

Testimony of
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Testimony on

"Oversight Hearing: U.S. Refugee Admissions and Policy"

by Fr. Kenneth Gavin, S.J.

on behalf of

Refugee Council USA

before the

Senate Committee on the Judiciary
Subcommittee on Immigration, Border Security
and Citizenship

September 27, 2006

Thank you, Chairman Cornyn, Ranking Member Kennedy, and Members of the Senate Judiciary Subcommittee on Immigration, Border Security and Citizenship for providing me the opportunity to testify on an issue of great importance to the people of the United States--our country's role as the preeminent provider of hope, assistance and protection for the world's refugees.

I testify today both in my capacity as Vice Chair of Refugee Council USA and as National Director of Jesuit Refugee Service/USA (JRS/USA).

Refugee Council USA is a coalition of 23 non-governmental organizations focused on refugee protection. Refugee Council USA provides focused advocacy on issues affecting the protection and rights of refugees, asylum seekers, displaced persons, victims of torture, and victims of trafficking in the United States and across the world. Our particular areas of concern are adherence to international standards of refugee rights, the promotion of the right to asylum, political and financial support for UNHCR, and the promotion of durable solutions, including resettlement to the United States.

The members of Refugee Council USA are: American Refugee Committee International, Amnesty International, Center for Victims of Torture, Chaldean Federation of America, Church World Service/Immigration & Refugee Program, Episcopal Migration Ministries, Ethiopian Community Development Council, Hebrew Immigrant Aid Society, Hmong National Development, Human Rights First, International Catholic Migration Commission, International Rescue Committee, Jesuit Refugee Service/USA, Jubilee Campaign, Kurdish Human Rights Watch, Lutheran Immigration and Refugee Service, Mapendo International, Migration & Refugee Services/U.S. Conference of Catholic Bishops, National Alliance of Vietnamese

American Service Agencies, Southeast Asia Resource Action Center, U.S. Committee for Refugees and Immigrants, Women's Commission for Refugee Women & Children, and World Relief.

My personal involvement with refugee protection stems from my role as National Director of Jesuit Refugee Service/USA. Based on our commitment to Catholic social teaching and in the finest tradition of American humanitarian values, the mission of Jesuit Refugee Service/USA is to accompany, serve, and defend the rights of refugees throughout the world. JRS is not a resettlement agency; rather it focuses on programs to assist the world's most vulnerable refugees and asylum seekers. Among its many programs are schools for refugees in camp settings in Thailand, Uganda, and Kenya, and for repatriated refugees in southern Sudan and Liberia. Working in partnership with fellow members of Refugee Council USA, JRS advocates strongly for generous resettlement policies in the United States and worldwide, stemming from our conviction that this is frequently the most appropriate form of protection for thousands of refugees around the world.

On behalf of both Jesuit Refugee Service and Refugee Council USA, I would like to thank you and the Congress of the United States for your essential leadership in creating and maintaining the U.S. Refugee Resettlement Program. As we continue to seek to fulfill this noble calling, and to address the array of challenges facing refugees across the globe, your role as protectors of the world's most vulnerable individuals is as critical now as ever before.

The following testimony will address Refugee Council USA's perspective on four issues: first, the RCUSA perspective of the current state of the U.S. Refugee Resettlement Program; second, the refugee protection crisis created by present interpretation and application of the "material support for terrorist activity" bar on refugees and asylum seekers; third, structural impediments that must be overcome to facilitate protection of the greatest possible number of refugees; and fourth, the funding essential for U.S. global leadership in refugee protection.

The Current State of the Refugee Admissions Program

Since 1975 the U.S. has resettled over 2.6 million refugees. The average number of refugees admitted annually since 1980 is 98,000. In recent years, however, this number has steadily declined.

In the aftermath of September 11th, refugee admissions fell to fewer than 30,000 for the following two years while new and more stringent security standards were created and implemented to strengthen those measures already in place. By 2003 the U.S. Refugee Resettlement Program was well on its way to recovery. Admissions increased from 28,422 to 52,868 in FY04 and to 53,813 in FY05. Unfortunately this positive trend has now been reversed due largely to the effects of the newly implemented "material support" bar. As a result of this bar, only 42,000 refugees are expected to be admitted in Fiscal Year 2006. The Administration has requested the admission of only 70,000 refugees for FY 2007 and of this number has allocated only 50,000 to specific geographic processing regions, with 20,000 to be held in reserve.

Despite the disappointing number for the coming year, widespread public commitment to the humanitarian principles enshrined in this program remains strong. Local citizens and private organizations throughout the country stand ready to welcome the persecuted and to provide them a safe haven and home.

Refugee Council USA has consistently called for the admission of at least 90,000 refugees per year since the beginning of the Bush Administration. This reflects a pledge that the Administration made early in its first term to increase the program incrementally to that level over the next four years. In the view of our members, the achievement of this level of admissions would represent a significant contribution of the United States toward its responsibility to relieve the burden placed on countries of first asylum who continue to provide refuge to millions of refugees year after year. It is vital, therefore, to remember that in each year the U.S. fails to use its full capacity for resettlement, thousands in need of this form of international protection continue to subsist in desperate situations throughout the world. When admissions ceilings are not achieved, thousands of opportunities to rescue refugees are lost.

The "Material Support" Bar on Admissions: Punishing the Victims of Terrorism

Mr. Chairman, the U.S. Refugee Resettlement Program, which was well on its way to a post-September 11th recovery, faces a new, devastating threat today--the "material support" bar. The "material support" bar, the common term ascribed to the broad terrorism-related grounds of inadmissibility applied to refugees and asylum seekers, is a tragedy for refugees as well as for the moral leadership of the United States, a nation traditionally known for welcoming the victims of persecution to its shores.

Components of the material support bar, when applied individually or in combination have the dire, although unintended, effect of barring the admission and asylum of legitimate refugees who are not by any reasonable definition terrorists and who thus pose no danger to the United States. The most troubling of these components are the overly broad definition of terrorism and terrorist activity, the lack of an exception for material support provided under duress, and the lack of a de minimis exception for the support given.

As the law is presently applied, refugees who have been members or supporters of organizations whose activities fall within the scope of self defense against brutal governments condemned by the United States, including refugees who were trained by the U.S. and who fought side by side with U.S. soldiers, are barred from U.S. admission under the expanded terrorism definition. Examples include Montagnards and Hmong who supported the U.S. military during the Vietnam War, and Cubans who supported anti-Communist movements. Many of these refugees whom the U.S. now labels as terrorists continue to suffer persecution because of their close association with the United States. We believe that Congress and the Bush Administration should immediately address this issue so that legitimate freedom fighters and allies who pose no security threat to the United States can receive the protection they so urgently need.

Although the Administration has recently begun to exercise discretionary authority for narrowly circumscribed groups who have provided support to organizations now mistakenly labeled as "terrorists", it does not have the authority to extend such discretion to members of these

organizations nor to individuals who have been trained by them. Legislation is needed to allow a distinction between actual terrorists who are a security threat to our nation and refugees who have been forced to defend their families and their freedom from oppressors.

Two additional objectionable aspects of the material support bar are the lack of any exception for those refugees who have been coerced to provide support under duress and for support that was of a very minimal nature. The "material support" bar, as it is now interpreted, denies refugee protection to bona fide refugees who have been forced by circumstances beyond their control or coerced under extreme duress--even at gunpoint--to provide material support, even when such support was of the most minimal value.

In many refugee producing areas, large territories are occupied, controlled and administered by opposition groups considered to be terrorist organizations under U.S. law. Refugees who live in such areas are forced by the necessities of existence to interact with these opposition groups in the course of daily life. In well known cases, such as that of Colombia, residents are forced to pay coercive fees to paramilitary or guerilla groups, are subject to the confiscation of goods, to the holding of family members for ransom, and to other forms of coercion. Refugees who flee these circumstances are now barred from the U.S. refugee admission program as supporters of terrorism, when they should in fact be recognized for what they are--victims of terrorism. Even individuals who have given as little as a glass of water to armed men who demanded it of them, or who have been forced to stand by while brigands looted their homes for what little food they possessed are barred as supporters of terrorism. Surely no reasonable person or nation should interpret such minimal, inadvertent, or involuntary contributions as support to terrorism.

Although the problems that the material support bar poses for refugee admission were identified several years ago, the only possible solution allowed by current law involves interagency negotiations between the Secretary of State, the Department of Homeland Security, and the Attorney General. The process of these negotiations has been inexcusably slow, and no comprehensive solution has been found to date. While the agencies debate which populations may be exempt from the material support bar, the U.S. refugee admissions program has practically been shut down for Colombians. The material support bar has caused substantial processing delays and has resulted in a 20 percent rejection rate for Burmese Karen in Thailand, bona fide refugees identified in October 2005 by the United States as in need of resettlement. Of an initial 1,500 Burmese Chin in Malaysia slated for U.S. resettlement, 1,185 have been negatively affected by the material support bar. This problem is not limited to a few instances. Other populations suffering the impact of the bar include such long-time U.S. allies as Vietnamese Montagnards and Hmong, as well as Cubans, Liberians, and Sudanese.

Not only are refugees overseas at risk, but so too are many refugees who have fled to the United States and applied for asylum in this country. Over 560 asylum requests have been placed on indefinite hold as a result of these provisions and the failure of the Department of Homeland Security to set up an effective process for refugees to seek an exemption. Asylum seekers from Colombia, Burma, Nepal, Sri Lanka, and Bhutan are among those improperly prevented from receiving asylum because of the material support bar. This state of limbo has already lasted several years for some asylum seekers, causing delays that have left many families divided, stranding refugee children seeking to join their parents in the United States in difficult and

dangerous circumstances abroad, and forcing many asylum seekers to endure long periods of detention. In some cases, asylum applicants have now remained incarcerated for a year or more, even though immigration judges have ruled that they are otherwise deserving of asylum.

In light of the scope and complexity of the issues surrounding the overly broad application of the material support bar, Refugee Council USA calls for a legislative solution to this problem. Although the Secretary of State has exercised her discretionary authority with some success in the past, the problems with the material support bar are too intricate and the cases too varied to be solved through time-consuming, interagency negotiations. A more effective and comprehensive solution requires a legislative fix, which will grant the Secretary of State the authority to issue waivers to groups that are currently ineligible for this exemption, such as members and combatants of groups that have been falsely identified as "terrorist organizations." The material support statute itself must also be amended so that groups or individuals that pose no threat to the United States cannot be misnamed as terrorists, and so that people who are victims of terrorism are not further punished for any alleged collaboration with their persecutors. These legislative remedies are urgently needed to restore the U.S. Refugee Resettlement Program to its traditional scope of operation and ensure its pre-eminence, strength, and example to the world as a leader in refugee resettlement and protection in the coming years and decades.

The fact that individuals are forced to provide "material support" under the threat of death or torture should not be grounds for inadmissibility for refugees or asylum seekers seeking protection from the United States government. Yet, as far as we know, not one case in which duress is a mitigating factor has been admitted to the U.S. Even refugees whose support was coerced by rape, torture, or other extreme acts of brutality remain categorically barred from admission. Immediate legislative action should set in place procedures for exempting appropriate duress cases from the "material support" bar.

Until a full legislative solution is in place, Refugee Council USA urges the Administration to move swiftly to bring to bear such tools as it already has available to admit deserving refugees who are currently excluded by the material support provisions. Nonetheless, without a comprehensive legislative fix to this humanitarian problem, the number of refugees who are in need of protection and fall victim to this bar will continue to grow.

Structural Reforms Needed to Fulfill the United States' Refugee Protection Mission

Mr. Chairman, notwithstanding the situation stemming from the "material support" bar, Refugee Council USA believes that the State Department could achieve a far higher admissions number if several policy and procedural reforms were instituted.

In managing the refugee admissions program, the Bureau for Population, Refugees, and Migration (PRM) of the State Department has historically treated the authorized admissions number as a ceiling, not as a target. Evidence of this is the persistent, significant difference each year between the ceiling and actual arrivals. In recent years, a significant number of admission slots in the Presidential Determination has been set aside as "unallocated". This means that there is no effort to develop an operational plan for the use of these numbers, which are reserved for use in unanticipated situations.

Although the total number of refugees in the world has decreased somewhat in recent years, there remain millions of refugees for whom no durable solution has been found. These include the Burmese in Thailand, Malaysia, and Bangladesh, the Bhutanese in Nepal, Iraqi minorities and several large refugee populations in Africa. Only one large population, the 100,000 Karen in Thailand, has been identified for resettlement in the next year. The Administration does indeed deserve credit for acting to designate an exception to the "material support" bar that will allow the majority of the Karen refugees who have languished in Thailand for over ten years to be processed for resettlement. We note with dismay, however, that the current plan envisions fewer than 10,000 admissions from this group in Fiscal Year 2007. In a world where needs are so great and admissions numbers are so limited, urgent action is needed to ensure that, once a group has been identified for resettlement, its processing and movement are treated with more urgency.

The process of identifying new groups of refugees for resettlement can also be improved. Although Refugee Council USA supports the work of the UNHCR, which plays an indispensable role in refugee protection throughout the world, we believe that there continues to be an over-reliance by the U.S. government on the United Nations High Commissioner for Refugees (UNHCR) for identification of refugees in need of resettlement. This over-reliance is especially problematic given the serious funding constraints facing UNHCR.

In recent years, the shift in the refugee resettlement program from reliance on the movement of large populations in a limited number of locations toward smaller groups with compelling needs in many, less accessible locations has put an enormous strain on the limited resources and infrastructure of UNHCR and the international humanitarian community. This has created lengthy backlogs in many locations for both refugee status determinations and resettlement referrals. These backlogs pose substantial obstacles for refugees attempting to access the United States resettlement program.

In view of these limitations, alternative routes of access to the United States resettlement program must urgently be employed. First of all, utilization of "Priority -2" group designations should be enhanced to increase access to the U.S. program in light of the above challenges. The P-2 designation has provided an important avenue of protection for many "groups of special concern to the United States" over the years. It has allowed groups with compelling and similar refugee claims to access the U.S. Refugee Resettlement Program directly, without the need for an individual referral from UNHCR. This has resulted in timely and effective refugee access to durable solutions and huge savings in staff time and other resources for UNHCR. The Chin in Malaysia would be an excellent example of a group of refugees which would lend itself to a P-2 designation.

A second access route that should be more widely used is "Priority 3"--family reunification eligibility. Family unity should be a key consideration in determining which refugees are considered for resettlement in the United States. Family unity is a fundamental and universally recognized human right that applies to all individuals, regardless of their status. The "P-3" category, dedicated to reunifying refugees with immediate family members already living in the United States, is presently limited to only a few nationalities. Since Fiscal Year 2004, the P-3 designation has been further limited to those refugee applicants whose family "anchor" entered the United States as a refugee or asylee. The Refugee Council USA recommends that P-3

designations be applied to refugees of all nationalities and that the restrictions placed on eligibility for P-3 in Fiscal 2004 be rescinded. The necessary systems are already in place to address concerns about misrepresentation in this caseload.

The most vulnerable refugees in any situation must be given special attention and proactively identified for urgent consideration. As an example, within the Burmese refugee population in Thailand are some 8,000 minors living without their parents. Not all of these children are candidates for resettlement, but all are in need of evaluation and assistance. The U.S. should take a leading role in ensuring Best Interest Determinations are performed for each of these children. If UNHCR does not have the capability of ensuring that this process takes place, the U.S. should promote the use of NGO child welfare experts to assist in implementation. More generally, the U.S. should show leadership in ensuring that vulnerable refugees, including separated children, the disabled and infirm, and women at risk are consistently identified and evaluated both for immediate assistance and also for durable solutions as early as possible in each refugee situation.

Another way to augment and to complement UNHCR's referral capacity is through the use of the Targeted Response Team (TRT) model. These teams, which may involve a combination of State Department, NGO, UNHCR and DHS staff, travel to regions with the purpose of identifying particular refugee groups for resettlement and/or to assess a situation for the establishment of resettlement processing. Three TRTs were conducted in 2005: the first to Thailand and Malaysia; the second to Kenya and Tanzania; and the third to Krasnodor Krai, Russia. The Refugee Council USA urges the State Department to continue to mobilize regular TRTs to assist in the identification of new refugee groups in need of resettlement to the U.S.

An additional innovative way to enhance access to resettlement would be the establishment and mobilization of Rapid Response Teams, formalized structures composed of designated NGO staff who could be rapidly deployed to identify and process refugee populations for U.S. resettlement. The mission of these teams would be to engage expert NGO staff on a regular basis to analyze the resettlement needs of refugee populations around the world. These resettlement experts would then help establish the initial processing mechanisms for identifying and referring cases for United States consideration.

Refugee Council USA applauds and encourages PRM in its efforts to engage private organizations that provide assistance to refugees in specific regions around the world in making NGO referrals of refugees for U.S. resettlement. Greater use should be made of this alternative point of access, and NGOs everywhere should be encouraged and facilitated in their efforts to refer refugees for resettlement. The growth of this initiative should be encouraged through greater involvement of NGOs with refugee processing and resettlement experience in the coordination and training of the referring agencies.

As PRM has moved in recent years to the "Overseas Processing Entity" (OPE) model, it has sometimes relied on government personnel to conduct the processing work involved in refugee resettlement. Traditionally, the use of NGOs for this purpose brought flexibility, cost effectiveness, expertise, and connections to humanitarian services which are largely lost with the substitution of U.S. Government personnel. The involvement of NGOs, especially those with resettlement expertise, has also provided important perspectives, resources, and advocacy to the process. These resources are now underutilized.

The role of the Overseas Processing Entity should be enhanced and expanded to incorporate the full range of talents and resources of the NGO community, and to allow for a direct OPE role in the identification of groups of refugees and individuals not currently being considered by the U.S. Such a model should allow the OPE to engage in direct intake, registration, and processing of refugees within a designated P-2 group, and permit the OPE to identify and screen additional individual cases of compelling concern that may merit consideration by the U.S. Refugee Resettlement Program.

Lastly, the complexities of managing the refugee admissions "pipeline" require careful contingency planning to deal with the inevitable disruptions that occur due to medical problems, local security issues, transportation delays, and access issues that develop from time to time. A proposal repeatedly made by the voluntary agencies--one which we repeat here--is that PRM should strive to maintain at all times at least a three-month pipeline of travel-ready refugees so as to provide the flexibility needed to ensure that the full admissions number is utilized each year.

Funding Needs for Refugee Admissions and Resettlement

Mr. Chairman, in addition to significant modification of the U.S. government's approach to identifying and referring refugees for resettlement, Congress and the Administration must join together to provide sufficient funding for this program to ensure its success.

The two accounts that fund admissions and resettlement activities are the Migration and Refugee Assistance (MRA) account administered by the State Department's bureau of Population, Refugees, and Migration (PRM), and the Refugee and Entrant Assistance account administered by the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services. The refugee program also relies on the State Department's Emergency Refugee and Migration Assistance (ERMA) account, which funds unanticipated emergencies.

In recent years, we have seen several alarming trends in U.S. government funding for refugees.

? The President's budget request does not include the level of funding required to admit the full number of refugees set by the Presidential Determination (PD).

? Congress is appropriating less regular funding for refugee accounts than the amount requested in the President's budget.

? Congress is funding a significant portion of the State Department's refugee budget with supplemental appropriations.

? Supplemental appropriations which allow the State Department to bring in more refugees do not include funding for the Office of Refugee Resettlement (ORR) which is responsible for resettlement services at the local level.

These trends become evident in reviewing recent spending and appropriation figures. In Fiscal Year 2004, the State Department spent over \$900 million to assist and protect refugees. Yet, the President's request for Fiscal 2005 was a mere \$730 million for the MRA. Congress appropriated funds above this request, funding the MRA at \$764 million. However, these funds were

insufficient to cover the needs of the Presidential Determination on refugee admission, and an extra \$121 million in supplemental funding was necessary to provide for the admission of additional refugees and to address ongoing refugee crisis in Africa. In Fiscal 2005, PRM spend a total of \$996 million.

In Fiscal 2006 there was a substantial increase in the President's request, which was set at \$893 million for the MRA. Due to fiscal constraints, however, Congress appropriated over \$100 million less than the President's request, providing only \$783 million. Congress later realized this was insufficient, and appropriated supplemental funding exceeding \$150 million.

Refugee Council USA is concerned that the FY 2007 funding levels set by the House and Senate for the refugee accounts continue the alarming trend of leaving PRM dependent on supplemental appropriations later in the year. Although actual spending to meet the needs of refugees this fiscal year will exceed \$1 billion dollars for the first time in the history of the Refugee Resettlement Program, the House mark for refugees funds PRM at only \$730 million. The Senate mark funds PRM at the President's request of \$833 million.

This year, for the first time in several years, the President's FY07 budget request includes sufficient funding to admit the anticipated level of the Presidential Determination for this year, about 70,000 refugees. But the President's request is insufficient to meet the needs of repatriated refugees in Africa, to provide emergency food aid for refugees, to protect the internally displaced, and to help refugees work so they can eventually become less dependent on assistance.

The following chart shows that if Congress does not step in over the lame duck session to rectify the difference between the House and Senate mark for refugee assistance, the State Department will have a significant funding crisis on its hands. With the current FY07 marks, PRM may have to choose whether to assist vulnerable refugees overseas or bring more refugees to the United States. Congress has an opportunity now to provide sufficient funding for the refugee accounts so that the question of competing dollars for refugee assistance and resettlement do not become an either/or proposition.

Refugee Funding - Basic Needs for FY07
[Table Avail. Upon Request]

Refugee Council USA's initial FY07 request to the President and the Congress was \$1.2 billion for the MRA account. However, we acknowledge the challenge before Congress to negotiate for additional refugee funding beyond the President's request. That is why we recommend, at a bare minimum, the MRA account be funded at \$980m for FY07. If this basic level of funding is not met, the State Department will have to depend on supplemental funding for emergency needs later in the fiscal year.

The Refugee Council USA has also recommended a FY07 appropriation of \$798 million for the Office of Refugee Resettlement (ORR) to meet the needs of refugees during their initial eight-month settlement period after arriving in the United States. The President's FY07 request for

ORR is for \$615 million, which is a moderate increase of \$40m over FY06 appropriated levels. The Refugee Council USA is pleased that both the House and Senate have been able to meet the President's funding request for ORR, but feels that additional funds are needed for the early employment Match Grant program, social service grants to help states manage local services for new arrivals, and to care for domestic victims of trafficking.

Conclusion

In summary, Congress, through its oversight responsibilities for the U.S. Refugee Resettlement Program, should insist that the annual target for refugee admissions be met by the various Administration departments provided with this responsibility. Achieving this objective will require the full engagement of the U.S. government with both international agencies and the NGO community.

Legislative and administrative solutions must be found for the crisis caused by the "material support" bar that will ensure that refugees are properly recognized and offered the protection of the United States as victims of tyrannical regimes and terrorist groups, rather than barred as supporters of terrorism.

Among the reforms that should be utilized to meet the target are: expanded use of P-2 "groups of special concern" designations, a universal P-3 family reunion category, greater access for refugee minors, additional Targeted Response Team missions, initiation of a Rapid Response Team process, greater emphasis on NGO refugee referrals, expanded roles for Overseas Processing Entities in the identification of individuals and groups for resettlement, and refugee pipeline management that provides at least three months worth of travel ready refugees for resettlement.

Finally and most importantly, without adequate funding for the Migration and Refugee Assistance, Emergency Refugee and Migration Assistance and Office of Refugee Resettlement accounts, structural and legislative reform will be stymied. Congress and the Administration must recommit to providing the appropriate resources necessary to maintain the United States' traditional leadership role in refugee protection.

Refugee Council USA looks forward to working closely with Congress and the Administration in addressing the many challenges facing the U.S. Refugee Resettlement Program, and assisting in reinvigorating our country's commitment to protecting the world's refugees.

Mr. Chairman and Members of the Committee, I would like to once again thank you for giving us an opportunity to raise our concerns about the current state of the United States Refugee Resettlement Program.