



FEDERATION FOR AMERICAN IMMIGRATION REFORM



Refugee and Asylum Policy Reform

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EXECUTIVE SUMMARY

Refugee and asylum law is overdue for reform. It has strayed far from its original and altruistic intent of offering protection to those who face a credible fear of persecution at the hands of their governments, based on reasons of race, religion, ethnicity, or political belief. That commitment to helping others in distress, that is understood and supported by the public, has been hijacked by political interest groups seeking to advance their own narrow agendas and by non-governmental organizations with lucrative government contracts that pay them to resettle refugees in the United States.

The U.S. refugee program has been expanded to admit persons who were already protected in U.N.-supported refugee camps. The U.S. asylum program has been expanded through judicial advocacy of immigration lawyers who represent asylum claimants. These activists relentlessly seek to expand the definition of asylum to include people who live in failed or dysfunctional nations to the extent that the definition of asylum is now distorted. It now includes people who simply live in nations experiencing social and political turmoil; people who face social ostracism; people in dysfunctional and violent personal or marital relationships; people who live in nations facing environmental degradation or natural disasters; and other circumstances that have little or nothing to do with government repression. All of these people face compelling situations of human misery, but such a broad expansion of the grounds for political asylum could, quite literally, make billions of people around the world eligible for protection in the United States.

Current law puts the United States in the position of admitting the lion's share of all refugees permanently resettled worldwide, and this represents a major misallocation of resources. In addition, the refugee program has been riddled with fraud as foreigners displaced by conflict in their homelands have sought to improve their lot by gaining entry into the United States as refugees. Our humanitarian instincts have made us vulnerable to criminals — and potentially to terrorists — seeking a path into our country.

Our country's asylum law has been expanded by legislation and by court decisions to the extent that it has grown from a small program intended for unusual situations, where the return to a home country would constitute exposure to persecution, to become a major component of immigrant admissions. It too, by the absence of evidentiary standards, is open to fraud by persons who have no other basis for entry as immigrants.

Temporary Protected Status (TPS), adopted in 1990 to deal with the tens of thousands of illegal entrants principally from Central America who fled during revolutionary and counter-revolutionary fighting there, has come to operate as a back door route to permanent residence.

Because of lobbying by both domestic groups and foreign governments, TPS has been consistently renewed long after the end of any justification for such status.

The interest groups that have stretched and distorted these humanitarian programs are attempting to expand them further by expanding both the number of refugee and asylee admissions and creating new loopholes in the law sought by immigration lawyers to benefit their foreign clients.¹

The reforms that are truly needed are ones that provide a more rational allocation of resources in support of refugees and the restoration of an asylum policy to provide protection for the small number of people who would qualify as refugees if they were abroad. That cannot be done without establishing a new, limited, clear cut definition of for whom the benefit is available.

INTRODUCTION

Efforts in Congress to expand our intake of refugees and asylees defy logic. In 2008, the United States accepted nearly three-fourths of the worldwide total of refugees granted permanent resettlement in new countries, and many of those admitted are by persons who are not truly refugees.^{2,3} A thoughtful analysis of U.S. policies suggests that our refugee program is largely a misallocation of resources.

At the same time, the number of asylum grants to aliens who apply at ports of entry or within the United States to avoid deportation has rapidly increased as immigration judges more often give the benefit of doubt to the asylum applicant. A 2010 case federal court ruling implied that any Guatemalan women in the United States might be eligible for asylum because the high level of murders in their country has resulted in more deaths of women than men. The Obama administration has supported granting asylum to victims of domestic or sexual abuse, thereby reversing a longstanding policy of denying asylum to victims of domestic violence abroad.⁴ Some would expand asylum grants much further, as demonstrated in the following editorial comment in the *New York Times* of April 29, 2004.

In an enlightened world, no society would force women to wear burkas against their will, or threaten them with death for daring to talk to a man. Mr. Ashcroft and the Department of Homeland Security should make certain that such persecuted women who flee to the United States have a chance to stay.

The international standard for assistance to refugees is to provide shelter and sustenance to persons as near as possible to the homes they have abandoned in order to facilitate their return home as soon as the civil disturbance or natural disaster has passed and they no longer face danger or the prospect of persecution upon return. Resettlement in other countries should be a

last resort exercised only in situations where it is evident that the circumstances that led to their displacement are unlikely to be remedied within the foreseeable future.

For these reasons most countries channel their humanitarian assistance in support of temporary refugee camps administered by the U.N. High Commissioner for Refugees (UNHCR) rather than in transporting refugees to distant lands for permanent resettlement. Supporting essential services in a refugee camp is much more cost effective and allows for the protection and sustenance of many more people than processing, counseling, and transporting refugees to a new homeland and then providing language and job training as well as rent, medical and other social services for an extended period in the hope that the refugees will become self supporting in their new home.

There are some situations in which the UNHCR recommends individuals or groups for permanent resettlement in other countries. That may happen when a political or racial or religious minority becomes the target for persecution by an entrenched regime. But those cases represent a small minority of refugee situations.

When the influx of refugees fleeing communist repression waned with the collapse of the Soviet Union, the United States shifted the focus of its program and began to increasingly recruit persons not considered by the UNHCR to be in need of permanent resettlement. Under pressure from U.S. refugee resettlement groups to keep up the number of refugee admissions, the number of persons using fraud to enter as refugees began to soar. In addition to the increased evidence of fraud, the program shift has brought an increase in refugees who have encountered greater difficulty in becoming self-sufficient.

For those who get to the United States on their own, asylum is available for those who would likely suffer persecution on account of race, religion, nationality, membership in a particular social group, or political opinion if they had to return to their homeland. Grants of asylum are being steadily expanded by both law and judicial interpretation. A prime example of such expansion is a 1996 law that permits asylum for Chinese claiming persecution or fear of persecution resulting from the Chinese government's one-child family planning policy. Potentially, in a nation of some 1.3 billion people, there are more Chinese eligible for asylum than there are Americans — if they can get themselves smuggled into the United States.⁵

The U.S. government allows Cubans to receive asylum even though experience shows that most are coming for economic opportunity rather than to escape oppression as may be seen in the fact that most Cubans intercepted by the Coast Guard are sent back to Cuba. And judges are increasingly granting asylum to people like President Obama's aunt Zeituni Onyango even though there is no logical case that she would be subject to persecution if she returned to Kenya. She has family members in Kenya who are being treated as celebrities — rather than being persecuted — for their link to Obama.

Americans are generous and caring about the hardship of others. But our humanitarian instincts must be tempered by reality and our resources. The stark reality is that there are billions of people who live under circumstances that are difficult and even dangerous. According to Amnesty International, there are 14.2 million refugees and 24.5 million internally displaced persons in the world.⁶ But, our finite resources compel us to choose wisely who we can help and what form that assistance should take. In the long-run, the failure to acknowledge these realities will harm both this nation and the people around the world who most need our help. Unfortunately, our political leaders, driven by special interest pressures, are promoting refugee and asylum reforms that can only be described as irresponsible.

BACKGROUND

FAIR has long been concerned about the trend in expanding the scope of our refugee and asylum admissions policies. FAIR President Dan Stein urged reform of asylum policies in Congressional testimony May, 2001.⁷ In that testimony he outlined principles that should govern the nation's asylum policy. Those in brief included:

- Asylum should be restored to its original purpose: to provide temporary protection for persons here legally who, as a result of unforeseeable, changed circumstances can no longer return home.
- Asylum seekers should be expected to make a claim for protection at the first available opportunity in the first country of refuge.
- There should be some "State Action" at the core of the claim of persecution.
- Asylum policy should be integrated with refugee policy to create a single, unitary statutory scheme.
- The definition of "membership in a social group" must be defined narrowly enough that it retains some standard beyond the subjective parameters of an imaginative immigration bar.
- Because asylum grants allow an alien to line-jump in front of millions of other people, the grant must be made with circumspection.

Those principles remain key to an asylum policy that both serves the national interest and our obligations under international law. However, the gap between those principles and practice has widened since they were outlined, and proposed changes to the asylum law diverge still further from those principles.

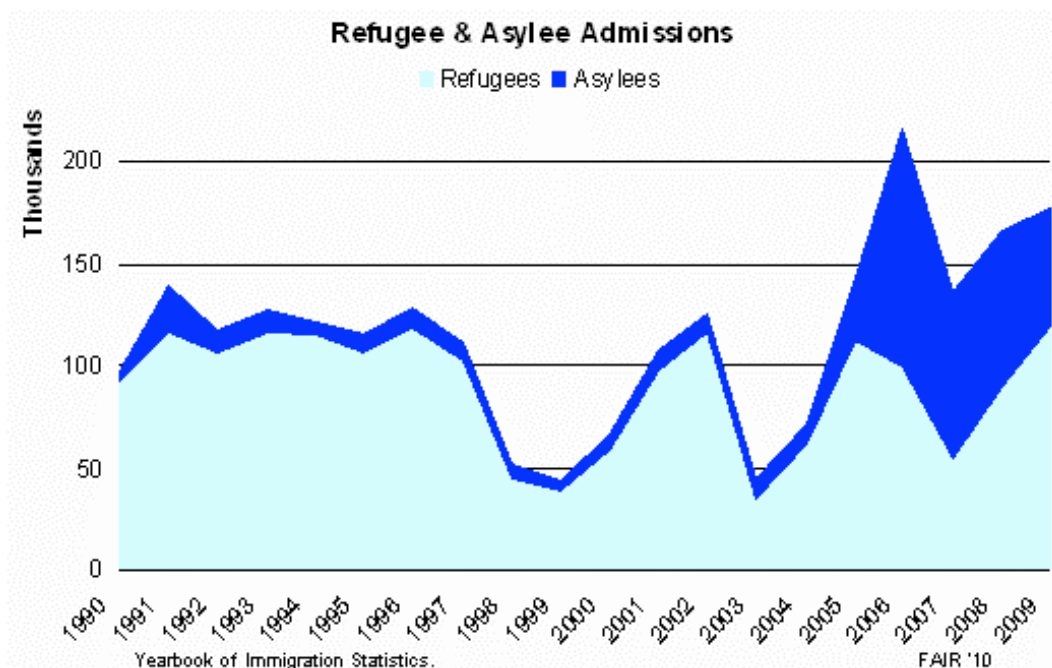
In September 2004, FAIR's president stated to the Immigration Subcommittee of the Senate Judiciary Committee our opposition to a proposed expansion of refugee intake and an expansion of asylum grants. Our position supported a recommendation of the U.S. Commission on

Immigration Reform in 1995 that a permanent ceiling be set on refugee admissions of 50,000 per year except for emergency situations.⁸

In June 2007 FAIR urged officials of the Departments of State, Health and Human Services, and Homeland Security to resist pressure for an expansion of the admission of refugees, "...among whom jihadists have shown an ability to recruit." We warned that the increasing evidence of assimilation problems and cultural clashes can jeopardize the American public's generous spirit in accepting refugees.⁹

The composition of both the refugee and asylum admissions programs has undergone a major change over the past decades. What was once a program to rescue persons fleeing communist oppression, including persons who fought beside U.S. troops and their family members has become a program to accommodate designer categories of 'at risk' populations. One major exception to that generalization is the continued mindless intake of Cubans as if the Cold War had never ended. Another is a law designed to speed the flow of Jews and other religious minorities as refugees claiming religious persecution in the Soviet Union, known as the Lautenberg Amendment. That law has been continuously extended by Congress despite the changed conditions.

As may be seen in the chart below, combined refugee and asylee admissions have hit new levels in recent years, exceeding 200,000 in 2006. At the same time, there has shift in the composition of these admissions. During the period 1990 to 2004 asylum admissions represented less than 10 percent of combined refugee and asylum admissions. Between 2005 and 2009 asylum admissions have been more than 43 percent of combined admissions.¹⁰



Refugees

By definition, a refugee is a person living outside his country of nationality who has experienced persecution or who has a well-founded fear of persecution if he were forced to return to his homeland.¹¹ Nevertheless, the United States accepts as refugees some applicants who have never left their homeland, e.g. Russians applying in Russia, Cubans applying in Cuba and Vietnamese applying while living in Vietnam. These exceptions to international standards identify an outdated U.S. mindset generated by the Cold War. Those aberrations are long overdue for expunging from law, policy and practice.

The Commission recommends establishment of a regional temporary protection system... we can and must do so without precipitating the migration or admission of large numbers of those who only seek a better economic life in the U.S.... For most protected populations, timely repatriation is the best solution.

— U.S. Commission on Immigration Reform, 1995

In the mid-1990s President Clinton — facing a threat by President Castro to launch a new Mariel boat exodus of dissidents to the U.S. — agreed to use his executive authority to adopt a unique policy for continuing to treat Cubans as persons fleeing political persecution, but only if they set foot on U.S. soil. He also accepted a floor of 20,000 Cubans a year who would be admitted as immigrants without regard to their place on the visa waiting list or even whether they were on the list.

An annual flexible ceiling is set each year by the Executive and Congress on the number of refugees to be admitted. The ceiling for fiscal year 2010 was 80,000. There are sub-ceilings for geographic regions, the largest of which currently is 35,000 for the Middle East/South Asia.

The refugee flow to the United States was higher when there were major flows still coming from Southeast Asia — as a result of the North Vietnamese military takeover of South Vietnam — and from Eastern Europe both before and after the collapse of the Soviet Union and following the disintegration of Yugoslavia. The intake of refugees from these areas dropped off as those political situations stabilized. But, the flow of refugee admissions has again surged as a result of the intake of new populations displaced by war and insurgency in Africa and South Asia.

Soviet Bloc

As the chart below shows, the admission of refugees and asylees into the United States nosedived following the collapse of the Soviet Union and the ability to emigrate from Russia and the member states eased. It is significant, however, that the admission of refugees from Russia

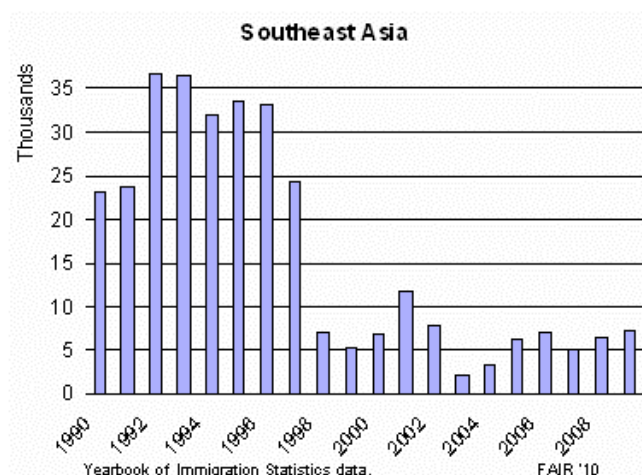
and the Ukraine has not ended.¹² That is in large measure due to the repeated extensions by Congress of the Lautenberg Amendment. That provision grants a presumption of group persecution to persons who identify themselves as Jews or Pentecostals and allows them to apply for refugee status without leaving their homeland. Unlike other refugees, they do not have to establish that they have been subjected to persecution or even that they have a well-founded fear of persecution in the future in order to be accepted into the U.S. refugee program.



This program persists despite concern by refugee admissions personnel and despite studies that have found that the program has been fraudulently used by persons falsely claiming to be members of a persecuted group, including by members of the Russian mafia, to gain residence in the United States. It also persists despite the fact that it would now be possible for most of the refugees admitted for residence in the United States to safely return permanently to their homeland. If the United States had observed international standards and had admitted only those who had fled the country because of repression, the number admitted would have been far fewer.

Southeast Asia

The flow of refugees and asylees from Southeast Asia has dwindled as most of the population that fled Vietnam following the fall of the Saigon government has found a new home in the United States. The flow of these refugees lasted long after the initial flight from Vietnam because the United States chose to continue to admit persons who were incarcerated for “re-education” in Vietnam and then released. The United States also chose to admit Vietnamese who were permanently resettled in the Philippines and elsewhere but who wanted to join their compatriots in the United States. Additionally, the United States chose to accept responsibility for any Vietnamese children of mixed race as being children sired by U.S. servicemen. The latter program was also highlighted by fraud because it also admitted persons identified as caregivers to the Amerasian children. This allowed persons seeking to enter the United States to recruit mixed race children to pose as their adopted child when they applied for visas. The data in the accompanying chart shows the admission of refugees and asylees from Vietnam and Thailand.

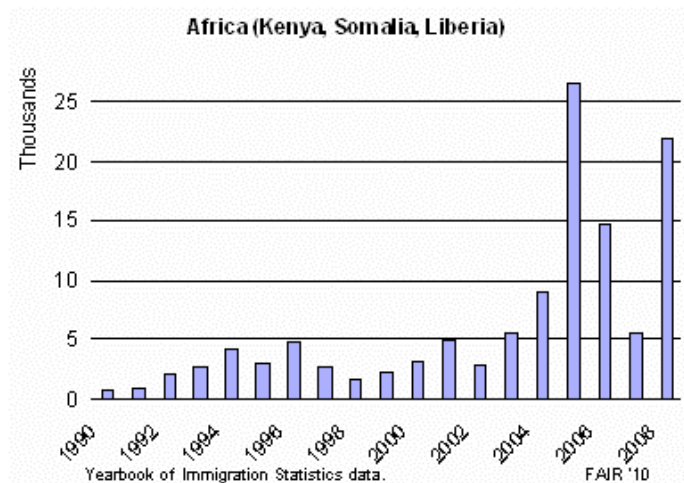


Despite the drop in refugees from the former Soviet Union and Southeast Asia, refugee admissions have rebounded after a decline. Africa is one of the regions that has taken up the slack, especially Somalis and Kenyans.

Africa

Most refugees in Africa live in refugee camps designed to sustain them until they can safely return to their home countries. However, the United States has incrementally begun to identify African populations for relocating to new homes here. An example is the Sudanese “lost boys” program begun in 2001. As acknowledged by one of the “lost boys” who became a refugee in the United States, he lied about being an orphan to

be accepted as a refugee.¹³ The reason that this makes a difference, other than the fraud, is because our family preference immigration policy puts a refugee in the position of being able to sponsor extended family members for visas.



This new effort is notorious for fraud. Refugee processing personnel had long expressed concern that persons were applying as refugees on the basis of being related to a person who had earlier been accepted as a refugee, but that these claims were doubtful and unverifiable because of the general absence of reliable evidence.

Refugees admitted into the refugee resettlement program receive an array of assistance programs including financial support, english language instruction, and job training aimed at making them self-supporting. However, not all are able to work and not all are able to find jobs, and they become an ongoing burden on the taxpayer.

Each new arrival from Iraq gets a one-time grant of \$900, then is eligible for welfare and food stamps; a single person receives \$359 a month, and a family of four receives \$862. Families with children continue to receive welfare until they can find work, but single people are restricted to eight months of assistance.¹⁴

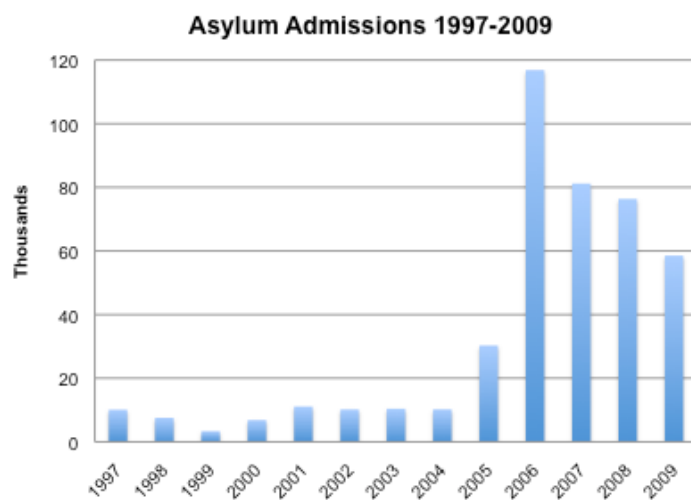
Asylees

Asylum was adopted by U.S. law in 1980 to cover the cases of persons living in the United States who, like refugees, faced a well-founded fear of persecution if they were forced to return

to their homeland. Initially, the law provided a ceiling of 5,000 ‘green card’ admissions per year for approved asylum applicants. In 1990, the ceiling on admissions was raised to 10,000 asylum grantees.

The 10,000 annual ceiling on the number of asylees who were authorized to adjust their status to legal permanent residence (LPR) lasted until 2005. The number of approved asylum grants had been in excess of the admission limit and a large backlog had developed. In May 2005, under the terms of a settlement of a class-action lawsuit, *Ngwanyia v. Gonzales*, brought on behalf of asylees, the government agreed to make available an additional 31,000 green cards for asylees during the period ending on September 30, 2007. This was in addition to the 10,000 green cards allocated for each year. However, the issue was rendered moot by the enactment of the REAL ID Act of 2005 because that law eliminated the limit on asylum admissions. With no limit, the number of asylum admissions surged.

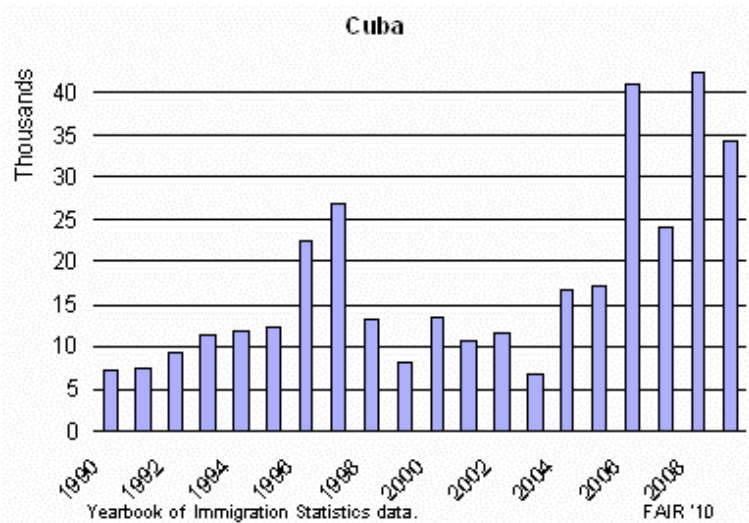
Asylum admissions data in the chart show the surge resulting from the processing of the backlog in approved asylum claims beginning in fiscal year 2005. Spreading the surge resulting from the backlog elimination over the preceding years when it was capped, the average number of admissions from 1997 to 2006 was an average of 21,691 per year. The average since then (2007-2009) has been about 72,000 per year. In effect, the lifting of the ceiling on admissions became a welcome mat for asylum applicants whether coming from abroad or already in the country seeking to stay.



Cuba

The Cuban Adjustment Act enacted in 1966, provides that all Cubans will be treated as having a well-founded fear of persecution if they were to be sent back to Cuba. Under that law, after being in the United States for one year, Cubans automatically become asylum beneficiaries unless they are found ineligible, e.g. as a result of having committed a felony. Cubans are the only nationality to be operating under a blanket presumption in U.S. law of persecution. Both the Cuban Adjustment Act and the Lautenberg Amendment are Cold War holdovers that make no sense today.

Despite the fact that refugee/asylee admission from Cuba has persisted following the end of other Cold War policies, there has been some change in policy. When the number of Cuban “rafters” began to peak in 1993-1994 and Cuban President Fidel Castro threatened to unleash a new Mariel boatlift of tens of thousands headed for Florida, President Clinton agreed in 1994 to modify policy by executive order to send back to Cuba those intercepted



at sea who did not evidence prima facie grounds of asylum eligibility. That is the “wet-foot” policy change that complemented the continued acceptance of any Cubans who got past the Coast Guard or arrived at a port of entry as asylees, i.e. the “dry-foot” provision.

That executive policy and the provision that established a minimum quota for immigrant admissions cause resentment among citizens of other countries in the region who see this as a discriminatory policy.

The chart showing refugee/asylee admissions from Cuba shows that this exceptional program for Cubans is currently operating at a level considerably higher than the 20,000 per year negotiated floor on admissions. What has increasingly happened in recent years is that the “rafting” of the 1990s has been replaced by an organized smuggling operation in which Cubans are paying smugglers using high-performance boats to evade the U.S. Coast Guard and enter the United States illegally.¹⁵

The perversion of the humanitarian nature of the asylum policy that results from the special treatment of Cubans is manifest in the current trend in accepting foreign nationals as Cubans even though they have never set foot in Cuba if they can make a claim to have acquired Cuban nationality from their parents who migrated from Cuba.

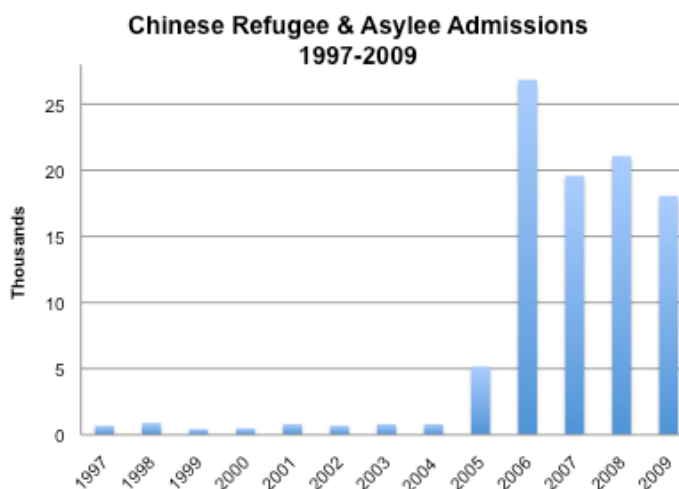
*Another Miami immigration attorney... said the law doesn't require a Cuban seeking permanent residency be persecuted in his or her homeland, or even that they reside there. All that is required is that an applicant be recognized as Cuban by U.S. authorities. And since 2007, the children of Cuban exiles haven't had to make a trip to Havana for the evidence needed to back up their claim.*¹⁶

China

Also taking up the slack in falling numbers of refugees from Southeast Asia and the former Soviet Union, asylee admissions from China have soared. That was made possible by a change in the law in Sec. 601 of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA). The provision incorporated coercive governmental family planning policies as a form of political repression. The clear target of this provision was China's one-child policy. The 1996 provision limited admissions to 1,000 per year.¹⁷

The limitation on admissions did not mean that the number of grants of asylum was similarly limited. It simply meant that if there were more than 1,000 grants of asylum per year, a backlog of persons waiting for adjustment would develop. That is what happened, and the development

of a backlog constituted an argument for removing the limit in the same way that the current waiting list of family-sponsored immigrants is used as an argument for increasing immigrant admissions. The 1,000 per year limit on admissions was eliminated in 2005 and the results may be seen in the chart of Chinese refugee/asylum admissions.¹⁸



For the 1997-2006 period, average refugee/asylum admissions were 3,763. For the 2007-2009 period, admissions were 18,540. The increase of Chinese admissions constitute more than one-fifth of the overall increase in asylum admissions.

The adoption of this policy did not mean that the U.S. would accept as refugees any of the hundreds of millions of Chinese who are living under the government's family planning policy, but it did mean that any Chinese who were apprehended illegally in the United States were provided a legal basis for their lawyers to argue for a grant of asylum to prevent them from being returned to China. Evidence documents that the Chinese smugglers (known as "snakeheads") began coaching their clients in how to claim asylum alleging persecution or the fear of persecution based on the one-child policy of the Chinese government.

*"In many cases of organized smuggling we have found (the immigrants) have been carefully coached by the snakeheads," said Homeland Security spokeswoman Virginia Kice, referring to organizers of human smuggling operations.*¹⁹

Policymakers should keep in mind there is an enormous potential influx of Chinese who would like to be able to live in the United States.²⁰ According to poll results reported by the Gallup Poll in June 2010, there are about 22.9 million Chinese who would like to be living here. Of course that does not mean that they would or could immigrate, but it does point to the enormous magnitude of the potential flow of smuggled Chinese as long as granting them asylum sends the message that illegal immigration is a low-risk option.

As there will be no reliable evidence in most cases of either past forced abortion or sterilization, these cases represent a virtually impossible situation for an immigration judge to decide. The defenders of the Chinese illegal immigrants have literature from dozens of organizations documenting past practices of forced abortions or sterilizations. The fact that the policies of the Chinese government have evolved towards relaxing its family planning policies especially in all but remote rural areas is not so well documented. The fact that the United States stands alone in treating these cases as political persecution suggests that this policy reflects more a domestic political agenda rather than an international standard of protection against persecution.²¹

Temporary Protected Status

TPS is another humanitarian policy that has operationally become a quasi-form of asylum. It allows nonimmigrants in the United States at the time of a political or natural disaster event in their home country to stay temporarily until the situation in the home country permits their return. This policy makes sense for legal nonimmigrants such as tourists or students, but it makes no sense for illegal residents who have no interest in returning to their homeland. By offering legal status and work permits to those illegal aliens, the effect is simply to further embed them in our society and further complicate their future removal. TPS has also become a foreign policy issue as the governments of countries that benefit from the program openly lobby *not* to have their citizens, who often send home billions of dollars in remittances each year, return home.

After adopting and extending TPS for a nonimmigrant population here, the advocates for those foreigners argue that because of the TPS policy those foreigners have “put down roots” in our society and it would be cruel to uproot them by forcing them to return to their homelands. The experience with the conversion of TPS into amnesty in 1997 for Central Americans demonstrates the problem with this provision. Policymakers, once having granted temporary legal status to large populations of foreigner residents, come under political pressure not to end that status, and ultimately to accept that population — even if they have entered the country illegally as economic migrants — as permanent legal residents. This is demonstrated in current legislation (H.R.264) introduced by Rep. Jackson-Lee (D-Tex.) which if adopted would allow the conversion to permanent legal status of any foreigner who has had TPS protection for a period of five years if they have not committed any disqualifying act.

Although TPS is generally adopted for a designated population of foreigners for a limited period — usually 18 months — it can be, and often is, extended repeatedly until it appears indefinite. Current TPS designations for Honduras and Nicaragua were first adopted in December 1998 because of a hurricane that devastated parts of those countries. Those designations have been repeatedly extended, most recently in 2010 and now have an expiration date of January 2012.

THE NEED FOR TRUE REFORM OF REFUGEE AND ASYLUM POLICY

The humanitarian basis for both our refugee and asylum policies is laudable, especially for a country that takes pride in its respect for and defense of human rights and its position of international leadership. But neither our current refugee nor asylum policy is similar in its operation today to what it was when it was first adopted. While both policies were founded on the same humanitarian concerns, asylum policy today bears little resemblance to refugee policy, and refugee policy has strayed widely from its roots. The expansion and distortions that have crept into both programs have rendered them out of sync with the humanitarian underpinnings of the programs and at cross-purposes to a U.S. immigration policy in the national interest.

What's Wrong with Refugee Policy?

The U.S. is entering an era that requires changes in our refugee policy.

—U.S. Commission on Immigration Reform, 1997

Refugee admissions must by their nature be flexible to conform to changing international circumstances. Unfortunately, the world remains plagued by despots and wars that cause persons to flee for their safety. The U.S. Commission on Immigration Reform noted, “The U.S. government must have the capacity to detect the causes of the movements to better prevent them through political, diplomatic, and economic initiatives; to assist in caring for and protecting the refugees overseas who are forced to leave their countries; to resettle the few for whom U.S. resettlement is the only or best option.”

Since the call for change in our refugee policy by the U.S. Commission, the significant change in our refugee policy has been its expansion and diversification in the composition of the intake. At the same time the number of refugees accepted by the U.S. has become more disproportionate compared to other developed countries.

“...files on 128,000 people were submitted by UNHCR to resettlement countries last year [2009]. Some 84,000 of them were accepted by 26 countries, said Cochetel, who heads UNHCR's resettlement service. But only 6,800 were offered a new start in European countries, compared to 62,000 accepted by the United States.”²²

United Nations High Commission on Refugees (UNHCR) data demonstrate that the U.S. intake of refugees goes beyond those identified by that agency. That may be seen in the fact that the UNHCR states that the United States accepted of 62,000 refugees out of 84,000 who were identified as needing permanent resettlement by that agency in 2009 — nearly three-fourths of the total — compared to the actual admission of 74,602 refugees shown in data from the DHS’s Yearbook of Immigration Statistics below.²³ Data from both DHS and the Office of Refugee Resettlement in HHS indicate that in 2009 the U.S. admitted more than 9,000 additional persons as refugees not identified by the UNHCR as refugees needing permanent resettlement.

Refugee Arrivals 1997 and 2009

	1997			2009		
Former USSR	27,072	39.1%		Iraq	18,838	25.3%
Former Yugoslavia	21,360	30.8%		Burma	18,202	24.4%
Vietnam	6,660	9.6%		Bhutan	13,452	18.0%
Somalia	4,974	7.2%		Iran	5,381	7.2%
Cuba	2,911	4.2%		Cuba	4,800	6.4%
Other	3,620	3.9%		Other	5,548	5.6%
Total	69,276			Total	74,602	

The 2009 arrivals data also show an increase in refugee arrivals of 8 percent in 2009 from 1997 and that refugee arrivals were more diverse in the countries from which they came. In 1997, two disintegrating communist countries accounted for 70 percent of all refugees. In 2009, the top two sources of refugees accounted for slightly less than half of the arrivals. The number of refugee arrivals from sources other than the top five countries increased from 3.9 percent in 1997 to 5.6 percent 2009.

REFUGEE POLICY SERVING BUREAUCRATIC INTERESTS, NOT REAL NEEDS — As the flow of refugees from communist Europe countries waned, the refugee resettlement agencies in the United States mounted a concerted campaign to encourage the U.S. Department of State to seek out new sources of refugees to restore a large stream of refugees for them to resettle.²⁴ The State Department was quick to respond.

“In last year’s report to Congress [2003] we acknowledged the [refugee] program was at a crossroads. We had two choices: limit the size and scope of our program, allowing the program to wane; or mount the most extensive and expensive rescue operation in the history of the U.S. refugee admissions program. Of course we chose the latter. In doing so, we expanded the concept of “rescue” to include refugees who have been living in protracted unresolved situations, like the Meskhetian Turks in Russia, who had been rootless for decades, or 15,000 Lao Hmong living in a closed camp in Thailand for about a decade.” — Assistant Secretary of State, Arthur Dewey²⁵

The U.S. Commission on Immigration Reform, in its 1997 report, also was influenced by the prospect of a decline in refugee admissions.

The Commission remains concerned, however, that resettlement could drop to unacceptably low levels as the need for the two principal resettlement efforts of the 1980s and early 1990s—for refugees from Southeast Asia and the former Soviet Union—declines. Hence, we believe that to preclude a steady erosion of admissions, it is necessary to establish a minimum target or goal for post-Cold War refugee admissions.

That comment from the Commission, led in 1997 by Shirley Hufstedler, did not define that level and did not directly conflict with the Commission’s recommendation in 1995 — when it was chaired by Barbara Jordan — that a ceiling of 50,000 refugees be established.²⁶

Rather than opt for the more logical path of reducing refugee intake as conditions allowed, the Department of State chose to undertake “extensive and expensive” efforts to find new sources of refugee populations to prop up the dwindling program. Thus, America’s refugee resettlement effort became less a program designed to aid people in need, but one designed to perpetuate itself for the sake of perpetuation. The statement by Assistant Secretary Dewey suggests that, in the post-Cold War era, the primary objective U.S. refugee resettlement is to serve the needs and interests of a network of non-governmental organizations that exist — and receive government funding — to resettle people who can be classified as refugees.

Americans are generous and have often been willing to open their doors and hearts to people fleeing persecution. What they are being asked to do today, however, is open their doors and pocketbooks to justify the continued existence of organizations that resettle refugees.

A prime example of a refugee resettlement organization whose *raison d’etre* has become self-perpetuation is the Hebrew Immigrant Aid Society (HIAS). The venerable organization that has helped Jews fleeing pogroms, the Holocaust and, more recently, oppression in the Soviet Union,

has been confronted with a situation that might otherwise be considered a positive development: There are remarkably few Jewish refugees in need of resettlement. Without a real mission, HIAS has resorted to inventing one rather than declaring its mission accomplished and closing its doors. By its own admission, only a small percentage of the people resettled by HIAS are the people whom the organization ostensibly exists to serve.

The same mission of self-perpetuation can be seen within government bureaucracies. Instead of accepting that the number of displaced persons truly needing permanent resettlement in a new country was diminishing, the State Department refugee bureaucracy — which maintains a cozy relationship with non-governmental resettlement groups — adopted the mission of seeking out people whom they could resettle.

“...after years of trying to reach the most vulnerable [Sudanese] Darfuri refugees to offer the hope of a way out of their situation through resettlement, staff of the Departments of State and Homeland Security - with the invaluable support of our processing partners - overcame formidable security, logistical, and other challenges to launch a pilot program for Darfuris in Chad.”²⁷

Further evidence of the irrationality and misallocation of resources in the U.S. refugee resettlement program is well documented in the admission of Kosovo ethnic Albanians fleeing the Serb ethnic cleansing bloodbath. That these were true refugees is not in doubt. The issue is whether a permanent resettlement program in the United States was justified or prudent.

“Neither the United Nations High Commissioner for Refugees (UNHCR) nor the Government of Macedonia (GOM) [where the fleeing Kosovo refugees took refuge] requested U.S. resettlement assistance. Even the three federal agencies with principal responsibility for refugee admissions — State, Justice, and Health and Human Services — balked at the idea. Most importantly, the refugees themselves strongly resisted being moved from the close proximity to home of the camps in Macedonia to safer, more pleasant quarters elsewhere.”²⁸

—David Robinson, Career U.S. Diplomat

Notwithstanding the lack of need or desire to be resettled, Vice President Al Gore announced in April 1999 that the U.S. would begin flying up to 20,000 ethnic Albanians to refugee resettlement in the United States. According to Robinson, who is currently the U.S. ambassador to Guyana, the pressure for the program came from a public relations campaign orchestrated by the domestic refugee resettlement groups in the Committee on Migration and Refugee Affairs (CMRA). This is, in effect, a lobbying group that advocates increased U.S. refugee admissions.²⁹ According to the State Department participant in the event, “The power of public sentiment,

shaped and directed by skilled lobbyists, turned televised images of men, women and children fleeing Milosevic's terror into a foreign policy mandate."

A similar distortion of traditional refugee resettlement policy attributed to the CMRA was the shift in efforts to find new refugees for the resettlement program as old sources of refugees dried up — especially the effort to identify African refugees for U.S. resettlement.

*"A coalition of refugee resettlement organizations in Washington, DC, known as the InterAction Commission on Migration and Refugee Affairs (CMRA), took select Congressional staff members on three separate trips to Africa during the late 1990's. With Congressional Black Caucus members as leaders on both these Committees [Judiciary/John Conyers and International Relations/Mel Watt] during the mid-1990's, the Caucus was ideally positioned to help refugee advocates push for their cause. The trips that CMRA organized helped bring Congressional Black Caucus members on board to support increased African refugee resettlement to the United States."*³⁰

What both of these specific cases document is that it is lobbying of the federal government's refugee bureaucracy by voluntary organizations — most of which are church based — that drives the U.S. refugee admissions program rather than priorities established by the UNHCR or the objective conditions of refugees in need of permanent resettlement. This lobbying has been undertaken to maintain an unjustified level of admissions in order to perpetuate jobs for employees of the non-profit organizations.

The effort to identify new populations for participation in the refugee program has succeeded. The numbers of arriving refugees has rebounded from the low levels earlier in the decade, but new problems have arisen in the adjustment of refugees from pre-modern societies into modern communities.

*'We are bringing people from refugee camps to get a new start in the U.S. only to see them Dumpster-diving somewhere,' said Tom Medina, who heads the [Washington] state's office of Refugee and Immigrant Assistance.'*³¹

An example of the problems being encountered in the resettlement of refugees from these pre-modern societies concerns populations such as the Hmong from Asia and the Bantus from Africa. Not only is the program recruiting refugees from populations temporarily resettled in camps, but in doing so the U.S. refugee resettlement bureaucracy is also placing a greater burden than normal on the U.S. communities in which they are resettled.

The Bantu have enormous barriers to overcome in their introduction to American society. Their status as immigrants, their lack of English skills, illiteracy and the fact they possess no modern job skills, will only make the challenge that much harder. ... According to the Cultural Orientation Resource Center, the Bantu have had very little exposure to Western housing, conveniences or food, and things we take for granted such as electricity, flush toilets, telephones, and kitchen and laundry appliances are totally alien to most Bantu refugees. ...The Bantu also have had little experience with banks, checking accounts, or ATM's and require intensive training on finances, budgeting, and financial planning. ...The Center also states that resettlement professionals will have to deal with significant health care, sanitation, and social support issues relating to small children and mothers, pointing out that the Bantu use pit latrines and "are unfamiliar with typical American bathroom facilities and common sanitation items such as diapers and feminine care products."³²

LAUTENBERG AMENDMENT — As previously noted, the Lautenberg Amendment in 1989 created a new group refugee status to Jews and Evangelicals living in the Soviet Union and elsewhere. They could apply for refugee status without leaving home. The administrators of this refugee program expressed concerns that it was being abused by persons who were not part of any persecuted group including criminal elements seeking a new venue for their organized crime activities in the United States.

“Law enforcement experts say they fear the lenient standards [of the Lautenberg refugee program] have contributed to a burgeoning criminality in the United States on the part of the immigrants.”

—*Washington Times*, November 4, 1995³³

In addition, an Immigration and Naturalization Service study of the program in 1995 found that of 624 applicants, only three cases would have qualified for refugee resettlement under international standards. Nevertheless, the Lautenberg Amendment refugee program, strongly backed by HIAS, has been consistently renewed, and marked its 20th year of operation in March 2010. In 2006, an amendment added categories of Iranian religious minorities for processing under Lautenberg’s reduced evidentiary standards.

FALSE FAMILY RELATION CLAIMS — A better documented source of fraud in the refugee program involves false claims of family relationship to refugees previously admitted for resettlement in the United States. Genetic testing has documented that many of these persons are not related to the earlier resettled refugee.

“The State Department has suspended a humanitarian program to reunite thousands of African refugees with relatives in the U.S. after unprecedented DNA testing by the government revealed widespread fraud.”³⁴

The initial response of the State Department to the fraud allegations from program administrators was to launch a requirement that refugees being admitted for resettlement in the United States identify all of their family members at the time of their admission into the program. That list of relatives then became used to establish future claims of family relationship. Going one step further because of continued concern about fraud, the State Department refugee bureaucracy undertook an experiment with DNA matching between refugee applicants and the claimed relative in the United States. The result was that only one-fifth of the applicants required to submit a DNA sample were found to be related. Not all of the other four-fifths were proven to be unrelated — many simply refused to be tested. DNA testing could not, of course, establish whether someone claiming to be a spouse of a refugee in the United States was actually married to that person.

As a result of the evidence of rampant fraud, the family-based refugee admissions program for Africans is currently suspended. However, the program is likely to be restarted later this year based on a new provision that requires DNA testing for children of previously admitted refugees. If the DNA test is positive, it will be paid for by the U.S. taxpayer. This family-reunification provision allows for the father of dozens of children in a polygamous family to eventually reunify that family in the United States.

Asked whether any action would be taken to investigate whether persons admitted into the refugee program as relatives prior to the testing had been admitted on the basis of fraud, the Department of State said that would have to be answered by the Department of Homeland Security. No such effort has been announced by that Department.

The fact that the rampant fraud has been unmasked and the State Department has acted to end the fraud does not remove the bitter after-taste of knowing that the generosity of the American public has been abused.

What’s Wrong with Asylum Policy?

CUBAN ADJUSTMENT ACT — The asylum policy towards Cubans is a Cold War anachronism, as earlier described. It reflects the political activism of the Cuban refugee population in the United States. It has survived changes in our relations with Cuba and in the transition of the arriving Cubans from homemade rafts to sophisticated human smuggling operations.

Perpetuating the distorted asylum policy towards Cubans, the State Department is currently working to bring to the United States most of the 39 Cuban political prisoners exiled to Spain this summer, the Associated Press reports.³⁵ The plan “gets around a Catch-22 whereby Cubans who left the island were no longer considered in harm's way, and thus not eligible for traditional asylum requests in the U.S.” the AP reports. The “Catch-22” reference refers to the situation in which a person given asylum in another country cannot any longer be considered eligible for resettlement to the United States. The report does not explain how the State Department has found a way to ignore the law.

CHINESE FAMILY-PLANNING ASYLUM — The Chinese family-planning asylum provision demonstrates how asylum policy has diverged from the U.S. refugee policy. Chinese claiming fear of abuse if sent back to China are not considered refugees by the UNHCR and they are not recognized as refugees by the United States unless they are already in the United States — the majority of whom applied after being apprehended and put in deportation proceedings.³⁶

CAMPAIGN TO DECREASE ASYLUM DENIALS — There has also been an unrelenting pressure on immigration judges to more liberally approve unsubstantiated asylum claims through publicity campaigns.

Immigration attorney, Carl Shusterman wrote in September 2010 in his firm’s blog, “Back in 1986, Immigration Judges denied almost 90% of all asylum requests. Now, during the past 9 months, the Judges granted 50% of asylum requests. What's more, the disparities among various Immigration Judges have narrowed somewhat.”³⁷

That same analysis was summed up in a *USA Today* report on the approval rate of immigration judges. “U.S. immigration judges are approving nearly half of all requests for asylum, a dramatic turnaround from the mid-1980s, when only about 10% were granted, according to a new analysis of Justice Department records. Denial rates are at their lowest in 25 years.”³⁸

EXPANDED DEFINITION OF PARTICULAR SOCIAL GROUP — The growing divergence of asylum policy from refugee policy has also come from judicial decisions that have expanded the scope of the “membership in a particular social group” clause in the definition of a refugee. Until recent decades, the need for protection of an individual had been based on the persecution resulting from government policy or complicity. That standard has been gradually eroded as the chief factor in determining persecution.

Homosexuality gained recognition as grounds for being granted asylum in the United States in 1994. That expansion of particular social group status has since been widened to other sexual orientation cases.

*John Ademola ... applied for — and was granted — asylum in the U.S. in 2009 based on his homosexuality and fear of what he might face if he returned to Nigeria. He now holds a green card that puts him on the track to U.S. citizenship. The Riverdale resident, 50, is one in a seemingly growing but hard-to-track group of Chicago-based immigrants who've successfully applied for asylum based on their sexual orientation or gender identity. Such asylum applications have been possible for 16 years, after then-Attorney General Janet Reno declared an LGBT asylum case precedent.*³⁹

Commenting on the sexual orientation expansion of asylum protection, the *Washington Post* noted on July 10, 2007:

Homosexuality, once a de facto condition for barring foreigners from entering the country, is now officially recognized by the U.S. government as a category that might subject individuals to persecution in their homeland, just as if they were political dissidents in a dictatorship or religious minority members in a theocracy.

An example of the extremes to which asylum policy is being expanded by judicial findings is the awarding of asylum status in January 2010 to a German family that came to the United States as nonimmigrants. The judge ruled that a German government policy that banned home schooling was political persecution.⁴⁰

Traditionally, asylum has been granted based on acts, or likely acts, of commission by foreign governments against certain classes of their citizens. In this new era of activist judicial what foreign governments don't do, i.e. omission, increasingly has been construed as grounds for asylum in the United States.

A “groundbreaking” case of a lesbian from Uganda who was granted asylum on the basis that her family had a stranger rape her as a cure for being gay and that she could not expect to receive protection from the state if she were returned to her homeland serves as an illustration. Again, in those cases, the governments to which they would have been deported was not found to have instigated or been complicit in persecution, but the decisions accepted that the governments would not or could not provide sufficient protection for the individuals. In essence, decisions of this type put the United States in the position of a safety valve whenever foreign governments fail to exercise their responsibilities to protect their own citizens. That may be a noble objective, but it is an unreasonable burden.

Litigation with regard to what constitutes a social group succeeded as early as 1996 in finding a judge willing to accept that women subject to genital circumcision constitute a particular social group needing protection despite the fact that the action was a societal practice that had nothing to do with government policy.⁴¹ No government, including the Togolese government where the asylum applicant came from, condones the practice, although it persists in some rural areas because it is a custom and the government works to change the practice gradually through education rather than punishment. It is not in any way government persecution nor condoned by the government nor prevalent throughout the country, and, therefore, should not result in asylum protection. However, the United States must use its influence and discretion in foreign aid spending in order to eradicate the practice wherever it is occurring.

Increasingly, judges have acceded to the demands of advocacy groups to include inter-personal relationships as the basis for being granted asylum. Recent court decisions have expanded grounds for asylum to include women claiming they will be subjected to spousal abuse if returned to their home country. That position received the support of the Obama administration.

*Last week, The New York Times revealed that Department of Homeland Security (DHS) officials have filed official court documents indicating the Obama Administration's support for granting asylum to victims of domestic or sexual abuse. The court documents conflict with specific provisions of federal law and would reverse a longstanding policy of denying asylum to victims of domestic violence abroad.*⁴²

In a recent case, a Guatemalan woman received a grant of asylum protection on the basis that there is a high incidence of murder of women in that country. The courts handling asylum cases have in the past avoided defining women as a particular social group, but they are approaching a breach of that barrier when they in effect adopt a standard that could apply to all Guatemalan women.

*A U.S. federal court ruling this week could unleash a wave of political asylum claims from applicants who say being female and from Central America is reason enough to fear for their lives. ... In Monday's ruling, the 9th U.S. Circuit Court of Appeals in San Francisco ordered immigration judges to reconsider whether Guatemalan women constitute a 'particular social group' that may be persecuted. Courts have granted such status to women who fear genital mutilation and victims of domestic abuse, but two lower courts had said Guatemalan women was too broad a category.*⁴³

The San Francisco court rejected the lower courts' denial of asylum on the basis of violence against women, and the Obama administration has shown no signs of challenging that ruling.

A similar expansive court interpretation of a special social group found that Mexican female public school teachers should receive asylum in the United States if they have suffered spousal abuse because, if they returned to Mexico, their abusive spouse could track them down. Again the administration has not challenged this ruling.

*In a novel argument, a Mexican lawyer specializing in information access, Jimena Avalos Capin, declared that L.R. could not find safety by moving to any new location in Mexico because her common-law husband could easily track her down using the Internet. For L.R. to be able to work in her profession as a schoolteacher, Ms. Capin said, she would have to post her current address in a public registry.*⁴⁴

In recent years, asylum grants for Mexicans have been increasing. Lawyers representing Mexicans applying for asylum are currently citing the threat of increased violence resulting from intra-gang battles between narcotics traffickers and the government's campaign against the gangs. The approval of these asylum applications ignores the international standard that the individual does not qualify as a refugee if he or she may find refuge elsewhere in the country. If Mexicans could not find refuge from violence elsewhere in the country, this would constitute an open invitation to all the millions of Mexicans who would like to seek a better life in the United States to attempt to take advantage of our humanitarian policy.

*In fiscal year 2008, asylum officers and immigration judges combined approved 250 Mexican asylum petitions compared to 153 the previous year and 133 in 2006 — the formal start of the war on drugs launched by Mexican President Felipe Calderón. Separate figures from U.S. Citizenship and Immigration Services show an increase in Mexican asylum case approvals from fiscal year 2007 to 2008 — 146 to 264 — but a decrease to 249 in the first 11 months of fiscal year 2009.*⁴⁵

What is common to all of these expansions of asylum grants is that none of them involve foreign government persecution or complicity. If the government is seen to be ineffective in upholding its own laws and failing to provide protection to its own citizens, asylum protection is granted.

To put this into perspective, courts in the United States routinely issue orders prohibiting abusive spouses from having further contact with the person abused, but that does not stop repeated abuse and even murder of spouses from occurring. Despite the intention of our legal system, it cannot provide any guarantee against abuse. Yet, a U.S. citizen could not expect to receive asylum protection in another country on the basis of a claim that they would be subject to spousal abuse if sent back to the United States.

With each of these precedent setting rulings, the lawyers arguing for the grant of asylum have assured that the new standard will apply to very few similar cases. However, it should be obvious that the number of Chinese who can claim they have been subjected to or potentially are subject to the government's family planning policies includes hundreds of millions of persons. Similarly, the number of homosexuals from Mexico or another country in which homosexuality is considered deviant behavior is very large, as is the female population of Guatemala, or abused Mexican professional women or the population of women who are subjected to spousal abuse or those in Islamic societies who are forced by religious or societal norms to wear burkas.⁴⁶

While the number of such foreigners in the United States illegally seeking to use asylum as a protection against deportation may initially be relatively small, the fact that such protection exists acts as an invitation to illegal entry by persons who otherwise would have no basis for obtaining an immigrant visa. In the case of the Chinese, it serves as a sales pitch available to the *snakehead* immigrant smugglers who coach their clients in the opportunity for an asylum claim if they are apprehended.

The other illogical aspect of asylum policy is that persons who have entered the United States on their own, with or without visas, should be treated the same as refugees upon being granted asylum. Because the United States has selected refugees to be resettled in the United States, it makes sense that the U.S. taxpayer would be expected to assume the responsibility for the costs of sponsoring those refugees in terms of language and job training, medical coverage and subsistence expenses. But asylum applicants have arrived on their own initiative. If they apply for asylum at a port of entry or shortly after entry, their intent in coming to the United States to seek protection from persecution is apparent. But if they have entered the country legally or illegally and have only applied for and been granted asylum after being put in removal proceedings, they should be treated the same as immigrants rather than as refugees and be expected to support themselves rather than becoming a public charge on the U.S. taxpayer.

ASYLUM FRAUD — Another problem area in asylum policy is documented in investigations of unscrupulous immigration attorneys who recruit illegal aliens as clients with claims to be able to obtain favorable asylum determinations.

Between 2000 and 2004, the [immigration lawyer] defendants filed hundreds of claims for Romanians, Indians, Nepalis and Fijians. They made more than \$1 million charging clients for bogus addresses, medical reports, notarized declarations and tales of rapes and beatings that never took place, court records show. The case exposed a vulnerability that experts say is inherent in the system: With tens of thousands of refugees asking for asylum every year, overworked judges often rely on gut instinct about the evidence presented. That evidence

*frequently consists of little more than the applicant's testimony, so the detailed documentation presented by Sekhon & Sekhon swung the scales in their favor.*⁴⁷

More recently, in September 2010, a Romanian interpreter, Iosif Caza, who worked for immigration lawyers seeking asylum for their clients was sentenced to 7 ½ years in prison for fraud.

At least 700 of the firm's clients, most of them Romanians, face possible deportation because after being coached by the firm's lawyers and interpreters, they told phony stories of rape and torture to immigration judges and asylum officers.... A fraud of the size of this case cannot help but to make the asylum process more difficult for those who have suffered persecution,' the government said. 'They are the true victims of the defendant's crimes.' — Sacramento Bee, September 24, 2010

Also in September 2010, three Sacramento immigration attorneys were sentenced to prison for asylum fraud based on false documents.

*...immigration officials are reviewing hundreds of asylum cases that emanated from the Sekhon firm to determine if they will be reopened. The firm's clients were primarily from India and Romania. It also filed claims on behalf of Fijian and Nepali nationals.*⁴⁸

These cases demonstrate that the asylum adjudication process can be gamed by both immigration lawyers and their clients who are illegally in the United States in an effort to gain legal residence by fabricating false claims of persecution. That these fraudulent operations were uncovered and prosecuted should not be taken as an indication that detection of fraud is likely. More likely is that the size of these operations made them suspect, and smaller numbers of fraudulent applications are less likely to be detected.

Fraud is difficult to prevent with the asylum criteria having grown to encompass so many issues. It is less likely to be a problem if the criterion for granting asylum is restored to the more narrow scope of earlier years.

NATIONAL SECURITY — Our asylum policy has also been shown to represent a national security vulnerability in that it has been used by terrorists to gain legal permanent residence or to obtain release from custody that allowed them the freedom to travel legally around the country while planning terrorist attacks.

Two of the terrorists who participated in the 1993 World Trade Center terrorist attack were released from detention apparently as a result of claiming asylum. Ahmed Ajaj was released from custody on an immigration bond pending the outcome of his Immigration Court case. A second terrorist, Ramzi Yousef, had also been detained and released after he applied for asylum.⁴⁹ Mir Aimal Kasi, a Pakistani who murdered two CIA employees arriving for work at Langley, Virginia, was similarly freed from immigration detention after applying for asylum.⁵⁰ Nuradin Abdi, a Somali al Qaeda operative indicted in June 2004 for plans to blow up an Ohio shopping mall, applied for and received asylum in 1999.⁵¹ Gazi Ibrahim Abu Mezer, who was responsible for the August 1997 New York City subway plot, was arrested in Washington State in January 1997 for entering illegally for the third time but was released on bond and applied for asylum the next month.⁵²

Since the September 11, 2001 attacks, the FBI and immigration authorities are on a heightened alert for possible terrorist plotting from within the United States. Accordingly, it is less likely that a terrorist will slip through detention as a result of an asylum claim. However, the current expanding and nebulous standards for granting asylum, the swamping of immigration judges with asylum claims and contested appeals against adverse decisions, means that the potential for again allowing our humanitarian concerns to be manipulated by someone intent on killing Americans remains possible. The likelihood of that happening will be reduced if the criteria for asylum claims is restored to congruency with refugee policy and the number of applicants is reduced.

A surge in Somalis entering the United States from Mexico and requesting asylum is a current security concern. In 2000, the Department of Homeland Security reported that 2,393 Somalis were granted legal permanent resident status in the United States. According to DHS's Yearbook of Immigration Statistics, this number sky-rocketed to 10,745 in 2008, and to 13,390 in 2009. Given recent events in which U.S. youth in the Somali community have been recruited into the al Qaeda-linked Somali Islamist group, al Shabab, the arrival of these Somali's — after a long and costly route through Nigeria, Central America and Mexico — raises the prospect that among these asylum applicants are terrorists.

ENFORCEMENT — When an application for asylum is rejected, there are no guarantees that the individual actually leaves the country. It is more likely that the individual simply stays illegally inasmuch as many of the asylum applicants were illegal residents before applying for asylum. There is no better example of non-compliance than Zeituni [Last Name], President Obama's aunt who successfully thumbed her nose at unfavorable court rulings. As the report of the U.S. Commission on Immigration Reform noted, "The absence of an effective and coordinated strategy to ensure the timely removal of rejected asylum seekers may undermine efforts to demonstrate that the U.S. is serious in its commitment to a credible asylum system."⁵³

ASYLUM SHOPPING — International standards provide that if a person fleeing persecution has been admitted to a country that offers protection the individual is no longer considered a person seeking protection. But, because international practice varies, and because the United States has adopted expanded grounds for granting asylum, persons arrive in the United States seeking asylum who have been denied asylum in other countries. To a limited extent the United States has acted to prevent what amounts to asylum shopping by adopting an agreement with Canada that prevents persons denied asylum in one of the two countries from being granted the opportunity to apply in the other.

The U.S.-Canadian agreement on asylum shopping would be in the interest of the United States if it were expanded to other countries that receive substantial numbers of asylum applicants. The difficulty in arriving at such an agreement is the variance in the standards between the United States and other countries for granting asylum. A reform of U.S. asylum practice that restores the congruity of U.S. practice with international standards for resettlement of refugees would facilitate such agreement.

What's Wrong with TPS Policy?

The adoption of TPS policy was unnecessary from the start. The immigration law allows discretion to withhold deportation for temporary periods. The recent earthquake in Haiti that led to the adoption of TPS in January 2010 was met first with a statement of policy by DHS that they would suspend deportation proceedings for Haitians until conditions stabilized. That was the correct response. The later adoption of TPS was a misguided political decision.

TPS policy is not only unnecessary, but extending its application to people who are in the United States illegally is ill-conceived. Offering temporary legal status to persons whose presence in the country results from their violation of our immigration law and who have no intent of returning to their homeland as soon as possible is illogical. A grant of TPS to illegal aliens — giving them a work permit and the basis to apply for a U.S. driver's license — has the effect of rewarding their violation of our immigration law and making more difficult their future detection and removal.

In addition, the TPS law vests foreign governments with the authority to request that the president designate TPS for their nationals in the United States and to prolong that status — which they routinely do. The reason is clear. Those foreign governments value the remittances that their nationals working in the United States send home. The elimination of TPS designations would not likely end those remittances (because most would likely remain illegally in the U.S), but it could reduce them because the legal work status would be terminated.

A declaration of TPS that includes illegal immigrants undermines immigration law enforcement and that effect is reinforced every time that TPS is extended as well as every time that lawmakers consider a proposal to grant an amnesty to give legal residence to TPS beneficiaries.

SHAM REFUGEE AND ASYLUM ‘REFORM’

The special interests that have achieved a broadening intake of refugees and asylees are not complacent with their achievement. They continue to press for still greater expansion. That may be seen in legislation introduced in the 111th Congress. An example of the ‘reforms’ sought by these special interests is the removal of the bar on asylum claims after the claimant has been in the United States for more than one year; a provision adopted in the reforms against illegal immigration in 1996.

A current publicity campaign against the one-year bar on asylum claims focuses on a Chinese student who asserts that he would be persecuted if he were sent back to China because while he was in the United States he became active in the Falun Gong social movement that the Chinese government has persecuted at home. He has been ruled ineligible for asylum because he did not make his asylum claim within one year of arrival in the United States, and he is fighting that decision. He asserts that his situation changed after the one-year bar as a result of his subsequent involvement in protest activities against the Chinese government while in the United States.

The questionable nature of cases of this type is that it is virtually impossible to judge whether the student became active in the Falun Gong because he viewed that as a means to gain permanent U.S. residence on the basis of asylum. It is also virtually impossible to judge whether his activities are likely to have come to the attention of the Chinese government or whether he would in fact run the risk of persecution if he were to return to China — unless he chose to openly challenge the government. He has chosen not to be identified by name in a recent article about the one-year bar in the *New York Times*.⁵⁴

The one-year limit on asylum claims is not an absolute barrier to gaining asylum in the United States. A recent study found that less than half (46%) of asylum appeals to the Board of Immigration Appeals challenging an asylum denial because of the one-year rule were sustained.⁵⁵

Other asylum changes being proposed by advocacy groups and immigration lawyers under the guise of reform are provisions that would vastly expand opportunities for individuals to gain asylum. These measures which are likely to expire with the 111th Congress may be expected to be pushed again in the next Congress. They demonstrate the sorts of loopholes advocacy groups and the immigration bar are seeking:

- Relaxation of the standard that asylum applicants should be detained until their identity and bona fides can be established.
- A requirement that detention facilities be located near immigration lawyers.
- New burdens on U.S. taxpayers to pay for the legal defence against deportation of aliens.
- A requirement that asylum applicants be provided interpreters at taxpayer expense.
- Allowing asylum and refugee applicants who participated in terrorist acts to avoid ineligibility by claiming they were coerced.
- Expanding asylum coverage of persons claiming fear of “forced family planning.”
- Lessening the burden of proof on an asylum applicant by substituting that their race, religion, etc. need be only “a factor” in fear of persecution rather than the current standard that it must be a “central reason for persecuting.”
- Eliminating the criteria of a “totality of circumstances” in judging credibility of asylum applicants.
- Providing asylum applicants new appeal rights, beyond already excessive opportunities to appeal unfavorable rulings.
- Establishment of a national support center for training immigration lawyers in how to defend their clients against deportation.
- Open-ended opportunities for asylum claimants to identify family members to subsequently come as refugees.
- Allowing both refugees and asylees to immediately become legal permanent residents rather than the current one-year period for investigating false identity or other disqualifying provision, e.g. criminal activity, terrorism link, etc.
- Allowing asylum applicants to apply for a lottery visa while in the United States and to switch status if they won an immigrant visa in the lottery.

Similar expansive criteria are being sought for those seeking admission as refugees:

- Creation of new group eligibility on the basis of a shared “conscience” that members of the group “should not be required to change.”
- Eliminating the annual ceiling on refugee admissions and making it a “target,” i.e. a quota.
- Empowering the Secretary of State to designate collective groups for refugee status similar to what is now done by law in the Lautenberg Amendment.
- Requiring taxpayers “to provide legal services for refugees to assist them in obtaining immigration benefits for which they are eligible.”

Collectively these proposed provisions would increase the flow of refugees to the United States for permanent resettlement, significantly increase the costs of that program to the U.S. taxpayer, and increase the opportunities for persons who would not qualify for refugee status — if they were abroad — to seek similar benefits as asylees if they can get into the United States either

legally or illegally. The asylum changes in particular would inexorably expand the number of asylum claims.

FAIR'S AGENDA FOR TRUE REFUGEE AND ASYLUM REFORM

The United States needs to condition its commitment to accept refugees who truly need permanent resettlement in order to leverage other countries to fairly share the burden of refugee admissions. At the same time, reform measures are needed in the national interest to reallocate resources by narrowing refugee admissions to just those truly requiring permanent resettlement and by narrowing the scope of the asylum provisions so that they confer benefits only on persons who would qualify as refugees if they were outside of the United States. A reduction in refugee intake would allow for adequate support for those resettled here and for those waiting in UN facilities for repatriation to their homeland.

The primary reason that these latter reforms are needed and in the national interest is because the current abuses in those programs — even without those abuses being magnified by the changes proposed in S.3113 — are undermining public support for our humanitarian efforts. The more that those programs are seen as a fraudulent backdoor route to permanent residence that result in Americans being required to support foreigners who should not be in our country, the greater will be a possible future backlash that could undermine support for those programs.

There will likely always be more refugees and asylees than can be accommodated internationally as well as nationally. That situation has led to a prioritization system at the international level for identifying refugees most in need of permanent resettlement. A similar prioritization is needed by the United States to operate within a fixed ceiling of admissions. The practice of circumventing admission ceilings by creating waiting lists is an abrogation of the responsibility for prioritizing and has the pernicious effect of simply creating pressure to raise the ceiling.

RECOMMENDATIONS

REFUGEE POLICY — Admission of refugees should be restored to its original context of applying to individuals who have no prospect of being able to return to their homeland because of a well founded fear of persecution. To accomplish that goal requires the following changes:

- Group status, e.g., the Lautenberg Amendment, opens the door to fraud and to unverifiable claimants to participation in the group and should be ended.

- In-country processing of applicants for refugee status is similarly a distortion of true refugee status because their presence in the country demonstrates that they are not subject to government persecution of a nature that generates the need for refugee protection. It also siphons off dissidents who may become agents for governmental change. The refugee screening programs in Russia, Vietnam and Cuba should be permanently shut down.
- The UNHCR has a long track record and expertise in addressing refugee problems, with the United States exerting major influence in the development of its policies. Accordingly, the United States should harmonize its refugee intake more with UNHCR priorities for populations needing permanent resettlement, and, in the process, insist on a more equitable burden sharing within the international community. This would entail a reduction in refugee admissions and a greater emphasis on temporary protection.
- The family reunification provisions of U.S. refugee admissions policy should apply only to the immediate family (spouse and minor children) of the principal refugee. This is not to exclude adult children and other extended family members, but to require that they must establish in their own right their eligibility to be recognized as refugees.
- Persons accepted for refugee resettlement in the United States on the basis of being an immediate family member of a preceding refugee should be required to substantiate that family relationship including by genetic testing where fraud in such claims has been found.

The adoption of these policy changes would likely reduce the intake of refugees below the annual level of 50,000 recommended by the Jordan Commission.

ASYLUM POLICY — Americans empathize with and try to help foreigners who do not share our freedoms and standard of living. However, in the same way that most Americans do not accept the judgment of some foreign government that the existence of the death penalty in the United States is immoral and a violation of human rights, we should recognize that other societies have norms with which we do not agree that often have a religious or cultural foundation. The fact that our law does not condone some practices in the United States should not be taken to mean that those practices in other countries constitute governmental persecution. Corporal punishment — rather than incarceration — would be a case in point. That context underlies the following recommendations.

- Restore the congruity of asylum policy with refugee policy. If persons are not recognized as refugees by the UNHCR, they should not qualify for asylum protection in the United States. Similarly, if they have not been identified as needing permanent resettlement, they should not be granted asylum.
- Asylum protection should be temporary, maintaining the focus of the individual on the need to return to the home country to work for positive change. Only after a substantial

period when it is clearly established that the need for protection is perpetual should it be converted to permanent residence.

- The “particular social group” provision in the definition of a refugee must be clearly and narrowly defined in a way that prevents the definition from constituting a magnet for a further flow of illegal immigrants seeking to exploit our humanitarian concerns to gain U.S. legal residence.
- The exemption of Cubans in the United States from being required to justify a well-founded fear of persecution if sent back to Cuba is a political rather than humanitarian provision that encourages illegal immigration from Cuba. The Cuban Adjustment Act should be repealed and the “wet-foot-dry-foot-policy that paroles Cubans into the country should be rescinded by the president.
- The expansion of the definition of a refugee to include coercive family planning policies should be reversed. It deviates from international practice and encourages illegal immigration from China.
- Asylum applications should be adjudicated within the immigration courts by judges trained and experienced in such cases. There should be no *de novo* consideration in the U.S. court system. The current appeals process results in innumerable delays in the removal of foreigners trying to game the system.
- Persons seeking protection from deportation in the United States should be required to apply for protection immediately upon arrival or immediately after an event in the home country that creates a well-founded fear of persecution if they were forced to return to their home country.
- Access to the refugee resettlement program should be denied to persons who have traveled to and have been living and supporting themselves in the United States illegally until put into deportation proceedings and who then file a defensive asylum claim.

The adoption of these reforms will go a long way towards combating the documented fraud in the asylum system and in reducing the possibility that a potential terrorist will slip through the overburdened asylum hearing system and be released to attack innocent bystanders.

TEMPORARY PROTECTED STATUS — TPS should provide legal status only to persons legally in the United States at the time of a natural disaster or civil strife in their home country and who will seek to return to their home at the earliest safe opportunity. Those who are in the country illegally and have no intent of willingly returning to their home country as soon as conditions allow should be excluded from access to temporary legal status.

- TPS should be narrowed to apply to only foreigners legally present in the United States at the time that an event occurs in their homeland that temporarily prevents their return.

The provision in law that places foreign governments as supplicants for the establishment or extension of TPS is inappropriate and should be removed.⁵⁶ If TPS is restricted to legally present foreigners, foreign governments are unlikely to have any continuing interest in TPS declarations.

ENDNOTES

¹ This may be seen in S.3113, Refugee Protection Act of 2010, introduced by Sen. Patrick Leahy [D-VT] Mar 15, 2010.

² “UNHCR Resettlement Statistics by Resettlement Country,” in “Proposed Refugee Admissions for Fiscal Year 2010,” report of Department of State, Department of Homeland Security, and Department of Health and Human Services to Congress (undated).

³ Included among refugee admissions are relatives of earlier refugees who are not required to meet the refugee standard as well as illegal Cuban entrants who similarly are not required to establish a well-founded fear of persecution if sent back to Cuba. These are only two examples among many discussed later.

⁴ “New Policy Permits Asylum for Battered Women,” *New York Times*, July 15, 2009.

⁵ “Most people free to have more child [sic]” *China Daily*, July 11, 2007. “While popularly referred to as the “one child policy”, the rule actually restricts just 35.9 percent of the population to having one child, Yu Xuejun, a spokesman with the commission [National Population and Family Planning Commission], said in a Webcast on the government’s website (www.gov.cn).” In 2007, according to the Population Reference Bureau’s 2007 World Population Data Sheet, China’s population was then 1,318,000,000 and 35.9 percent of that population would be 473 million Chinese.

⁶ “Refugees, migrants and internally displaced persons,” Amnesty International, website consulted October 20, 2010.

⁷ Stein, Dan, “U.S. Asylum Policy: Reforms Needed in Current System,” Testimony to Immigration Subcommittee of the Senate Judiciary Committee, May 3, 2001. See http://www.fairus.org/site/News2?page=NewsArticle&id=16795&news_iv_ctrl=1701.

⁸ “The Need for Reform of Refugee Admission Policy,” Letter from Dan Stein to Sen. Saxby Chambliss, September 22, 2004. See http://www.fairus.org/site/News2?page=NewsArticle&id=16806&news_iv_ctrl=1701.

⁹ “Reforming Refugee Admissions,” statement by Jack Martin to the FY-2008 Refugee Admissions Program stakeholders’ meeting, June 6, 2007. See http://www.fairus.org/site/News2?page=NewsArticle&id=16423&news_iv_ctrl=1701.

¹⁰ In part the jump in asylum admissions was due to the elimination of the ceiling of 10,000 admissions per year and the admissions of persons from a waiting list. But that does not explain the continued jump in asylum admissions.

¹¹ Article 1, The 1951 Convention Relating to the Status of Refugees.

¹² Refugee admissions data are for the USSR until 1996 and since then are for Russia and the Ukraine.

¹³ Eggers, Dave, *What Is the What: The Autobiography of Valentino Achak Deng*. McSweeney’s, 2006.

¹⁴ “Recession dims job prospects for Iraqi refugees; Thousands have settled in San Diego County,” *San Diego Union Tribune*, September 6, 2009.

¹⁵ “Surge in Cuban Migration Spurs Human Smuggling,” NPR, February 3, 2008.

¹⁶ “U.S. Offers Refuge to Cubans, Even if They’re Not From Cuba,” *Wall Street Journal*, April 7, 2009.

¹⁷ INA Sec. 207(a)(5).

¹⁸ REAL ID Act of 2005, (“Persons resisting coercive population control methods.—Section 207(a) of the Immigration and Nationality Act is amended by striking paragraph (5).”).

¹⁹ MSNBC.com, “Illegal Chinese immigrants land in U.S. limbo: Beijing stalls return of 39,000 of its nationals, frustrated DHS officials say,” April 18, 2006. (website consulted October 14, 2010).

²⁰ “Roughly 6.2 Million Mexicans Express Desire to Move to U.S.: Nearly three times as many Chinese and Indians say the same,” Gallup Poll results June 7, 2010, website consulted June 9, 2010

(<http://www.gallup.com/poll/139391/Roughly-Million-Mexicans-Express-Desire-Move.aspx>).

²¹ Joseph A. D’Agostino, vice president for Communications at the Population Research Institute, commented in that organization’s November/December newsletter “Leftist elites love to talk about the paramount importance of women’s choices when it comes to procreation, but Western European nations and Canada couldn’t care less about China’s 30-year-old coercive population control program.”

²² “UNHCR and partners lobby for joint European resettlement scheme,” May 17, 2010 (UNHCR website consulted September 30, 2010)

²³ UNHCR website consulted October 20, 2010. (<http://www.unhcr-budapest.org/index.php/news/215-resettlement-momentum-in-europe-is-building>). “In 2009, UNHCR submitted 129,000 refugees for resettlement, a steady increase from 99,000 in 2007. 84,000 refugees were actually resettled last year, with three traditional resettlement countries taking the lion’s share (United States 62,000; Australia and Canada 6,500 each).”

²⁴ This was observed first hand by the author at annual consultative meetings hosted by the Departments of State, Homeland Security and the Health and Human Services’ Office of Refugee Resettlement with stakeholders, e.g. on June 6, 2007.

²⁵ Congressional testimony to Senate Committee on the Judiciary, Subcommittee on Immigration, Border Security and Citizenship, September 21, 2004.

²⁶ “Legal Immigration: Setting Priorities,” Report of the U.S. Commission on Immigration Reform, 1995.

²⁷ “Proposed Refugee Admissions for Fiscal Year 2010,” Department of State, Department of Homeland Security , and Department of Health and Human Services to Congress (undated).

²⁸ Robinson, David M., “How Public Opinion Shaped Refugee Policy in Kosovo,” National War College paper , 2000.

²⁹ The Committee on Migration and Refugee Affairs (CMRA) is a coordinating group of ten voluntary agencies that have contracts with the federal government for resettling refugees in the United States. It currently operates under the umbrella non-governmental coordinating organization InterAction. According to Robinson, “...the federal government provides about ninety percent of [the CMRA’s] collective budget

³⁰ Boas, Heidi H., “Note: The New Face of America’s Refugees: African Refugee Resettlement to the United States,” *Georgetown Immigration Law Journal*, Spring 2007.

³¹ “Refugees face homelessness all over again in U.S.,” *The Seattle Times*, August 30, 2010.

³² “The Bantu: A closer look,” *Shelbyville Times-Gazette*, December 22, 2007.

³³ “Vast Soviet refugee fraud detailed; INS memos catalog misuse of Lautenberg Amendment,” *Washington Times*, November 4, 1995.

³⁴ “Refugee Program Halted As DNA Tests Show Fraud,” *Wall Street Journal*, August 20, 2008.

³⁵ “U.S. offers asylum to Cuban exiles in Spain; other inmates may go free,” Associated Press, October 4, 2010.

³⁶ DHS *Statistical Yearbook of Immigration Statistics*, 2009. Chinese asylum admissions based on defensive [fighting deportation] claims were 3,418 and affirmative claims were 2,691.

³⁷ Asylum: Some Progress, But Much More Needs to be Done, September 11, 2010 (website consulted September 14, 2010 <http://blogs.ilw.com/carlshusterman/2010/09/asylum-some-progress-but-much-more-needs-to-be-done.html>).

³⁸ "Report: Immigration judges approving more asylum bids," *USA Today*, September 2, 2010.

³⁹ "Gay immigrants savor freedom: Growing number win asylum in U.S. based on sexual orientation," *Chicago Tribune*, May 17, 2010.

⁴⁰ "German homeschooling family granted political asylum in U.S.," Catholic News Agency, Memphis, January 28, 2010.

⁴¹ Fauziya Kassindja, a Togolese woman, was granted asylum by the U.S. Board of Immigration Appeals in 1996.

⁴² "New Policy Permits Asylum for Battered Women," *New York Times*, July 15, 2009.

⁴³ "US asylum ruling could spark surge in claims from Guatemala, other Central American countries," Associated Press, July 15, 2010.

⁴⁴ "Asylum Granted to Mexican Woman in Case Setting Standard on Domestic Abuse," *New York Times*, August 12, 2010.

⁴⁵ "Asylum approvals for Mexicans up," *Miami Herald*, April 2, 2010.

⁴⁶ The expansion of asylum grants based on membership in a particular social group suggests that, if not constrained, it could be found to apply to women who are denied the ability to wear burkas in public, as in France.

⁴⁷ "Law firm's scam reopens hundreds of asylum cases," *Sacramento Bee*, November 16, 2009.

⁴⁸ "Three attorneys sentenced to prison in asylum scheme," *Sacramento Bee*, September 26, 2010.

⁴⁹ Mann, Juan, "How Alien Terrorists Exploited the EOIR," blog at <http://vdare.com/mann/terrorism.htm> (consulted October 1, 2010).

⁵⁰ Krikorian, Mark, "Who Deserves Asylum?" *Commentary*, June 1996.

⁵¹ "Ohio Man Sentenced to Ten Years Imprisonment for Conspiracy to Provide Material Support to Terrorists," Dept. of Justice press release, November 27, 2007.

⁵² "Bombs in Brooklyn: How the Two Illegal Aliens Arrested for Plotting to Bomb the New York Subway Entered and Remained in the United States," Office of the Inspector General, Department of Justice, March, 1998

⁵³ "U.S. Refugee Policy: Taking Leadership," Report to Congress, U.S. Commission on Immigration Reform, June 1997.

⁵⁴ "Reports Say Deadline Hinders Asylum Seekers," *New York Times*, September 30, 2010.

⁵⁵ "New report says one in five refugees denied asylum due to late application submission," Lexology.com, October 25, 2010.

⁵⁶ INA 244(b)(1)(B)(iii) provides the grounds for a TPS declaration if "...the foreign state officially has requested designation under this subparagraph."

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