

The Leahy-Coleman Amendment to Support Vulnerable Refugees *What It Does and Why It Is Needed*

(1) What is the problem?

The resettlement of thousands of vulnerable refugees is in jeopardy because of language in the Immigration and Nationality Act that bars admission to anyone who has associated with or provided “material support” to any armed group. This is true even if the group is not a designated terrorist organization and even if the refugee was forced at gunpoint to provide the support.

Of particular concern is the fate of approximately 10,000 Burmese refugees scheduled to be resettled to the United States. These are refugees that have suffered brutal persecution at the hands of the ruling Burmese government – a government that the United States does not support. Yet, many of these refugees have associated with or provided some sort of “material support” – often in the form of water or rice – to the U.S.-supported, pro-democracy groups operating along the border. Because these groups fall within the overbroad definition of “terrorist organization,” the refugees’ support of these movements is being used to deny their admission.

Hundreds of vulnerable Colombian refugees are also being impacted. These are refugees who were forced, under threat to their own lives or their children’s lives, to provide money, food, or shelter to members of the Revolutionary Armed Forces of Colombia (FARC). The law makes no exception for material support provided under duress, and, as a result, their resettlement to the United States has been put on hold.

Supporters of pro-democracy movements in Cuba, West Africans who have been terrorized by rebel groups in Liberia, Hmong, Vietnamese Montagnards, and Sudanese are also currently being denied admission to the United States because of this bar.

(2) How can this be fixed?

The Leahy-Coleman Amendment includes two simple provisions that would prevent these unintended consequences.

- **A Certification Requirement: Ensuring a Consistent Foreign Policy and Immigration Policy**

The law includes a catch-all definition of “terrorist organization” that is defined as any group of two or more people who bear arms with the intent to endanger the safety of any “individual.” The definition is so broad as to encompass members of the Northern Alliance who fought alongside the United States and those

associated with the African National Congress during the fight against apartheid in South Africa. In fact, any time U.S. forces enter another country involuntarily, they are deemed a “terrorist organization” under this law.

The Leahy-Coleman Amendment solves this problem by adding a requirement that the Secretary of State certify which groups fall within this catch-all category of “terrorist organization.” The certification can be done internally, ad hoc, and not be formally published, as required for the designated foreign terrorist organizations, thereby ensuring maximum flexibility to respond to fast-developing cells on the ground. Such a certification provision would protect groups that the United States supports – such as the pro-democracy Burmese and Cuban movements - from inadvertently falling within an overbroad definition of “terrorist organization.”

- **An exception for “material support” that is forced or coerced.**

The law does not make any exception for refugees who provide support to “terrorist organizations” against their will, even though they may be forced to do at gunpoint or knifepoint. As a result, the facts that form a refugee’s well-founded fear of persecution are the very same facts that are used to deny refugees asylum in the United States.

The involuntariness exception to the material support bar included in the Leahy-Coleman Amendment would cure this problem. It would protect Liberian women whose resettlement is currently on hold for providing “support” in the form of shelter and household services to rebel groups that held them hostage in their own homes, gang-raped them, and forced them into domestic servitude. It would also protect the Colombians and Sudanese who have been terrorized into providing food or other household goods to armed rebels.

Notably, there is precedent for this type of exception in another part of the statute. Another part of the statute that bars members of totalitarian and communist regimes from entering the United States yet includes an exception for “involuntary membership.”

- (3) *Why is an amendment needed? Doesn’t the administration have the authority to waive the application of the law?*

The administration does have the authority to waive the application of the law but it has never used this power. In fact, members of the administration have been in negotiations for almost a year about the application of a waiver, but have not yet reached a consensus as to how – or what – waiver to apply.

It is unclear exactly why the administration has been unable to reach a resolution. One possible explanation is that the waiver provision requires the Secretaries of State and Homeland Security to provide a report to Congress detailing every

instance in which the administration has applied the waiver. The administration may be concerned that Congress will react negatively if the administration reports that it is applying this waiver for thousands of individuals.

In addition, the waiver authority is not available to members – as opposed to supporters – of the broadly-defined “terrorist organizations.” That means that, even if it wanted to, the United States could not waive in members of the pro-democracy movements in Cuba or Burma, or any of the Montagnards who joined the forces fighting alongside the United States in the Vietnam War.

(4) Why not just expand the waiver?

The administration’s difficulty in deciding whether and how to apply the waiver has resulted in inaction. There is no reason to believe that an expanded waiver would be any easier to implement.

Even if the United States does decide to apply the waiver in limited circumstances, this does not solve the problems created by the incongruities between U.S. immigration policy and foreign policy. There is something disturbing about defining groups supported by the United States as “terrorist organizations” under the immigration law.

Moreover, a waiver is an inadequate protection for asylum seekers who would otherwise be sent back to the persecution they fled. Under the current law, individuals who were forced to provide “material support” under threat of death or serious bodily injury are denied asylum status and at risk of being returned to the source of the persecution absent the application of a discretionary waiver of the bar. Protecting asylum seekers from return to persecution should not be decided on the basis of an unreviewable discretionary waiver.

(5) Why is an immediate fix needed?

Each fiscal year, Congress allocates a certain number of slots, broken down by region, for refugees to be admitted into the United States for the fiscal year. For the past several years, the United States has allocated 65,000 to 70,000 slots for refugees. This fiscal year, Congress allocated 70,000 slots.

If the refugees’ feet are not on U.S. soil by September 30, the end of the fiscal year, their slots will disappear.

The best estimate suggests that without some sort of fix the United States will admit 10,000 to 20,000 fewer refugees than otherwise expected for this year.

(6) Why can’t we wait and see if the administration applies a waiver?

- There is a considerable amount of lag time between when the government decides to start processing a refugee and when the refugee actually arrives in the United States. Because of the long time it takes to complete the processing of each refugee, the fix needs to be implemented as soon as possible to avoid a significant shortfall in the number of refugees admitted this year.
- There is a danger that the United States will lose its access to the Burmese refugees in Thailand if there is not a resolution soon. Thailand only just started granting United States meaningful access to the refugee camps in Thailand over the last two years. Access was largely based on U.S.'s promise that it would begin resettling a number of the refugees living there. Officials in the State Department are worried that Thailand may begin blocking access if this problem is not soon resolved.
- There are also growing threats to the safety of refugees awaiting resettlement in Thailand and elsewhere. Local media are now beginning to report that refugees are being denied access to the United States because they are deemed to be "terrorists." Previously, neither the refugees nor the local population knew of the grounds for any delay in resettlement. UNHCR believes that refugees' safety may become endangered as this information spreads.

(7) Who else – other than refugees - is being affected by this law?

- Persons in the United States who are seeking asylum status are being impacted by this bar. Currently, there are more than 500 reported cases on hold at the Asylum Office in the Department of Homeland Security because of this bar, while an unknown number of other asylum claims before the immigration courts have also been rejected because of this bar.
- The bar impacts the ability of an individual to adjust his or her status from refugee to legal permanent resident.
- The bar can be used to preclude a finding of “good moral character” which is a prerequisite for naturalization. This could potentially impact U.S. soldiers that fought in Afghanistan or Iraq who are green card holders and are now trying to naturalize.
- The bar can also be used as a basis for deportation.

(8) Will the involuntariness exception hurt the Department of Justice’s ability to deport individuals who have connections to terrorism?

No. It is inconceivable that an involuntariness exception to the material support provision would ever prevent DOJ from deporting someone for whom there were

legitimate grounds to deport. This is because the Immigration and Nationality Act give DHS and DOJ a wide range of grounds for deportation, including separate security, criminal law, and foreign policy grounds, many of which are easier to invoke. In fact, the material support bar has never been used as the primary bar for deportation in any published case.

Moreover, the exception places the burden of proof on the alien to establish involuntariness, which will be very hard for the alien to meet. If the alien was truly forced to provide support at gunpoint, and that's the only basis for the deportation proceedings, then the alien should prevail.