

“How Comprehensive Immigration Reform Should Address the Needs of Women and Families”

Questions for the Record from Senator Klobuchar

For Mee Moua

1. In current law there is a requirement that all asylum applicants must apply for asylum within one-year of entering the United States. Many advocates believe that this rule is arbitrary and has needlessly prevented many deserving people from gaining asylum. What impact has this deadline had on asylum seekers and does it need to be amended?

Response: The one-year asylum filing deadline, enacted as part of the 1996 laws, has tremendously harmed asylum seekers and unnecessarily wasted government resources.

Human Rights First research has found that as a result of the filing requirement, many legitimate refugees with well-founded fears of persecution have been barred from receiving asylum in the United States.¹ “In the 12 years since the deadline began barring asylum requests, more than 53,400 applicants have had their requests for asylum denied, rejected or delayed due to the filing deadline.”² Many of these applicants, who are from a multitude of countries, have indeed suffered persecution or have well-founded fears of persecution in their home countries. In fact, according to Physicians for Human Rights, the bar disproportionately harms asylum-seekers with the strongest claims as many fail to file in a timely manner due to Post-Traumatic Stress Disorder and women, who experience higher rates of sexual violence and domestic violence, and consequently, have a higher rate of untimely filing than men—by 13%.³

¹ The Asylum Filing Deadline, Denying Protection to the Persecuted and Undermining Government Efficiency, *Human Rights First*, Retrieved April 8, from <http://www.humanrightsfirst.org/wp-content/uploads/pdf/afd.pdf>.

² *Id.*

³ One Year Bar to Asylum (Fact Sheet), *Physicians for Human Rights*, Retrieved April 8, 2013, from https://s3.amazonaws.com/PHR_other/factsheets/One-Year-Bar.pdf

There are many legitimate reasons asylum seekers are unable to meet the one-year filing deadline. “Asylum seekers may understandably arrive in this country traumatized from persecution, unable to speak English and without any knowledge of the U.S. asylum system. Some do not know that they might be eligible for asylum. Many do not have the resources to retain legal counsel, and pro bono resources are scarce or simply not available in many parts of the country.”⁴ As a result, these asylum seekers are either returned back to the country where they were persecuted or only offered temporary forms of protection that leave them vulnerable to exploitation, detention and deportation.

The filing deadline also undermines the efficiency of the already over-burdened asylum and immigration court adjudication systems. As a result of the filing deadline, over 18,000 cases have been pushed to the immigration court system instead of being resolved at the more efficient asylum offices, delaying the adjudication of these cases and diverting resources from both the asylum offices and the court system.⁵

Rather than preventing abuse of the asylum system by individuals filing fraudulent claims, which was the purported purpose its enactment, the one-year filing deadline has prevented refugees with credible non-fraudulent asylum cases from receiving asylum in the United States, the very individuals the asylum system was meant to protect. Beginning in 1995, many major reforms to prevent fraud and abuse have already been implemented, including requirements to sign applications under penalty of perjury, permanent bars from immigration benefits for fraudulent applications, series of database checks with DHS, FBI and other federal databases and criminal prosecution of applicants, preparers and attorneys for fraudulent applications.

Legislative history shows that the one-year filing deadline was not intended to bar legitimate applicants, which it is indeed doing. Therefore, Congress should eliminate the wasteful and unfair asylum filing deadline that is barring refugees with well-founded fears of persecution from asylum and diverting overstretched

⁴ The Asylum Filing Deadline, Denying Protection to the Persecuted and Undermining Government Efficiency, *Human Rights First*.

⁵ *Id.*

adjudication resources.⁶ This change is included in Refugee Protection Act (RPA) of 2011 (S. 1202 and H.R. 2185) Section 3. In connection with this legislative change, Congress should also permit individuals who, due to the filing deadline, were granted withholding of removal but not asylum, to adjust their status to lawful permanent resident and petition to bring their spouses and children to safety.

2. Under current law parents cannot get asylum based on the fear that their children will be subject to persecution in their home country. This means that parents can be faced with the agonizing choice of whether to leave their children with other caretakers in the U.S. or bring them back to their home countries and face the threat of persecution. Can you speak to this problem and the current obstacles to family unity in asylum cases?

Answer: A report by the Women Refugee's Commission found that "[e]very year, thousands of unaccompanied alien children (UACs) risk harrowing journeys and travel alone to seek refuge in the United States. These children come from all over the world for many reasons, including to escape persecution in their home countries."⁷ Children around the world are increasingly facing violent attacks by gangs and drug cartels and girls in particular face gender-based violence. "In recent years, the U.S. government has had roughly 6,000-8,000 of these children in its care and custody each year."⁸ The majority of these children, approximately 70 percent, have been between the ages of 15 and 17.4.⁹

⁶ DHS confirmed that it concluded that the asylum filing deadline should be eliminated, confirming that it expends resources without helping uncover or deter fraud (UNHCR Washington Office, Reaffirming Protection, October 2011, Summary Report, p. 18, at <http://www.unhcrwashington.org/atf/cf/%7BC07EDA5EAC71-4340-8570-194D98BDC139%7D/georgetown.pdf>). The Administration has publicly pledged to work with Congress to eliminate the deadline (U.S. Department of State, PRM, *Fact Sheet: U.S. Commemorations Pledges*, 7 December 2011, available at <http://www.state.gov/j/prm/releases/factsheets/2011/181020.htm>). Several studies underscore this issue including Human Rights First, *The Asylum Filing Deadline*, (New York: 2010) available at <http://www.humanrightsfirst.org/wpcontent/uploads/pdf/afd.pdf> and P. Schrag, A. Schoenholtz, J. Ramji-Nogales, and J.P. Dombach, *Rejecting Refugees: Homeland Security's Administration of the One-Year Bar to Asylum*, William and Mary Law Review, (2010), available at <http://wmlawreview.org/files/Schrag.pdf>.

⁷ *Forced from Home: The Lost Boys and Girls from Central America*, Women's Refugee Commission, Retrieved April 8, 2013, from <http://womensrefugeecommission.org/press-room/1491-forced-from-home-the-lost-boys-and-girls-of-central-america>.

⁸ *Id.*

⁹ *Id.*

Recently, many undocumented parents have brought asylum claims based on fear that if they and their children are deported, their daughters will undergo female genital mutilation (FGM).¹⁰ In many cases where the daughter is a United States citizen and thus able to remain in the country without her parents, courts have often refused to allow derivative asylum claims absent a showing that the parent personally fears persecution or that the child will be constructively deported.¹¹

By having a law that does not permit children seeking asylum to come with their parents, America is creating generations of orphaned asylees in the United States. The law forces thousands of children into the foster care system, which not only imposes emotional harm on thousands of children, but imposes tremendous costs on local, state and federal governments.¹² This law clearly contradicts the United States immigration tradition of valuing family unity, particularly between parents and children, and harms the most basic and essential unit of American society.

¹⁰ An Impossible Choice: Denial of Parents' Derivative Asylum Claims Based on their Citizen Daughter's Risk of Female Genital Mutilation, Washington University Global Studies Law Review, Retrieved April 8, 2013, from http://law.wustl.edu/WUGSLR/Issues/Volume8_3/Cahan.pdf.

¹¹ *Id.*

¹² *Id.*