

Refugee Or Terrorist?

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When Abdihakim was nine, Somalia's longtime military dictator, Mohamed Siad Barre, fled the country—plunging it into a civil war that uprooted millions and rages to this day. Abdihakim's family spent the following years on the run, fleeing the roving armed militias that would attack, loot and burn down their homes, beat the men, and rape or abduct the women.

At age 17, Abdihakim was abducted by militiamen and taken as a slave to a banana plantation. His troubles were compounded because Abdihakim—from a minority clan—has a hearing loss and a speech impediment. An easy target, Abdihakim was forced to mimic animals and dance for his captors. He watched a fellow captive who had tried to escape shot to death as a warning.

Abdihakim escaped during a gun battle between his captors and rival militias. He made his way to Mogadishu and months later to Cairo, where he applied for refugee status at the office of the United Nations High Commissioner for Refugees. The UNHCR granted him refugee status and he was referred for resettlement.

Inadmissible

Abdihakim hoped that he, like many other Somalis displaced by war, could resettle in the United States. But those dreams were crushed when—on the basis of a single, brief interview—he was rejected as inadmissible to the United States on terrorism-related grounds. He had provided “material support” to terrorists—his captors. That he was a minor and enslaved had no effect on the U.S. decision.

The technical basis for Abdihakim's rejection were amendments to the Immigration and Nationality Act—amendments contained in the USA PATRIOT Act of 2001 and REAL ID Act of 2005. These two laws dramatically broadened the grounds for denying resettlement or asylum because of “material support” for terror groups.

The USA PATRIOT Act broadened the definition of a terror group beyond those designated under the immigration statute or through publication in the Federal Register. Rather, an organization is deemed to be a “terrorist organization” if it engages in “terrorist activity.” This is a broad concept which includes any use or attempt or conspiracy to use a weapon or “dangerous device” with the intent to endanger, directly or indirectly, the safety of one or more individuals, or to cause substantial damage to property, for any motive other than “mere personal monetary gain.”

The REAL ID Act greatly expanded the definition of “non-designated” terrorist organizations to include a “group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in any form of terrorist activity.” This creation of what are being referred to as “third tier” terrorist “organizations”—organizations that need not be recognized by any particular name or be listed on a terrorist list—is particularly onerous for individuals like Abdihakim, who come from countries where various armed militias—some U.S.-backed—compete for resources and power.

Material support includes not only providing arms or funds to such groups, but also providing a “safe house, transportation, communications, or false documentation.” U.S. courts have held that “material support” also includes other types of support not enumerated in the statute—including food or services. The law does not provide for waivers based on duress, age of consent, statute of limitations, or *de minimus* support.

A Sea Of Refusals

Abdihakim's case, of course, is not unique. Though exact statistics are nearly impossible to come by, it is clear that tens of thousands of refugees and asylum seekers—who are victims of terror—are being impacted by the “material

support bar,” as detailed in a report by Human Rights First. Another affected is a Liberian woman who was gang-raped and held hostage by a violent rebel group; her settlement has been placed on hold based on the determination that the cooking and washing the rebels forced her to perform constituted “material support” to a terrorist group. A fisherman from Sri Lanka who was abducted by the Tamil Tigers and forced to pay his own ransom has been barred. And, according to a report completed by the Human Rights Institute at Georgetown University Law Center, the “material support bar” has nearly brought to a halt the U.S. admissions program for Colombian refugees, many of whom are forced to pay a *vacuna* (a war tax) to guerrilla groups in order to avoid kidnapping, torture or death. Ironically, the billions of dollars of foreign aid the U.S. government provides to the Colombian government in the name of an unending and elusive war on drugs only continues to fuel the civil unrest and violence.

The United States ought to stand by the vulnerable victims of terrorism. Instead refugees are now also victims of the “war on terror,” bearing the brunt of misguided governmental policies. Following the 9/11 attacks, President Bush issued a moratorium on refugee admissions—the only immigration program it suspended. It was an inconceivable move to penalize a population who languish for years in refugee camps.

This cruel moratorium is in practice unrelated to preventing terrorism: No known terrorist has ever entered the United States through the refugee program, largely because of its stringent screening process, and because the refugee definition itself excludes dangerous individuals.

Politics and Refugees

But the U.S. asylum process has always been beleaguered by politics. Years ago it was Cold War that determined who was accepted and who was rejected. At the height of McCarthyism, the McCarran-Walter Act ensured that those with communist or other unfavorable opinions would be kept out of the United States. This ban included visiting literary figures such as Graham Greene, Gabriel Garcia Marquez, Pablo Neruda, Carlos Fuentes, and Dario Fo.

In 1980 Congress tried to eliminate ideological preferences and set a single main criterion for refugee eligibility: fear of persecution. It passed the Refugee Act, which incorporates the 1951 U.N. Convention definition of a refugee as a person who, due to a well-founded fear of persecution on grounds of religion, race, nationality, political opinion or membership in a particular social group, cannot return to her home country.

But politics continued to intervene in U.S. refugee policy—reaching a peak during the Reagan years. According to the INS, from 1984 to 1990, the government denied 97 percent of Salvadoran and 99 percent of Guatemalan asylum applications, because the U.S. was supporting those governments during their civil wars. At the same time, asylum seekers fleeing countries whose governments the Reagan administration opposed—Nicaragua and Cuba—were granted asylum at significantly higher rates.

The McCarran-Walter Act was effectively eradicated in 1990. But its present day manifestation is Section 411 of the USA PATRIOT Act, under which the government can keep out those who have “used their position of prominence to endorse or espouse terrorist activity.” Using this provision, the U.S. has denied a visa to Tariq Ramadan, a prominent Muslim scholar who had been offered a prestigious chair at Notre Dame University, because he gave money to a Muslim charity.

Against this backdrop, the latest developments are not entirely unexpected. When President Bush lifted the moratorium on refugee admissions on November 21, 2001, he authorized the admission of up to 70,000 refugees for fiscal year 2002-2003, down 12.5 percent from the previous year. However, actual admissions remained and still remain significantly short of the cap. Contributing to the shortfall in admission is the harsh application of the “material support bar.”

There is something that can be done. Congress should amend the current laws to tighten and clarify the overly broad definitions, and permit for waivers in appropriate circumstances. There is a way for the United States to uphold its commitment to international human rights law and prevent the admission of persons who pose a danger to the United States. Our policies should not treat victims of terror, like Abdihakim, as perpetrators of it.