The Hmong & the Law: Preventing Another Material Support Mistake

Steven Williams
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by Steven Williams*

I. INTRODUCTION

From its beginning, the United States of America has been a land of liberty, a place of protection, a refuge for the retreating. However, because of the progression of refugee law over the last thirty years, many people who should be granted admission to the United States are being denied. In 2005, the Real ID Act was passed and, because of progressively stricter definitions of terrorism over the past twenty-five years, many refugee communities were erroneously defined as terrorists. One of those communities affected by this unfortunate definition was the Hmong, a refugee population from Southeast Asia that centers in California, Wisconsin, and Minnesota. This definition severely limited Hmong rights to citizenship and their opportunities to immigrate. Although specific exemptions were made for the Hmong and other refugee groups in December 2007—reinstating previously denied rights—potential remains for similar problems of erroneously defined terrorists in the future if the law and associated powers granted in the laws remain as they stand.

As a result of increasingly stringent definitions of “terrorism” and “material support” and the restriction of executive oversight powers, the Hmong had rights needlessly taken away and delayed. These delays and problems can be prevented in the future by reinstating executive oversight provisions and returning to an earlier definition of terrorism as recommended in the Refugee Protection Act of 2010, providing greater flexibility in the law to evaluate refugee admissibility.
Section II of this paper highlights the history of Hmong interaction with U.S. refugee law to provide insight into the historical reasons for the current problems, particularly focusing on the development of terrorist exclusion and the degradation of executive oversight, culminating in the consequences resulting from defining the Hmong as terrorists. Section III describes the reaction of the Hmong community to highlight the seriousness of the problem and its effect on refugee populations. It then analyzes the problematic process necessary to correct this erroneous definition, concluding with a brief synopsis of current and potential problems the current law could cause for other refugee groups. Section IV analyzes and suggests changes to two solutions proposed in the Refugee Protection Act of 2010 that could be incorporated into a Refugee Protection Act of 2011 to prevent future problems of a similar nature.

II. THE HMONG AND THE LAW: A REVELATORY HISTORY

Refugee Law before 1980 and the Hmong Refugee Crisis

The Hmong distrust strong governments; they depend heavily on familial structure and cultural solidarity. The word “Hmong” itself denotes “those who must have freedom or independence.” In contrast, the Chinese, who reigned over them, referred to them as the “Miao,” a pejorative Chinese word suggesting servitude and great contempt. This dichotomy between the way the Hmong view themselves and the view of the majority is not new. For thousands of years, the Hmong ruled a rival kingdom in China that was based on democracy, indicating the Hmong fear of a single powerful ruling

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Because the Hmong yearned for freedom, when they were overtaken by the Chinese, they fled into the mountainous regions of southern China and Indochina, particularly Laos and Vietnam. There, they remained aloof from the lowland majority ethnicities, avoiding dictator governments and relying on family-based clan structures to maintain order and enforce moral law. The family, not some outside government or ruling body, became the ultimate authority. Thus, when the United States approached the Hmong to help fight in the Vietnam War, there were many cultural barriers which ordinarily would have prevented the Hmong from assisting a strong government like the United States.

The United States requested the help of the Hmong in fighting against the Viet Cong and Pathet Lao during the Vietnam War. The Geneva Accords of 1954 declared Laos as a neutral state. However, with “Thailand and Burma to the west, Vietnam to the east, and Cambodia to the south—all of them stronger and more populous, and none of them walled off by natural barriers”—it was unlikely that Laos could retain its neutrality. Preventing the fall of Laos to the Communists was essential to the United States’ strategy in Southeast Asia because “Laos was viewed as the first domino in the face of spreading [c]ommunism.” The United States was caught in a

2 Id. at 6.
6 HAMILTON-MERRIT, supra note 1, at 69 (“Despite its remoteness, we were determined to preserve the independence of Laos against a take-over backed by its neighbors to the north—Communist China and North Vietnam. For the fall of Laos to Communism could mean the subsequent fall—like a tumbling row of dominoes—of its still-free neighbors, Cambodia and South Vietnam and, in all probability, Thailand and Burma. Such a chain of events would open the way to Communist seizure of all Southeast Asia.” Id. (quoting President Dwight D. Eisenhower in WAGING PEACE, 1956-1961: THE WHITE HOUSE YEARS (1965)).
political quandary: to send in foreign troops would have been a blatan
t disregard for the neutrality established by the Geneva Accords,
but to do nothing would surely result in the spread of communism
throughout Southeast Asia, beginning with Laos. The Hmong sud-
venly became a critical asset for the United States in Northern Laos
because they knew the mountains of Laos well and had a fierce de-
sire to maintain their freedom.

Despite their past fears and cultural leanings, the Hmong chose
to valiantly fight for the United States because of promises of ref-
uge given by government officials. At the beginning of the war, “the
CIA advisors traveled throughout Hmong villages with interpreters
and told everyone [that the United States] will give [the Hmong] the
means to fight and defend [their] homes.” These promises went be-
ond support in the fight, however, as these advisors also “assured
the Hmong of assistance in case the war was lost.” Although avoid-
official, written treaties or agreements because of the clandestine
ature of the conflict, the CIA, as a token of their making good on
these promises, “issued each Hmong soldier a payroll number and
paid each an average of . . . ten cents per person per day.” In con-
trast, American privates received between $7 and $11 per day, even
thought Hmong soldiers were “killed at a rate ten times higher than
their American counterparts.” The Hmong chose to serve because of
the promise of “a homeland if the United States won in Laos and
[the pledge] that the United States would care for the Hmong even

7 See FADMAN, supra note 5, at 125.
8 See LILLIAN FADMAN WITH GHEA XIONG, I BEGIN MY LIFE ALL OVER: THE
9 CASTLE, supra note 3, at 38.
10 LAOS: BEYOND THE REVOLUTION 220 (Joseph J. Zasloff & Leonard Unger
11 FADMAN, supra note 5, at 128 (Undersecretary of State U. Alexis Johnson
tested in 1971 before the Senate Armed Services Committee: “[The
operation in Laos] is something of which we can be proud as Americans.
It has involved virtually no American casualties. What we are getting for
our money is, to use the old phrase, very cost-effective.”).
12 Id. at 129.
if it were to lose the war,” promises which the CIA has never
denied were made. The Hmong put an unusual amount of trust in the
U.S. government and the CIA advisors because of these promises, as
shown by the total dedication of their available resources.

Because of their commitment to help the United States, the
Hmong suffered terrible losses in their fighting against the Pathet
Lao and Viet Minh. Over the course of the war from 1963 to 1971,
of 300,000 Hmong in Laos, 40,000 were actively fighting in the army. This army fought bravely, often “rescuing downed American
pilots, watching the movements of the enemy forces, and fighting
the ground war” in order to prevent the Viet Minh from using the Ho
Chi Minh Trail, the key North Vietnamese supply line from North
to South Vietnam. Even more indicative of the Hmong's dedication
fighting the war was the alarming shift in the Hmong fighting
population. As military age Hmong soldiers were killed, younger
boys were recruited: by “1971, seventy percent of the new recruits
were between the ages of ten and sixteen.” The Hmong paid dearly
for their unyielding, hope-filled dedication; before the war was
over, more than 20,000 had been killed, including “half of all males
over [the age of] fifteen,” a particularly staggering loss considering
the need of males in a subsistence agricultural tradition like the
Hmong’s.

The survival of the Hmong as a people was at stake, leading them
to rely more heavily on their only source of hope: the promises made
by the CIA advisors at the beginning of the war. In 1973, as the
United States withdrew from the conflict in Vietnam, the Royal Lao-

13 HAMILTON-MERRITT, supra note 1, at 92 (According to Tasseng Yang, who
claims to have been at the original meeting between Col. Yang Pao and the
CIA, the CIA promised, “If the Hmong people beat the Vietnamese, then
we will help the Hmong people as much as we can. If the Hmong people
lose, we will find a new place where we can help the Hmong people.”).

15 CASTLE, supra note 3, at 82.
16 FADERMAN WITH XIONG, supra note 8, at 7.
17 See Id.
18 See Id.
tian government surrendered to the communist Pathet Lao army. As the situation continued to decay, the Hmong who had fought honorably were told they would be airlifted to safety if they reported to the Long Chien airbase. Although thousands of Hmong reported to the airfield, “only two airplanes were ever sent to rescue the top military officials.”19 In December of 1975, the Pathet Lao established the Lao People’s Democratic Republic, a communist puppet government.20 After this official establishment, the LPDR set up labor camps for those who had opposed them, including the Hmong. The Hmong, in particular, were in great danger because of the hatred from the Lao government directed towards them: an official statement from the Communist Party in Laos announced the Hmong “must be exterminated down to the root of the tribe.”21 Between 1975 and 1980, of the 350,000 Hmong still remaining in Laos, some 100,000 perished.22

The flexibility of refugee law prior to 1980 enabled the U.S. government to suppress information about the “Secret War” and ignore the Hmong’s increasingly problematic plight in Thai refugee camps. To this point in U.S. law, refugee admissions were decided largely by the Executive Branch in specific cases, with “no real statutory limits or Congressional controls on the admission of refugees.”23 For years, the American government refused to acknowledge the role of the Hmong in the war in Laos; many journalists “knew of the ‘secret war’ being fought in northern Laos, but . . . could not write about it then. It was embargoed.”24 Although the United States allowed the entry of 300 Hmong high-ranking army officers and their families in 1975, 25 the vast majority of the Hmong were left to be killed and driven out of Laos by the use of prohibited chemical-biological

19  HAMILTON-MERRITT, supra note 1, at 341-51.
20  CASTLE, supra note 3, at 127.
21  FADMAN, supra note 5, at 138.
22  HAMILTON-MERRITT, supra note 1, at 410.
24  HAMILTON-MERRITT, supra note 1, at xi.
25  FADMAN, supra note 5, at 167.
weapons. Despite these atrocities, the “U.S. Department of State’s annual human rights report submitted to Congress did not mention Laos in 1976, 1977, or 1978.”26 Once the Hmong saw that no further help would come from their hoped-for American saviors, 144,000 Hmong fled to Thailand refugee camps between 1975 and 1980.27 Finally, in 1979, after almost eighteen years of active military involvement, the Hmong received verbal recognition of their role in Laos from individuals within the U.S. government, including firsthand accounts from CIA officials who had worked closely with the Hmong in Laos.28

Following the admission of the role of the Hmong in the Secret War in Laos, President Carter announced that 168,000 Indochinese refugees would be allowed to immigrate to the United States in 1979.29 Although this made it possible for many more Hmong refugees to come to the United States, it also raised concerns in the minds of Americans that this would open “floodgates” to millions of refugees around the world.30 Thus, the Refugee Act of 1980 was passed to ease the minds of the American people.

The Refugee Act of 1980 Codifies and Structures Refugee Law

The Refugee Act of 1980, though seeking to introduce case-by-case admittance and increase the opportunities for refugees to enter the country, ultimately provided a broad excuse for the government to renege on its responsibility to admit refugees in certain cases.31 The stated goals of this act were to increase the annual limitation on regular refugee admissions from 17,400 to 50,000, to establish “an orderly but flexible procedure to deal with emergencies,” and to replace the executive-based decision making with “new statutory

26 Hamilton-Merritt, supra note 1, at 410.
27 Id.
28 Id. at 436.
30 Kennedy, supra note 23, at 145-46.
31 Id.
language asserting Congressional control over the entire process of admitting refugees.’’ \(^{32}\) Thus, the Refugee Act of 1980 “restricted refugee immigration to the United States and provided for approval of resettlements on a case-by-case basis.” \(^{33}\) The case-by-case admittance was intended to allow for the highest priority refugees, those in the direst circumstances, to enter the country first. For Hmong people specifically, the Act caused the resettlement of Hmong in the United States to “drop from 27,000 in 1980 to 2,800 in 1981,” \(^{34}\) a shocking decrease despite the fact that over a “quarter of a million Indochinese refugees still remained in Thai refugee camps.” \(^{35}\) Thus, this act prevented many thousands of Hmong people from entering the United States as legitimate refugees all in the name of controlling refugee immigration.

**Terrorist Exclusion Comes to a Head in the USA PATRIOT Act of 2001**

Although they had little direct effect on the Hmong community at the time, three separate acts in the 1990s introduced and subsequently strengthened the exclusion of potential immigrants on terrorism-related grounds. The terrorist grounds for exclusion were added in the Immigration Act of 1990 in an effort to streamline and “modernize the security and foreign policy grounds for inadmissibility and removal.” \(^{36}\) Ironically, in its efforts to streamline these grounds, this act began an ever-broadening elaboration of what associations and promotional activities could be deemed terrorist activities. It defined “virtually any illegal civilian use of weapons” as terrorism—even if it was to “resist a violent dictatorship or to fight alongside American troops.” \(^{37}\) The Illegal Immigration Reform and Immigrant Responsi-

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32 Id. at 143.
33 See LAOS: BEYOND THE REVOLUTION, supra note 10, at 220.
34 Id. at 222.
35 Id. at 226-227.
bility Act and Antiterrorism and Effective Death Penalty Act, both of 1996, markedly strengthened the anti-terrorism provisions and tightened policies and provisions that would relate to the enforcement of the Immigration Act of 1990 and revised several existing exclusion grounds. For example, “the security-related inadmissibility ground was expanded to cover persons who have incited terrorist activity under circumstances indicating an intention to cause death or serious bodily harm.” These acts set the stage for further terrorist exclusions that would eventually cause serious problems for the Hmong.

The USA PATRIOT ACT of 2001 greatly expanded the definition of terrorism to include a broader sweep of groups and introduced material support as a terrorist exclusion. Coming in direct response to the September 11, 2001 terrorist attacks, the Patriot Act was intended, as its contrived acronym states, for the “Uniting and Strengthening [of] America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism.” These “tools” included an incredible expansion of the definition of terrorism reminiscent of the type of suspicion and fear associated with the Red Scare and the Communist witch hunts of American Cold War infamy. Among this expansion was the first clearly defined statement that “barred any non-citizen who has afforded ‘material support’ to a terrorist or a terrorist organization from entering or remaining in the United States.” “Material support” at this time was left as a relatively vague provision that allowed for leeway in the application of the law, so it had little direct effect on specific refugee groups. In fact, this loosely worded law was helpful in making admission decisions because it gave principle-based criteria for admission. However, the seed was planted for the problem that would come to unfortunate fruition in the REAL ID Act of 2005.

While the administration was granted discretionary authority, this authority was curtailed to the point that exemptions could not

38 See García & WASEM, supra note 36, at 3.
be made for those groups defined as terrorists. As stated in the Patriot Act, this authority could be exercised by "either the Secretary of Homeland Security or the Secretary of State after consultation with each other and the Attorney General." However, they "may not waive the application of this provision with respect to any group that has itself engaged in conduct defined by the INA as 'terrorist activity'." In addition, the act defined "terrorist activity" so broadly that it ignored the context in which this activity occurs and whether such activity is supported by the United States. In fact, it "criminalizes without exception even behavior that is officially authorized in support of U.S. military and foreign policy objectives." Thus, although a "case-by-case analysis" system was technically provided for, it was so limited in its scope that it was impotent to provide any real relief to any group that fell under the definition of terrorist. This lack of exception-granting power proved dangerous for the Hmong once the REAL ID Act of 2005 was passed.

The REAL ID Act of 2005 and its Effect on the Hmong

By continuing the expansion of terror-related grounds for exclusion and removal, the REAL ID Act of 2005 defined the Hmong as terrorists because of their material support and fighting against the genocidal Lao Communist government. Although the main purpose of the act was to implement a federally-based identification system (as opposed to the state-controlled system of the time), its implications reached beyond jurisdiction over driver's licenses. Specifically,

41 Melanie Nezer, Material Support Problem: Where U.S. Anti-Terrorism Laws, Refugee Protection, and Foreign Policy Collide, 13 BROWN J. WORLD AFF. 177, 179 (2006) ("In March 2003, the Department of Homeland Security absorbed the functions of the Immigration and Naturalization Service (INS), which had been a division of the Department of Justice.").
42 Garcia & Wasek, supra note 36, at 3.
43 See Id.
44 Margaret D. Stock, Providing Material Support to a Foreign Terrorist Organization: The Pentagon, the Department of State, the People's Mujahedin of Iran, & The Global War on Terrorism, BENDER'S IMMIG. BL.L. 521, (2006).
it expanded the terror-related grounds for inadmissibility, changing the definitions of "terrorist organization" and "engage in terrorist activity" used by the Immigration and Nationality Act. 45 "Terrorist activity" was defined as "the use of any explosive, firearm, or other weapon or dangerous device . . . with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property." 46 In addition, the expansion of the definition of "material support" brought several refugee groups under the definition of terrorists. The REAL ID Act definition of "material support" includes, but is not limited to, provision of "[a] safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training." 47

Because of this grandiosely broad definition of both "terrorist activity" and "material support," innocent victims of "torture, rape, and other atrocities committed against them by brutal totalitarian regimes, could themselves be labeled 'terrorists,'" barring them not only from entering the United States, but also removing their previously-granted rights as citizens and approved aliens. 48 The Hmong fought to protect their families from Lao Communist soldiers, using explosives and firearms to protect themselves and to fight against the newly established Communist government. Those who did not fight provided food, shelter, directions, and advice to those who were fighting. All of these Hmong, because of the changes in the REAL ID Act and the lack of executive exemption powers, were defined as terrorists.

This unintended definition of the Hmong as terrorists caused the Hmong inside and outside the United States to suffer extreme

45 Garcia & Wase, supra note 36, at 4.
consequences for over three years. They struggled to become full, participating citizens and lost trust in the government and desire to identify themselves as Americans. More than 2,000 refugees already cleared to enter the United States from the camps in Thailand, who were “still in need of a durable solution after nearly thirty years,” were not only denied entry to the United States days before their scheduled departure, but were also subsequently threatened by the Thai government with immediate repatriation to Laos because of this new definition by the United States government. Within the United States, this definition prevented families with family members in the refugee camps in Thailand from being reunited for years longer than they expected, if they ever were reunited. One man, Xo Chia Vue, has spent “three decades in the mountains, his combatant past . . . on behalf of the United States . . . now acting against him” and preventing him from being reunited with his two brothers who “escaped through Thailand and settled in California.” Even those in the United States who were already citizens, or had green cards marking them as officially sanctioned aliens, suffered from this definition. A Hmong teenager was denied a driver’s license for months despite having already completed his driver’s test; hundreds of Hmong refugees with green cards were denied citizenship after having successfully passed the intimidating citizenship test; families with eight to ten children received reduced welfare allotments; and recently-arrived, illiterate Hmong refugees were threatened.


51 Anna Husarska, Exile Off Main Street: Refugees and America’s Ingratitude, 506 CURRENT 27, 27 (2008).
with deportation. This mistaken definition scarred all levels of the Hmong community.\footnote{Sandy Cha, Hmong Labeled Terrorists, Denied Green Cards, New Am. Media, Sep. 12, 2007, available at http://news.newamericamedia.org/news/view_article.html?article_id=90ec9fecd6b08795215a1eb0f6c7bfc.}

This prohibition has reached beyond the Hmong community to the general refugee population. In the aftermath of 9/11, refugee immigration to the United States fell from almost 70,000 to a mere 27,000 in 2002.\footnote{Id. supra note 51, at 4.} Although those numbers have risen since that time, just over half of the original 70,000 refugees are coming into the United States each year.\footnote{Id.} This is largely due to the fact that, as the State Department has admitted, “as a result of anti-terrorist legislation, 12,000 qualified refugees may have been barred . . . in 2006.”\footnote{Id.} Clearly, this explosion of complex and far-reaching definitions has seriously hampered the United States in its ability to provide refuge to those who are in need because of the provisions concerning those whom we define as terrorists and refugees.

III. Hmong and Government Responses: The Problematic Process

Government’s Response: The Sluggish Giant Awakens

The process of recognizing, reacting, and remedying the “Material Support Problem” laid bare the ineffectiveness of the executive on its own to resolve injustices, and placed in importance the role of the legislature in advocating for the needs of those whom they represent. This delay was caused by the lack of executive powers to grant specific exemptions for a group of refugees.

These problems were quickly brought to the public eye through representatives from states with Hmong populations. With the passage of the REAL ID Act in December 2005, the subsequent rights violations against the Hmong both here and abroad quickly became known. Representatives made repeated calls to “act now to make sure that Hmong refugees are not barred from seeking freedom here
because of a poorly-worded and reactionary law.” Senate Amendment 4117 to the 2006 immigration bill, which would have provided an exception for the Hmong, was “opposed by the Administration and defeated on the floor.” Finally, after almost a year of continual lobbying and demonstration starting in the Hmong community and spreading to the public and legislature, the “Administration publicly endorsed the need for a solution . . . in January 2007.” As the situation of the Hmong in Thailand worsened, the senators and representatives from California, Minnesota, and Wisconsin stepped up their assertion of the need for a swift response. However, despite this light of hope in the ability of the legislative branch to help resolve this problem, it still took three years to rescue the Hmong from the effects of this erroneous definition.

This extreme delay occurred because the executive lacked the power to provide an exemption for the Hmong. In March of 2007, Secretary of Homeland Security Michael Chertoff, when questioned by Senator Russell Feingold in a Senate Judiciary Committee Hearing regarding whether he was planning to apply a waiver to the Hmong population according to the powers that had been granted him under the Patriot Act and the Real ID Act, gave a worrisome response: “I believe I signed a number of waivers in the last few weeks. I have to confess I don’t particularly remember whether the Hmong were included, but I can get you the answer to that.” When reminded that “this is a problem that’s been around for several years . . . and the department, thus far, has applied a very limited number of waivers to the material support bar” and asked to give an estimated timeframe for the completion of these waivers, Chertoff flippantly attempted to dismiss concern: “I think I may have done it. The reason I’m hesitant is I think I may have done it already. But I can’t specifically recall.”


58 Id.
The Secretary of Homeland Security even claimed that "we can deal with this . . . the statute gives us the flexibility . . . I think we can deal with this under the existing law." This lack of understanding of the law resulted in further delay of resolution of these problems. Ironically, despite the fact that "the Homeland Security Department already issued some waivers, the administration [said] it needs legislation to consider asylum for those who have borne arms," Thus, the impotence of the executive to affect a quick solution delayed the resolution of the material support problem for two years.

As a result of the phenomenal grassroots efforts begun by the Hmong and brought to the government by concerned and involved legislators, the definition of the Hmong as terrorists was fortunately reversed on December 26, 2007, when it was approved by President Bush. As part of the Fiscal Bill of 2008, a provision was included which provided an exception for the Hmong and other similar refugee groups to the Material Support clause, thus removing them from the list of terrorists. This provision was passed in the House as House Resolution 2764 on June 22, 2007. The House-passed version of the bill expressly provided that the Hmong would not be considered "terrorist organizations" on the basis of any act or event occurring in or before 1975, meaning that persons would not face immigration consequences on account of their membership in such groups. The Senate version, passed on September 6, 2007, expanded the waiver authority concerning the application of the definition of "terrorist organization" to any non-designated group. Further, immigration authorities would be authorized to waive many of the terrorist-related grounds of inadmissibility. It also required the Secretary of Homeland Security to provide the House and Senate Committees on the Judiciary with reports about those waivers that had been issued to immigrants who "provided material support to terrorist entities under


61 Id.
duress.” These provisions and exceptions are excellent in that they meet the specific needs of specific groups, while also recognizing the need for greater flexibility and human involvement in the decision-making process of refugee admittance.

Although the problem was resolved in theory and on paper, the nearly two years of waiting for resolution has proven costly. It took as long as a year for Hmong denied citizenship to be able to reapply, and those who lost refugee status during that time are still waiting to be reconsidered. The most striking and lasting consequence, however, will be on those Hmong people still in Thai refugee camps who are on the verge of forced repatriation. There have been reports that “detention conditions have worsened, and that the Thai government is decreasing its commitment to assist Hmong fleeing persecution from Laos and blocking efforts to resettle eligible individuals in third countries.” Among those threatened with repatriation were those who were denied, and continue to be denied, admittance to the United States based off the terrorist grounds for refugee exclusion. This law has not been completely applied and continues to damage the Hmong community internationally. However, the most important question is what can be done now to improve our attitude and the attitude of the government towards refugees in the face of these positive changes.

To prevent future problems further action needed to be taken beyond a specific exception for the Hmong. Senator Russell Feingold, D-Wis., said:

While enacting this provision would be a good first step, Congress needs to do more to ensure that other legitimate refugees, who are not threats to our national security, do not face lengthy and unnecessary delays as the federal agencies

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62 Garcia & Wase, supra note 36, at 18-19.
involved determine whether they are eligible for a waiver that will permit them to resettle in the United States. 64

Continued Problems for Other Refugee Groups

The continued problems of other refugee groups clearly show the need for a further resolution beyond a group-specific exemption. The flaw in the U.S. government’s concept of “material support” has affected refugees from all over the world who do not support terrorism and in some ways have been the victims of violent terrorist groups. For example, Colombian refugees who have been forced to pay money to armed militants were said to be giving material support and denied asylum. A Sri Lankan refugee was kidnapped by the Liberation Tigers of Tamil Eelam (LTTE) and forced to pay 50,000 rupees for his release. 65 U.S. Judge Tadal denied him asylum on account of this provision of material support to a designated terrorist group. One woman was gang-raped, kidnapped, and held hostage by the Liberians United for Reconciliation and Democracy (LURD). She was forced to do many household tasks such as cooking, cleaning, and doing laundry. 66 She was denied asylum by the U.S. government because the services she provided were considered material support to a terrorist organization. In addition, one man fled from Colombia to Ecuador after he was kidnapped by marauding paramilitaries on a killing spree and forced to dig graves for the victims of their slaughter. 67 Because of anti-terrorism legislation refugees from areas that have been disrupted by war, like Colombia, are not granted asylum in the United States.

Since the introduction of the Refugee Act, there have been many instances where legal protections for refugees in the United States have weakened significantly. Refugees face an inadequate system of laws that often results in unnecessary detention, needless delay,

67 Editorial, Terrorists or Victims?. N.Y. TIMES, April 3, 2006, at A16.
and, in some cases, deportation to countries where they face further unfair treatment. On September 26, 2006, Human Rights First issued a report entitled “Abandoning the Persecuted” documenting the impact of the “material support” bar on refugees who seek asylum in the United States. As detailed in the report, many refugees have had their asylum requests denied or relegated to a long-term administrative limbo because of this overly broad provision of the immigration law. The time that refugees have spent in immigration jails—and separated from their families—has been prolonged by months or even years.

In order to avoid unfair treatment toward refugees, such as the Colombians and the Sri Lankans, there is a strong need for a permanent solution. Clearly, the exemptions provided for specific groups such as the Hmong are not sufficient to provide for every situation where the law may erroneously interpret a group’s actions as terrorism. Thus, a more principle-based solution is needed.

IV. CONCLUSIONS: A RETURN TO COMPASSION

Proposed Solutions in Future Refugee Legislation

Although the Refugee Protection Act of 2010 was dismissed from the books, the two solutions proposed, including expanding executive oversight provisions and rewording definitions contained in the law are workable solutions and can be made even more effective with some additions. Because the 110th Session of Congress recently ended, the Refugee Protection Act will need to be resubmitted to Congress in its current two-year session in order to be considered again. With some changes, this revamped refugee legislation could provide methods for refugee groups to be admitted in an efficient but flexible system that will better service those with legitimate refugee needs and concerns.

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69 See Id. at 2-4.
Criticisms of these proposed changes range from overly broad definitions and executive power in determining admission, which could lead to admission of groups that should not be admitted, and a concern that these changes will in fact slow the process by involving the executive too much. Although it is true that the Attorney General and the Secretary of State are granted certain expanded powers including ability to appoint counsel and to provide exceptions for specific groups, these powers are not without checks and balances that prevent them from being abused. The Secretary of State must report to Congress any exceptions to be granted, and Congress must give its approval of that request. As for delaying the process further, the main cause of delays before was the limits on exception-granting power when it came to terrorist exclusion. By lifting this proviso to exception-granting power, the Secretary of State can grant exceptions in any case without having to go through the legislative process to get amendments passed to provide those exceptions. Although it does seem to involve more of the slowing effect of human involvement, in reality this change will enable the human decision-making and judgment capabilities to have a positive effect on the timing and ease with which exceptions can be granted and approved.

The Refugee Protection Act of 2010 broadens executive oversight provisions of the Attorney General, Secretary of State, and the President. The Attorney General is given power to determine specific cases of refugees by appointing counsel to represent these refugees when the refugees’ admission is challenged.\textsuperscript{70} He also has discretion over whether or not certain aliens should be detained. The Secretary of State, after notification to Congress, may designate specifically defined groups of aliens whose resettlement in the United States is justified by humanitarian concerns or is otherwise in the national interest.\textsuperscript{71} The Refugee Protection Act eliminates the quota requirements on how many people can enter the United States as refugees per year.\textsuperscript{72} The power to determine this number is given

\textsuperscript{70} Refugee Protection Act of 2010, Sec. 3113 § 22, 111th Cong. (2009). (Dismissed from books, 2010)
\textsuperscript{71} Id. at § 20(2).
\textsuperscript{72} Id. at § 18(2).
directly to the president. This is good because the president can determine the numbers of refugees admitted according to the current political climate. If the president does not assign a number before the beginning of the following year, then the number allowed will be only 25% of the previous year's allotment. This provision punishes the refugees rather than the executive branch if the president fails in his responsibilities.

However, these changes could be expanded to better service additional potential and current refugee groups in the following ways. The Attorney General should have more control over adjustments made to the definition of terrorism and more specifically of material support in order to protect those falsely tagged as terrorists. The Secretary of State should be provided complete power to determine selections, with no limitations for those defined as terrorists. The check provided in communicating any exceptions to Congress will be sufficient to ensure the security necessary in these times combined with the flexibility to take into account the varying situations inherent in the complexity of our society and the world.

Limited changes are made to the definition of terrorism and material support in the Refugee Protection Act. The only changes made in the section that would protect victims of terrorism from being defined as terrorists affect only those from Palestine. Some groups may still be kept back from refugee status because they can fall under the title of terrorist. Unless these groups can demonstrate a “well-founded fear of persecution,” they will still be denied admittance to the United States without exception.

More extended and meaningful changes should be made that will allow those who make admissions decisions by evaluating paperwork and law will be able to make those decisions correctly and quickly. Suggested changes would include staying away from making exceptions to specific groups as done above lest that become the means by which changes are consistently made. Instead, the definitions should be kept as they were in the USA PATRIOT Act of 2001

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73 Id. at § 19(3)(B).
74 Id. at § 41(1)(A).
75 Id. at § 5(a).
but with exception powers given to the Secretary of State. This will provide a sufficient framework to expedite review processes, but will also provide sufficient flexibility to ensure problems like those the Hmong encountered are kept to a minimum.

Thus, the Refugee Protection Act of 2010 makes many positive changes, but they must be carried to protect future refugee groups who have been affected by terrorists but are not terrorists themselves. These changes are important to ensuring that future problems do not arise.

*Changing our Attitudes*

Along with the change in refugee law, this problem of inflexibility in refugee law reflects a larger issue evident in the attitudes of the American people of mistrust toward refugees. The key to successfully transforming our attitudes towards refugees as responsible citizens is to take responsibility for the actions of our government. We must do all we can to help refugees realize the voice they have in changing their situation and standing up for themselves. We must understand and appreciate cultural circumstances, while also acknowledging flaws in cultural and social traditions. We must advocate more effectively for refugees in our community and help them to advocate more effectively for themselves. If we as individuals and communities retain our compassion, this will spread within the government. We can be enriched and positively diversified, and those who do immigrate will be more likely to want to become true Americans and adopt this American spirit of selfless service and sacrifice.