

**Written Testimony Submitted to the**  
**Senate Committee on the Judiciary**

**“Renewing America’s Commitment  
to the Refugee Convention:  
The Refugee Protection Act of 2010”**

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**On behalf of:**

**The Hebrew Immigrant Aid Society (HIAS)**



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## **HIAS Strongly Supports the Refugee Protection Act of 2010**

The Hebrew Immigrant Aid Society (HIAS), the international migration agency of the American Jewish community, would like to thank Senators Patrick Leahy (D-VT), Carl Levin (D-MI), Daniel K. Akaka (D-HI), Roland Burris (D-IL), and Richard Durbin (D-IL) for introducing the Refugee Protection Act of 2010. The introduction of this legislation is a fitting tribute to the Refugee Act of 1980, which Congress enacted 30 years ago to ensure that the U.S. meets its obligations to refugees and asylum seekers under the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol.

HIAS believes that all refugees overseas and those who reach our shores should have access to a meaningful, humane, and professional refugee and asylum system. Any reluctance on the part of the United States to offer safe haven sends a dangerous message to countries around the world that are likely to follow our lead and further diminish refugee protection.

It is also important to remember that refugee protection does not end on the day asylum or refugee status is approved. Once here, the U.S. should make sure that refugees and asylees get the help they need to start their new lives in the United States. The Refugee Protection Act would go a long way towards ensuring that refugee families are reunited quickly and that refugees and asylees are able to integrate fully into U.S. society.

While the provisions of the Refugee Act have resulted in the protection of countless refugees and asylum seekers during the 30 years it has been in effect, in recent years, protections for asylum seekers have eroded. Laws have been enacted containing provisions that threaten the rights and safety of asylum seekers, including a harsh expedited removal system, arbitrary deadlines for filing asylum claims, and other limitations on asylum seekers' ability to obtain protection in the U.S. Even after asylum seekers have proven their credible fear of persecution, many are detained, and less restrictive alternatives to detention rarely are provided to asylum seekers who are found not to be threats to society.

The Refugee Protection Act proposes thoughtful and effective solutions to these problems and will ensure that fairness is restored to the asylum system. It would bring asylum and refugee processing up to date, informed by the country's 30 years of experience with these programs. In the 1990s, sweeping procedural reforms addressed the huge backlogs in asylum applications. The Refugee Protection Act takes these changes into account, eliminating the one-year filing deadline for asylum applications that was established as a response to the long delays that now are a thing of the past.

While HIAS supports the Refugee Protection Act in its entirety, we would like to express our appreciation for several provisions in particular that address problems caused by current law and procedures that have caused extreme and needless suffering for the refugees and asylum seekers we serve.

## **Family Reunification**

Family reunification, a cornerstone of the U.S. Refugee Admissions Program, has been eroded by overly restrictive policies that needlessly separate families. The Refugee Protection Act would make some modest yet important changes to current procedures that would help ensure that asylees and refugees are able to bring their spouses and minor children to safety in the United States.

In theory, refugees have two means of reuniting with family – the I-730 (family reunification) process and the Priority Three process. The I-730 process is available to the spouse and minor children of a refugee or asylee. The benefit of the I-730 process is that the family member is not required to wait for a visa to become available before joining their spouse or parent in the U.S. However, in order to benefit from the process, the family relationship must be in place at the time the petitioner was granted refugee or asylum status (marriage after the grant of asylum or refugee status confers no access to the I-730 process; a child conceived after the grant of asylum or refugee status is also ineligible). With few exceptions, the I-730 petition must be filed within 2 years of obtaining refugee/asylee status. Although designed to quickly reunite refugee families, the I-730 process can be slow and is highly restrictive.

The Priority Three process, which in theory prioritizes for refugee resettlement the close family members of certain refugees already in the U.S., has been totally non-functional for more than two years while the State Department has attempted to address integrity problems with the program. As a result, children, husbands, wives, and parents are trapped in dangerous situations and remain separated from their loved ones in the United States.

An example of the problems with the current refugee family reunification process is the case of Wesal Adam, a Darfuri girl who languished in a displaced person camp in Sudan without her parents until she was four years old. Wesal's father, Motasim Adam, was a human rights activist who openly spoke out against the ruling regime and Janjaweed Arab militia that carried out the genocide in Darfur. Motasim's political opinion ultimately forced him to flee his home country and seek asylum in the United States in 2002, before Wesal was born. Motasim later learned that his wife, Wejdan Saleh, was in a refugee camp in Chad. Motasim visited Wejdan in Chad, and Wejdan became pregnant. She returned to Sudan to give birth to their daughter, Wesal, in August 2004. Motasim filed the I-730 petition with the Department of Homeland Security (DHS) so that his wife and daughter could join him in the U.S. Motasim's wife was authorized to enter the U.S. in November 2006. However, because then 2-year-old Wesal was conceived after Adam was granted asylum, her application to accompany her mother was denied.

Because living in displaced persons' camps is particularly dangerous for women, the family had to make the gut-wrenching decision to leave their daughter in the camp with a family friend, with the expectation that she would join them shortly. Wejdan emigrated to the U.S., and joined her husband in New York.

The separation that was expected to last for months lasted for years. After years of desperately trying to bring Wesal to the U.S., Wesal was finally granted humanitarian parole, an extraordinary measure used by DHS in only the most compelling cases, and joined her family in New York in 2008 at the age of 4.

The Refugee Protection Act would amend the INA to permit the admission of the children of a refugee's spouse or child as derivative refugees themselves – a small change that would have a big impact on refugee families who under current procedures face needless separation.

### **Expedited Removal**

Because asylum seekers are fleeing persecution, they frequently arrive at U.S. ports of entry without appropriate entry documentation. Those individuals detected by immigration officials from the DHS Bureau of Customs and Border Protection (CBP) are placed into the “expedited removal” process – a system legislated in 1996 to quickly remove arriving aliens without involving an immigration judge, while allowing those who have a fear of return to pursue an asylum claim. The asylum procedures for aliens with such a fear of return, however, are unnecessarily expensive, cumbersome, and adversarial.

The Refugee Protection Act would preserve expedited removal while improving the asylum procedure for arriving asylum seekers through a more efficient and appropriate process. It would allow a trained asylum officer to make an asylum determination through a non-adversarial interview – just as asylum officers are already authorized to do for asylum seekers who have already made an entry into the United States. This would be a significant improvement over the current system for arriving aliens seeking asylum, in which an asylum officer's authority is limited to making a “credible fear finding” to refer the asylum seeker to a relatively expensive, lengthy and adversarial removal proceeding before an immigration judge and against a Homeland Security trial attorney.

### **Detention of Asylum Seekers**

Among the most egregious problems in the current asylum system, identified by the U.S. Commission on International Religious Freedom (USCIRF), is the unnecessary detention of asylum seekers. International standards make clear that asylum seekers should not be detained, except when absolutely necessary, and that any detention should be in the least restrictive setting possible. However, in the United States, detention is automatic for arriving asylum seekers. Asylum seekers are held in jails or jail-like facilities that are inappropriate. These conditions create a serious risk of psychological harm, particularly for torture-survivors.

The Refugee Protection Act would ensure that asylum seekers are not held in detention if they do not pose a risk of flight, are danger to the community, and if they pass the credible fear interview. It also provides asylum seekers access to Immigration Judges to review DHS's detention decisions.

### **Terrorism Related Inadmissibility Grounds/ Material Support**

The security related grounds of inadmissibility were enacted in 2001 to protect the national security interests of the United States and prevent individuals who have engaged in acts of terrorism, genocide, torture or other crimes against humanity from being granted admission to the United States. In addition, law and policy changes have tightened the categorical disqualification from asylum and refugee protection of those who would pose a danger to the United States and have greatly enhanced security reviews in the asylum and refugee admissions process. Unfortunately, legitimate policies designed to bar the admission of terrorists are resulting in the denial of protection to bona fide refugees and asylum seekers who are unfairly labeled as “terrorists” when many are in fact victims of terror.

In 1906, Tuvia Bielski was born into a Jewish family of peasant farmers in Eastern Poland. His life completely changed with the Russian occupation of Poland, and later, the German advancement. When the Nazis began the mass executions of Jews in 1941, slaughtering Bielski’s parents and other relatives in the ghetto, Tuvia Bielski fled to the nearby forest with his three brothers. What began as a gathering of family, developed into a well-organized partisan unit. Hundreds of Jews who escaped the mass killings and deportations joined up with the Bielski otriad (partisan detachment) and participated in countless acts of resistance and rescue. Benjamin Dombrovsky was the head of the demolition unit in the Bielski detachment and was resettled in the U.S. by HIAS in 1949.

Currently, any group of two or more people who engage in “terrorist activity” is prohibited from attaining asylum in the U.S. Astonishingly, under today’s laws, Tuvia Bielski and Benjamin Dombrovsky, along with their families and the countless other Jews who bravely resisted Nazi terror and saved thousands of Jews from certain death, or provided assistance to the Partisans in their fight against the Nazis, would have faced exclusion when they sought refuge in the U.S. Under the current terrorism definitions, these heroes would be branded as “terrorists” because they illegally engaged in armed conflict. In an absurd twist, America’s anti-terrorism laws are now being used to deny protection to refugees fleeing some of the most brutal regimes and violent conflicts on earth.

In recent years, due to the unduly broad definition of “terrorist activity” and the expansive interpretations adopted by DOJ and DHS, victims of oppression seeking protection have been unjustly labeled supporters of “terrorist organizations” or participants in “terrorist activity.” As a result of these laws, thousands of legitimate refugees and asylum seekers—who pose no danger to the United States and who have committed no acts of wrongdoing—have been labeled “terrorists” and had their applications for protection denied or delayed.

In 2007, recognizing that legitimate refugees were being denied access to protection because of the broad terrorist-related inadmissibility grounds, Congress gave the Administration broad authority to issue exemptions and admit those who should not be considered to be terrorists. This did not solve the problem, and more than 6,700 refugees,

asylees, and asylum seekers remain “on hold”—waiting for asylum, green cards, or to be reunited with their spouse or minor children.

The Refugee Protection Act would clarify the definition of terrorist activity, create an exception for material support provided as a result of coercion, and eliminate the overly broad definition of terrorist group. The Refugee Protection Act would not compromise our nation’s security, and the tools needed to fight terrorism would remain intact. The Refugee Protection Act would help to ensure that the label of “terrorist” is no longer applied to those who are the victims of oppression and persecution.

### **Expedited Processing**

The U.S. Resettlement Program lacks an efficient method to address the processing needs of refugees in protracted situations. While UNHCR recognizes the needs for resettlement to strategically address protracted refugee situations in cases where the population cannot repatriate or integrate into the country of first asylum, USCIS circuit rides frequently result in high denial rates when interviewing long staying refugees. Often, refugees in protracted situations have been out of their country of persecution for so long that they have difficulty articulating their fear of return at a level of specificity sufficient to pass their refugee interview. This is often the case for refugees who left their country when they were young children or who were born in a refugee camp. One example is the group of Burundians who have been in Tanzania since 1972.

An estimated 250,000 or more Darfuri refugees are struggling to survive in an area of eastern Chad that is riddled with violence, with about 60% of these refugees being women and children. The majority of the refugees in Chad fled because of brutal ethnic cleansing conducted by the Janjaweed militia in the Darfur region of Sudan during 2003 and 2004. Conditions in the Chadian camps are especially bad for women and girls, who are plagued by the threat of rape. Perpetrators range from being nearby villagers and members of the Chadian National Army to family members, other refugees and even staff of humanitarian organizations, whose job it is to provide assistance and support." For the past several years, HIAS has been serving these Darfuri refugees and advocating for their resettlement.

The Refugee Reform Act would authorize the Secretary of State to designate populations of humanitarian concern for expedited resettlement interviews, who have no viable options for integrating locally and cannot return home. It would then allow DHS to use their interview time more efficiently by focus on admissibility, security issues and detect family relationship fraud during the refugee interview and adjudication, and less time re-establishing what the State Department has already determined- that the group to which the person belongs cannot safely return home. Refugee status would be determined by establishing membership in that group. This would greatly aid populations like the Darfuri refugees. The streamlining of processing procedures and shortening of interview times would ultimately save the government money.

### **Protection for Asylum-Seekers Interdicted at Sea**

Of longstanding concern to HIAS is U.S. policy towards asylum seekers interdicted on the high seas as they make their way towards the U.S. Jews are sensitive to the issues

confronting boat people, as they still remember the Saint Louis being turned away from the United States in 1939, resulting in the return of Jews to Nazi-controlled Europe.

In the wake of the political unrest that followed the September 1991 coup against President Aristide, thousands of Haitians fled the country by boat. On May 24, 1992, President George H.W. Bush reacted by issuing Executive Order 12807 -- the "Kennebunkport Order" -- declaring that U.S. obligations under the Refugee Convention do not extend outside U.S. territory and that all Haitians interdicted by the Coast Guard were to be repatriated. Between 1982 and 2009, the U.S. Coast Guard stopped—or "interdicted"—114,716 Haitians on their way to the United States. The U.S. Coast Guard does not require interpreters during all interdiction procedures. Therefore, except for the Haitians who physically or verbally resist the Coast Guard's efforts to repatriate them, referred to as the "shout test," it is U.S. policy to return all Haitian boat migrants without any asylum screening whatsoever.

Not all asylum seekers escaping by boat are subject to this policy, known as the "shout test." Cubans are provided information in Spanish informing them that they can raise concerns about their return. Chinese are given a questionnaire asking about their reasons for leaving their country. It is indefensible that Haitians are given unequal opportunity to express a fear of persecution based solely on who they are and the fact that they are from Haiti. Under our country's international treaty obligations, as a signatory of the Refugee Convention, the United States is obliged to ensure that all asylum-seekers interdicted at sea, including Haitians, are entitled to receive protection. The Refugee Protection Act would require DHS to develop policies that would be effective, just, and consistent to ensure refugee protection in the course of interdiction and rescue operations.

Affording refugees the opportunity to seek safe haven in the United States has been a fundamental component of the American humanitarian tradition and international human rights principles, and is a reflection of the Jewish tradition of "redemption of the captive." HIAS long has supported asylum as a key element of refugee protection, advocated for just and compassionate asylum and refugee policies, and urged the government to devote sufficient resources to successfully fulfill the crucial undertaking of protecting the persecuted. For these reasons, HIAS supports the Refugee Protection Act and again thanks the co-sponsors for promoting fair and humane asylum and refugee laws that meet today's needs.