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May 19, 2016

Mr. Simon Henshaw
Principal Deputy Assistant Secretary
Bureau of Population, Refugees, and Migration
U.S. Department of State
2201 C St., NW, # 5805
Washington, DC 20520

**REF: Agency/Docket Number: Public Notice 9528, Document Number:
2016-09267, FY 2017 U.S. Refugee Admissions Program**

Public Comment of the Immigration Reform Law Institute, Inc.

Dear Principal Deputy Assistant Secretary Henshaw:

The Immigration Reform Law Institute, Inc. ("IRLI") and the Federation for American Immigration Reform, Inc. ("FAIR") submit the following comments to the U.S. Department of State ("DOS") Bureau of Population, Refugees, and Migration ("BPRM") in response to your solicitation of public comments on the FY 2017 U.S. Refugee Admissions Program, as published in the Federal Register on April 21, 2016. *See* 81 Fed. Reg. 23544.

IRLI is a non-profit, public interest law organization that exists to defend the rights of individual Americans and their local communities from the harms and challenges posed by mass migration to the United States, both lawful and unlawful, and to monitor and hold accountable federal, state, or local government officials who undermine, fail to respect, or comply with our national immigration and citizenship laws. IRLI also provides expert immigration-related legal advice, training, and resources to public officials, the legal community, and the general public.

FAIR is a non-profit, non-partisan organization of concerned individuals who believe that our immigration laws must be reformed to better serve the needs of current and future generations. With a support base that includes nearly 50 private foundations and over 250,000 diverse members and activists, FAIR is free of party loyalties and special interest connections. For more than 35 years, FAIR has been leading the call for immigration reform by offering and advocating solutions that help reduce the harmful impact of uncontrolled

immigration on national security, jobs, education, health care, and our environment.

Introduction

Section 101(a)(42)(a) of the Immigration and Nationality Act (“INA”) defines a “refugee” as “any person who is outside any country of such person’s nationality . . . [who] is unable or unwilling to avail himself or herself to 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[.]” Stated differently, only a person who faces persecution on account of “race, religion, nationality, membership in a particular social group, or political opinion” can be admitted to the U.S. as a refugee. United States refugee law “does not cover those fleeing from natural or economic disaster, civil strife, or war.” *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 235 (B.I.A. 2014). Similarly, U.S. refugee law “do[es] not protect people from general conditions of strife, such as crime and other societal afflictions.” *Id.*

It goes without saying that your refugee admission and resettlement policies must be in conformity and in compliance with our refugee statutory law. There has been no congressional delegation of authority to completely eliminate the threshold requirements for refugee status, broaden or replace the definition of refugee established by the INA, or change the grounds for refugee inadmissibility. The President does have the authority to provide humanitarian assistance to refugees *outside of the United States* if he believes that such assistance will contribute to the foreign policy interests of the United States. *See* 22 U.S.C. § 2601(b)(2). However, he is constrained by the legal definition of refugee in the INA in making refugee determinations for purposes of granting resettlement entitlement and admission to the United States.

As discussed in more detail below, three broad concerns arise regarding the current Administration’s policies: (1) The DOS and U.S. Citizenship and Immigration Services (“USCIS”) are ignoring the INA’s definition of a refugee and are instead applying a similar but more lenient definition used by the United Nations High Commissioner for Refugees (“UNHCR”); (2) The lax application of statutory requirements adds to the fraud occurring in the application process; and (3) While the current Administration’s report entitled *Proposed Refugee Admissions for Fiscal Year 2016: Report to the Congress* (“the Report”)¹ boasts about using the most stringent national security screening process available, the American public is still not

¹ *Proposed Refugee Admissions for Fiscal Year 2016: Report to the Congress*, U.S. DEPT. OF STATE (Oct. 1, 2015), <http://www.state.gov/documents/organization/247982.pdf>.

adequately protected from those who come under the guise of a “refugee,” but in fact come to commit an act of terror.

1. The DOS and USCIS are not complying with statutory requirements.

While the Report states that USCIS is diligently screening applicants to ensure that each person falls within the statutory language, internal and external contextual clues have emerged that may suggest otherwise. For example:

- The Report states that “the United States aims to ensure at least 50 percent of all refugees referred by UNCHR worldwide are considered for resettlement in the United States” *Id.* at 3. The government cannot possibly aim to accept 50 percent of those referred by UNHCR when each applicant has yet to be screened for compliance with U.S. statutory standards.
- The current screening process for refugee determination is tainted from the start. Under current practices, the access to refugee resettlement has begun with a determination that the applicant is vulnerable and the subject of special humanitarian concern. However, that is a determination which must follow a finding of persecution or a well-founded fear of persecution based on account of one of the five enumerated grounds under law, not precede it. If the answer is “no” to the question regarding persecution or a well-founded fear of persecution, then the screening process should end; the applicant is not eligible for refugee status.
- The Syrian civil war or better educational opportunities are often cited as the reason for resettlement of Syrians within the U.S.²
- DOS says that the purpose of the Central American Minors (CAM) Refugee/Parole Program³ is to give “certain vulnerable, at-risk children an opportunity to be reunited

² See United Nations High Comm’r of Refugees, *Resettlement offers Am. Dream to Syrian refugees* (Dec. 3, 2015), <http://www.unhcr.org/56614cee6.html> (detailing that a refugee who came to the United States after fighting in Syria intensified left because his business and home were damaged by shell fire); see also Louise Ridley, *UN Director Admits Most Syrians Not Fleeing over War*, THE HUFFINGTON POST (May 14, 2016), http://www.huffingtonpost.co.uk/entry/refugee-crisis-facts-un-michael-moller_uk_5734277ee4b01359f6866db0 (“Møller says feedback from people working in refugee camps suggests the main reason people are leaving Syria isn’t the crippling violence in the country. ‘The number one reason why people leave Syria is not the bombs or the food or the cold, it’s because they want to find educational opportunities for their children,’ he explains.”).

with parents” who reside in the United States.⁴ However, under U.S. refugee law “vulnerable, at-risk youth” is not a protected ground for refugee admittance. In addition, CAM eligible minors should not have been designated priority 2 as they do not have a cognizable shared characteristic which caused them to be persecuted or fear persecution. What is more troubling, the courts are “increasingly ‘rubber stamping’ the issuance of green cards for minors without seeing any proof that they were actually under a threat of violence and abuse in their home countries of Guatemala, El Salvador and Honduras.”⁵

- Secretary of State John Kerry requested that the UNHCR assist in screening CAM applications and making the initial determination of refugee status.⁶ Unlike U.S. law, the UNHCR definition provides protections for persons fleeing from civil strife and gang violence. By these actions, Secretary Kerry has expanded the UNHCR influence on the U.S. refugee program.

It cannot be clearer that this Administration is not screening individuals for refugee resettlement in accordance with the law or with reasonable unbiased adjudicatory practices.

2. DOS has not addressed the extensive fraud and abuse in the refugee application process.

The problems with vetting applicants do not end at ensuring each applicant properly complies with the statutory requirements. Extensive fraud and abuse of the application process has been found, yet the government does not properly address these findings. Such fraud and abuse will only become more prevalent as the President seeks to fulfill his 10,000 Syrian refugee quota by the end of the fiscal year.

³ The program has processing centers in certain Central American countries to process children who wish to come to the United States who would have otherwise traveled alone into the U.S. via the southern border. U.S. Customs and Immigration Serv., *In-Country Refugee/Parole Processing for Minors in Honduras, El Salvador and Guatemala (Central American Minors – CAM)* (June 1, 2015), <https://www.uscis.gov/CAM>.

⁴ Bureau of Population, Refugees, & Migration, *In-Country Refugee/Parole Program for Minors in El Salvador, Guatemala, and Honduras With Parents Lawfully Present in the United States*, U.S. Dep’t of State (Nov. 14, 2014), <http://www.state.gov/j/prm/releases/factsheets/2014/234067.htm>.

⁵ Leo Hohmann, *South Carolina Governor Sued For Importing Muslims*, WND (Feb. 17, 2016), <http://www.wnd.com/2016/02/refugee-lovin-governor-sued-for-importing-muslims/>.

⁶ Julia Preston, David M. Herszenhorn and Michael D. Shear, *U.N. to Help U.S. Screen Central American Migrants*, THE NEW YORK TIMES (Jan. 12, 2016), http://www.nytimes.com/2016/01/13/us/politics/un-to-help-us-screen-central-american-migrants.html?_r=0.

The Government Accountability Office (“GAO”) recently produced a lengthy report on the fraud risks inherent in the refugee process.⁷ The GAO found that the government has limited resources for detecting and addressing fraud and that the U.S. Department of Justice has not assessed fraud risks in the asylum process. House Judiciary Committee Chairman Bob Goodlatte (VA-6) stated the “new GAO report adds to mounting evidence that the Obama Administration refuses to take the steps necessary to crack down on asylum fraud and protect the integrity of our immigration system. We already know that there is proven or possible fraud in up to 70% of asylum applications yet the Administration hasn’t implemented procedures to identify and prevent fraud in the system.”⁸ The GAO report criticisms of the asylum process come years after the Administration found extensive fraud in the family reunification category and had to shut down the program for several years.⁹

3. The American public is still not adequately protected under the current refugee screening process.

As part of a new surge operation aimed at meeting the President’s self-imposed goal of resettling 10,000 Syrian refugees by the end of the fiscal year, the Administration has decided to rush the refugee vetting process that is supposed to ensure the safety and security of the American people.¹⁰ “While the resettlement process usually takes 18 to 24 months, under the surge operation this will be reduced to three months,” said Gina Kassem, the regional refugee coordinator in Amman, Jordan.¹¹ The decision to expedite the vetting process contradicts reassurances given by the President when he lectured Americans leery of accepting refugees after the deadly Paris massacre last November.¹²

⁷ U.S. Gov’t Accountability Office, *Asylum: Additional Actions Needed to Assess and Address Fraud Risks* (Dec. 2015), available at <http://www.gao.gov/assets/680/673941.pdf>.

⁸ Press Release, The House of Representatives Judiciary Committee, *Goodlatte: GOA Report Adds to Mounting Evidence on Administration’s Failure to Address Asylum Fraud* (Dec. 2, 2015).

⁹ Ann Corcoran, *DNA testing required in wake of widespread Somali family reunification fraud*, *Refugee Resettlement Watch* (Oct. 21, 2015), <https://refugeeresettlementwatch.wordpress.com/2015/10/21/dna-testing-required-in-wake-of-widespread-somali-family-reunification-fraud/> (citing Kate Worth, *For Some Refugees, Safe Haven Now Depends on a DNA Test*, Public Broadcasting Station (Oct. 19, 2019), <http://www.pbs.org/wgbh/frontline/article/for-some-refugees-safe-haven-now-depends-on-a-dna-test/>).

¹⁰ Kelly Riddell, *U.S. cuts Syrian refugee screening time in order to handle surge*, *THE WASHINGTON TIMES* (Apr. 7, 2016), <http://www.washingtontimes.com/news/2016/apr/7/us-cuts-syrian-refugee-screening-time-handle-surge/>.

¹¹ *Id.*

¹² Patrick Goodenough, *Under New U.S. Syrian Refugee Surge, Processing Time Reportedly Slashed to 3 Months*, *CNSNEWS* (Apr. 7, 2016), <http://cnsnews.com/news/article/patrick-goodenough/under-new-us-syrian-refugee-surge-processing-time-reportedly-slashed> (“Understand, under current law, it takes anywhere from, on average, 18 to 24 months to clear a refugee to come into the United States, the president said. “They are subjected to the most rigorous process conceivable.”). What is more troubling, a recent FOIA production of documents obtained from DHS by a government watchdog reveals that the current Administration scrubbed the law enforcement agency’s “Terrorist Screening

The President's refugee goals are not properly considering the severe national security concerns that face the country in light of the attacks in Paris and in San Bernardino, where the female terrorist passed the government's security screening. While the President,¹³ Jeh Johnson,¹⁴ and DOS officials¹⁵ say that the security checks for refugees are rigorous, the screenings are not sufficient to protect American citizens. Other government officials who are deeply involved in screening refugees state that the current background investigation produces only limited information on those being screened.¹⁶

Indeed, USCIS has disclosed that the government does not have access to any database in Syria that can be used to check the backgrounds of incoming refugees.¹⁷ The Federal Bureau of Investigation ("FBI") Director, James Comey, commented, "[w]e can query our databases until the cows come home, but nothing will show up because we have no record of that person. You can only query what you have collected." *Id.* The Homeland Security Committee of the House of Representatives found that the massive flow of Syrians puts Western countries at risk of terrorist infiltration into the refugee program and subsequent attacks by such individuals. *Id.* Add to this the rampant fraud, corruption, and fake and counterfeit documents that proliferate within the resettlement program and one must conclude that it would be nearly impossible for a national security officer to assess an applicant's credibility and the merits of a claim for refugee status.¹⁸

Database" in order to protect what it considered the civil rights of suspected Islamic terrorist groups, thereby indicating that the current Administration is not serious about the security screening process. Press Release, Judicial Watch, Inc., *Judicial Watch: Homeland Security Records Reveal Officials Ordered Terrorist Watch List Scrubbed* (Mar. 1, 2016), <http://www.judicialwatch.org/press-room/press-releases/judicial-watch-homeland-security-records-reveal-officials-ordered-terrorist-watch-list-scrubbed/>.

¹³ See *supra* note 1.

¹⁴ 2015 Immigration Law and Policy Conference: Keynote Address: The Honorable Jeh Johnson, Catholic Legal Immigration, Inc., Migration Policy Inst., & Georgetown U. Law Cntr., (<https://cliniclegal.org/ILPC>).

¹⁵ *Background Briefing on Refugee Screening and Admissions*, U.S. Dep't. of State (Nov. 15, 2015), <http://www.state.gov/r/pa/prs/ps/2015/11/249613.htm#.VI9sG1FdRcQ.email>.

¹⁶ Homeland Security Comm., *Terror Threat Snapshot: November 2015*, HOUSE OF REPRESENTATIVES (Nov. 2015), <https://homeland.house.gov/wp-content/uploads/2015/11/November-Terror-Threat-Snapshot.pdf>.

¹⁷ Homeland Sec. Committee, *Syrian Refugee Flows: Security Risks and Counterterrorism Challenges*, House of Representatives 1, 4 (Nov. 2015), <http://www.state.gov/r/pa/prs/ps/2015/11/249613.htm#.VI9sG1FdRcQ.email>.

¹⁸ It has been reported that the situation is so bad in Syria that former government employees have abandoned their offices and left behind intelligence information, blank passports, identity documents and equipment to fill them out. Michele McPhee and Brian Ross, *US Intel: ISIS May Have Passport Printing Machine, Blank Passports*, NBCNEWS (Dec. 10, 2015), <http://abcnews.go.com/International/us-intel-isis-passport-printing-machine-blank-passports/story?id=35700681>. It is even said that ISIS/ISIL has a passport machine which they are using to make passports for new recruits to use in traveling to join their cause. *Id.*

Solution

The mission of the resettlement program is to ensure that refugee settlement opportunities go only to those who are eligible for such protection and who do not pose a risk to the safety and security of our country. We believe the screening process must adequately and appropriately answer the following questions:

- Has the applicant met the burden of proving that he or she has been persecuted in the past or has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion? This is the critical threshold question and if the answer is “no,” the screening process is over. The applicant is not eligible for refugee status.
- Has the applicant persecuted others on account of one of the five enumerated grounds?
- Has the applicant been firmly resettled in a third country?
- Does the applicant have a criminal record that bars refugee status?
- Has the applicant engaged in terrorist activities that bar refugee status?
- Is the applicant admissible to the United States under our refugee laws?
- If the applicant is admissible, but not admissible without waivers, have the needed waivers been granted?
- Is the applicant among refugees “of special humanitarian concern to the United States”?
- Does the applicant pose a risk to the safety and security of our country?
- Is refugee status and resettlement warranted as a matter of discretion on a case by case basis?

There is no statutory entitlement to refugee protections. The fact that an applicant may meet all the statutory requirements for refugee status and is admissible does not guarantee that the status and resettlement should be granted. The adjudicating officer must also consider whether the applicant poses a risk to the safety and security of the United States and that refugee status and resettlement is warranted as a matter of discretion. In considering whether an applicant poses a risk to the safety and security of the United States, there must be criteria established which will allow ways to distinguish between migrants who will likely do harm to our nation and those who will not do harm.

Conclusion

Current Administration policies and practices have resulted in the grant of refugee status and resettlement to the United States to migrants who are not statutorily eligible for the protections

U.S. Department of State
DOS Docket No.: Public Notice 9528
May 19, 2016

Page | 8

and benefits of our refugee law. There must be a pause in the refugee resettlement program until policies and procedures are in place to ensure that the program is administered in compliance with our immigration law, as well as addressing the safety and security of the nation.

Respectfully Submitted,

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