



**Written Testimony of Bill Frelick
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United States Senate Committee on the Judiciary

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

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Mr. Chairman, we thank you for the opportunity to submit testimony for the hearing on “Renewing America’s Commitment to the Refugee Convention: The Refugee Protection Act of 2010.” We are grateful for your leadership on this issue and applaud you for introducing this important legislation. We are particularly pleased that this hearing is examining the extent to which US law fulfills the US commitment to implement the 1951 Refugee Convention. In our view, and as the following testimony will explain, current US law falls well short of US obligations as a party to the Refugee Protocol, through which the United States has committed itself to implementing the Refugee Convention.

Human Rights Watch endorses The Refugee Protection Act of 2010. The reforms contained within this important piece of legislation will bring the United States closer to upholding its human rights obligations towards asylum seekers, refugees, and other vulnerable non-citizens held in US immigration detention facilities.

Human Rights Watch is one of the world's leading independent organizations dedicated to defending and advancing human rights. Since 1997, we have investigated the treatment of vulnerable non-citizens held in immigration detention facilities throughout the United States, and have advocated for their rights, as well as for the rights of asylum seekers, refugees, and persons fearing return to torture. Our most recent critique of this area of US policy is [“Costly and Unfair: Flaws in US Immigration Detention Policy,”](#) published in May 2010. This is part of our broader mandate to protect the human rights of all people worldwide by working to prevent discrimination, uphold political freedom, to protect people from inhumane conduct in wartime, and to bring offenders to justice. We investigate and expose human rights violations and hold abusers accountable. We challenge governments and those who hold power to end abusive practices and respect international human rights law.

The United States has a justifiably proud tradition of welcoming persons fleeing persecution and other vulnerable immigrants—a tradition that has been marred by some serious gaps and overly restrictive provisions in US law. This bill offers essential reforms aligned with that tradition, and with upholding standards of fair treatment for all.

Without prejudice to the merits of other provisions of this important legislation, in this testimony, we would like to highlight several of the bill's provisions that address problems that have been of particular concern to Human Rights Watch.

Sec. 6: Effective Adjudication of Proceedings

In our view, the single greatest flaw in the US system with respect to refugee protection is the lack of a right to appointed counsel to indigent people who are faced with removal to their countries of origin in cases where they claim a fear of persecution or torture upon return. Academic studies have shown that only one in three affirmative asylum applicants has a legal representative and that asylum seekers referred through the affirmative process to immigration courts are six times more likely to be granted asylum if they have legal representation.¹ While the Refugee Protection Act of 2010 does not address this problem squarely, it does ameliorate this gap in protection by providing for the appointment of counsel in cases where the Attorney General determines that the fairness and accuracy of immigration and asylum hearings and results would be advanced by the appointment of counsel. While we would prefer a bill that would include a right of appointed counsel to all people faced with removal who are seeking asylum or other forms of protection, we are pleased that the Refugee Protection Act of 2010 advances this right considerably by providing appointed counsel for non-citizens who are at a particular disadvantage in presenting claims and asserting their rights, such as unaccompanied children and people with mental disabilities and mental illness. Human Rights Watch is currently researching the impact of mental disability and mental illness on the right to seek and enjoy asylum from persecution and shortcomings in the US system's ability to process these claims, and we anticipate being able to provide this Committee with our findings on this important matter later this year.

Sec. 3: Elimination of Arbitrary Time Limits on Asylum Applications

We particularly welcome the provision in the Refugee Protection Act of 2010 that would eliminate the one-year deadline on filing asylum applications. The bar to asylum for applicants who fail to lodge a claim within one year of arriving has resulted in asylum officers referring would-be asylum applicants directly to immigration court for removal proceedings without first considering the merits of their claims. The law makes exceptions to the filing deadline in cases of changed country conditions that would materially affect the asylum claim or extraordinary circumstances that prevented the timely filing of a claim. Such exceptions do not take into account the time it takes asylum seekers to gain sufficient understanding and confidence in the asylum system to come forward and to find free or low-cost legal representation.

From an international human rights perspective, the US one-year filing deadline is particularly problematic. Unlike nearly all other jurisdictions worldwide, which bar the return of **refugees** to places where their lives or freedom would be threatened, the nonrefoulement (or "withholding") provision of US immigration law (INA 241(b)(3)(A)) bars the removal of **"an alien"** to a country where his or her life or freedom would be threatened. The withholding standard in current US law is that

the threat to life or freedom must be more likely than not. By contrast, Article 33 of the Refugee Convention specifically bars the return of “a refugee,” which it defines as a person with a well-founded fear of being persecuted. US law applies the word and definition of “refugee” only to people who are granted the benefit of asylum or who are admitted to the United States as resettled refugees, but not to those protected under the withholding standard. This difference in language is a difference of life or death for refugees. It means that the United States permits refoulement, or returning refugees to persecution, who do not file paperwork before the one-year deadline and cannot meet the “more likely than not” withholding standard. The United States should not fail refugees, and its treaty obligations, for such arbitrary reasons. The reform in the Refugee Protection Act of 2010, while not going as far as we would like by bringing US law into conformity with the Refugee Convention, nevertheless would restore crucial protection to refugees who might otherwise face persecution simply for having missed a filing deadline.

Sec. 23: Protection for Aliens Interdicted at Sea

Related to the failure in US law to fully protect refugees from nonrefoulement, we welcome the provision in the Refugee Protection Act of 2010 that would create a uniform screening procedure for interdicted boat migrants, and, particularly that this provision uses the “well-founded fear” standard rather than “life or freedom would be threatened” standard for deciding who should not be returned. Current law permits the US Coast Guard to return refugees to persecution, in violation of Article 33 of the Refugee Convention. This provision would not only eliminate the current practice of nationality-based discrimination in the standards applied to Cubans versus Haitians and other nationalities, but would also prevent the extraterritorial refoulement of refugees who do not meet the standard that they more likely than not would face threats to their life or freedom if returned, despite having a well-founded fear of persecution upon return.

Sec. 14: Lawful Permanent Resident Status of Refugees and Asylum Seekers Granted Asylum

Human Rights Watch welcomes the provision in the Refugee Protection Act of 2010 that would allow refugees and asylees to become lawful permanent residents when they receive a grant of refugee or asylee status, rather than being required to wait for one year. Our December 2009 report, [“Jailing Refugees: Arbitrary Detention of Refugees in the US Who Fail to Adjust to Permanent Resident Status,”](#) documented the tragic and bizarre US practice of throwing into jail refugees who the US government had brought to this country in order to protect because they had failed to adjust to lawful permanent resident status (LPR) after one year. Although the law is not applied uniformly, ICE interprets section 209(a) of the Immigration and Nationality Act as mandating detention of all refugees who have been in the US for 12 months who have not filed to adjust their status, until they have filed for adjustment and their applications have been adjudicated. In Arizona, where Human Rights Watch conducted most of its interviews, refugees were sometimes detained for several months in remote, desert locations, and in some cases for longer than a year, without being formally charged with any legal offense.

The majority of resettled refugees interviewed by Human Rights Watch said that before their detention, they were unaware that they were required to file for adjustment of status. Most believed that filing for adjustment of status was optional, and were unaware of any potential legal repercussions for failure to file after one year. We encountered one such refugee, Joseph Kamara (we have changed his name to protect his identity), at the Pinal County Jail in Arizona. “My whole childhood was war,” he told us. Joseph was born in Liberia. When he was nine years old he watched as “my mother was raped, my uncle was beheaded before me.” In 2001, the US government, to its great credit, resettled Joseph in Oakland, California. Joseph wasn’t aware of the requirement to adjust to LPR status or the consequences for failure to do so. “I thought I had a good status,” he said. We witnessed the re-traumatization of this refugee in an Arizona jail. “You claim you are saving me from a war,” he said. “Ten in a cell and we uses one toilet. That alone is really stressful for me.” Although only a small number of refugees are jailed for this purpose, and the number appears to have decreased under the Obama administration, the detentions continue to be selective and arbitrary, and therefore a violation of international human rights law. We applaud you, Mr. Chairman, for providing a fix to this mindlessly bureaucratic policy that unnecessarily traumatizes refugees and their families, not to mention wasting the government’s resources.

In “Jailing Refugees” we urged the US Congress to grant legal permanent residence to all recognized refugees in the US, given that their cases have already been considered in depth as part of the asylum or refugee resettlement process. Some might argue that the current law should remain unchanged because it gives US immigration authorities an opportunity to examine refugees after one year to see if they should be removed because of criminal behavior. We believe this concern is misplaced. Providing LPR status to refugees upon admission would still allow US immigration authorities to put criminals into removal proceedings. Under existing law, US immigration authorities have ample grounds for initiating removal proceedings against lawful permanent residents convicted of crimes and for detaining them during those proceedings.

Sec. 10: Conditions of Detention

We welcome the provision in the Refugee Protection Act of 2010 that would define the requirements for medical screening and treatment of detainees with medical needs. We documented this need in our March 2009 report, “[Detained and Dismissed: Women’s Struggles to Obtain Health Care in United States Immigration Detention.](#)” Abuses found in that report ranged from delays in medical treatment and testing in cases where symptoms indicated that women’s lives and well-being could be at risk, to the shackling of pregnant women during transport, to systematic failures in providing routine care.

Certain themes arose again and again in our interviews with women in US immigration detention. They did not have accurate information about available health services. Care and treatment were often delayed and sometimes denied. Confidentiality of medical information was often breached. Women had trouble directly accessing facility health clinics and persuading security guards that

they needed medical attention. Interpreters were not always available during exams. Security guards were sometimes inside exam rooms, invading privacy and encroaching on the patient-provider relationship. Some women feared retaliation or negative consequences to their immigration cases if they sought care. A few were not given the option to refuse medication or received other inappropriate treatment. Full medical records were not available when the detained women were transferred or released. Written complaints about medical care through facility grievance procedures went ignored. The list goes on. We welcome your attention to rectifying these grievous breaches in medical screening and treatment for immigration detainees.

We also commend you, Mr. Chairman for introducing some reasonable checks on ICE's currently unfettered discretion to transfer immigrant detainees far away from their attorneys, witnesses, and evidence, and family members. Our December 2009 report, "[Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States](#)," documents the deleterious impact of transfers to remote locations on detainees rights, particularly the disruption of attorney-client relationships and separation from families and communities of support. As we reported in "Locked Up Far Away," an attorney who represents immigrant detainees said:

The transfers are devastating—absolutely devastating. [The detainees] are loaded onto a plane in the middle of the night. They have no idea where they are, no idea what [US] state they are in. I cannot overemphasize the psychological trauma to these people. What it does to their family members cannot be fully captured either. I have taken calls from seriously hysterical family members—incredibly traumatized people—sobbing on the phone, crying out, "I don't know where my son or husband is!"²

As our research has shown, 1.4 million detainee transfers have occurred between 1999 and 2008—revealing the widespread nature of this problem, which infringes upon immigrants' fundamental right to a fair trial in immigration court.

Sec. 11: Timely Notice of Immigration Charges

The provision in the Refugee Protection Act of 2010 that would require that the notice to appear, the charging document used in immigration proceedings, is filed in the court nearest to the location in which a non-citizen is apprehended by ICE, would help to establish fair trial standards in immigration court and curb the problem of detainees being transferred far away from attorneys, key witnesses, and evidence in their cases.

Sec. 4: Protection of Victims of Terrorism from Being Defined as Terrorists

Finally, Human Rights Watch wishes to voice our support for the provisions in the Refugee Protection Act of 2010 that would address the overly broad inadmissibility grounds under current law relating to material support for broadly defined terrorist activities. We note that this legislation would retain

existing bars on admission of people who the US has reasonable grounds for regarding as a danger to the United States, including all the other grounds of inadmissibility in INA 212(a)(3)(B). We are pleased that the Refugee Protection Act of 2010 would create an exception to the material support bar for cases in which the activities were a result of coercion, and we support the bill's elimination of the Tier III category of terrorist group. This change will prevent innocent people, often the victims of terrorism themselves, from being wrongly branded as terrorists and denied admission and other essential protections. Given that the Tier III definition of a terrorist organization includes any group of two or more people, whether organized or not, that engages in broadly defined terrorist activities, it is likely that even US-supported insurgencies (or past insurgencies) in places such as Afghanistan, Iraq, and Burma would be covered. To date, waivers that are intended to prevent a denial of admissibility on material support grounds to refugees deserving of US protection have been piecemeal and insufficient. The law needs to be changed.

¹ Andrew I. Schoenholtz and Jonathan Jacobs, "The State of Asylum: Representation: Ideas for Change," *Georgetown Immigration Law Journal*, vol. 16, summer 2002, p. 739.

² Human Rights Watch interview with Rebecca Schreve, immigration attorney, El Paso, Texas, January 29, 2009, reported in Human Rights Watch, *Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States*, December 2009, <http://www.hrw.org/node/86789>, p. 2.