

Statement of
Asylum Seeker Advocacy Project at the Urban Justice Center
Center for Gender and Refugee Studies
Church World Service
DC-Maryland Justice for Our Neighbors
Friends Committee on National Legislation
HIAS
Human Rights First
Human Rights Initiative of North Texas
International Refugee Assistance Project
International Rescue Committee
Jesuit Conference of Canada and the United States
Jesuit Refugee Service/USA
Latin America Working Group (LAWG)
League of United Latin American Citizens
Lutheran Immigration and Refugee Service
Multifaith Alliance for Syrian Refugees
NETWORK Lobby for Catholic Social Justice
Northern Illinois Justice for Our Neighbors
Office of Social Justice, Christian Reformed Church in North America
Pax Christi USA
Tahirih Justice Center
The Episcopal Church
The IMPAC Fund
U.S. Committee for Refugees and Immigrants
Women's Refugee Commission

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H.R. 2431, (The Michael Davis, Jr. and Danny Oliver in Honor of State and Local Law Enforcement Act)

The Michael Davis, Jr. and Danny Oliver in Honor of State and Local Law Enforcement Act, H.R. 2431, would harm refugees, asylum seekers, and stateless people fleeing persecution. This legislation worsens already expansive laws under the guise of targeting terrorism that instead has consequences for refugees and asylees. It expands the United States immigration detention system that currently detains many torture survivors, asylum seekers, families with children, and others seeking protection from persecution in their home countries. H.R. 2431 would directly result in the detention of asylum seeking children and their families, a practice documented to be traumatic. It is believed that asylum seekers may make up the majority of immigrants held in immigration detention; however, for three years U.S. Immigration and Customs Enforcement has failed to abide by its legal mandate to provide Congress with annual data on asylum seekers in detention, leading to a lack of transparency regarding whom the agency is detaining and why. Additionally, H.R. 2431 unwisely delegates the enforcement of national immigration laws to

state and local law enforcement agencies despite demonstrated instances of profiling and subsequent weakening of community safety.

In 2001, Congress enacted legislation that significantly broadened the definition of “terrorist activity” found within the Immigration and Nationality Act (INA). Though well-meaning in its intent, the definition has proven to be so broad it includes activities that have no connection to terrorism. For example, refugees who fled because they were forced to provide money or services to terrorists, and those who supported freedom fighters rising up against the most repressive regimes in the world, are mislabeled as “terrorists” under the expansive law. Trafficking victims - including children - forced to work for criminal organizations can also be mislabeled as “terrorists.”

The provisions that created these new bars to admission are collectively known as the Terrorism-Related Inadmissibility Grounds (TRIG) provisions. For over a decade, TRIG provisions have been causing tremendous and unnecessary hardship for individuals who have fled persecution.

Under these provisions, many refugees seeking safety – including those with family already in the United States – are barred from entering the U.S. with little to no ground for appeal. In addition, many refugees and asylees already granted protection and living in the U.S. legally are barred from obtaining lawful permanent residence and reuniting with their spouses and children who remain in dangerous situations abroad.

A bipartisan coalition in the 110th Congress led by Senators Patrick Leahy (D-VT) and Jon Kyl (R-AZ) amended the law in 2007 to authorize the Administration to grant exemptions from the law’s broad terrorism-related provisions on a case-by-case basis to people with no actual connection to terrorism. However, because of the sweeping nature of the law, and the Administration’s slow implementation of its authority to grant exemptions, thousands of people in the United States and abroad have been stuck in legal limbo by immigration law definitions of “terrorism” that are widely acknowledged to be needlessly harming refugees that the United States should instead be protecting.

As Congress considers reforms to our immigration system, it should be fixing this problem for the thousands of refugees and asylees who have been mislabeled as “terrorists.”

Instead, H.R. 2431 would make the problem even worse.

Sections 202 and 203, “Terrorist Bar to Good Moral Character” and “Terrorist Bar to Naturalization,” would bar from a finding of good moral character and naturalization, anyone who is described as a “terrorist” under section 212(a)(3)(b) of the Immigration and Nationality Act. While on its face this may seem reasonable, in fact, this provision would bar law abiding refugees who have lived in the U.S. for years or even decades from naturalization.

The Department of Homeland Security (DHS) and the Department of Justice interpret the term “terrorist activity” to include *any amount and all types of support* to armed opposition to any established government, no matter how repressive, and even to include acts committed under duress. Support can include providing small amounts of money or food, attending meetings or

joining groups, and even political speech. Under these agencies' interpretation of the law, *even if this "support" is coerced*, it can bar a refugee's admission to the United States or adjustment to permanent resident status.

Under this legal interpretation, even survivors of the Warsaw Ghetto uprising are considered "terrorists," along with: Iraqis who rose up against Saddam Hussein and fought alongside Coalition forces; Afghan groups that fought the Soviet invasion of Afghanistan with U.S. support; democratic opposition parties in Sudan and the South Sudanese opposition movement (that is now the ruling party of South Sudan); nearly all Ethiopian and Eritrean political parties and movements; religious and other minority groups that fought the ruling military junta in Burma; and, any group that has used armed force against the regime in Iran since the 1979 revolution.

The assumption that "aliens described in section 212(a)(3)" are "Persons Endangering the National Security" is a false one. This is one of the core problems with the INA's terrorism-related inadmissibility grounds, and is also the reason why Congress gave the Administration statutory authority to grant people exemptions from those grounds. We are concerned that this provision could even result in the denial of naturalization for refugees who have gone through the arduous process of being granted an exemption from the terrorism bars by the Department of Homeland Security.

Section 318, "Expedited Removal for Aliens Inadmissible on Criminal or Security Grounds," would subject anyone determined *by DHS* to fall within these same sweeping terrorism-related inadmissibility grounds to expedited removal by DHS, without a court hearing. The bill does not require that DHS even believe that the person poses a threat to the United States, nor does it make explicit provision for persons in this situation who would face persecution or torture if deported. Given that persons deemed by DHS "to have engaged in a terrorist activity" within the meaning of the INA have included a man who was robbed by armed men of his lunch and the sum of \$4, this is alarming.

Section 206, "Background and Security Checks" would require DHS to complete background and security checks before granting any immigration application, including for employment authorization, or any immigrant or nonimmigrant petition, or before issuing any proof of status to a person. This could have serious consequences for applicants for immigration benefits or relief, including those who apply for asylum, whose security and background checks are grossly delayed for reasons beyond their control and who are ultimately cleared.

Additionally, **Title I** of H.R. 2431 would expand the role of state and local law enforcement agencies in enforcing federal immigration law. By granting states and localities full authority to create, implement, and enforce immigration laws, the Act would hand state and local police officers vast authority without federal oversight. The approach could lead to racial profiling and discrimination. Those who "look undocumented," including refugees and asylees, would be subject to law enforcement stops, arrests, and detention. This approach could decrease public safety by fostering a fear of law enforcement in migrant and refugee communities making survivors and witnesses of crimes less willing to cooperate with law enforcement.

Section 107 of H.R. 2431 requires DHS to add additional detention facilities to the network of over 200 jails and jail-like facilities used to detain individuals in immigration proceedings or awaiting repatriation.

Section 310 also eliminates current prohibitions on indefinite detention of individuals for immigration purposes. Many individuals seeking protection in the United States from persecution and torture in their home countries would be directly harmed by these changes. Notably, stateless individuals often spend significant lengths of time in immigration detention given their inability to obtain travel documents.

Section 301 would expand the INA's definition of an "aggravated felony," while **Section 309** would bar a person convicted of any crime classified as an aggravated felony under this expanded definition from withholding of removal, regardless of the length of sentence. The new definition for example would cover all passport and visa-related offenses for which a person received a sentence of at least one year, regardless of the circumstances, and with no exception for refugees forced to flee their countries on invalid documents. This change would place U.S. practice in serious tension with its treaty obligations not to return refugees to persecution.

Section 608 would transfer authority to extend Temporary Protected Status (TPS) designation away from the Secretary of the Department of Homeland Security and instead require Congress to pass legislation in order to extend TPS. Section 608 would also change the lawful status of TPS grantees as persons who are not considered "admitted" under our immigration laws. TPS was created by Congress with the passage of the Immigration Act of 1990 to address gaps in U.S. immigration policy and regularize the process by which our government accommodated those gaps. Congress understood that a stay of deportation and employment authorization are necessary for nationals who are already in the United States but who cannot return to their country safely due to conditions in their home countries. Countries given TPS designation include: El Salvador, Guinea, Haiti, Honduras, Liberia, Nepal, Nicaragua, Sierra Leone, Somalia, South Sudan, Sudan, Syria, and Yemen; countries that have experienced ongoing armed conflict, environmental disaster, or extraordinary conditions that prevent nationals from returning safely.

These changes put those persons who have been granted TPS status at risk of not having their status extended due to Congress potentially failing to pass legislation. Lastly, stripping TPS grantees from admitted status will have profound consequences to those individuals, putting those individuals at greater risk of detention and removal. These changes will have a profound impact on the Central American Minors (CAM) Refugee/Parole Program. The CAM Program provides certain qualified children in El Salvador, Guatemala, and Honduras a safe, legal, and orderly alternative to the dangerous journey that some children are currently undertaking to the United States. By stripping parents with TPS status from "admitted" status, it will render these parents unable to reunify with their refugee children from Central America. Our organizations have documented too many cases of children who have lost their lives in Northern Triangle countries due to endemic violence.

Finally, **Section 610** of H.R. 2431 would amend existing law such that any child apprehended while with their parent or legal guardian, or stripped of their "unaccompanied" legal status, could be detained at the discretion of DHS. It further directs that DHS facilities in which such children

(and their parents) would be detained be governed by standards determined by DHS; states would be prohibited from imposing any specific licensing requirements on such facilities. These changes would directly impact the many women and children who have fled harm and insecurity, particularly in Central America, and who are legally seeking asylum at the southern U.S. border. The overwhelming majority of these families are able to establish viable asylum claims: 88 percent of these moms fleeing with their children have established a credible fear of persecution. Numerous studies and complaints have documented trauma, especially to children, and the due process violations inflicted by current family detention practices. Under Sec. 610, DHS could further expand family detention practices, significantly weaken the basic standards currently in place, and subject children and mothers seeking asylum to serious trauma and harm.

H.R. 2431 undermines our nation's legal obligations to refugees and would cause unnecessary hardship for refugees seeking and refugees who have already received protection in the United States.

Addendum

Case examples of refugees and asylees who would be negatively impacted by H.R. 2431
Pseudonyms provided to protect identities.

Sections 202 (Terrorist Bar to Good Moral Character) and 203 (Terrorist Bar to Naturalization)

Example: Sam, a citizen of Iraq, was forced to flee as a result of threats to his life stemming from his work as an interpreter for the U.S. military. Granted refugee protection in the United States without hesitation, he was then denied permanent residence based on his past association with a Kurdish party that had had fought against Saddam Hussein—as had the U.S. forces he was later threatened for assisting. Sam had described all of these facts in his application for refugee protection that was previously approved. Sam was finally granted permanent residence after receiving an individual exemption from the terrorism-related inadmissibility grounds from the DHS Secretary. This provision would appear to bar Sam from naturalization.

Section 204: Denaturalization for Terrorists

Example: American physicians volunteer to provide free medical assistance to sick and injured victims of conflict and other emergencies in various areas around the world, through NGO's that provide those services where national health systems have collapsed or can't cope. Overwhelmingly these victims are civilians suffering from injuries with ordinary medical needs ranging from illness to childbirth. But what if a doctor in this situation finds herself with a patient who appears to be a former rebel combatant, and treats him. DHS considers the provision of medical care to anyone who has taken part in combat against the forces of an established government to be "terrorist activity" for purposes of the INA. Are we going to strip this doctor of her citizenship if she became a citizen by naturalization?

Section 206: Background and Security Checks

Case Example 1: A woman from Honduras who, along with her children, was a victim of horrific abuse by an armed gang in that country fled to the United States and filed an affirmative application for asylum. Due to asylum office backlogs, she waited over two years for an asylum interview. After the application had been pending for five months, she was able to apply for employment authorization so as to work legally and support herself, while she waited for her interview. After her interview, she was issued a recommended approval, meaning that she was found to qualify for asylum pending completion of security and background checks, which had not yet cleared. In accordance with existing law, she will not be issued a final grant of asylum until those checks clear, but she needs to be able to continue to renew her work permit in the meantime.

Case Example 2: Salem fled Syria with his wife and two daughters in 2013 and they all have pending applications for asylum, but were also eligible for Temporary Protected Status (TPS) and filed their 2014 applications for employment authorization on that basis. Salem's application for employment authorization that year was pending for months beyond the normal regulatory time limit. When he inquired, he was told that security and background checks had not cleared—security and background checks that applied to his application for TPS, rather than to the related EAD application. In other words, Salem had the same experience this bill would make common. Salem had previously held a work permit on a different basis, and was working, and was the sole support of his family of four. The validity of his driver's license was linked to that of his work permit, so when his old work permit expired and the new one still had not been issued, he became unable to drive (in a part of the country where there is no other option) and unable to work. To make matters worse, the family's lease was set to expire in the midst of all this, and the landlord was demanding a current work permit in order to renew the lease. The situation was finally resolved just before it reached the point of total crisis. Salem was then approved for TPS, as expected, but the delay could have rendered him and his family homeless. This situation cannot become the national rule.

Case Example 3: An asylum applicant facing persecution in his home country is assisted by a relative in obtaining a visa for the United States. After his arrival in this country, he is placed in removal proceedings; the document initiating those proceedings charges him with having obtained his visa through misrepresentation or fraud. The applicant denies that charge but concedes that he is removable. He applies for asylum as a defense to removal. His immigration court proceedings are pending for two years, and at their conclusion, he is granted asylum by the Immigration Judge, a delegate of the Attorney General. The fraud charge is never reached because his asylum case is granted. Several questions would arise under this bill: First, the fraud allegation in this case had nothing to do with the content or basis of this refugee's application for asylum, much less his application for employment authorization for which he became eligible while that application was pending, but would this section make it impossible for him to be granted work authorization during the pendency of his case because DHS had chosen to charge him with having obtained a visa based on misrepresentation?