

Testimony of

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STATEMENT OF MOST REVEREND THOMAS WENSKI
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BEFORE
THE SUBCOMMITTEE ON HUMAN RIGHTS AND LAW
SENATE JUDICIARY COMMITTEE
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I am Thomas Wenski, bishop of Orlando and consultant to the U.S. Conference of Catholic Bishops' Committee on Migration. Through Migration and Refugee Services (MRS) of the U.S. Conference of Catholic Bishops (USCCB), the Catholic Church is the largest refugee service provider in the United States. Working with over 100 Catholic dioceses across the nation, we provide resettlement assistance to approximately 15,000 to 20,000 refugees each year, helping them with job placement, housing, and other forms of assistance to ensure their early self-sufficiency.

I would like to thank Subcommittee Chairman Richard Durbin (D-IL) and Ranking Member Tom Coburn (R-OK) for the invitation to speak to you today about refugee and asylum protection issues, particularly the issue of material support. I also would like to thank Chairman Patrick Leahy (D-VT) for his leadership on this issue, as well as Senator Edward M. Kennedy, chairman of the Subcommittee on Immigration. In assessing the issue of material support, the Catholic bishops believe that the United States can meet its national security protection goals without jeopardizing this honored tradition of welcoming refugees, asylum-seekers, and other vulnerable populations to our shores.

The Administration and Congress should move immediately to correct the damage caused by recent changes in law relating to material support. These changes have led to unintended consequences that do not contribute to security yet undermine the safety and rights of refugees and asylum-seekers. These provisions can be interpreted in an overly-broad manner, resulting in the possible denial of refugee protection to many deserving, bona fide refugees. Specifically, we ask for the following changes in the material support policy:

? Congress should review the definitions of "terrorist activity" and "terrorist organization" in current law to ensure that they are not so broad so as to limit the protection of bona fide refugees who might have provided support to a pro-democracy group that is no threat to the United States;

? Congress should amend the law to ensure that refugees, asylum-seekers, and other entrants who provide material support to a designated group under duress are not barred from entering the United States;

? The Administration should create a process for consideration of waivers of individuals in the removal process, adjustment of status, and family reunification cases;

? The Administration should speed the process of granting waivers to any refugee, asylum-seeker, or other entrant who provided material support under duress to a Tier I or Tier II group.

The Issue of Material Support

The Immigration and Nationality Act (INA) prohibits granting refugee status to anyone who is a terrorist or supports terrorist activity. This prohibition is needed to ensure national security and to prevent the extension of refugee protection to those who are undeserving of protection.

However, the USA Patriot Act and the REAL ID Act expanded and broadened this law in ways that have had an unintended, negative impact on bona fide refugees. For example, the USA Patriot Act expanded the reach of the terrorism definition by broadening grounds of inadmissibility to anyone who provides "material support" to groups which engage in "terrorist activity," which includes any use of a weapon or "dangerous device" with the intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property, for any motive other than "mere personal monetary gain." Moreover, the REAL ID Act expanded the definition of "non-designated" terrorist organization to include a "group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in "any form of terrorist activity."

These overly broad changes were ostensibly designed to protect the United States from genuine terrorist threats. However, they have had the effect of excluding from U.S. protection refugees and asylum-seekers who have been victims of terrorism or brutal regimes. This bar to admissibility is having a profound impact on several vulnerable refugee populations. They do not simply affect refugees and asylum-seekers, but also those seeking adjustment of status, NACARA applicants, and those seeking citizenship.

Mr. Chairman, I would like to include for the record several case examples of vulnerable refugees who have been unable to enter the United States because of the material support issue:

Somali woman's family attacked by United Somali Congress (USC) members,; paid ransom for son's release. USC members beat a Somali's woman husband, and when her daughter ran to her father pleading with the men to stop beating him, the men shot and killed both the daughter and her husband. They blindfolded and handcuffed the woman's son, looted the house of valuables, and took her son away in a car. The woman's son was held for three months until she paid \$2,000 for his release. One week after her son was released, the attackers returned to her house, beat her and her son, raped her, and told them to leave their house. The woman and her son fled the country, but were denied resettlement in the US because of their material support (the valuables and the ransom) to terrorists.

Sierra Leonean man on hold for fixing rebels' cars to protect his family. Sierra Leonean man was working as a mechanic when a group of heavily armed JUNTA men came to his house and demanded that he provide them with transportation support. He refused, but the men took over his garage and said they would kill his family if he did not help them. He worked for them for two weeks, fixing cars. After two weeks, the men took the man and some of his family to another location, but during the move, KAMAJOR men attacked and the refugee escaped with his family. The man's resettlement to the U.S. is on hold for material support (fixing cars under duress).

Liberian woman attacked at home, forced to wash clothes. A Liberian single female head of household was referred to U.S. resettlement program by UNHCR as a particularly vulnerable single parent. During the war in Liberia, LURD rebels came to her home and beat her and her father. They shot and killed her father and gang-raped her before abducting her and holding her against her will. During the time she was held hostage, she was forced to perform tasks such as washing the rebels' clothing. The woman escaped from the rebels after several weeks of captivity and made her way to a refugee camp where she remains. DHS considered the tasks she had performed for the rebels (i.e. doing laundry) to be "material support" and her case was placed on hold.

Colombian youth forced to dig graves. A 22-year-old Colombian male arrived in Ecuador after fleeing from a paramilitary encampment after a death march. Earlier the man's mother refused to sell family land to paramilitaries who planned to build a road through the property the man's mother and three younger siblings were "disappeared." The man was away attending high school at the time of the disappearances. He believes his family was killed for their resistance to the paramilitary plan. At the age of 16, he continued to refuse to sell the land. One night, four members of the paramilitary arrived at his mother's house where the man was living with his uncle and forced him to march to where the paramilitaries had amassed some of the local indigenous population. The paramilitaries shot and killed many of those who marched with him. The man dug graves for the dead. Because the paramilitary forces would sometimes shoot someone in the back when he had finished digging the grave, the man said, "I never knew when I would be digging my own grave." He is awaiting resettlement. The material support issue in his case: providing services for the paramilitaries - i.e. digging graves, including what could have been his own grave.

Mr. Chairman, I would like to specifically point out the plight of the Colombian refugee population, which has been severely impacted by the material support bar. Simply put, the material support bar has virtually halted the

resettlement of Colombians from Ecuador and other countries of first asylum to the United States. Because at least 70 percent of Colombian refugees have been forced under duress to make payments to Colombian rebel groups [The Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN) and the United Self-Defense Forces of Colombia (AUC)] on the State Department's list of foreign terrorist organizations, just over 100 Colombian refugees were resettled in the United States last year.

Colombian refugees are particularly a population in need. Safe return to Colombia is not possible at this point and integration in nearby countries is difficult to achieve. Colombian refugees have difficulty accessing basic services in countries of first asylum, such as Ecuador, Costa Rica, and Venezuela, and often face discrimination. Resettlement is the only option for many of these refugees. Disturbingly, the United Nations High Commissioner for Refugees (UNHCR) has stopped referring the large majority of Colombian cases to the U.S. State Department because of the material support bar.

Impact of the Material Support Provision on the U.S. Refugee Program

Mr. Chairman, this issue has had a profound impact on the U.S. refugee program and its ability to provide protection to vulnerable refugees. During 2006, as many as 12,000 refugees who were otherwise eligible were not admitted to the program because of the material support bar. Many other cases were delayed in entering the United States because of a lack of a waiver process, including the Burmese, Bhutanese, and Chin in Malaysia. It is expected that this bar could have a profound impact upon Iraqis fleeing violence in Iraq.

Since September 11, 2001, the United States has resettled, on average, 25 percent less refugees per year. With the enactment of the material support bar, that average has dipped even further. In 2006, the U.S. refugee program resettled only 41,276 refugees and this year approximately the same number of refugees are expected to be resettled, despite a presidential ceiling of 70,000.

Administration Interpretation and Implementation of Material Support Bar

Mr. Chairman, these are a few examples of the injustice that has occurred because of the material support provisions of U.S. law. For the past several years, attempts have been made to correct these provisions so as to permit bona fide refugees entrance into the United States, but progress on this front has been slow, at best. The administration has made several announcements regarding waivers for certain refugee groups, but the results of these announcements in terms of increased resettlement of these groups have yet to be realized.

For example, in January 2007, the Administration announced its intention to grant a series of waivers to individuals who had provided material support to several groups, including the Chin National League for Democracy, the Karenni National Progressive Party, and the Cuban Alzados. While these waivers are encouraging, their implementation has been slow and has not served to expedite the processing of affected refugees. About 3,000 refugees have been admitted to the United States pursuant to these waivers. In addition, 442 asylum cases remain on hold, with only 9 waivers for asylees granted.

Part of the problem is the process whereby the Administration has "cleared" the groups being considered for a duress waiver. DHS granted the authority to grant these waivers in April for Tier I and Tier II groups, but to date only those who supported the FARC have been cleared. This is because of intelligence assessments of groups which have taken months, not days, to complete.

It is clear that, despite having a waiver authority, the Administration is not using this authority expeditiously and in time to meet our resettlement goals. Moreover, the Administration has not yet issued or set out procedures for individuals who are in removal proceedings but eligible for a waiver.

A Solution to the Material Support Issue

Mr. Chairman, we understand and appreciate the role of Congress in protecting the American public from outside threats, including terrorist attacks. The purposes of the material support provisions are to protect Americans from those who might enter the United States with the intent of harming innocent Americans. In our view, the provisions are overbroad in their meaning and application and have had the unintended effect of harming refugees, asylum-seekers, and others who are themselves fleeing terror and persecution. Surely, this was not the intent of Congress in

enacting these provisions. With some changes to the material support provisions, we can rescue bona fide refugees from persecution without inhibiting our ability to prevent terrorist attacks.

Congress must first look at the definitions of "terrorist activity," and "terrorist organization" contained in the USA PATRIOT Act and the READ ID Act of 2005. The PATRIOT Act expanded the definition of terrorist activity to include almost any use of a "weapon" for the purposes of other than "monetary gain." While the U.S. Department of State maintains a list of designated terrorist organizations, this expanded definition could extend terrorist activity to any groups that use armed force. This could include groups that seek to overthrow totalitarian regimes and whom the United States has supported in the past. Moreover, the READ ID Act expands the definition to include groups with subgroups that use weapons.

Mr. Chairman, it is clear that the definitions described are overly broad and impact refugees and asylum-seekers which may have supported groups seeking to overthrow brutal regimes, such as the Cuban government and the Burmese military junta. Congress should revise these definitions to exclude groups that are no threat to the United States and do not meet the criteria for designation as foreign terrorist organizations.

Further, the Administration has interpreted the material support provisions as not including a duress exception. In other words, any support given to a terrorist organization does not have to be voluntary in order for an individual to be barred from entry. In many cases, refugees are forced at gun point or through threat of their lives to provide support to a rebel group or some other organized group. This has prohibited thousands of refugees who are victims of terror from receiving protection in our country.

To their credit, the Administration is beginning the process of issuing waivers for certain cases of duress, but, as mentioned, the process is slow. We urge Congress, at a minimum, to address this issue and enact a duress exception to the statute.

Mr. Chairman, the Senate's recent adoption of language in the Foreign Operations Appropriations bill would provide some relief from the material support bar to bona fide refugees. The legislation provides relief to combatants and members of the groups already waived by the Administration, plus those who supported the Hmong and Montagnards. It also expands the waiver authority of the Administration by providing exemptions to combatants and members of groups and ensures continued authority for the Administration to issue duress waivers.

This new language marks a step forward in addressing this critical issue, but is insufficient to solve the problem at hand. It fails to examine the definition of terrorist activity or terrorist organization nor does it provide a statutory duress exception, leaving these judgments to the Executive branch. We will continue to monitor the actions of the Administration in admitting bona fide refugees and work to improve this language in the future, if necessary.

Conclusion

Mr. Chairman, the issue of material support has seriously undermined the effectiveness of the U.S. refugee protection regime in offering safe haven to persons who flee terror and persecution in our world. We need not shrink from our responsibilities to the world's refugees in order to obtain security for the American public. Indeed, refugees and asylum-seekers share a similar experience with our country as victims of terror.

We urge you to correct the unintended consequences of the material support bar and amend it so that bona fide refugees may have access to a new future in our country.