

Testimony of Eleanor Acer
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**The Oversight and Government Reform Committee Joint Subcommittee Hearing
with the Subcommittee on National Security and the Subcommittee on
Government Operations**
“National Security: Threats at Our Borders”

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Human Rights First is a non-profit, nonpartisan human rights advocacy organization that challenges America to live up to its ideals. For over 30 years, we’ve built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership, including the protection of the rights of refugees. With offices in Houston, Texas, New York, and Washington D.C., Human Rights First oversees one of the largest pro bono legal representation programs for refugees in the country, working in partnership with volunteer attorneys at many of the nation’s leading law firms. Human Rights First appreciates the opportunity to testify at this hearing.

This hearing is focused on “National Security: Threats at Our Borders” including steps that the U.S. government can take to mitigate the potential of terrorists trying to enter the country. Human Rights First believes that the United States can and should protect its national security while also complying with its human rights and refugee protection commitments. As a bipartisan group of former national security advisors, CIA directors, defense secretaries, secretaries of state, and homeland security secretaries pointed out in December 2015, in the context of resettlement of Syrian refugees, “America can and should continue to provide refuge to those fleeing violence and persecution without compromising the security and safety of our nation.”

Overall apprehensions at the U.S. borders are at a 40-year low and the number of border patrol officers is at an all-time high. According to a December 22, 2015 statement by Secretary of Homeland Security Jen Johnson, Department of Homeland Security (DHS) statistics show a "drastic decrease in those apprehended at the border in FY2015 - 337,117 - the second lowest apprehension number since 1972, reflecting a lower level of attempted illegal migration at our borders." United States Customs and Border Protection (CBP), both at ports of entry and along the borders, has extensive access to tools and databases designed to identify individuals who present a threat to national security. For instance, CBP has an extensive law enforcement and national security database that contains records relating to law enforcement, inspection and intelligence. This database contains various types of information from a variety of federal, state, local, and foreign sources, and the database contains records pertaining to

known or suspected terrorists, wanted persons, and persons of interest for law enforcement and counterterrorism purposes.

Globally, in the wake of escalating and unresolved conflicts and persecution around the world, the number of refugees has increased, reported by the UN Refugee Agency (UNHCR) to be 19.5 million in total. Only a very small portion of the world's refugees have sought protection from the United States. The number of people, including children and families, seeking protection from the escalating violence and persecution in the Northern Triangle countries of Central America has increased in recent years. (This increase has not just affected the United States; as UNHCR explained in its recent report, *Women on the Run*, “[c]ombined, Mexico, Belize, Costa Rica, Nicaragua, and Panama have seen the number of asylum applications from citizens fleeing the [Northern Triangle Countries] grow to nearly 13 times what it was in 2008.”) Some of those who seek asylum in the United States come from countries outside this region, including from other top refugee-producing places such as Afghanistan, Iraq and Syria, as well as from China. This is not a new phenomenon. America has long provided refuge to people fleeing political, religious and other forms of persecution around the world. And the United States, pursuant to its commitments under U.S. law and international conventions, has a process for identifying those who meet the standards for refugee protection, and those who do not.

Protecting the persecuted is a core American value. Reflecting this country's deep-seated commitment to liberty and human dignity, as well as its pledge under the Refugee Convention's Protocol, the United States has long led efforts to protect those who flee from political, religious, and other persecution. The U.S. asylum system has protected thousands of refugees from being returned to places where they would face political, religious, or other persecution. Through its pro bono legal representation initiatives, Human Rights First and its pro bono attorneys see these people day in and day out: they are victims of religious persecution from China; women escaping honor killings, trafficking and horrific domestic violence; gay men attacked in countries where they face constant threats; human rights advocates who stand up against oppression in Syria or against the perpetrators of brutal violence in Central America; and ordinary people who are persecuted for who they are or what they believe.

U.S. leadership in protecting refugees is not only consistent with American ideals, it also advances U.S. national security and foreign policy interests. Earlier this year, I visited Jordan, Lebanon, and Turkey to assess the impact of the Syrian refugee crisis on these front-line states and to assess the U.S. response. Over 4.8 million refugees have fled from Syria to other countries in the region, and over 11 million are displaced within Syria. I had previously visited the region last year, as well as a year earlier. The critical infrastructures of these front line refugee hosting states – Jordan, Lebanon, and Turkey – are straining under pressure of hosting so many refugees. Lebanon is hosting over 1 million registered Syrian refugees (making one out of every four persons in Lebanon a Syrian refugee), Jordan is hosting over 600,000, and Turkey is hosting over 2.8 million. U.S. leadership in addressing the plight of refugees is not only necessary from a humanitarian and human rights perspective, it also advances U.S. national security interests. Ryan Crocker, former U.S. Ambassador to Syria, Iraq and Lebanon, has explained that a U.S. initiative to share in hosting some Syrian refugees “affirmatively advances U.S. national security interests” and that increased aid and resettlement of refugees from Syria “helps protect the stability of a region that is home to U.S. allies.” Similarly, the bipartisan group of former high level national security officials referenced above concluded that initiatives to resettle refugees “help advance U.S. national security interests by supporting the stability of our allies and partners that are struggling to host large numbers of refugees.”

The United States is facing much smaller numbers of asylum seekers at our borders than the numbers facing the states surrounding Syria and those countries have far fewer resources and much less capacity than the United States. The United States must lead by example in order to encourage other states to continue to do their part. As the Council on Foreign Relations Independent Task Force on Immigration Policy, co-chaired by former Florida Governor Jeb Bush and former Clinton White House chief of staff Thomas “Mack” McLarty, pointed out: “The treatment of refugees and asylum seekers is [a] dimension of immigration policy that reflects important American values.” That task force’s report also stressed the example that the United States sets for the world: the U.S. commitment to protect refugees from persecution is “enshrined in international treaties and domestic U.S. laws that set the standard for the rest of the world; when American standards erode, refugees face greater risks everywhere.”

In both our policies and practices, as well as in public rhetoric, it is critical to distinguish between the victims of terror and repression on the one hand, and the perpetrators of horrific acts on the other hand. This is not only essential from a refugee protection and human rights perspective, but labeling the victims of violence and terror as security threats also undermines U.S. national security and foreign policy objectives. As a number of leading U.S. national security experts have described, in the context of the resettlement of Syrian refugees, refusing to provide refuge to Syrian refugees is counterproductive from a national security perspective as it helps ISIL’s narrative. For instance, former DHS Secretary Michael Chertoff told the Wall Street Journal in November 2015 that admitting Syrian refugees “allows us to truthfully say that we’re not hypocrites or bigoted against Muslims or people from other cultures. That has a positive impact in terms of the disposition people around the world have toward the U.S. You don’t want to play into the narrative of the bad guy. That’s giving propaganda to the enemy.”

Rigorous Safeguards Exist at the U.S. Border

As noted above, the United States has rigorous systems at its borders and ports of entry for identifying potential threats, and access to a wide range of databases to identify security threats, foreign fighters, false passports and other risks. These include databases with access to a wide range of law enforcement and counter-terrorism related information from a variety of federal, state, local, and foreign sources, including records pertaining to known or suspected terrorists, wanted persons, and persons of interest for law enforcement and counterterrorism purposes. These mechanisms should be regularly reviewed and strengthened as necessary.

In addition to vetting through CBP and its databases, in connection with any protection requests at the border, U.S. authorities have a range of effective tools to identify potential threats or abuse. For protection requests that enter the system through the credible fear process, the Department of Homeland Security has explained that USCIS Asylum Officers conduct a mandatory check of both the CBP law enforcement and national security database (described above, and known as “TECS”) and US-VISIT/IDENT during the credible fear process. US-VISIT/IDENT is a DHS system managed by the National Protection and Programs Directorate’s (NPPD) Office of Biometric Identity Management (OBIM), and includes biometric information related to the travel history of foreign nationals and Watchlist information. It also contains visa application information owned by the Department of State. This system is used to confirm identity, determine previous interactions with government officials and detect imposters. Fingerprints are also electronically submitted to the US-VISIT/IDENT database, where they are stored and matched to existing fingerprint records. This system is used to confirm identity and

determine previous interactions with government officials. DHS has explained, in the written testimony cited below, that this information helps to confirm identity and inform lines of questioning.

Moreover, with respect to cases that enter the system through the credible fear process, asylum officers – at the credible fear stage - also ensure that the Federal Bureau of Investigation (FBI) name check and fingerprint checks have been initiated. DHS, in written testimony, stated that “[t]he USCIS asylum officer’s determination as well as information on the individual’s identity, including how he or she established it, results of the security checks, and any adverse information is recorded and placed in the alien’s file upon completion of the credible fear process. This information is then provided to ICE.”¹ As a result, ICE will have this information with respect to individuals who pass the credible fear screening process and are put into immigration court removal proceedings and to consider in connection with custody decisions and determinations.

Wrongdoers and Security Threats Excluded from Protection

In addition, the Refugee Convention’s “exclusion clauses” require host countries to exclude from the Convention’s protections any person who has committed heinous acts or grave crimes that make him undeserving of international protection as a refugee, even if that individual has a well-founded fear of persecution. A separate provision of the Convention allows the return of a refugee who poses a danger to the security of the host country. The United States incorporated into its law the Refugee Convention’s promise to provide protection to refugees, but also codified bars to asylum and withholding of removal intended to reflect the Convention’s exceptions.

U.S. immigration laws prohibit granting asylum and any form of refugee protection to: people who engaged in or assisted in or incited the persecution of others; people who have been convicted of a particularly serious crime in the United States; people who have committed a serious non-political crime abroad; people who have engaged in terrorist activity; people who are representatives of foreign terrorist organizations; or people who otherwise pose a threat to the security of the United States.² The inadmissibility provisions of U.S. immigration law are so broad that they have regularly ensnare refugees with no real connection to terrorism, such as a refugee from Burundi who had a rebel group rob him of four dollars and his lunch, an Iraqi former interpreter for the U.S. Marine Corps who was informed that his past connection to a Kurdish group allied with the United States and his opposition to Saddam Hussein made him inadmissible, and an Iraqi widow who had a member of a designated terrorist

¹ See Department of Homeland Security (DHS), Combined Testimony of DHS before the House Judiciary Homeland Security Committee for a hearing on “Asylum Abuse: Is it Overwhelming Our Borders” (December 12, 2013) available at http://judiciary.house.gov/_cache/files/e9043d83-e429-4d21-9621-c681c6499251/combined-dhs-testimony.pdf; fact sheet from U.S. Citizenship and Immigration Services (USCIS) on file with Human Rights First; USCIS, Affirmative Asylum Procedures Manual (November 2013) available at http://www.uscis.gov/sites/default/files/files/nativedocuments/Asylum_Procedures_Manual_2013.pdf.

² INA § 208(b)(2) (8 U.S.C. § 1158(b)(2)) (bars to asylum); INA § 241(b)(3)(B) (8 U.S.C. § 1231(b)(3)(B)) (bars to withholding of removal).

organization buy flowers in her flower shop (incidentally while the group was under U.S. military protection).³

A Strong System is Staffed Adequately to be Timely, Fair, and Effective

A strong asylum and immigration system that adjudicates immigration removal cases in a fair and timely manner is essential both for ensuring the integrity of the U.S. immigration process as well as protecting refugees from return to places of persecution. However, in order to effectively secure the integrity of the system, the agencies responsible for asylum adjudication – the Department of Justice’s Executive Office of Immigration Review (EOIR) and the Department of Homeland Security’s United States Citizenship and Immigration Services (USCIS) – must be properly staffed and resourced to adjudicate cases in a fair and timely manner, and to eliminate backlogs that can leave the system vulnerable to abuse.

According to the most recent data, over 474,000 immigration removal cases have now been pending for an average of 667 days in the U.S. immigration courts, with projected average wait-times around three years – with many waiting much longer. While immigration enforcement and related funding have increased significantly in recent years, funding and staffing for the immigration courts have lagged well behind. Not only can delays increase the vulnerability of our immigration system to abuse and prevent refugees from having their cases adjudicated in a timely manner, but they often leave refugee families stranded in difficult and dangerous situations abroad. Human Rights First just issued a report assessing the need for additional staffing to address the backlogs in the U.S. immigration courts. Entitled the “U.S. Immigration Court: A Ballooning Backlog that Requires Action,” the report urges appropriations and other actions³ to address the backlogs and ensure timely and fair asylum and immigration proceedings.

Moreover, our current asylum system fails to provide protection in a manner consistent with this country’s commitments and legal obligations to protect refugees fleeing persecution. Over the years, so many barriers, hurdles and technical complexities have been added to the asylum system, including through multiple rounds of legislation, that refugees who seek the protection of the United States often find themselves denied asylum, delayed in receiving protection, or lingering for months in jails and jail-like immigration detention facilities. Many cannot navigate this increasingly complicated system without legal counsel, and many go unrepresented as they cannot afford to retain private counsel. In addition to supporting a fair and timely decision-making process for those seeking this country’s protection, Congress should eliminate unjust barriers that deny or delay U.S. protection to refugees and implement the recommendations of the U.S. Commission on International Religious Freedom relating to expedited removal and detention. America should stand firm as a beacon of hope that will not turn its back on those seeking protection from persecution.

Recommendations

In addition to continuing to review and update key databases and tools, Human Rights First recommends the following steps to strengthen U.S. processes for identifying and protecting refugees at U.S. borders and ports of entry:

³ For more background, see Human Rights First, *Refuge at Risk: The Syria Crisis and U.S. Leadership*, November 2013; Human Rights First, *Denial and Delay: The Impact of the U.S. Immigration Law’s “Terrorism Bars” on Asylum Seekers and Refugees in the United States*, 2009.

- **Address the ballooning backlog in the immigration courts.** Congress should allocate funding for 75 immigration judge teams in FY 2017 and another 75 judge teams in FY 2018, in addition to supporting the President’s budget request for an infrastructure expansion to facilitate the onboarding of new immigration judges.
- **Support Expansion of Legal Orientation Programs and Access to Counsel Measures that Improve Fairness and Efficiency.** Over 80 percent of detained individuals do not have representation in their immigration proceedings. LOPs – and quality legal counsel - can help non-represented individuals understand their eligibility, and in some cases lack of eligibility, for asylum and other potential forms of immigration relief. Those who are represented overwhelmingly appear for their immigration court appointments. Congress should sufficiently fund DOJ to ensure that LOPs are funded and in place at *all* facilities used for immigration detention. According to a 2012 DOJ report, LOP reduced the amount of time to complete immigration proceedings by an average of 12 days. Factoring in the savings – primarily to DHS through reduced length of time spent in detention – LOP has been shown to have a net savings of approximately \$18 million.
- **Remove unnecessary impediments that delay cases and block refugees from this country’s protection, including elimination of the asylum filing deadline.** As Dr. Richard Land has described, "When people escape horror and come to the United States in desperate need of freedom and safety, we shouldn't turn them away because of a bureaucratic technicality."
- **End Detention of Families seeking asylum.** DHS should stop sending families seeking asylum to immigration detention. Not only is such detention inconsistent with this country’s human rights and refugee protection commitments, but it is also damaging to the health of children.
- **Implement U.S. Commission on International Religious Freedom (USCIRF) Recommendations on those fleeing religious and other forms of persecution.** The Department of Homeland Security and Immigration and Customs Enforcement should implement U.S. Commission on International Religious Freedom recommendations, including: maintaining, effectively implementing and codifying the existing parole guidance into regulations; expanding legal orientation presentations; only using detention facilities that do not have jail-like conditions when asylum seekers are detained; and limiting the use of expedited removal given implementation deficiencies.

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As the senior director of Human Rights First's Refugee Protection program, Eleanor Acer oversees Human Rights First's research and advocacy on issues relating to refugee protection, asylum, and the human rights of migrants. Eleanor advocates, speaks and writes regularly on issues relating to the human rights of refugees and migrants, including legal representation, detention, U.S. asylum law and policy, U.S. global refugee protection and resettlement policies, and protection from xenophobic and bias-motivated violence. She works closely with Human Rights First's pro bono legal representation team, conducts field research, has authored numerous reports and articles and has testified before the U.S. Congress.

Eleanor was awarded the Louis J. Lefkowitz Award for Public Service by Fordham University School of Law in 2007. She was selected by the American Bar Association to serve on its Commission on Immigration, and currently serves on the Advisory Board to that Commission. She also served as vice chair of the Refugee Council USA from 2006 to 2008. Eleanor received her J.D. from Fordham University School of Law and her B.A. in History from Brown University.