

April 20, 2010

Re: Eliminate the Arbitrary One-Year Bar to Asylum: Co-Sponsor the Restoring Protection to Victims of Persecution Act (H.R. 4800)

Dear Member of Congress,

We, the undersigned 87 faith-based, human rights, legal services and refugee assistance organizations and 81 individual asylum law practitioners, pro bono attorneys, law professors and other experts, urge you to support H.R. 4800, the Restoring Protection to Victims of Persecution Act. This bill would eliminate the one-year deadline for filing asylum applications, a technical requirement that has led to the denial, rejection, or delay of thousands of requests for asylum protection in the United States. Elimination of the deadline has already been included in other pieces of legislation, such as the CIR ASAP Act of 2009 (H.R. 4321); Refugee Protection Act of 2010 (S. 3113); and the Refugee Protection Act of 2001 (S. 1311), which received bipartisan support in the Senate.

Congress enacted the one-year deadline as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996. Deadline proponents were concerned at that time about the filing of fraudulent claims to delay deportation. However, in 1995 reforms had already been initiated by U.S. immigration authorities to address those concerns and to counter abuse and backlogs in the asylum system. Even though these reforms had a dramatic impact, IIRIRA was still passed with the filing deadline included.¹ That said, even key proponents of the deadline stressed that it was not intended to impede legitimate asylum seekers.² Thirteen years later, it is now clear that the deadline – ironically – has led the United States to deny asylum to *credible refugees* with well-founded fears of persecution irrespective of how compelling or meritorious their asylum claims are. Meanwhile, the immigration and asylum systems have many other mechanisms in place that are actually designed to counter attempted fraud.³

¹ After the 1995 INS reforms, official immigration statistics documented a sharp drop in asylum filings and an improved pace of adjudication – meaning that unsuccessful applicants were put into deportation proceedings much more quickly. Then-INS Commissioner Doris Meissner described the reforms as a “dramatic success” that had “fixed a broken system.” Five years later, the INS provided statistics confirming that the reforms were still working. William Branigin, *Year-Long Campaign Slashes New Claims by 57%*, WASH. POST, Jan. 5, 1996, at A2; *INS Announces Progress Five Years Into Asylum Reform*, 77 INTERPRETER RELEASES 186, Feb. 7, 2000.

² For example, Sen. Orrin Hatch assured that asylum protection would be “available for those with legitimate claims of asylum,” and that he was “committed to ensuring that those with legitimate claims of asylum are not returned to persecution, particularly for technical deficiencies.” 142 CONG. REC. S11840 (daily ed. Sept. 30, 1996) (statement of Sen. Hatch).

³ Asylum applications and testimony are provided under penalty of perjury; applicants who provide false information can be prosecuted and permanently barred from receiving any immigration benefits in the future; original documents submitted as evidence regularly undergo forensic testing to help identify document fraud; and the Department of Homeland Security subjects asylum applicants, as it does all potential immigrants to the United States, to extensive security procedures, including FBI biometric (fingerprint) testing and identity checks through multiple intelligence databases.

The deadline has also added unnecessary inefficiencies into the asylum system. Credible refugees who could be granted asylum at the Asylum Office are shifted into the immigration courts, wasting scarce government resources. At both stages, investigating compliance with the filing deadline or eligibility for an exception is often time-consuming for adjudicators who are already notoriously overloaded – especially Immigration Judges⁴ – and diverts time away from evaluating the merits of the asylum case.

The deadline bars an applicant from asylum if she cannot demonstrate by “clear and convincing evidence” that her application was filed within one year of her arrival in the United States, absent a finding of “changed” or “extraordinary” circumstances that would excuse her delayed filing.⁵ Although Congress stressed that the statutory exceptions should guard against the exclusion of bona fide refugees, these exceptions have not prevented refugees with well-founded fears of persecution from being denied asylum or being ordered deported. In many cases, the exceptions have been applied narrowly or inconsistently with Congressional intent, failing to account for many understandable reasons why bona fide applicants would not file within one year. For example, adjudicators have denied exceptions to refugees who suffer from post-traumatic stress disorder (PTSD) and other psychological conditions that occur as a result of trauma, even though these conditions can make it very difficult for refugees to provide a detailed explanation of their past in an asylum application. Refugees with claims based on domestic or sexual abuse, sexual orientation, HIV+ status, rape, female genital mutilation, forced marriage or other highly personal situations may initially avoid applying for asylum out of fear of stigmatization, and/or because asylum may mean not only severing their ties with country, but also with family and community members. In addition, exceptions are not usually recognized when applicants did not know about asylum or about the filing deadline, or were unable to find affordable legal representation. In all of these cases, the filing deadline has denied asylum protection to legitimate refugees for reasons largely outside of their control and having nothing to do with the merits of their case.

Because of these shortfalls, the filing deadline has disastrous consequences for refugees, for example:

- **Burmese pro-democracy student activist denied asylum even though found credible.** A Burmese student fled to the United States after being jailed for several years for his pro-democracy activities. The student did not know anyone in the United States, did not speak English, and did not learn about asylum until several years later when he met other Burmese refugees who told him how to apply. The Immigration Judge found the student to be credible and to face a clear probability of persecution. However, the judge held that the student’s extreme isolation (from members of society who might have been able to advise him about the asylum

⁴ In 2008, immigration judges issued an average of 1014 decisions per judge, about four decisions per workday. AMERICAN BAR ASSOCIATION, REFORMING THE IMMIGRATION SYSTEM: PROPOSALS TO PROMOTE INDEPENDENCE, FAIRNESS, EFFICIENCY, AND PROFESSIONALISM IN THE ADJUDICATION OF REMOVAL PROCEEDINGS: EXECUTIVE SUMMARY ES-28 (2010), available at http://www.abanet.org/media/nosearch/immigration_reform_executive_summary_012510.pdf.

⁵ Examples of changed and extraordinary circumstances can be found at 8 C.F.R. § 208.4(a)(4) – (5). Though these lists are not meant to be exhaustive – and plainly say so in the regulations themselves – many adjudicators will not recognize exceptions for situations not delineated therein.

process at an earlier point) did not constitute an exception to the filing deadline and denied asylum. Instead, the student was granted “withholding of removal,” a minimal form of protection which, among other acute disadvantages, will never allow him to become a lawful permanent resident or integrate fully in the United States.

- **Eritrean torture survivor denied asylum.** A young woman from Eritrea was forcibly conscripted into military service, where she was tortured for her Christian beliefs. She applied for asylum four months after arriving in the United States, but the asylum officer rejected her claim and put her into immigration court removal proceedings because she did not have a passport showing her date of entry. In court, the young woman provided three affidavits and documentary evidence to prove that she had been in the United States for less than a year before she filed her application. Though the judge told her that she fit the definition of a refugee, he denied asylum because she had not proved that she timely filed. After three years of adjudication, the judge granted the young woman withholding of removal.
- **Senegalese woman who fled forced marriage and FGM denied asylum and ordered deported.** A Senegalese woman was ordered by her parents to undergo female genital mutilation (FGM) and marry a man 40 years her senior. The woman refused and fled to the United States. For several years, she attempted – to no avail – to change her parents’ minds so she could safely return to Senegal. She finally applied for asylum four years after her arrival in the United States, after learning that her younger sister was forced to undergo FGM. The Immigration Judge found the woman credible and observed there was “a reasonable possibility” that she would be forced to undergo FGM in Senegal. Nevertheless, because of the one-year deadline, she was deemed ineligible for asylum. She was also deemed unable to meet the higher standard of proof applicable to withholding of removal claims. She therefore found herself ineligible for any protection at all, and was ordered deported.

Unwitting failures to comply with a mere technicality, as illustrated above, should not prevent credible refugees from receiving asylum and protection from persecution. An adjudicator should be able to evaluate the facts of each individual asylum case and conclude *based on the merits of the case*, whether the individual is a refugee. This is the foundation of our asylum system, and is consistent with our commitments under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, to which the United States acceded in 1968.

In order to ensure that refugees with well-founded fears of persecution are not denied asylum or returned to the hands of their persecutors on the basis of a technical procedural barrier, we urge you to cosponsor H.R. 4800, the Restoring Protection to Victims of Persecution Act.

Sincerely,

NATIONAL ORGANIZATIONS

1. American-Arab Anti-Discrimination Committee (ADC)
2. American Immigration Lawyers Association
3. American Jewish Committee
4. Amnesty International USA
5. Asian American Justice Center
6. Chaldean Federation of America
7. Church World Service, Immigration and Refugee Program
8. The Episcopal Church
9. Freedom Network (USA)
10. Global Lawyers and Physicians
11. Hebrew Immigrant Aid Society (HIAS)
12. Human Rights First
13. Human Rights Watch
14. Immigration Equality
15. International Rescue Committee
16. Jesuit Refugee Service/USA
17. Jewish Labor Committee
18. Jubilee Campaign USA
19. Kids in Need of Defense (KIND)
20. The Leadership Conference on Civil and Human Rights
21. Lutheran Immigration and Refugee Service (LIRS)
22. Migration and Refugee Services, United States Conference of Catholic Bishops

23. National Advocacy Center of the Sisters of the Good Shepherd
24. National Immigration Forum
25. NETWORK, A National Catholic Social Justice Lobby
26. Physicians for Human Rights
27. Presbyterian Church USA Office of Immigration Issues
28. Rabbis for Human Rights – North America
29. Refugee and Immigration Ministries of the Christian Church (Disciples of Christ)
30. The Sikh Coalition
31. South Asian Americans Leading Together (SAALT)
32. Tahirih Justice Center
33. Union for Reform Judaism
34. Unitarian Universalist Association of Congregations
35. United Sikhs
36. Women of Reform Judaism
37. World Organization for Human Rights USA
38. World Relief

ARIZONA

39. Florence Immigrant and Refugee Rights Project
40. Lynn Marcus
Co-Director, Immigration Law Clinic & Adjunct Professor of Refugee Law and
Policy
James E. Rogers College of Law, University of Arizona*

CALIFORNIA

41. Raquel Aldana
Professor of Law
McGeorge School of Law*

42. California Consortium of Torture Treatment Centers
43. Center for Gender and Refugee Studies
44. Center for Justice and Accountability
45. Center for Survivors of Torture at Asian-Americans for Community Involvement
46. Carmen Chavez
Executive Director
Casa Cornelia Law Center
47. Kate Jastram
Lecturer in Residence
Senior Fellow, Miller Institute for Global Changes and the Law
University of California, Berkeley, School of Law*
48. Institute for Redress and Recovery
49. Institute for the Study of Psychosocial Trauma (ISPT)
50. Lawyers' Committee for Civil Rights
51. LiNK | Liberty in North Korea
52. Paul Lufkin
Adjunct Professor of Constitutional Law and Immigration Law
John F. Kennedy University College of Law*
San Francisco Law School*
53. Program for Torture Victims
54. Public Counsel
55. Kathi Pugh
Pro Bono Counsel
Morrison & Foerster*
56. Danielle Rosché
Attorney at Law
Feldman & Feldman*
57. Satrang
58. Survivors International

- 59. Survivors of Torture, International
- 60. Bardis Vakili
Director, Political Asylum Program
Casa Cornelia Law Center

COLORADO

- 61. Regina Germain
Adjunct Professor of Asylum Law and the Asylum Practicum
University of Denver Sturm College of Law*

CONNECTICUT

- 62. Jon Bauer
Clinical Professor of Law & Director, Asylum and Human Rights Clinic
University of Connecticut School of Law*
- 63. Michael J. Wishnie
Clinical Professor of Law
Yale Law School*

FLORIDA

- 64. Wendi Adelson
Program Director, Center for the Advancement of Human Rights
Florida State University*
- 65. Amigos Center
- 66. Florida Center for Survivors of Torture
- 67. Florida Legal Services, Inc.
- 68. E. Lea Johnston
Assistant Professor
University of Florida Levin College of Law*

ILLINOIS

- 69. Heartland Alliance Marjorie Kovler Center
- 70. Indo-American Center
- 71. National Immigrant Justice Center

INDIANA

72. Perfecto Caparas
Program Manager, Program in International Human Rights Law
Indiana University School of Law-Indianapolis*

IOWA

73. Barbara A. Schwartz
Clinical Law Professor
University of Iowa College of Law*

LOUISIANA

74. Hiroko Kusuda
Assistant Clinic Professor, Law Clinic & Center for Social Justice
Loyola University New Orleans College of Law*

MAINE

75. Immigrant Legal Advocacy Project

MARYLAND

76. Advocates for Survivors of Torture and Trauma
77. Anjum Gupta
Assistant Professor of Law & Director, Immigrant Rights Clinic
University of Baltimore School of Law*
78. Sarah Rogerson
Clinical Fellow, Immigrant Rights Clinic
University of Baltimore School of Law*

MASSACHUSETTS

79. Deborah Anker
Clinical Professor of Law & Director, Immigration and Refugee Clinical
Program
Harvard Law School*
80. Carolyn Benedict-Drew
President & CEO
International Institute of Boston

81. Marlee Furman
Asylum Attorney
82. Sarah Ignatius
Executive Director
Political Asylum/Immigration Representation Project
83. Jewish Alliance for Law and Social Action, Boston
84. Lin Piwowarczyk, MD, MPH
Co-director, Boston Center for Refugee Health and Human Rights
85. Post Deportation Human Rights Project, Center for Human Rights and International
Justice
Boston College Law School*
86. Irene Scharf
Professor of Law and Director, Immigration Law Clinic
Associate Dean for Clinical Programs
University of Massachusetts School of Law – Dartmouth*
87. Ragini Shah
Assistant Clinical Professor of Law
Suffolk University Law School*

MICHIGAN

88. Freedom House
89. Rachel Settlege
Clinical Assistant Professor & Director, Asylum and Immigration Law Clinic
Wayne State Law School*

MINNESOTA

90. The Advocates for Human Rights
91. Center for Victims of Torture
92. Immigrant Law Center of Minnesota
93. Malinda M. Schmiechen
Adjunct Professor of Immigration and Nationality Law
William Mitchell College of Law*

MISSOURI

94. St. Louis Survivors Collaborative
St. Louis Mental Health Board

MONTANA

95. Deborah S. Smith
Adjunct Professor
University of Montana School of Law*

NEW JERSEY

96. Joyce Antila Phipps
Casa Esperanza
97. International Institute of New Jersey/Cross-Cultural Counseling Center

NEW MEXICO

98. Jennifer Moore
Professor of Law
University of New Mexico School of Law*

NEW YORK

99. Katrina L. Baker
Associate
Kramer Levin Naftalis & Frankel LLP*
100. Bellevue/NYU Program for Survivors of Torture
101. Jacquelyn Burke
Associate
Fried Frank, Harris, Shriver & Jacobson LLP*
102. Stacy Caplow
Professor of Law & Director of Clinical Education
Brooklyn Law School*
103. Makini Chisolm-Straker
Department of Emergency Medicine, The Mount Sinai Medical Center of NYC*
104. Jennifer Colyer

- Pro Bono Counsel
Fried, Frank, Harris, Shriver & Jacobson LLP*
105. Ruven Ellberger
Associate
Skadden, Arps, Slate, Meagher & Flom LLP*
106. Holly L. Henderson
Associate
Skadden, Arps, Slate, Meagher & Flom LLP*
107. Jean-Pierre Kamwa
Espoire
108. Rene Kathawala
Pro Bono Counsel
Orrick, Herrington & Sutcliffe LLP*
109. Allen S. Keller, M.D.
Associate Professor of Medicine
Director, Bellevue/NYU Program for Survivors of Torture
Director, NYU School of Medicine Center for Health and Human Rights*
Director, Master Scholars Humanism and Medicine Program*
110. Olga Khvatskaya
Counsel
Hunton & Williams*
111. Sital Kilantry
Associate Clinical Professor of Law & Co-Director, Immigration Appellate Law and
Advocacy Clinic
Cornell University Law School*
112. Jennifer K. Kim
Associate
Fried, Frank, Harris, Shriver & Jacobson LLP*
113. Elizabeth Knauer
Principal
Sive Paget & Riesel, P.C.*
114. Steven J. Kolleeny
Special Counsel
Skadden, Arps, Slate, Meagher & Flom LLP*
115. Lutheran Social Services of New York, Immigration Legal Services Program

116. Vanessa Merton
Professor of Law & Faculty Supervisor, Immigration Justice Clinic
Pace University School of Law*
117. Alizabeth Newman
Director, Immigrant Initiatives
CUNY School of Law*
118. C. Mario Russell
Senior Attorney, Catholic Charities, New York*
Adjunct Professor
St. John's University School of Law*
119. Safe Horizon Immigration Law Project
120. Sanctuary for Families
121. Ari M. Selman
Associate
Skadden, Arps, Slate, Meagher & Flom LLP*
122. Dan Smulian
Assistant Professor of Clinical Law
Brooklyn Law School*
123. Elly Spiegel
Pro Bono Administrator
Kaye Scholer LLP*
124. Christian B. Sundquist
Associate Professor of Law
Albany Law School*
125. Karen E. Willenken
Counsel
Skadden, Arps, Slate, Meagher & Flom*
126. Lauris Wren
Clinical Professor, Asylum Clinic
Hofstra Law School*
127. Stephen W. Yale-Loehr
Adjunct Professor of Law & Co-Director, Immigration Appellate Law and Advocacy
Clinic

Cornell University Law School*

OKLAHOMA

128. Elizabeth McCormick
Associate Clinical Professor of Law & Director, Immigrant Rights Project
University of Tulsa College of Law*

OREGON

129. Michelle A. McKinley
Assistant Professor
University of Oregon School of Law*

PENNSYLVANIA

130. Audrey Allen
Attorney at Law
Audrey Allen Immigration Law, LLC
131. Daniel G. Anna
Attorney at Law
Anna & Anna, P.C.*
132. Catherine M. Baggiano
Attorney at Law
133. Jon Landau
Attorney at Law
Baumann DeSeve & Landau*
134. Matthew Lister
Sharswood Fellow in Law and Philosophy
University of Pennsylvania Law School*
135. Sarah H. Paoletti
Clinical Supervisor and Lecturer, Transnational Legal Clinic
University of Pennsylvania Law School*
136. Pennsylvania Immigration Resource Center (PIRC)
137. Philadelphia Jewish Labor Committee
138. Michele R. Pistone
Professor of Law
Villanova University School of Law*

139. Jaya Ramji-Nogales
Assistant Professor of Law
Temple University, Beasley School of Law*
140. Shoba Sivaprasad Wadhia
Director, Center for Immigrants' Rights & Clinical Professor of Law
Penn State Dickinson School of Law*
141. Susan Smolens
Attorney at Law

RHODE ISLAND

142. Alexandra Filindra, Ph.D
Research Fellow, Taubman Center for Public Policy and American Institutions
Brown University*
143. Immigrants United of Rhode Island

TEXAS

144. American Gateways
145. Artemis Justice Center
146. Catholic Charities of Dallas Immigration & Legal Services
147. Michael J. Churgin
Raybourne Thompson Centennial Professor
University of Texas School of Law*
148. Daya Inc.
149. Denise Gilman
Clinical Professor of Law, Immigration Clinic
University of Texas School of Law*
150. Las Americas Immigrant Advocacy Center

UTAH

151. Barbara Szweda
Legal Director, Utah Health and Human Rights Project
Attorney at Law

- Perretta Law Firm*
152. Utah Health and Human Rights Project

VERMONT

153. Vermont Immigration and Asylum Advocates

VIRGINIA

154. Northern Virginia Family Service

WASHINGTON

155. Jennifer Arterburn
Associate
Davis Wright Tremaine LLP*
156. Clayton P. Graham
Associate
Davis Wright Tremaine LLP*
157. Christopher R. Helm
Partner
Davis Wright Tremaine LLP*
158. Won Kidane
Assistant Professor of Law
Seattle University School of Law*
159. Northwest Immigrant Rights Project

WASHINGTON, DC

160. Ayuda
161. CAIR Coalition
162. Alice Clapman
Clinical Teaching Fellow/Supervising Attorney, Center for Applied Legal Studies
Georgetown University Law Center*
163. Immigration Legal Services, Catholic Charities of the Archdiocese of Washington

164. Elizabeth Keyes
Clinical Faculty
American University Washington College of Law*
165. Andrew I. Schoenholtz
Visiting Professor of Law & Co-Director, Center for Applied Legal Studies
Deputy Director, Institute for the Study of International Migration
Georgetown University*
166. Philip G. Schrag
Delaney Family Professor of Public Interest Law & Co-Director, Center for Applied
Legal Studies
Georgetown University Law Center*
167. Steven H. Schulman
Pro Bono Partner
Akin Gump Strauss Hauer & Feld LLP*
168. Rebecca K. Troth
Pro Bono Counsel
Sidley Austin LLP*

*Affiliation provided for identification purposes only.