

February 8, 2013

Re: Recommendations on the U.S. Asylum System for Immigration Reform Legislation

Dear Member of Congress,

This country has a long history of global leadership in protecting persecuted refugees and displaced persons. We believe that immigration reform legislation must include key changes to the U.S. asylum system to better ensure that refugees who seek the protection of the United States are afforded meaningful access to a fair, effective and timely asylum adjudication process. Together, as 162 faith-based groups, refugee protection organizations, and legal experts on the U.S. asylum system, we urge the U.S. to take steps to ensure that the U.S. asylum system reflects U.S. values and commitments to protecting the persecuted. We support the recommendations listed below for inclusion in immigration reform legislation, many of which were proposed in the Refugee Protection Act (RPA) of 2011 (S. 1202 and H.R. 2185).

Congress should support inclusion of the following changes in immigration reform legislation to repair the U.S. asylum system:

- 1. Eliminate the wasteful and unfair asylum filing deadline** that is barring refugees with well-founded fears of persecution from asylum and diverting overstretched adjudication resources.¹ This change is included in RPA Section 3. In connection with this legislative change, permit individuals who, due to the filing deadline, were granted withholding of removal but not asylum, to adjust their status to lawful permanent resident and petition to bring their spouses and children to safety.
- 2. Require and support a fair and efficient adjudication process** authorizing legal representation in particularly vulnerable and complex cases, including for children, persons with mental disabilities and vulnerable immigrants in immigration detention, authorizing increased Immigration Judges and other staffing at immigration courts, requiring all asylum claims to be initially adjudicated at the asylum office level, and mandating that EOIR's Legal Orientation Program is provided in all facilities that detain immigrants for ICE for more than 72 hours. Related proposed changes are included in RPA 2011 Sections 10 and 13.
- 3. Protect refugees from inappropriate exclusion and free up administrative resources** by amending INA §212(a)(3)(B) so that it targets actual terrorism and does not exclude bona fide refugees. Specifically, the "terrorist activity" definition should be limited to the use of armed force against civilians and non-combatants, as proposed in RPA 2011 Section 4, and

¹ DHS confirmed that it concluded that the asylum filing deadline should be eliminated, confirming that it expends resources without helping uncover or deter fraud (UNHCR Washington Office, Reaffirming Protection, October 2011, Summary Report, p. 18, at <http://www.unhcrwashington.org/atf/cf/%7BC07EDA5EAC71-4340-8570-194D98BDC139%7D/georgetown.pdf>). The Administration has publicly pledged to work with Congress to eliminate the deadline (U.S. Department of State, PRM, *Fact Sheet: U.S. Commemorations Pledges*, 7 December 2011, available at <http://www.state.gov/j/prm/releases/factsheets/2011/181020.htm>). Several studies underscore this issue including Human Rights First, *The Asylum Filing Deadline*, (New York: 2010) available at <http://www.humanrightsfirst.org/wpcontent/uploads/pdf/afd.pdf> and P. Schrag, A. Schoenholtz, J. Ramji-Nogales, and J.P. Dombach, *Rejecting Refugees: Homeland Security's Administration of the One-Year Bar to Asylum*, William and Mary Law Review, (2010), available at <http://wmlawreview.org/files/Schrag.pdf>.

the definition of a “Tier III” organization should be eliminated. The definition of “material support” should be revised to specify that the term applies only to support that is quantitatively significant and qualitatively of a nature to further terrorism.

4. **Implement lasting immigration detention reforms to protect detained individuals, including asylum seekers, and reduce unnecessary costs** through expanding cost-effective alternatives to detention, immigration court review of detention decisions, strengthened oversight and compliance mechanisms, and standards and conditions in line with the American Bar Association’s proposed civil immigration detention standards.² Congress should also mandate a study on the expanded use of the expedited removal process to ensure that refugees are being not returned to persecution. Related proposed changes are included in RPA 2011 Sections 10 and 13.
5. **Ensure adequate substantive and procedural safeguards for all child asylum seekers**, given their vulnerability. Measures should include giving the Asylum Office initial jurisdiction over applications of principal child asylum seekers, employing a child centered analysis to their claims, and – as proposed in the RPA 2011 Section 15 - exempting them from such bars as Safe Third Country, previous denial of asylum, and the one year filing deadline (provisions already enjoyed by unaccompanied children).
6. **Ensure that gender-based asylum claims are properly recognized** by supporting legislative clarifications proposed in the RPA 2011, Section 5, especially the provisions clarifying what can constitute a “particular social group” (the statutory ground under which many women’s asylum claims are brought), what kinds of evidence can support such claims, and other clarifications needed to remove obstacles currently posed to gender-based claims.
7. **Ensure that asylum-seekers interdicted in international or U.S. waters are not subjected to refoulement** by requiring that all U.S. authorities taking control of irregular maritime vessels in international or U.S. waters make available to irregular boat migrants the opportunity to apply for asylum or to express a fear of persecution and shall refer any such asylum-seeker to a U.S. asylum officer for an interview according to INA 235(b)(B); and requiring that all authorities patrolling the U.S. borders, including the U.S. Coast Guard, receive effective training from UNHCR on international human and refugee rights and on U.S. domestic asylum law and other forms of protection. Related proposed changes are included in RPA 2011 Section 24.

We look forward to working with you and your staff and would like to respectfully request a meeting with you at your earliest convenience to discuss these recommendations further. Sara Jane Ibrahim, Advocacy Counsel at Human Rights First, is our focal point and can be reached at ibrahims@humanrightsfirst.org; 202-370-3318. Thank you for your attention to our views.

Sincerely,

² American Bar Association, ABA Civil Immigration Detention Standards, available at http://www.americanbar.org/groups/public_services/immigration/civilimmidetstandards.html.

National/International Organizations

American Civil Liberties Union

New York, NY/Washington, DC

Americans for Immigrant Justice

Miami, FL/Washington, DC

American Immigration Lawyers Association (AILA)

Washington, DC

American Jewish Committee

Washington, DC

Blacks in Law Enforcement of America

Washington, DC

Breakthrough

New York, NY

Center for Gender and Refugee Studies (CGRS)

San Francisco, CA

Civil Liberties and Public Policy

Amherst, MA

Ethiopian Community Development Council, Inc.

Arlington, VA

Fahamu Refugee Programme

International

Family Equality Council

Washington, DC

Franciscan Action Network

Washington, DC

Gay & Lesbian Advocates & Defenders

Boston, MA

HIAS (Hebrew Immigrant Aid Society)

New York, NY/Washington, DC

Human Rights Advocates International (HRAI)

Elizabeth, NJ

Human Rights First

New York, NY/Washington, DC

Human Rights Watch

New York, NY

Immigration Equality

New York, NY/Washington, DC

International Foundation for Gender Education

Waltham, MA

Jesuit Refugee Service/USA

Washington, DC

Kids in Need of Defense (KIND)

Washington, DC

Lambda Legal

New York, NY

Leadership Conference of Women Religious

Silver Spring, MD

Lutheran Immigration and Refugee Service

Baltimore, MD/Washington, DC

Muslim Legal Fund of America (MLFA)

Richardson, TX

National Center for Transgender Equality

Washington, DC

National Council of Jewish Women (NCJW)

New York, NY

National Gay and Lesbian Task Force Action Fund

Washington, DC

National Immigrant Justice Center

Chicago, IL

National Immigration Law Center

Los Angeles, CA/Washington, DC

National Latina Institute for Reproductive Health

New York, NY/Washington, DC

NETWORK, a National Catholic Social Justice Lobby
Washington, DC

Organization for Refuge, Asylum & Migration (ORAM)
San Francisco, CA

Physicians for Human Rights (PHR)
Cambridge, MA

Refugee Women's Network, Inc.
Decatur, GA

Survivors of Torture, International
San Diego, CA

Tahirih Justice Center
Falls Church, VA/Houston, TX

The Center for Victims of Torture
St. Paul, MN

The Episcopal Church
Washington, DC

Unid@s, The National Latin@ LGBT Human Rights Organization
Washington, DC

US Committee for Refugees and Immigrants
Arlington, VA

Women's Refugee Commission
Washington, DC

State/Local Organizations

Advocacy for Justice and Peace Committee of the Sisters of St. Francis of Philadelphia
Philadelphia, PA

Advocates for Survivors of Torture and Trauma (ASTT)
Baltimore, MD

American Gateways
Austin, TX

Capital Area Immigrants' Rights Coalition
Washington, DC

Casa Esperanza

Plainfield & Bound Brook, NJ

Casa Latina

Seattle, WA

Cleveland Immigrant Support Network

Cleveland, OH

Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)

Los Angeles, CA

Community Immigration Law Center (CILC)

Madison, WI

Congregation of St. Joseph

Cleveland, OH

DRUM - Desis Rising Up & Moving

Jackson Heights, NY

Georgia Women's Action for New Directions (WAND)

Atlanta, GA

HIAS Pennsylvania

Philadelphia, PA

Holy Cross Ministries of Utah

Salt Lake City, UT

Human Rights Initiative of North Texas

Dallas, TX

Immigrant Legal Advocacy Project

Portland, ME

IRATE & First Friends

Elizabeth, NJ

Jesuit Social Research Institute/Loyola University New Orleans

New Orleans, LA

L.A. Community Center Legal & Educational

Los Angeles, CA

La Raza Centro Legal

San Francisco, CA

Las Americas Immigrant Advocacy Center
El Paso, TX

Lutheran Social Services of New England
Worcester, MA

Nebraska Appleseed
Lincoln, NE

Pangea Legal Services
San Francisco, CA

Political Asylum/Immigration Representation Project (PAIR Project)
Boston, MA

Program for Torture Victims
Los Angeles, CA

Reformed Church of Highland Park, NJ
Highland Park, NJ

Refugee and Immigrant Center for Education and Legal Services (RAICES)
San Antonio, TX

Sisters' Home Visitors of Mary
Detroit, MI

Sisters of Mercy West Midwest Justice Team
Omaha, NE

Sisters of Saint Joseph of Chestnut Hill, Philadelphia
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Sisters of St. Francis of Philadelphia
Aston, PA

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The Advocates for Human Rights
Minneapolis, MN

The Florence Immigrant & Refugee Rights Project
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The IHM Justice, Peace and Sustainability Office
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