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Statement of the American Immigration Lawyers Association

Submitted to the Senate Committee on the Judiciary Subcommittee on Immigration and the National Interest

October 1, 2015 hearing

“Oversight of the Administration’s FY 2016 Refugee Resettlement Program: Fiscal and Security Implications”

Contact:

Greg Chen

Director of Advocacy

gchen@aila.org; 202-507-7615

Alyson Sincavage

Legislative Associate

asincavage@aila.org; 202-507-7657

The American Immigration Lawyers Association (AILA) is the national association of immigration lawyers established to promote justice and advocate for fair and reasonable immigration law and policy. AILA has over 14,000 attorney and law professor members.

The world is witnessing the largest refugee crisis since World War II, with an estimated 60 million people currently forcibly displaced from their homes due to war, civil conflict, and persecution who are seeking safety either within their countries or in other countries. By itself, the civil war in Syria has forced over 4 million Syrians to flee as refugees into neighboring countries, and within Syria, nearly 12 million people are displaced internally.

In response to this global crisis, America can do more and must do more. AILA calls upon our nation’s leaders to act immediately and increase our resettlement of refugees worldwide to 200,000 for the fiscal year beginning October 1, 2015. Of that total number, 100,000 should be refugees from Syria. AILA urges that the U.S. continue the robust support of UN High Commissioner for Refugees (UNHCR) and other humanitarian efforts worldwide.

During this crisis the scapegoating of Muslims has unfortunately crept into the national debate, and some commentators have made unjustified claims that refugees from Syria are terrorists. We hope that members of Congress will exercise moral leadership by challenging such ugly and discriminatory views and calling for a humanitarian response that is in keeping with our nation’s commitment to welcome and protect those fleeing persecution.

As a nation, we must also protect the large numbers of people, including families and children, who are arriving on our southern borders fleeing persecution in Central America. Several members of this Committee and dozens of other leaders in Congress have challenged the Department of Homeland Security’s (DHS) aggressive border deterrence strategy that has resulted in the massive detention of family asylum seekers. This shameful practice must end.

Protecting Syrian refugees

Each day, thousands of Syrians make the terrifying decision to flee having borne witness to the destruction of their homes and neighborhoods, and the senseless killing of their family, friends, and

neighbors. According to the U.N., more than half of all Syrian refugees are under the age of 18. Children fleeing this horrible violence are at risk of falling ill, becoming malnourished, and being abused and exploited. The perils of remaining in Syria are so great that many risk everything to make the dangerous journey to safety. In 2015, more than 2,500 refugees have died in the Mediterranean trying to attempt the journey.

On September 10, 2015, the Obama Administration pledged to resettle 10,000 Syrian refugees for the fiscal year 2016. This was a welcome step, but only an initial step that must be followed by a more comprehensive plan to protect the millions in need. Other smaller and less affluent countries across the Atlantic are hosting far greater numbers of Syrian refugees, with a total of about 4 million being hosted in Turkey, Lebanon, Jordan, and Iraq. Several European countries have stepped up as well, most notably Germany, which committed to accepting 35,000 Syrian refugees, in addition to Syrian asylum seekers.

The United States has the capacity to resettle at least 200,000 refugees in a single year. In 1980, the U.S. government accepted over 200,000 Vietnamese refugees, and in other years, similarly high numbers from Cuba, Northern Iraq, and Kosovo.¹ Our nation has always been a beacon of hope for those fleeing persecution and oppression, and we should accept far more than the 85,000 total refugees planned for the next year. This is the time for America to show leadership worldwide.

Rigorous security and background checks for refugees

Some commentators have recommended that the United States place additional restrictions on the refugee resettlement program to ensure national security and public safety. Since the terrorist attacks of September 11, 2001, the U.S. government has implemented a detailed and rigorous security screening process for all refugees who are candidates for resettlement to the United States. These security protocols are extremely rigorous, and it is unnecessary for Congress to mandate additional measures.

First, refugees are referred to the U.S. by the UNHCR, a U.S. embassy, or a trained non-governmental organization. Refugees then undergo a series of biometric and investigatory background checks, including collection and analysis of personal data, fingerprints, photographs, and other background information, all of which is checked against government databases. All refugees must also appear for a detailed interview by trained DHS personnel. Where any security concerns exist, refugees must undergo additional screening by way of a Security Advisory Opinion, which requires clearance from multiple U.S. law enforcement and intelligence agencies before resettlement may be approved.

Stopping fearmongering against Muslims

In the media and public discourse, a dangerous sentiment against those of Muslim faith is taking hold. Some have suggested that the U.S. refugee resettlement program should exclude Muslims outright or prioritize other religious groups. Such a change to our laws and traditions would be a terrible mistake. Restricting refugee protection to certain faiths would be inconsistent with U.S. and international asylum law which do not discriminate against any religious group. Exclusion of Muslims from the U.S. resettlement program would leave thousands of people who have suffered horrific violence and persecution at the hands of ISIS or other warring factions without humanitarian protection. We call upon Congress to demonstrate leadership by speaking out against the scapegoating of any group during this time of crisis.

AILA supports the “Protecting Religious Minorities Persecuted by ISIS Act of 2015” (H.R. 1568) which would give especially vulnerable Syrian refugees direct access to the U.S. Refugee Admission Process while enforcing security measures currently in place. AILA also supports efforts to increase the capacity

¹ The United States resettled 111,000 Vietnamese refugees in 1979 and then doubled that number to 207,000 in 1980.

of DHS and the Department of State to process security and background checks for Syrian and other refugees so they can be efficiently cleared for resettlement.

America must ensure humanitarian protection for refugees arriving on our borders

In addition to aiding Syrian and other refugees that are overseas, the U.S. has a responsibility to protect those who come to our borders, in particular those from Honduras, El Salvador and Guatemala who are fleeing persecution and violence that qualifies them as refugees. For the past several years the escalating violent crime, gang violence and domestic violence that has raged beyond control within those countries has resulted in thousands of children and families fleeing and seeking refuge in the United States and other countries in the region.

In initial interviews with government asylum officers, these individuals are qualifying as refugees at extremely high rates, demonstrating that they should be protected under U.S. asylum laws. For example, U.S. Citizenship and Immigration Services (USCIS) data shows that the vast majority – nearly 90 percent – of detained families have established that they have bona fide claims for asylum or other protection under U.S. law. Further indication of the strength and veracity of their claims is the extremely high success rate of asylum grants when the women and children have their cases finally reviewed by immigration judges.

Instead of welcoming them and ensuring their safety, since summer 2014, DHS has embarked on a deterrence strategy that is intended to show force on the border and turn back these asylum seekers. The DHS strategy has included rapid, so-called “expeditious,” deportations that have abrogated due process protections and in many cases resulted in the unlawful return of women and children without giving them the meaningful opportunity to seek asylum. The principle of *non-refoulement*, under Article 33(1) of the 1951 Refugee Convention, protects both refugees and asylum seekers by prohibiting states from returning them to territories where there is a risk that their life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion. As a country, we must ensure that fundamental protections are provided to asylum seekers, and that instead of being intimidated and turned back, they are treated in a dignified and humane manner.

Under U.S. law, individuals facing deportation, including children and family asylum seekers, are still not guaranteed counsel paid for by the government, even for those who are indigent and have little or no understanding of our laws. In some cases, the government places such onerous restrictions on volunteers and pro bono lawyers who are trying to assist families in detention that meaningful assistance of counsel is effectively denied. Since July 2014, AILA lawyer members from across the country have volunteered in New Mexico, Texas, and Pennsylvania at family detention facilities and, in early 2015, AILA established the CARA Family Detention Pro Bono Project in partnership with other legal service providers to assist families in detention in Texas. Despite the private, in-kind nature of these volunteer efforts made by hundreds of lawyers and professionals, DHS has repeatedly obstructed the ability of counsel to speak with detainees – including detainees whom the government knows to be represented by counsel – for legal consultation at family detention facilities. DHS has also employed coercive tactics that undermine the ability of these detained asylum seekers to assert their rights, including, in at least one instance, going from cell-to-cell demanding the names of detainees who spoke with their lawyers about their concerns regarding the terms of their release, telling the detainees that lawyers have nothing to do with the matter.

Finally, as part of its border deterrence strategy, the U.S. government has dramatically increased the use of detention against families and currently is incarcerating more than 2,000 children and mothers who are seeking asylum and other protection under U.S. law. Private for-profit prison companies run the two largest family detention facilities and now hold contracts for the only alternatives to detention programs DHS offers. Daily, our volunteers and staff are helping these families and are bearing witness to the

suffering borne by these mothers and children – some breastfeeding infants – including severe loss of weight, psychological trauma, and inadequate medical treatment. AILA and other organizations have sent formal complaints to the DHS Office for Civil Rights and Civil Liberties documenting these and other deleterious consequences of the Administration’s family detention policy.

Instead of being subjected to detention and expedited removal procedures that limit their ability to seek counsel and adequately present their claims, these families should be placed into the regular removal process, given the opportunity to tell their story to an immigration judge and released from physical detention so they can join the families and friends who are willing to support them while they prepare their cases.

The mass incarceration of asylum seekers not only violates our country’s laws but also contradicts America’s most cherished principles and values. We call upon Congress and the Administration to end family detention.

The United States needs to open its doors to those fleeing from persecution and violence whether they fled from war in Syria, or from gangs, rape, or domestic violence in Honduras, Guatemala, or El Salvador. No matter from which shore, country or continent these refugees have fled, America must stand behind our laws and guarantee them humanitarian protection.