.house.gov/wp-content/uploads/2016/02/USCIS-Rodriguez-Testimony.pdf (last visited Apr. 13, 2017). See also U.S. Dep't of State, Special Briefing, *Background Briefing on Refugee Screening and Admissions* (Nov. 17, 2015), available at 2009-2017.state.gov/r/pa/prs/ps/2015/11/249613.htm (last visited Apr. 13, 2017).

⁴⁶Human Rights First, *At Least 10,000*, *supra* note 19.

⁴⁷USCIS FACT SHEET, *supra* note 42.

⁴⁸*Id.*

⁴⁹Human Rights First, *Vetting, Security and Fraud Screening*, *supra* note 43.

⁵⁰Human Rights First, *At Least 10,000*, *supra* note 19.

⁵¹USCIS FACT SHEET, *supra* note 42; Human Rights First, *At Least 10,000*, *supra* note 19. Statement of Leon Rodriguez, *supra* note 45 (explaining that the State Department's Bureau of Population, Refugees and Migration (PRM) incorporated Security Advisory Opinions (SAOs) into the program in response post-9/11 security

concerns and that SAOs are required in the Syrian context; Statement of Zoe Lofgren, Member, H. Comm. on the Judiciary, *The Syrian Refugee Crisis and Its Impact on the Security of the U.S. Refugee Admissions Program Before the H. Comm. On the Judiciary*, 114th Cong. (Nov. 19, 2015), available at www.gpo.gov/fdsys/pkg/CHRG-114hhrg97632/pdf/CHRG-114hhrg97632.pdf (last visited Apr. 13, 2017).

⁵³Human Rights First, *At Least 10,000*, *supra* note 19. See also Statement of Leon Rodriguez, *supra* note 45 (noting that the Interagency Check is of the “most import” since the check is repeatedly conducted throughout the application and admission process, even after the refugee passes the initial State Department background check).

⁵⁴Human Rights First, *At Least 10,000*, *supra* note 19.

⁵⁵USCIS FACT SHEET, *supra* note 42. For a critique of CARRP, see ACLU, *Muslims Need Not Apply* (2013).

⁵⁶Human Rights First, *At Least 10,000*, *supra* note 19.

⁵⁷Caitlin Dickerson, *How U.S. Immigration Judges Battle Their Own Prejudice*, N.Y. TIMES (Oct. 4, 2016), www.nytimes.com/2016/10/05/us/us-immigration-judges-bias.html?_r=0.

⁵⁸See, e.g., Jane Herlihy et al., *Discrepancies in autobiographical memories—implications for the assessment of asylum seekers: repeated interviews study*, BMJ (2002); Jane Herlihy & Stuart Turner, *Untested assumptions: psychological research and credibility assessment in legal decision-making*, EUR. J. PSYCHOTRAUMATOL. (2015); Walter Kalin, *Troubled Communication: Cross-Cultural Misunderstandings in the Asylum-Hearing*, 2 INT’L MIGRATION REV. 230 (1986).

⁵⁹PHILIP G. SCHRAG ET AL., REFUGEE ROULETTE: DISPARITIES IN ASYLUM ADJUDICATION AND PROPOSALS FOR REFORM (2009); PHILIP G. SCHRAG ET AL., LIVES IN THE BALANCE: ASYLUM ADJUDICATION BY THE DEPARTMENT OF HOMELAND SECURITY (2014).

⁶⁰*Asylum Outcome Increasingly Depends on Judge Assigned*, TRAC IMMIGR. (Dec. 2, 2016), trac.syr.edu/immigration/reports/447.

⁶¹Press Release, U.S. Dep’t of Justice, Department of Justice

Announces New Department-Wide Implicit Bias Training for Personnel (June 27, 2016), www.justice.gov/opa/pr/departement-justice-announces-new-department-wide-implicit-bias-training-personnel (last visited Apr. 13, 2017).

⁶²Chris Rickerd, Letter to the Editor, *Bias in Immigration Judges*, N.Y. TIMES (Oct. 6, 2016), www.nytimes.com/2016/10/07/opinion/bias-in-immigration-judges.html.

⁶³U.S. Citizenship & Immgr. Servs., *Gender-Related Claims Training Module*, *supra* note 34.

⁶⁴*Id.*

⁶⁵Dickerson, *supra* note 56. See also Dana Leigh Marks, *Who, Me? Am I Guilty of Implicit Bias?*, 54 JUDGES J. (2015), www.americanbar.org/publications/judges_journal/2015/fall/who_me_am_i_guilty_of_implicit_bias.html (last visited Apr. 13, 2017).

⁶⁶Dickerson, *supra* note 56 (citing Stuart L. Lustig et al., *Burnout and Stress Among United States Immigration Judges*, 13 BENDER’S IMMIGR. BULL. 22 (2008)).

⁶⁷See, e.g., Human Rights First, *At Least 10,000*, *supra* note 19 (“The president should direct DHS and U.S. security vetting agencies to increase staffing and resources to conduct follow-up vetting inquiries ... so that the completion of security clearance vetting is not unnecessarily delayed due to lack of sufficient staffing... DHS should increase the size of the USCIS Refugee Corps and build on recent initiatives to conduct larger, more continuous, circuit rides to the region to minimize processing gaps and meet U.S. targets. The State Department and U.S. Resettlement Program should enlist and leverage trained and trusted nongovernmental organizations to refer vulnerable refugee cases for U.S. processing and encourage [the UN High Commissioner for Refugees] to work closely with experienced nongovernmental organizations that can assist in identifying and preparing cases.”).

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