

STATEMENT FOR THE RECORD FROM PHYSICIANS FOR HUMAN RIGHTS

U.S. Senate Committee on the Judiciary

Senator Patrick Leahy, Vermont, Chairman, Presiding

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

May 19, 2010

Physicians for Human Rights (PHR) is pleased to support the goals and swift passage of the Refugee Protection Act, S. 3113. The Act extends and creates key protections that guarantee that US law respects the human rights of vulnerable, persecuted persons who seek our assistance.

PHR particularly supports adoption of the following vital reforms contained in the legislation:

- **Section 3:** Elimination of the one-year deadline for filing for asylum, which is particularly pernicious for survivors of torture and trauma;
- **Section 4:** Amendments to “material support to terrorism” -related provisions to eliminate applicability to individuals whose activities were coerced or performed under duress;
- **Section 6:** Grant to the Attorney General of authority to appoint counsel for incompetent and severely mentally ill noncitizens in removal proceedings, as well as for other individuals when representation would promote efficient Immigration Court adjudications;
- **Section 8:** Elimination of mandatory detention of arriving asylum seekers which harms the health of those who are traumatized, instituting a preference for parole of asylum seekers who demonstrate a credible fear of persecution;
- **Section 9:** Creation of community-based alternatives to detention programs based upon case-management models that meet the needs of immigration enforcement as well as former detainees;
- **Section 10:** Codification of enforceable minimum immigration detention standards, including the right to free, comprehensive, timely medical screening and care.

As an organization that mobilizes health professionals to advance human rights, dignity, and justice, Physicians for Human Rights has long had a particular interest in protecting the health and safety of survivors of persecution and other immigrants in held in detention in the US. Health professional members of PHR have evaluated the mental and physical health of detained and non-detained indigent asylum seekers and torture survivors through PHR's Asylum Network since 1992.

In the course of its work with victims of persecution and torture, PHR has developed very serious concerns about the expansion of immigration detention for individuals in deportation ("removal") proceedings.

The scope and quality of immigration detention health care has not kept pace with the expansion of detention. Since the early 1990s, the number of noncitizens detained daily by the Immigration and Naturalization Service/Department of Homeland Security has grown from about 6,000 to 33,000, due to laws that mandate detention of broad classes of people without regard to their individual circumstances. Among these detainees are a significant number of survivors of trauma who seek protection. According to a recent report by Human Rights First, over 48,000 asylum seekers were detained during the six-year period from 2003 to 2009. While the average length of stay in detention for all noncitizens is 30 days, the last available figures on the average length of detention for asylum seekers and torture survivors, whose detailed claims for relief require extended administrative adjudication, range from 47 to 109 days depending upon the procedural status of the asylum claim. The ACLU has recently identified immigrants with mental illnesses who were held in detention for as long as 5 years.

PHR is gravely concerned about ongoing harm to health and human rights posed by serious flaws in the immigration detention health care system. These problems have been spotlighted over the past three years in reports by human rights organizations and investigative journalists. Shortcomings also have been uncovered by the US Department of Homeland Security's Office of Inspector General, as well as DHS's own staff. Health problems in immigration detention include:

- Treatment and preauthorization protocols that place procedural and substantive barriers to obtaining care for chronic and emerging conditions.
- Impaired quality of care from a system that requires health professionals to take into account multiple non-medical considerations in approving or denying requested interventions, including whether an individual is likely to be deported in the near future.

Detention health care must promote detainee health, not rapid deportation. Numerous high-profile cases over the past several years demonstrate the urgent need to reform immigration detention health care to focus on conserving or restoring health, instead of merely maintaining a noncitizen in a fit state to be deported. Detainees who have endured needless suffering through the current system's "treat for deportation" philosophy include Hiu Lui Ng, who was accused of faking illness, refused a wheelchair, and dragged to a

vehicle in shackles as he deteriorated rapidly from terminal cancer that attacked his back and spine.

A number of families have even lost loved ones to avoidable deaths through this system, including the family of Francisco Castaneda, a Salvadoran detainee whose cancer could have been found and treated a year sooner if detention health officials had responded to providers' orders for a biopsy.

Alternatives to detention should be the rule, not the exception. PHR's report *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers* (2003), <http://physiciansforhumanrights.org/library/documents/reports/report-perstoprison-2003.pdf>, found that the mental and physical health of asylum seekers progressively declined the longer they were in detention. Particularly vulnerable people suffer acutely in an environment that is designed for a punitive purpose. In recognition of this fact, survivors of persecution and torture must not be subjected to detention in prison-like facilities unless they present an articulable danger to public safety and security.

US law must focus on protection of the most vulnerable. In the three decades since enactment of the Refugee Act of 1980, US policy toward immigrant survivors of human rights abuses has suffered serious erosion. PHR believes that:

Particularly vulnerable individuals should not be excluded from applying for asylum by procedural bars. The one-year deadline for applying for asylum after entering the US unjustly prevents legitimate asylum seekers from obtaining the protection to which they are entitled. A large number of noncitizens who miss the one-year application deadline do so because of after-effects of the trauma that caused them to flee to the US in the first place. Many others who miss the deadline are unaware of their ability to petition for asylum – a particular problem among LGBT applicants – or receive bad advice from unlicensed immigration law advisors.

Victims of violence should not be treated as perpetrators by operation of US law. The gradual expansion of anti-terrorism law since the 1990s has resulted in thousands of asylum seekers being at risk of exclusion from US protections, even when no rational person would deem the particular individual to be a terrorist. Applications for US protection that are currently “on hold” due to allegations that a person supported terrorists include the matter of a Colombian doctor who, on one occasion, treated three wounded guerillas brought to the emergency room where he was on duty. Thereafter he was threatened by rebels at gunpoint for having complied with a law requiring him to report suspicious injuries to the government. Forced to flee to the US for his safety, his asylum claim may be barred due to the overly-broad application of material support exclusion provisions.

PHR Supports the Refugee Protection Act's Restoration of Human Rights Principles to US law. Human rights principles affirmed in both US domestic law and treaties to which the US has adhered direct that:

- Persons with a well-founded fear of future persecution or torture may not be endangered by forcible return;
- Individuals may not be arbitrarily incarcerated; and
- Detained individuals must be treated humanely and with respect for their dignity.

In addition, the UN High Commissioner for Refugees has declared in Guidelines for implementation of the Refugee Convention and Protocol that,

Where there are monitoring mechanisms which can be employed as viable alternatives to detention, (such as reporting obligations or guarantor requirements) ... these should be applied first [before detention] unless there is evidence to suggest that such an alternative will not be effective in the individual case.

PHR supports the Refugee Protection Act because it would effect faithful implementation of these human rights obligations of the US.

By eliminating unnecessary bars to obtaining asylum and providing for the possibility of government-provided counsel in the most compelling cases, the Refugee Protection Act would make significant strides in ensuring that the US never violates the central principle of non-refoulement. The Act's expansion of parole and community-based secure release programs will help guarantee that vulnerable survivors of abuses are not unnecessarily or arbitrarily detained while their cases are pending, and that they receive assistance with complying with immigration proceedings that maintains and respects their dignity and humanity. Creation of legally binding detention standards will for the first time meaningfully prevent substandard medical care and other conditions of confinement that have caused the impermissible suffering, and even death, of far too many immigration detainees.

The Refugee Protection Act contains reforms that are essential to ensuring that the US meets its human rights obligations in welcoming, processing, and resettling asylum seekers. PHR urges the Senate to swiftly enact S. 3113.