

## *DENIAL AND DELAY: The Impact of the Immigration Law’s “Terrorism Bars” on Asylum Seekers and Refugees in the United States*

Human Rights First’s report, “DENIAL AND DELAY: The Impact of the Immigration Law’s ‘Terrorism Bars’ on Asylum-Seekers and Refugees in the United States,” describes the adverse and unintended consequences the overly broad “terrorism” provisions in the Immigration and Nationality Act (INA) are producing for asylum-seekers and refugees. The report’s policy recommendations would focus the scope and application of the INA’s “terrorism”-related provisions on those individuals whom Congress intended those provisions to target: people who threaten U.S. national security and those who have engaged in or supported acts of violence that are inherently wrongful and condemned under U.S. and international law. These recommendations would serve the United States’ national security interests while also upholding this country’s long-standing commitment to provide protection to refugees fleeing political, religious and other forms of persecution.

### **Background:**

The INA defines “terrorist activity” as any unlawful use of a weapon for any purpose other than personal enrichment and a “Tier III terrorist organization” as any group of two or more people who engage in—or has a subgroup that engages in—“terrorist activity.” These laws are overly broad, and for the past several years the immigration agencies have been interpreting them in an increasingly expansive way. As a result, thousands of legitimate refugees and asylum seekers—who pose no danger to the United States and who have committed no acts of wrongdoing—have been labeled “terrorists” and had their applications for protection denied or delayed.

While the INA also provides broad authority to the Secretary of Homeland Security and the Secretary of State, in consultation with the Attorney General, to grant “waivers” of most of the terrorism-related inadmissibility grounds, the federal agencies involved have implemented this authority in a piecemeal and centralized fashion that has proved to be unworkable as a long-term, meaningful solution.

Examples of refugees who have been characterized as “terrorists” under these legal definitions include:

- A refugee from Burundi, who was detained for 20 months in a succession of county jails because the U.S. Department of Homeland Security, and the immigration judge who would otherwise have granted him asylum, took the position that he had provided “material support” to a rebel group because armed rebels robbed him of four dollars and his lunch.
- A young girl kidnapped at age 12 by a rebel group in the Democratic Republic of the Congo, used as a child soldier, and later threatened for advocating against the use of children in armed conflict, who has been unable to receive a grant of asylum, as her application has been on hold for over a year because she was forced to take part in armed conflict as a child.
- A man who fled political and religious persecution in Bangladesh, who has had his application for permanent residence placed on indefinite hold because he took part in his country’s successful struggle for independence—in 1971.
- The minor children of members of the democratic opposition from Sudan who were granted asylum in the United States years ago, who have been prevented from becoming permanent residents because the peaceful political activities of their parents have been deemed to constitute “material support to a terrorist organization.”

These provisions are being applied to refugees who were associated with groups that the U.S. government does not consider to be “terrorist organizations” in any other context. The INA’s sloppy definition of a “Tier III terrorist organization” is causing groups that the United States does not treat as “terrorist” in any other context to be defined in this way. As a result, refugees who pose no threat to the United States, and are not guilty of any conduct for which the U.S. would legitimately want to exclude them, are being denied the protection they need or are unable to obtain permanent residence or reunited with their spouses or children. Any non-citizens who do

pose a threat to the U.S. or who *are* guilty of actual terrorist acts or other crimes are already covered by other provisions of the immigration law, so that the “Tier III” definition is being used overwhelmingly against people who were not its intended targets.

Examples of groups who have been labeled “Tier III terrorist organizations” include:

- Iraqi groups who rose up against Saddam Hussein in the 1990’s, including those who took part in the failed uprising at the end of the Gulf War of 1991 that was encouraged by the first President Bush;
- Iraqi groups that later fought against Saddam Hussein’s government at any other time, including in conjunction with the Coalition forces that ultimately overthrew his regime in 2003;
- Afghan mujahidin groups that fought the Soviet invasion in the 1980’s, with U.S. support;
- The Democratic Unionist Party and the Ummah Party, two of the largest democratic opposition parties in Sudan, many of whose members were forced to flee the country in the years after the 1989 military coup that brought current President Omar Al-Bashir to power;
- Groups that fought the ruling military junta in Burma and were not included in the 2007 legislation that removed the Chin National Front and other Burmese insurgent groups from the scope of the Tier III definition;
- All groups that have used armed force against the regime in Iran since the 1979 revolution; and
- The Movement for Democratic Change (MDC), the main political opposition to President Robert Mugabe of Zimbabwe.

Many of the refugees affected by the “Tier III” definition’s overbreadth were involved only in peaceful political activity in connection with groups that are now deemed to be “terrorist organizations” for immigration-law purposes.

The federal immigration agencies charged with applying these laws—the Department of Homeland Security, the Department of Justice, and the Department of State—have also been interpreting all these provisions in a very expansive way. The immigration law’s “material support” bar, for example, is being applied to minimal contributions, to people who were forced to pay ransom to armed groups, to doctors who provided medical care to the wounded in accordance with their medical obligations, and to persons who engaged in other forms of lawful activity. These interpretations have exacerbated the impact of the law’s overbroad definitions.

### **Key Recommendations:**

- **Congress** should eliminate the statutory definition of a “Tier III” terrorist organization, which has led to numerous unintended consequences but is not needed as an enforcement tool against its intended targets;
- **Congress** should amend the immigration law’s definition of “terrorist activity” so that it (a) targets only the use of violence for purposes of intimidation or coercion (of a civilian population or of a government or an international organization), and (b) no longer applies to uses of armed force that would not be unlawful under international humanitarian law;
- **Congress** should amend the immigration law’s definition of “material support” to make clear that it does not apply to acts done under coercion;
- **Congress** should eliminate the provision that makes a person inadmissible simply for being the spouse or child of a person inadmissible under the immigration law’s “terrorism”-related grounds;
- **Congress** should give waiver authority to the Attorney General for cases pending before the Department of Justice, with the provision that the Attorney General delegate this authority to the immigration courts;
- **The Departments of Homeland Security, Justice, and State** should support the statutory amendments outlined in the recommendations to Congress above;
- **The Departments of Homeland Security, Justice, and State** should interpret existing law consistently with its text and purpose, to target those who advance actual terrorist activity; and
- **The Departments of Homeland Security, Justice, and State** should implement a more effective and fair approach to waivers.

Please contact Brenda Bowser Soder at [bowersoderb@humanrightsfirst.org](mailto:bowersoderb@humanrightsfirst.org) or visit [www.humanrightsfirst.org](http://www.humanrightsfirst.org) for a copy of “DENIAL AND DELAY: The Impact of the Immigration Law’s ‘Terrorism Bars’ on Asylum-Seekers and Refugees in the United States.”