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Punishing the Persecuted

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The United States is mired in a bitter conflict in Iraq while facing an increasingly hostile world. It is unclear if the U.S. government has ever been less popular, even among traditional allies.

Yet America does have friends abroad. People who still view the U.S. as a beacon of liberty and opportunity. People who so love this nation that they want to live here and become citizens.

But they can't. Because they fought with America against America's enemies.

Strange? Yes, but nevertheless true. There are thousands, indeed tens of thousands, of people around the globe, victims of horrid oppression who have fought for their own liberation, sometimes alongside U.S. forces, who today are considered to be terrorists or supporters of terrorists, and thus cannot settle in America.

Welcome to Washington, D.C., and the Kafkaesque world of the PATRIOT and Real ID Acts, as interpreted by the federal bureaucracy.

IT HAS LONG BEEN EVIDENT that Uncle Sam lives in a bubble, largely isolated from reality. Nonsensical decisions are not just common; they are to be expected. Three years ago, for instance, the Board of Immigration Appeals rejected an asylum claim by a Chinese Christian who had been arrested, beaten, tortured, and humiliated. The reason: he violated the Chinese government's "legitimate" restrictions on religious activity. Under pressure the Bush administration vacated the decision. Just another day in Washington.

The events of September 11 made evident to all the importance of monitoring those who enter America. Congress enacted in haste a bill drafted in haste by the Bush administration. Refugee status was to be denied to anyone who provided "material support" for "terrorists." Alas, people in Washington write and interpret the law very differently than would normal people.

First, terrorist groups include anyone who opposes a legally recognized government. That is, under current U.S. law any French or Spanish citizens who aided the American Revolution would be barred from coming to America. None of them are still alive, of course, which thankfully spares us yet another embarrassment.

But many Hmong and Montagnards are still alive, and they now cannot settle in the U.S. because they fought with America against the Communist governments of Laos and Vietnam. Similarly situated are Cubans who have opposed the Castro regime, under sanction by the U.S. government for nearly five decades; Afghans who fought the Taliban, defenestrated with U.S. support; and Iraqis who resisted the very government which America ousted militarily. Indeed, Michael Horowitz of the Hudson Institute points out that the law bars entry to any Jew who was living in the Warsaw Ghetto and who fought the

Nazis while U.S. forces were battling the Wehrmacht.

Under a similar interdict are members of the ethnic groups Chin, Karen, and Karenni, which have spent the last half century battling against Burma's central government. The U.S. currently imposes sanctions against the odious military regime in Rangoon, but anyone who takes up arms, or helps those who take up arms, against the junta is considered to be an anti-American terrorist.

Second, "material support" includes incidental aid to individuals as well as help provided under duress. It doesn't matter if you exhibit a moment of minor kindness to a soldier passing by or have been kidnapped and forced to work: if you "assist" terrorists, you become a terrorist equivalent yourself.

It's estimated that 10,000 people were denied entry last year because of these provisions. The following are just a few people rejected as refugees (or previously accepted as refugees but now denied green cards for work) because they were found to provide material aid to terrorists:

- * A 16-year-old Colombian boy whose family was slaughtered by right-wing paramilitaries and who was later forced to dig graves for murdered captives;
- * A Liberian woman whose father was killed and whose home was occupied by rebels. She was raped--and then forced to cook for her persecutors and to wash their clothes;
- * A Cuban opponent of Castro who fought in the U.S.- supported Bay of Pigs invasion;
- * A Colombian woman whose husband was murdered and whose life was threatened by militia forces after she gave a glass of water to an armed communist guerrilla who invaded her farm.

What does the administration say? Not much. The State Department has used its waiver power twice, for Karen refugees outside of America. Weirdly (but then, perhaps that is to be expected in this case), the administration has not applied the same waiver to Burmese escapees who've already made it to America.

Paul Rosenzweig, assistant secretary of homeland security, opined: "I will completely own up to wishing we had done more, but it's a big department." Well, now, that's a good excuse for treating people as anti-American terrorists who have fought for the U.S., backed American goals, and opposed foreign oppression. "It's a difficult problem," he continued. "It isn't as easy as some might wish to balance the security risks that come with this and the humanitarian impulse."

Eh?

What is the likelihood that ethnic Chin, Karen, and Karenni who have fought for years against the Rangoon junta will start, oh, bombing American shopping centers if granted asylum? How likely are Colombian widows and orphans to plot an attack on, say, the Sears Tower? Who expects Hmong, Montagnards, and Tamils to band together and create a new

organization determined to, for instance, shoot down American airliners?

Legitimate concern over terrorism cannot justify a policy that does little to catch real terrorists while creating enormous personal hardship and besmirching America's reputation. Surely Washington is capable of drafting rules that target genuine terrorists and those who provide them with real assistance.

Frustration with the administration transcends ideological lines. Analysts with Human Rights Watch, Heritage Foundation, Refugee Council USA, Liberty Coalition, Christian Freedom International, and several other groups have come together on the issue; conservative leaders including Gary Bauer of American Values and David Keene of the American Conservative Union have added their voices to figures on the left.

Under pressure, the administration has offered to more freely grant waivers, including to eight groups opposing anti-American regimes as well as some people acting under duress. It's a positive step, but it doesn't go nearly far enough.

The basic problem is statutory. The law is overbroad and will cause problems even for the best-intentioned regulators. Moreover, years of maladministration suggest that the best-intentioned regulators have not yet been found. The administration's change of heart might be genuine, but its promises cannot be taken on trust. Indeed, despite the latest concessions, Bush officials still don't appear to really "get it." For instance, Rosenzweig objects to allowing duress as a defense: "We should encourage people to oppose terrorist organizations wherever they are." Huh? As in, a woman who has been raped should, oh, "just say no" when her captors demand that she wash their clothes? That a kid whose parents have been murdered should, oh, tell the guerrillas to "stuff it" when they demand that he dig graves? Rosenzweig's attitude demonstrates why statutory reform is essential.

Remedial legislation has been proposed that would streamline the process to clarify which groups are terrorist, protect victims of coercion, and provide increased administrative discretion. Apparently receptive is Senate Judiciary Committee Chairman Patrick J. Leahy (D-Vt.), who has previously criticized the law. This is a cause that both Democrats and Republicans should embrace.

Protecting America from terrorist attacks is an imperative duty for the federal government. It is reasonable, then, to closely scrutinize would-be refugees.

But it makes no sense to treat people who love America, indeed, who are among the most pro-American on earth, as terrorists. Rosenzweig complains that "the conundrum is that this law applies to both" refugees and dangerous people, "and the process of sorting them out is not as easy as waving a magic wand."

No, but doing so is a lot easier than the administration seems to think. It's time for Congress to fix the law. Then the administration, any administration, will be able to rely on common sense instead of a magic wand.

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