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The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the American Bar Association, I write to encourage you to support the Leahy-Coleman amendment to the Emergency Supplemental Appropriations Act (H.R. 4939). The amendment will protect vulnerable refugees by correcting provisions added to the Immigration and Nationality Act (INA) by the REAL ID Act of 2005 and the USA PATRIOT Act of 2001¹ that ban from entry even those refugees and asylum seekers who are forced to assist terrorists against their will. These provisions have significantly compromised the longstanding commitment of the United States to provide fair and meaningful access to the asylum process for legitimate refugees. The provisions are inconsistent with this country's well-regarded dedication to protecting those fleeing persecution, including terrorist violence, throughout the world, and we urge their amendment.

The INA disqualifies applicants for asylum who have provided "material support" for terrorists. The material support definition has proven unduly restrictive and inflexible in its denial of access to legal protection for those deserving of humanitarian refuge. While the material support provisions ostensibly allow for a waiver,² the waiver requires the cooperation of three separate U.S. agencies, and this safeguard has not been exercised to date. Congressional action is needed to correct the recent legislation and enable the U.S. to continue protecting bona fide refugees.

Elements of the material support bar have succeeded in protecting our country from members of terrorist groups under U.S. law for over a decade. However, this extended bar fails to include exceptions for individuals who have provided "support" under implied or explicit threats of death, who support pro-democracy groups in conflict with repressive regimes, for minors forced to work for terrorist organizations, or for those who have provided such negligible "support" as a glass of water or a bowl of rice. The sweeping application of the material support bar is denying refuge to legitimate refugees who are the victims, rather than the perpetrators, of terrorism.

¹ See 8 U.S.C. § 1182(a)(3)(B) (2005) (INA § 212(a)(3)(B) (2005)).

² See 8 U.S.C. § 1182(d)(3)(B)(i) (INA § 212(d)(3)(B)(i)).

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The provisions affect those who provide support to pro-democracy groups engaged in conflict against repressive regimes through its currently overbroad definition of “terrorist organization.”³ Ironically these groups are often standing in opposition to totalitarian regimes with which the U.S. has severed diplomatic ties or monetary support. An example of the application of this overbroad classification is seen in the case of Burmese refugees currently living in camps in Malaysia. These refugees have suffered brutal persecution by a government that the United States does not support. Many of them have provided support to U.S.-supported pro-democracy groups along the border, in the form of food or water, and are thereby barred from entry to the U.S.

The bar has affected thousands of refugees fleeing religious persecution in Malaysia and Sierra Leone, and political persecution in Colombia, Cuba, Liberia, and Sri Lanka. The bar’s language is so broad that it would have excluded people who fought for freedom from apartheid in South Africa, Jews who resisted persecution in Nazi Germany, and Vietnamese and Hmong who aided United States forces during the Vietnam War.

Congressional action is urgently needed because the material support bar is having a severe and irreversible effect on the U.S. asylum and refugee resettlement programs today. For example, the bar has placed in jeopardy the welfare of a camp of Burmese ethnic minority refugees who were slated for resettlement to the United States this year. Without immediate action on the part of Congress, the camp is at risk of being closed down and these refugees’ lives will be in grave danger. Thousands of eligible Colombian refugees fleeing the terror of the Revolutionary Armed Forces of Columbia (FARC) and paramilitaries have to be rerouted for resettlement to other countries, significantly impeding their resettlement process and forcing these victims of violence to live in precarious situations in countries with inadequate security mechanisms to prevent future attacks. Congress allocates a limited number of slots for refugees each fiscal year; if this situation is not remedied quickly, it is estimated that 10,000 to 20,000 refugees will be unable to use the allocated slots, which do not carry over into next year.

The American Bar Association supports the Leahy-Coleman amendment because it would enable the Department of Homeland Security and the Attorney General to waive the material support bar in order to permit refugees to seek humanitarian relief in the U.S., and to prevent deportation and potential *refoulement* of refugees. In order to prevent bona fide refugees from suffering as a result of the overbroad material support bar, we urge you to amend the legislation to establish realistic exceptions for those who provided “support” under explicit or implicit duress, threats, or coercion, for those who provided “support” inadvertently, with neither the knowledge nor the intention to support a terrorist group, and for those who provided insignificant “support,” as in the well-publicized case of a woman who provided a glass of water to a group of armed invaders. Furthermore, we support amending the definition of “terrorist organization” to enable exclusion of pro-democracy groups, such as the pro-democracy movements in Burma. This would alleviate


³ A “terrorist organization” under the statute is defined to include “a group of two or more individuals, whether organized or not, which engages in [terrorist activity].” See 8 U.S.C. § 1182(a)(3)(B)(vi)(III) (INA § (a)(3)(B)(vi)(III)). “Terrorist activity” is currently defined to include “the use of any explosive, firearm, or other 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.” 8 U.S.C. § 1182(a)(3)(B)(iii)(V)(b) (INA § (a)(3)(B)(iii)(V)(b)).

the possibility of excluding from U.S. protection refugees who provide food and water or shelter to our pro-democracy allies.

Here in the U.S. there are currently over 500 reported asylum cases on hold due to “material support” factors in the cases. While cases are on hold, asylum applicants, who have already suffered inhumane and degrading treatment in their home countries, are often detained indefinitely while awaiting cooperative decision-making between the Department of State, the Attorney General, and the Department of Homeland Security. In addition to the impacts of the material support bar that are easily quantifiable, the ABA is concerned that this inflexible and overbroad bar will have a chilling effect on applications for asylum, as eligible individuals learn that they may be denied relief, detained, or deported for having had involuntary interaction with terrorist groups in their homeland.

The material support bar as presently drafted denies safe harbor to our allies and undermines the fundamental principles upon which our nation is based. We therefore urge your support of the Leahy-Coleman amendment to protect vulnerable refugees, which will prevent the unjust practice of denying refuge to those victimized or unknowingly taken advantage of by terrorist groups.

Sincerely,


Robert D. Evans