



*Jesuit Refugee Service/USA*

### **Victims of Terror Left Bereft - Refugee and Asylee Rejection Provisions**

The historic commitment of the United States to protect refugees and to provide sanctuary for the victims of persecution has been jeopardized by overly broadened definitions of terrorism and of what constitutes material support to terrorists. Enacted by Congress as provisions of the REAL ID ACT of 2005 and the USA PATRIOT Act of 2001, these provisions – known collectively as the “material support” bar – have brought the U.S. Refugee Resettlement Program to a point of crisis, excluding large numbers of previously eligible refugees and asylum seekers from US protection, and wrongly categorizing as “terrorists” individuals who have been the primary recipients of terrorist brutality and coercion.

President Bush, the Senate and the Congress must not turn their backs on terrorism's innocent victims. We ask that our political leadership affirm the American commitment to our historic tradition of serving as a haven to refugees who look to us for shelter and protection from hatred and violence.

#### **What is the Problem?**

Thousands of vulnerable refugees have been prevented from receiving asylum or resettlement in the United States under sweeping immigration law definitions that end up punishing the victims of persecution. Many of these refugees are actually the victims of violence and extortion in places like Colombia, Nepal and Sri Lanka. Others have provided support to pro-democracy groups with armed wings that have resisted repressive regimes, while some supported groups that fought alongside U.S. forces during the war in Vietnam.

A waiver provision built into the legislation by Congress is limited in scope, allowing for the Secretary of State or the Secretary of Homeland Security to declare exempt from the bar, on a case-by-case basis certain people who have *supported* groups whose policies do not conflict with the policy objectives of the United States. The waiver provision cannot be extended, however, to those considered members of, or combatants within these same pro-democracy organizations, nor to the spouses and children of members. After two years of inaction, the waiver has only been used in a very limited way, and never to help the victims of persecution who have been extorted by designated terrorist groups such as the FARC or Auto-Defensas of Colombia or the Lord's Resistance Army in Uganda.

#### ***Effected Colombian Refugees***

The lack of a duress exception has prevented the resettlement of thousands of eligible Colombian refugees who fled the terror of the Revolutionary Armed Forces of Colombia (FARC) and AUC paramilitaries, forcing some of these victims of terrorist violence to live in circumstances of extreme physical and/or legal insecurity in neighboring countries. Prior to the institution of the bar, the U.S. government recognized the dire situation of certain groups of Colombian refugees living in Ecuador in 2003 and initiated and funded a resettlement program for the refugees there. As a result, in 2004, just one year after the U.S. initiated a program to resettle Colombian

refugees at great risk in Ecuador, the program ground to a halt when the Department of Homeland Security (DHS) began to apply the “material support bar” to refugee resettlement, including to this population of Colombian refugees who are fleeing terrorist violence. Colombia is a fractured society in which irregular armed groups regularly tax and terrorize the rural population residing in those parts of the country that they control.

### **What Can Congress Do to Aid These Endangered Individuals?**

Despite an outpouring of advocacy on the part of human rights groups concerned about the situation of Colombian refugees, no Colombian refugee has been exempted from the harsh effects of the material support bar. Therefore the only avenue with which to mandate a duress exception to the material support bar is legislation, as elements within the administration have remained hostile to the idea of reading a duress exception into the statute or issuing a waiver for extorted Colombians affected by the bar.

A legislative solution would correct this absurd situation, which is an embarrassment to the United States and makes no sense from either a humanitarian or national security perspective.

#### **We believe that such legislation must include at minimum, the following:**

- (i) a streamlined process for ensuring that groups like the Hmong, Montagnards, Burmese ethnic minorities, and others are not inadvertently categorized as terrorist organizations;
- (ii) (ii) an inclusive duress exception to the material support bar to protect victims of terrorism from being defined as “material supporters” of terrorism; and
- (iii) (iii) expanded waiver authority to give the administration greater ability to prevent the unintended consequences of these laws and to provide a mechanism for individuals and groups to apply for such a waiver.

We strongly oppose a piecemeal solution that does not address all three components of the problem and provide a real solution for the thousands of innocent individuals who are now being treated as terrorists and denied entry or placed at risk of deportation and further persecution.

### **Still Caught in the Crossfire: Duress Cases Not Covered by the Administration’s Proposed Waiver<sup>1</sup>**

The Administration recently proposed a duress waiver to cover refugees that provided support to what are known as the non-designated terrorist organizations (so-called “Tier III” groups). While a step in the right direction, this waiver does not cover those who have been terrorized by any of

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<sup>1</sup> Cases compiled from Human Rights First’s report, “Abandoning the Persecuted”; Immigration Law Today’s article, “Victims of Terror”; and the Women’s Commission January 2005 report, Youth Speak Out: New Voices on the Protection and Participation of Young People Affected by Armed Conflict”; as well as reporting by the: *L.A. Times*, *New York Times*, and *Washington Post*.

the designated terrorist organizations (known as “Tier I” and “Tier II” groups). The following are some case examples.

**Miguel – a Colombian youth forced to dig graves by paramilitaries.** After Miguel’s entire family was murdered by the United Self-Defense Forces of Colombia (AUC), Miguel was abducted by the AUC and made to join a forced march along with members of the local population. The paramilitaries shot and killed the marchers indiscriminately and then forced the others to dig graves for the dead – periodically shooting the diggers in the back when they finished. Miguel eventually fled and made his way to Ecuador, where he continued to be followed by men he presumed to be paramilitary. *Miguel is barred from the US because the grave digging he did for the AUC – a “Tier I” group – is deemed material support of terrorism.*

**Helene – a Sierra Leonean woman whose family attacked with machetes, burned and sexually assaulted, forced to wash the clothes of their Revolutionary United Front (RUF) rebel attackers.** Sierra Leonean RUF rebels attacked Helene’s home, brutally killed one family member - chopping him with machetes – and attacked one of Helene’s sons, lighting him on fire and leaving him covered with severe burns. The rebels held the family captive for four days in their own home, repeatedly raped Helene and her daughter, and forced them to wash clothes and cook meals. *Helene is now barred from seeking refugee or asylum protection within the U.S. because the cooking and cleaning she did while enslaved by the RUF rebels – a “Tier II” group – is deemed material support of terrorism.*

**R.K. – a Sri Lankan fisherman, kidnapped by rebels and forced to pay a ransom to save his life.** R.K. was kidnapped by members of the Liberation Tigers of Tamil Eelam (LTTE) and forced to pay a ransom of 50,000 rupees for his release. R.K. fled to the United States – chosen because it was a country known for speaking out against Tamil brutality - and petitioned for asylum. Although the immigration judge who heard the case determined that the fisherman paid the LTTE under duress, DHS (ICE) attorneys argued “there is no duress exception to the material support definition.” As a result, R.K. was denied asylum and has now been held in a detention facility for over a year and a half, *Because the Tamil Tigers are one of the enumerated Tier I organizations, R.K. is not covered within the Administration’s proposed duress waiver and will continue to be denied asylum.*

**B.T- Nepalese government-employee and healthcare worker kidnapped by Maoist Rebels and forced to provide health services, asylum case on hold.** B.T. was twice kidnapped by a Nepalese Maoist guerilla unit, the People’s Liberation Army of Nepal guerillas, and forced at gunpoint to provide medical treatment to injured militiamen. After reporting these abductions to the authorities, he was kidnapped by the Royal Nepalese Army (RNA) and tortured for providing medical assistance to the rebels. The RNA stuck pins in his fingertips, cut his fingers and hands with knives, and threatened to kill him. B.T. eventually fled to the United States and applied for asylum. Although the Immigration Judge granted B.T.’s request for asylum, DHS has appealed the decision, placing B.T.’s case on indefinite hold. *DHS prosecutors argued that the material support bar does not include an exception for “provid[ing] material support in the form of medical care to the Maoists, a ... designated terrorist organization.” – even if the medical care was performed under duress.*

**Jennifer – a 13-year-old Ugandan girl abducted by the Lord’s Resistance Army (LRA) and forced to provide services for the LRA rebels.** At 13-years-old Jennifer was abducted from a boarding school in Northern Uganda by members of the Lord’s Resistance Army (LRA). She was held by the rebel group for six months, taking on the duties of “wife” to one of the LRA leaders, including gathering food and cooking meals. Jennifer eventually escaped from the LRA

but has been unable to find her family or reintegrate into life in Uganda. *Jennifer is barred from entering the United States because the food-gathering and cooking she did for the LRA – a “Tier II” group – is deemed material support for terrorism.*

**Luz - Colombian Housewife Forced to Watch the Murder of Her Husband.** One late afternoon in June 2002, Luz and her husband were sitting outside their small home in Southern Columbia when an armed man in a FARC uniform approached. The FARC soldier explained that he had traveled a long distance and needed a glass of water – and Luz complied. The next day, as Luz and her husband were tending to the farm fields; a group of six paramilitary soldiers confronted them and accused them of supporting the FARC. When Luz's husband tried to protest that it was only a glass of water, the paramilitary leader shot and killed him and threatened to kill Luz and the children. Luz and her family fled to a border town in the Ecuadorian jungle, where the United Nations refugee agency granted her refugee status. *Luz is barred from resettling in the US because the water she gave a member of the FARC – a “Tier I” group – is deemed material support of terrorism.*