



# UNHCR

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

**UNHCR**  
**United Nations High Commissioner for Refugees**  
Regional Representation in Washington

1775 K Street NW  
Suite 300  
Washington, DC 20006

Tel: (202) 296 5191  
Fax: (202) 296 5660  
Email: [usawa@unhcr.org](mailto:usawa@unhcr.org)

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The Honorable Patrick Leahy  
Chairman, U.S. Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

**Re: The Refugee Protection Act of 2010 (S. 3113)**

Dear Senator Leahy:

I am writing to commend your initiative in introducing the Refugee Protection Act of 2010, which if enacted would positively affect asylum-seekers, refugees and stateless individuals. The Office of the United Nations High Commissioner for Refugees (UNHCR) supports this legislative proposal and its goal of enhancing the consistency of United States law with international standards of protection for asylum-seekers, refugees and stateless individuals.

As you are aware, UNHCR is formally mandated by the United Nations General Assembly to ensure international protection to refugees, asylum-seekers and other persons of concern and to assist governments in identifying and implementing durable solutions on their behalf.

<sup>1</sup> UNHCR shares its support of the Refugee Protection Act of 2010 in the exercise of its supervisory responsibility as provided in Article II of the 1967 Protocol relating to the Status of Refugees ("1967 Protocol") to which the United States is a party. UNHCR's supervisory duties include advising governments on legislation and providing technical input into draft language affecting refugees and asylum-seekers. UNHCR is also mandated by the United Nations General Assembly to prevent and reduce statelessness around the world.

UNHCR is pleased that the legislation specifically addresses several issues affecting the adjudications of asylum claims that have long been of concern to UNHCR. For example, the Act would eliminate the arbitrary one-year bar for filing an asylum application, which has served as an unnecessary impediment to individuals receiving full protection when they clearly meet the refugee definition. It also provides clear guidance on application of several elements of the refugee definition. In particular, it clarifies the requirements for establishing asylum eligibility on the ground of "membership in a particular social group," which has recently been interpreted in a manner that is inconsistent with the language and intent of the 1951 Refugee Convention and 1967 Protocol, to more fully ensure that those whose fear of harm is based on a fundamental or immutable characteristic are protected.

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<sup>1</sup> Statute of the Office of the United Nations High Commissioner for Refugees, U.N.Doc. A/RES/428(V), Annex, PP1, 6 (1950).

The Act also authorizes government-appointed counsel in some cases, which is essential to an asylum-seeker's ability to effectively present a claim. The legislation extends the benefit of first instance, non-adversarial adjudications by asylum officers to all asylum-seekers who demonstrate a credible fear of persecution or torture and to all children seeking asylum. In UNHCR's view, non-adversarial proceedings are a more appropriate and effective means of assessing asylum and refugee claims.

The Act also includes several provisions regarding the detention of asylum seekers, a practice that is particularly concerning to UNHCR. Under international standards, asylum-seekers should not be detained unless absolutely necessary and for a minimum period, given the negative psychological effects and the impact on an asylum-seeker's ability to fully access the asylum adjudications process. We are pleased that the Department of Homeland Security (DHS) has committed to a comprehensive detention reform process, and view this legislation as complementary to that effort. For instance, the legislation provides for independent Immigration Judge review of any decision to detain an asylum-seeker who has met the credible fear standard. It also requires DHS to create a broad range of alternatives to detention programs, including referrals to community-based programs that are more appropriate for many asylum-seekers.

With regard to asylum-seekers who are subject to expedited removal, the Act contains a provision to ensure that the asylum safeguards are more fully implemented by requiring the recording of secondary inspection interviews. This safeguard provides critical protection against erroneous removals of refugees to persecution.

The Act includes several provisions designed to enhance family reunification and integration for asylum-seekers and refugees into the United States leading to increased stability for them and their families. For example, if these provisions are enacted, refugees and asylum-seekers may obtain lawful permanent resident status more quickly. The Act also improves the current law by ensuring that a child can accompany his or her parent when that parent is benefiting from the following to join process. It further protects refugee and asylum-seeking children by providing enhanced guidance on the treatment of orphaned and separated refugee children.

Finally, the Act includes the first comprehensive solution for *de jure* stateless individuals in the United States. By offering a permanent lawful status to stateless individuals with the opportunity to gain citizenship, they can travel outside of the United States to visit loved ones, they will no longer face onerous reporting requirements, and they will no longer fear prolonged detention while the U.S. government tries to find a country willing to take them.

Thank you again for your commitment to refugees, asylum-seekers and stateless individuals. Please let me know if my office can provide any assistance in your efforts to secure passage of this important legislation.

Sincerely,



Michel Gabaudan  
Regional Representative