

Testimony of

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STATEMENT OF
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JUDICIARY SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW

THE "MATERIAL SUPPORT" BAR: DENYING REFUGE TO THE PERSECUTED?

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Chairman Durbin, Senator Coburn, and Members of the Subcommittee on Human Rights and the Law: I would like to thank you for the opportunity to appear before you today as you examine issues related to the United States' protection and resettlement of refugees who may be subject to the material support provisions of the Immigration and Nationality Act (INA). I appreciate the Subcommittee's attention to this important issue, and I would like to assure the Members of the Subcommittee that the U.S. Department of Homeland Security (DHS) is steadfastly committed to fulfilling its mission of providing protection to deserving refugees while safeguarding our nation's security.

Under Section 212(a)(3)(B) of the INA, the aliens who provide material support to individuals or organizations that engage in terrorist activity are inadmissible or removable for having engaged in terrorist activity and are ineligible for most immigration benefits. The INA's broad definitions of terrorist activity and the provision of material support to terrorists or terrorist organizations are at the heart of the U.S. government's ability to be proactive in its counter-terrorism efforts. Terrorists need more than ill will to commit terrorist acts; they need funds, equipment, and a variety of other resources to successfully lodge an attack. The Courts and Congress have recognized that "foreign organizations that engage in terrorist activity are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct," See *Humanitarian Law Project v. Reno*, 205 F.3d 1130, 1136 (9th Cir. 2000) and ("Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA"), § 301(a)(7), P.L. 104-132, 110 Stat. 1214. Equipping the U.S. government with the means to take the offensive against those who fuel the maintenance of the terrorist infrastructure, thus, is an essential weapon in the Administration's counter-terrorism arsenal.

For DHS, with regard to immigration, one of our strongest weapons is the ability to deny benefits or protection to those who have provided material support to terrorists. For example, we successfully used this tool in the case of an alien from Saudi Arabia, who entered the United States as a student. A Joint Terrorism Task Force investigation revealed his connection to the Committee for Defense of Legitimate Rights (CDLR), an Al Qaeda front group. In 2004, U.S. Immigration and Customs Enforcement (ICE)--a component agency of DHS--initiated removal proceedings where an immigration judge found the alien had engaged in terrorist activity through his material support of and his membership to the CDLR. Among other things, he paid for and helped run the CDLR's website and solicited money for its operation. The alien was ordered removed and denied any immigration benefits. The alien was successfully removed from the United States in January 2007.

Another example is the case of an alien who was a former board member, fundraiser, and donor to the Benevolence International Foundation (BIF), whose associates in the United States included Aafia Siddiqui (placed on the Federal Bureau of Investigation's Most Wanted Terrorists list after 9/11 for assisting Al Qaeda), as well as members of the

"Portland 7," a terrorist cell in Portland, Oregon, which conspired to provide material support to Al Qaeda and the Taliban during the war against the United States in Afghanistan. The alien applied for adjustment of status to that of a lawful permanent resident, which U.S. Citizenship and Immigration Services (USCIS)--a component agency of DHS--denied; finding the alien had engaged in terrorist activity in the United States by providing material support, including solicitation of funds for BIF, an organization specially designated as a terrorist organization by the U.S. Department of Treasury. The alien was subsequently detained by ICE and placed in removal proceedings. He was removed from the United States in June of 2007.

These cases illustrate this crucial and readily used tool to bar immigration benefits to aliens who provide material support to terrorist organizations.

While it is vital that DHS is able to use the broad definitions of the INA to prevent aliens who present a genuine threat to the United States or its citizens from entering or staying in the country, it is also our duty to consider providing immigration benefits and protection to deserving aliens who provided material support in sympathetic circumstances, but otherwise are eligible under existing law and who do not pose such a threat. This is especially true in the case of refugees, who may face persecution--sometimes at the hands of the terrorists themselves--if they are not granted the benefits or protection they seek. Because the material support bar casts a broad net, its scope may include those who do not present a risk to U.S. national security and to whom the United States is sympathetic and willing to provide refuge, to the extent allowed by law. It is for this reason that Congress provided in section 212(d)(3)(B)(i) of the INA that the Secretaries of State and Homeland Security, in consultation with one another and the Attorney General, shall have the discretionary authority not to apply the material support provision in a particular case.

Since the last time I testified, in May of last year, the Administration has worked tirelessly, on an interagency basis, to exercise and implement this authority where doing so is in keeping with the foreign policy and national security interests of the United States. Secretary of State Rice exercised this authority three times in 2006 in the refugee program context for Burmese Karen individuals living in various camps in Thailand who provided material support to the Karen National Union (KNU) or Karen National Liberation Army (KNLA) and for Chin refugees from Burma living in Malaysia, India, or Thailand who provided material support to the Chin National Front (CNF) or Chin National Army (CNA). In January 2007, Secretary Rice exercised her authority eight additional times in the refugee program context for refugee resettlement applicants who had provided material support to the following eight organizations: Karen National Union/Karen National Liberation Army (KNU/KNLA), Chin National Front/Chin National Army (CNF/CNA), Chin National League for Democracy (CNLD), Kayan New Land Party (KNLP), Arakan Liberation Party (ALP), Tibetan Mustangs, Cuban Alzados, or Karenni National Progressive Party (KNPP).

In February of this year, Secretary Chertoff exercised his authority not to apply the material support inadmissibility provision with respect to certain aliens applying for immigration benefits or protection who had provided material support to these same eight undesignated terrorist organizations for whom Secretary Rice signed exemptions in January. These exercises of authority expanded the scope of the previous exemptions to include asylum seekers and other aliens applying for benefits or protection domestically, as well as refugees applying for protection overseas.

In addition to these eight groups, I am pleased to announce that the Administration has finalized two new exemptions to benefit aliens who have provided material support to certain individuals or groups associated with the Hmong and Montagnard. These exemptions will be issued jointly by the Departments of State and Homeland Security, and are now being prepared for signature by both Secretaries. As both the Hmong and the Montagnards acted as valuable allies to the United States during the Vietnam War, the Administration has long recognized the need to implement exemptions on their behalf.

Also in February of this year, Secretary Chertoff exercised his authority not to apply the material support inadmissibility provision with respect to certain aliens applying for immigration benefits if the material support was provided under duress to an undesignated terrorist organization under INA 212(a)(3)(B)(vi)(III), or, "Tier III," terrorist organization where the totality of the circumstances justify the favorable exercise of discretion. This was the first "duress exemption" either Secretary had exercised. This April, the Secretary of Homeland Security exercised his discretionary authority not to apply the material support bar to individuals who provided the support under duress to certain designated terrorist organizations under INA 219 or 212(a)(3)(B)(vi)(I) and (II), or, "Tier I and II," terrorist organizations if warranted by a totality of the circumstances.

Armed with the above described exemptions, the Administration has turned its attention to implementation of these exercises of authority. DHS has made a great deal of progress in this regard. USCIS has recently completed a tour of all of the asylum offices and two of the service centers handling adjustment of status applications, providing training on material support adjudication procedures.

So far, USCIS has issued over 3,000 exemptions to applicants for immigration benefits who provided material support either to one of the eight named groups or under duress to a terrorist organization. Most of these exemptions have been issued by the Refugee Affairs Division of USCIS. Thus, 2,909 of the exemptions were issued for refugee applicants who provided material support to one of the eight named groups. Most of these exemptions were issued for individuals who provided food and shelter or have assisted in transporting goods for one of the identified groups that opposes the Burmese government. This number includes 295 exemptions issued last fiscal year under the authority granted by Secretary Rice for refugee cases in certain locations. There have also been over 200 exemptions issued to individuals who provided material support to the Cuban Alzados. USCIS has also issued 101 duress-based exemptions. Individuals for whom USCIS issued duress-based exemptions include nationals of Iraq, Liberia, Somalia, and the Democratic Republic of Congo. In addition, Service Center Operations has issued 28 exemptions in instances where an applicant sought immigration benefits other than refugee or asylee status, 16 of which were group-based exemptions.

In the case of implementing the Tier I/II duress exemption, the Administration has agreed to a very careful, judicious process to assure that our national security is fully protected even as we fulfill our humanitarian objectives. Prior to beginning processing of cases involving claims of duress by a particular terrorist group, we are obtaining an all-source evaluation concerning that group, its aims and methods, including its use of duress. For instance, one of the goals of the evaluation is to assess whether the Tier I/II terrorist organization may be disposed to use the U.S. Refugee Admissions Program as a conduit to realizing a terrorism-related objective.

A great many of the cases involving the provision of material support under duress to a Tier I terrorist organization that have been adversely affected by the material support bar have involved the provision of material support to the Revolutionary Armed Forces of Colombia (FARC). For that reason, DHS proposed the FARC as the first Tier I group for which an evaluation would be conducted. Based on our review of this evaluation, USCIS has recently begun adjudicating exemptions for the first of these cases.

In addition to the FARC, the Administration has requested evaluations regarding other Tier I/II groups to which a significant number of individuals seeking immigration benefits have stated that they provided material support under duress. As those evaluations are completed and reviewed, we will proceed to process additional cases.

While the Administration has made tremendous strides in addressing the unintended consequences of the material support bar through the secretarial exercises of discretionary authority to exempt deserving aliens that have been signed and implemented to date, we remain cognizant of the fact that the authority provided for under INA 212(d)(3)(B) does not provide the U.S. government with the flexibility to exempt deserving aliens from all of the 212(a)(3)(B) terrorist provisions for which exemptions would be consistent with U.S. foreign policy and national security objectives. To this end, the Administration submitted proposed legislation to Congress early this year that would amend the INA to allow the U.S. government that needed flexibility. Perhaps most importantly, this legislation would provide the Administration with the authority to exempt certain individuals, such as certain Hmong and Montagnard combatants, who fought valiantly on behalf of the U.S. during the Vietnam War, but who are currently barred and beyond the reach of the Secretaries' discretionary authority to exempt. In addition, though in some cases the persecutor bar may still apply, the Administration's proposal could allow for the exemption of certain children abducted and forced to undergo military training by armed factions.

It is the Administration's view that important national security interests and counter-terrorism efforts are not incompatible with our nation's historic role as the world's leader in refugee resettlement. While we must keep out terrorists, we can continue to provide safe haven to deserving refugees. Due to national security imperatives, there have been recent changes to the law as well as to the process, and we continue to work on ways to harmonize these two important policy interests. In the last year, we have taken a number of important steps demonstrative of real progress on this front. We have implemented exemptions for aliens who have provided material support to eight Tier III groups and for aliens who have provided material support under duress to Tier I, II, and III groups, and applied these exemptions in both the overseas and domestic contexts. The implementation of these exemptions has yielded

impressive results: To date, we have exercised the Secretaries' discretionary authority to exempt over 3,000 deserving aliens from the material support bar, where doing so has been consistent with U.S. national security. As the Department and its interagency partners continue to improve this process, Congress can be assured that the number of deserving aliens who benefit from these exemptions will continue to increase, even as we remain vigilant in executing the mission that Congress has given us to safeguard the security of the American people.

I thank the Members of the Subcommittee for the opportunity to address these important issues today, and I stand ready to answer any questions you may have.