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Victims of a Growing Crisis: A Call for Reform of the United States Immigration Law and Policy Pertaining to Refugees of the Iraq War

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VICTIMS OF A GROWING CRISIS: A CALL FOR REFORM OF THE UNITED STATES IMMIGRATION LAW AND POLICY PERTAINING TO REFUGEES OF THE IRAQ WAR

"To states, they can be security risks. To ordinary people, they can be objects of pity and charity. But refugees matter most . . . because at some level we all realize that but for the accidents of birth and circumstance, we could be refugees ourselves."

Arthur Helton\[1\]

I. THE PLEIT OF IRAQI REFUGEES

When the United States troops crossed the border into Iraq in the Spring of 2003, Raza Maliki signed up as one of the first of thousands of Iraqis who aided the United States military.\[2\] He worked all day as a translator for his military division, risking his own life to help the United States troops navigate the increasingly hostile Iraqi streets.\[3\] Raza has paid dearly for his service since then.\[4\] Militants made death threats to him and his family for working with "the occupiers."\[5\] Militants also threatened his father, who worked as a contractor for the United States.\[6\] As a result, Raza fled Baghdad for Syria but was turned away, only to be denied reentry to Iraq by Iraqi border guards.\[7\] With nowhere to turn, he remained stranded on the border, forced to languish in a packed and squalid refu-


\[2\] See Audio Tape: Interview with Raza Maliki (Aug. 11, 2007) (on file with author) (explaining how Raza began work as interpreter for United States military). The author conducted this interview while on a fact-finding trip to Damascus, Syria and Amman, Jordan during August of 2007. The author changed this individual’s name for the purpose of protecting his identity.

\[3\] See id. (describing work Raza performed while working for United States military).

\[4\] See id. (indicating violence that would soon befall Raza and his family).

\[5\] See id. (stating threats issued by gunmen against Raza’s family for their association with United States military).

\[6\] See id. (describing threats issued by gunmen against Raza’s father in particular).

\[7\] See id. (recounting problems that Raza faced as refugee attempting to gain entrance into different countries in region).

(421)
gee camp in "no man's land" where hundreds like him shared the same fate.\(^8\)

After Raza fled, militants continued to target his family for their presumed support of United States troops.\(^9\) This past July, masked gunmen kidnapped Raza's father, tortured him with acid and left him for dead.\(^10\) In an effort to save his life, doctors amputated both of his father's legs that the acid had burned irreparably, but infection killed him days later.\(^11\) Despite all their service to the American military, Raza and his family have been largely abandoned by the American government's current laws that are designed, at least in principle, to protect Iraqi refugees.\(^12\)

This Note proposes a modest reform to the current resettlement and visa policy that the United States government has adopted towards Iraqi refugees, specifically those being targeted for their past service to the United States or because of their minority status.\(^13\) The proposed reform has three basic objectives.\(^14\) The first objective is to amend the material support provision in the Immigration and Nationality Act, which at present, prevents thousands of refugees from resettlement for actions performed under duress.\(^15\) The second objective is to prioritize resettlement for Iraqis who formally assisted the United States military or who are members of targeted minorities, preferably in the form of a modified special

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8. See id. (discussing Raza's time spent trapped along Iraqi-Syrian border in crowded refugee camp).

9. See id. (describing how gunmen violently targeted Raza and his family for their work with United States military).

10. See id. (recounting kidnapping and torture of Raza's father in Baghdad). The gunmen were members of a secular militia operating in Iraq known as the Mehdi Army. See id. (recounting details of kidnapping).

11. See id. (describing eventual death of Raza's father from infection contracted after he suffered extensive torture).

12. See id. (explaining great difficulties that Raza and his family have encountered in receiving refugee resettlement from United States).

13. For a discussion of the proposed reforms to United States immigration law and policy, see infra notes 118-88 and accompanying text. The author does not suggest that those Iraqis who served the military operations of other countries allied with the United States, such as the United Kingdom, do not deserve refugee protection as well. The question of whether these refugees should receive refugee resettlement in the United States instead of the United Kingdom is beyond the scope of this Note.

14. For a discussion of the proposed reforms to United States immigration law and policy as it pertains to Iraqi refugees, see infra notes 118-88 and accompanying text.

15. For a discussion on reforming the material bar support in the Immigration and Nationality Act, see infra notes 124-44 and accompanying text.
The final objective is to increase the number of Iraqi refugees allowed into the United States and expedite their resettlement. 17

Part II elaborates on the plight of Iraqi refugees by describing the humanitarian crisis they face and explaining why these particular groups are targeted. 18 Part III discusses the legal protection that currently is available for Iraqi refugees. 19 Part IV critiques these existing legal protections by demonstrating the gaps in refugee law and policy that have abandoned thousands of the most vulnerable Iraqis. 20 Part V proposes three basic changes to the existing immigration law and policy that will allow for a more effective resettlement of Iraqi refugees, and additionally, addresses the security concerns that such proposals inevitably raise. 21 Finally, Part VI provides a brief conclusion affirming the need for immigration reform and the practicability of the proposed measures for expeditiously processing the most vulnerable Iraqis for resettlement without undermining security concerns. 22

II. BACKGROUND OF THE IRAQI REFUGEE CRISIS

The severity of the Iraqi refuge crisis is shown through the sheer number of Iraqi refugees that exist, and also, by the squalid living conditions in which they manage to survive. 23 An estimated 2.2 million native Iraqis have fled Iraq, and are largely living in impoverished refugee ghettos

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16. For a discussion of the proposed special status visa for Iraqi refugees who are targeted due to their past service or vulnerable minority status, see infra notes 145-59 and accompanying text.

17. For a discussion of proposed changes to increase and expedite the resettlement of Iraqi refugees in the United States, see infra notes 160-74 and accompanying text.

18. For a discussion of the humanitarian plight of Iraqi refugees, see infra notes 23-47 and accompanying text.

19. For a discussion of the legal protections currently available to Iraqi refugees, see infra notes 48-71 and accompanying text.

20. For a discussion of the shortcomings of the current United States immigration law and policy as it pertains to Iraqi refugees, see infra notes 72-117 and accompanying text.

21. For a discussion of the proposed reforms to the United States immigration law and policy, as well as related security concerns, see infra notes 118-88 and accompanying text.

22. For a discussion of this Note's conclusion, see infra notes 189-98 and accompanying text.

23. See S. 1651, 110th Cong. § 2 (2007) (stating findings of proposed Refugee Crisis in Iraq Act, introduced in Senate by Sen. Edward Kennedy). "[T]he United Nations estimates that there are 2,000,000 Iraqis internally displaced and more than 2,000,000 Iraqi refugees in neighboring countries." Id. (detailing number of Iraqi refugees and internally displaced persons). Additionally, the "humanitarian needs of the Iraqi refugees and internally displaced persons are significant." Id. (recognizing growing needs of refugees). Rep. Alcee Hastings introduced a bill with similar findings in the House of Representatives. See H.R. 3674, 110th Cong. § 2 (2007) ("The Iraq Study group predicted that "[a] humanitarian catastrophe could follow as more refugees are forced to relocate across the country and the region.").
throughout Syria and Jordan. Approximately 2 million additional Iraqis fled their homes but remain displaced within Iraq. Intense sectarian violence throughout the country continues to create more refugees. The United Nations Assistance Mission to Iraq and the World Food Program estimate that around half of all displaced Iraqis have no access to official food distribution channels. Medical treatment for the sick and elderly, which is practically non-existent in many parts of Iraq, is very difficult to receive in neighboring countries harboring refugees.

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26. See Meital Waibsnaider, *How National Self-Interest and Foreign Policy Continue to Influence the U.S. Refugee Admissions Program*, 75 FORDHAM L. REV. 391, 409 (2006) ("The current struggle has led to an environment in which those in the religious minority in their neighborhoods are fleeing their homes for towns in which their religion represents the majority.").

27. See Cockburn, supra note 24 (describing many difficulties of bringing humanitarian aid to growing numbers of Iraqi refugees and internally displaced persons).

28. See Ann Curry, *Iraqi refugee crisis in Syria*, NBC News, May 9, 2007, http://www.msnbc.msn.com/id/18560456/ (reporting on difficult living conditions that Iraqi refugees formerly experienced in Iraq and now experience in Syria, specifically regarding scant availability and affordability of medical treatment). One refugee, Ihab al-Jumaini, brought his three year old son Mustafa to Damascus because hospitals in Baghdad had neither the drugs nor the doctors for his treatment. See id. (recounting one refugee’s efforts to find medical treatment for his son). Ihab has no job, little money, and is having difficulty providing food for him and his son while they seek treatment. See id. (detailing his limited resources in Syria). Doctors tell Ihab that even in Damascus, his son may die. See id. (describing deteriorating health of his son).
Poverty is a harsh and inescapable reality for most Iraqi refugees. While Iraqis may legally work in Syria, resources and opportunities remain sparse. In Jordan, Iraqis are not allowed to hold jobs, destining them to a life of abject poverty once their scant savings run out. Relevantly, the Third Circuit held that "the denial of an opportunity to earn a livelihood . . . is the equivalent of a sentence of death by means of slow starvation and none less final because it is gradual." The high levels of poverty have many disparate effects on refugee populations. For example, many fe-

29. See H.R. 3674, 110th Cong. § 2 (2007) (finding that millions of displaced Iraqis are living in increasing destitution and poverty).

30. See Curry, supra note 28 (describing difficult lives of Iraqi refugees living in Syria).

31. See Miller, supra note 24 (describing difficult living conditions, poverty and lack of employment opportunities available for Iraqi refugees now living in Jordan).

32. Dunat v. Hurney, 297 F.2d 744, 746 (3d Cir. 1962), superseded by statute as recognized in In re T. Z., 24 I. & N. Dec. 163 (B.I.A. 2007) (recognizing that economic sanctions can constitute physical persecution in plea for stay of deportation); see also Kovav v. INS, 407 F.2d 102, 107 (9th Cir. 1969) ("[A] probability of deliberate imposition of substantial economic disadvantage upon an alien for reasons of race, religion, or political opinion is sufficient to confer upon the Attorney General the discretion to withhold deportation."). Some debate exists over whether after Congress passed the Refugee Act in 1980, courts should still classify economic persecution as persecution under United States immigration law. See Mirzoyan v. Gonzales, 457 F.3d 217, 222-23 (2d Cir. 2006) (noting that while Board of Immigration Appeals "held that the 1980 amendments had not altered the requirement that [sic] 'that harm or suffering must be inflicted upon an individual in order to punish him for possessing a belief or characteristic, a persecutor seeks to overcome,,'" it "never discussed whether the pre-1980 standard for economic persecution should similarly continue to govern"). The court referred to the Refugee Act that Congress adopted in 1980 to amend the Immigration and Nationality Act. See Pub. L. No. 96-212, 94 Stat. 102 (1980) (setting forth standards for persecution as understood in United States immigration law). The Board of Immigration Appeals has, on occasion, suggested that the economic persecution standard still exists. See Matter of H-M, 20 I. & N. Dec. 683, 691 (B.I.A. 1993) (holding that respondents' loss of ration card and job did not constitute sufficient economic persecution); Matter of Barrera, 19 I. & N. Dec. 837 (B.I.A. 1989) (noting that Board of Immigration Appeals' denial of asylum stemmed in part from fact that group of Mariel Cubans had not claimed economic persecution—specifically that "they have not "been denied employment, education, housing, permission to travel, or other benefits of this sort"). The Board of Immigration Appeals, however, has failed to apply this standard consistently and subsequently, confusion still exists as to whether it applies. See Mirzoyan, 457 F.3d at 221-22 ("Had the BIA in past cases stated a standard for economic persecution, we might reasonably assume that it applied that standard in the present case. But as far as we can determine from a review of BIA decisions, the BIA had not applied a consistent standard."). For a discussion of the economic duress suffered by refugees around the world, see Michelle Foster, INTERNATIONAL REFUGEE LAW AND SOCIO-ECONOMIC RIGHTS: REFUGEE FROM DEPRIVATION 87-291 (Cambridge Univ. Press 2007).

male Iraqi refugees in Syria have turned to prostitution, especially widows whose husbands were murdered in Iraq and who are now the sole providers for their families.\textsuperscript{34} Additionally, child labor and exploitation continues to grow in poor refugee neighborhoods.\textsuperscript{35} Mental and emotional trauma plagues many Iraqi refugee children as well.\textsuperscript{36}

Certain groups of Iraqis, specifically members of religious minorities and individuals who worked with the United States or its allies, are particularly at risk of becoming refugees.\textsuperscript{37} Interpreters and other contractors who assisted the United States military regularly face the threat of death at the hands of militias and various insurgent groups.\textsuperscript{38} Iraqi Christians are

\textsuperscript{34} See Palmer, \textit{supra} note 33 (reporting on growing number of Iraqi girls and young women working as prostitutes in Syria to make money). Some female prostitutes are as young as fifteen years old. See \textit{id.} ("[A] growing stream of men from all over the Middle East is eager to prey on the most desperate refugees from the war.").

\textsuperscript{35} See Ashley Jonathan Clements, \textit{World Vision, Trapped!: Unlocking the Future of Iraqi Refugee Children} 3 (2007), available at http://www.iraqichildrentrapped.org/Downloads/wv_report.pdf (reporting on concern that child labor is growing in many poor refugee communities in Iraq and neighboring countries). In the report, Clements writes that "[a]s family savings dry up and situations become more desperate, Iraq's refugee children will be under increasing pressure to find jobs, risking exploitation." \textit{Id.} (describing factors contributing to child labor in poorer refugee neighborhoods). Conversely, the rights of refugee children in the United States are well-established by the Supreme Court. See Plyler \textit{v. Doe}, 457 U.S. 202, 221 (1982) (holding that primary and secondary education must be equally available to refugees as it is to citizens, regardless of their legal status). The Court held that education is not "merely some governmental ‘benefit’ indistinguishable from other forms of social welfare legislation." \textit{Id.} (recognizing right of refugee child in United States to equal education opportunities). Further, all refugees resettled in the United States are eligible for federal social services and assistance programs for up to seven years after their arrival. See John Fredriksen, \textit{Bridging the Gap between Rights and Responsibilities: Policy Changes Affecting Refugees and Immigrants in the United States Since 1996}, 14 \textit{Geo. Immigr. L.J.} 757, 762 (1999) (discussing social services available to refugees in United States).

\textsuperscript{36} See Clements, \textit{supra} note 35, at 4 (reporting on incidents of panic attacks, bed-wetting, sleeplessness and regular nightmares among young Iraqi refugee children).

\textsuperscript{37} See S. 1651, 110th Cong. § 2 (2007) (finding that many "Iraqis associated with the United States have fled Iraqi in fear of being killed or injured" and are now refugees in surrounding region).

also heavily targeted by various armed groups.\textsuperscript{39} Other vulnerable populations consist of ethnic minorities and nationalities that existed as refugees in Iraq prior to 2003 and who are largely displaced once again.\textsuperscript{40}

Few options remain for the growing number of Iraqi refugees.\textsuperscript{41} Most neighboring countries have essentially sealed off their borders to Iraqis.\textsuperscript{42} Saudi Arabia, Kuwait, Turkey and Iran have allowed entrance to only a handful of Iraqis.\textsuperscript{43} Jordan no longer allows Iraqi males between the ages of eighteen and thirty-five to enter the country, forcing many families to either break apart or flee to the already overcrowded refugee neighborhoods in Syria.\textsuperscript{44} Refugee resettlement in the United States, which the government suspended for two months after the terrorist attacks of Sep-

\textsuperscript{39.} See Iraq's Christian Minority Flees Violence, CBS News, May 7, 2007, http://www.cbsnews.com/stories/2007/05/07/iraq/main2766003.shtml ("Although Islamic extremists have targeted Iraqi Christians before, bombing churches and threatening religious leaders . . . [n]ow [m]any Christians are being expelled from their homes and forced to leave their possessions behind . . ."); see also Joseph T. Kassab, Statement to United States Department of State on Fiscal Year 2007 Refugee Admissions Program (June 28, 2006) (transcript available from the Chaldean Federation of America) (describing increased targeting and subsequent exodus of Christian populations in Iraq). Additionally, increasing incidents of attacks and kidnappings of Iraqi Christians have caused half of Christian population to flee the country. See Iraq's Christian Minority Flees Violence, \textit{supra} (reporting on mass exodus of Christian population from Iraq, now largely refugees, resulting from targeted violence).

\textsuperscript{40.} See H.R. 3674, 110th Cong. § 2 (2007) ("Iraq itself hosts more than 43,000 refugees from other countries, many of whom were refugees prior to 2003 and who have been displaced in Iraq for a second time, including many Palestinians."); RHODA MARGESSON ET AL., CONG. RESEARCH SERV., IRAQI REFUGEES AND INTERNALLY DISPLACED PERSONS: A DEEPENING HUMANITARIAN CRISIS? 3 (2007), available at http://fas.org/sgp/crs/mideast/RL33936.pdf (discussing vulnerable populations of long-time refugees living within Iraq). This group includes Palestinians, Iraqi Christians, Iranian Ahwazis, Sabean-Mandeans, Shi'a Turkmen, the Roma, Baghdad and Basra Kurds, Iranian Kurds, Sudanese and Syrian Arabs. See MARGESSON, \textit{supra}, at 3-4 (detailing composition of long-time refugees and displaced persons in Iraq, totaling over 51,000). Further, of the nearly 300,000 refugees who returned to Iraq in the years immediately following the fall of Saddam Hussein's regime, the majority are once again displaced. See id. (detailing cyclical displacement of many refugees that exists, largely consisting of Iraqis returning from Iran to Southern Iraq).

\textsuperscript{41.} For a discussion of the limited options Iraqi refugees have when fleeing Iraq, see \textit{infra} notes 42-47 and accompanying text.

\textsuperscript{42.} See Iraq: Plight of Refugees Worsens as Syria, Jordan Imposes Restrictions, REUTERS ALERTNET (June 17, 2007), http://www.alertnet.org/thenews/newsdesk/IRIN/3981375bf7b6a4b84c019c6eabb9b66e7.htm (reporting on deteriorating conditions for Iraqi refugees throughout Middle East).

\textsuperscript{43.} See id. (reporting on refusal of many neighboring countries to allow Iraqi refugees into their country).

\textsuperscript{44.} See Miller, \textit{supra} note 24 (reporting how neighboring countries are restricting admission of Iraqi refugees, especially adult males). Miller notes that "[f]ears that sectarian violence will spill into surrounding countries with refugees is a concern throughout the region." \textit{Id.} (discussing Jordan's motivations for restricting entrance of adult males into its territory).
tember 11, remains low.\textsuperscript{45} To date, the United States has done little to alleviate this growing refugee problem.\textsuperscript{46} As a result of the United States' passive response, the millions of Iraqis in and around Iraq are left with a difficult choice: brave an ever more dangerous Iraq or endure increasingly decrepit living conditions as refugees.\textsuperscript{47}

III. LEGAL PROTECTION AVAILABLE TO IRAQI REFUGEES

Iraqi refugees seeking safety and legal protection have distinct but limited resources from which to turn.\textsuperscript{48} International law for refugees has developed steadily since its inception in the mid-twentieth century.\textsuperscript{49} In addition, refugees may also utilize legal protection offered through United States domestic law.\textsuperscript{50}

\textsuperscript{45}. See Eleanor Acer, \textit{Refuge in an Insecure Time: Seeking Asylum in the Post-9/11 United States}, 28 \textit{Fordham Int'l L.J.} 1361, 1368-69 (2005) (describing two-month suspension of United States Resettlement Program by Bush Administration and decreased numbers of refugees resettled in United States following its reinstatement); Waibsnaider, \textit{supra} note 26, at 412 ("The extent to which admissions from the Near East and South Asia have failed to rebound in proportion to everywhere else is significant."). Additionally, Acer writes that "[e]ven after resettlement resumed, though, the pace of resettlement was so slow that thousands of refugees each year were left stranded in difficult and dangerous conditions." Acer, \textit{supra}, at 1369 (noting lingering delays in refugee resettlement after its suspension following September 11 terrorist attacks).

\textsuperscript{46}. See Sudarsan Raghavan, \textit{U.N. Decrees Neglect of Iraqi Refugees: Increased Support Urged for Leading Host Countries Syria and Jordan}, \textit{Wash. Post}, July 7, 2007, at A11, available at http://www.washingtonpost.com/wp-dyn/content/article/2007/07/06/AR2007070602049.html (detailing inefficient resettlement of Iraqi refugees by United States). As of July 2007, the United States has resettled fewer than 800 Iraqis since 2003. See id. (providing recent statistics of refugee resettlement in United States). Sweden, by contrast, has resettled more than 18,000 since only 2006. See id. (comparing Swedish refugee resettlement program with that of United States). Sweden has since announced it will make the asylum process more difficult for Iraqis and forcibly deport any Iraqi denied refuge. See id. (describing Sweden's changing asylum and refugee policies). In April and May of 2007, the United States resettled only one Iraqi refugee in each month. See Husarska, \textit{Refugee Scandal}, \textit{supra} note 38 (criticizing low number of Iraqi refugees that United States has resettled). More recently, the main countries of asylum for Iraqi refugees are Iran, Germany, the Netherlands, Syria and the United Kingdom; not the United States. See U.N. \textit{High Comm'\r for Refugees, Refugees by Numbers 2006} 8 (2006), available at http://www.unhcr.org/basics/BASICS/4523b0bb2.pdf (providing recent statistics for origins of ten largest refugee populations throughout world as of Jan. 1, 2006).

\textsuperscript{47}. For a discussion of the violence and poverty that affect many Iraqis, see \textit{supra} notes 23-47 and accompanying text.

\textsuperscript{48}. For a discussion of the limited legal protections that exist for Iraqi refugees, see \textit{infra} notes 50-71 and accompanying text.

\textsuperscript{49}. For a discussion of the international law pertaining to refugees and its historical development, see \textit{infra} notes 51-61 and accompanying text.

\textsuperscript{50}. For a discussion of the United States domestic law pertaining to refugees and its historical development, see \textit{infra} notes 62-71 and accompanying text.
A. Legal Protection from International Law

The United Nations established the Office of the United Nations High Commissioner for Refugees ("UNHCR") to lead and coordinate international efforts to protect refugees and resolve developing migration crises.\textsuperscript{51} International legal protection for refugees dates back to the 1951 Convention Relating to the Status of Refugees, enacted to address the refugee crisis in Europe following World War II, and its 1967 Protocol.\textsuperscript{52} The Convention sets out the obligations signatory states have to refugees in their territory, such as ensuring a refugee's right to fair treatment for employment, education and housing.\textsuperscript{53} The UNHCR establishes and


\textsuperscript{53} See Convention Relating to the Status of Refugees, \textit{supra} note 52, art. 12-34 (setting out obligations that signatory states have regarding treatment of refugees within their territory). Article 4 of the Convention provides that "[c]ontracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children." \textit{Id.} art. 4 (protecting refugees' right to religious freedom). Article 16 provides that refugees shall have the same treatment as a national in matters pertaining to access to the courts. See \textit{id.} art. 16 (protecting refugees' right to access courts). Article 17 provides that "[c]ontracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regard the right to engage in wage-earning employment." \textit{Id.} art. 17 (protecting refugees' right to employment). Article 20 provides that when a country instates a rationing system for products in short supply, refugees and nationals must receive equal treatment. See \textit{id.} art. 20 (protecting refu-
maintains many refugee camps in Iraq and neighboring countries that provide protection and basic humanitarian services to refugees. The UNHCR's Executive Committee has stressed that resettlement remains "an important tool of refugee protection and a durable solution for many refugees," and that "the use of resettlement should be expanded in the future." In their operations throughout the world, UNHCR officials may register refugees, provide them with protection documents for their identification and coordinate with countries like the United States to facilitate their resettlement.

Despite its honorable ambitions, the UNHCR has been incapable of efficiently addressing the needs of the millions of Iraqi refugees that now exist. Though the UNHCR has established several camps along the Iraqi border and in neighboring countries, it has no independent ability to transplant these refugees to other countries. Additionally, the UNHCR has no mechanism through which to determine whether signatory states are meeting their treaty obligations, nor to enforce compliance. The Iraqi government prohibits most Iraqis of Palestinian descent from receiving the right to access rationing system. Article 22 provides that "[c]ontracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education." Id. art. 22 (protecting refugees' right to education). Finally, Article 23 provides that refugees must receive equal treatment from contracting states with respect to public relief and assistance. See id. art. 23 (protecting refugees' right to public relief and assistance).

54. See Marisa Silenzi Giancarulolo, The W Visa: A Legislative Proposal for Female and Child Refugees Trapped in a Post-September 11 World, 17 YALE J.L. & FEMINISM 459, 462 (2005) (describing primary functions of UNHCR); see also Iraq-Syria: Plight of Palestinian Refugees in Border Camps Worsens, REUTERS ALERTNET (June 27, 2007), http://www.alertnet.org/thenews/newsdesk/IRIN/5bb99e07b104ae0bd6a5ff35fd2f40a6.htm (reporting on three camps that UNHCR has established in Iraq and Syria along border for Iraqi refugees).


57. See Geoff Gilbert, Protection after September 11, 15 INT'L J. REFUGEE L. 1, 2 (2003) (discussing inability of UNHCR to ensure that countries recognize rights of refugees).

58. See Iraq-Syria: Plight of Palestinian Refugees in Border Camps Worsens, supra note 54 (reporting that over 1,000 refugees remain stranded and in humanitarian need in two camps along Iraqi border).

59. See Gilbert, supra note 57, at 2 (discussing problems with determining and enforcing compliance with 1951 Convention Relating to Status of Refugees and its 1967 Protocol). There is some debate regarding whether the UNHCR has the implicit right to ask the International Court of Justice for an advisory opinion regarding a member states' fulfillment of its treaty obligations, though the UNHCR has never attempted such a maneuver. See id. (discussing potential role of International Court of Justice with enforcing 1951 Convention and its 1967 Protocol) (citing Reparations for Injuries Suffered in the Service of the United Nations, Advisory Opinion, 1949 I.C.J. 174, 179 (Apr. 11)).
tering the country, a policy that the UNHCR cannot violate, which strands thousands of Iraqis on the border if they cannot gain entrance to a neighboring country. The UNHCR is further inhibited by Jordan, Syria and Lebanon's refusal to join either the 1950 Convention relating to the Status of Refugees or its 1967 Protocol.

B. Legal Protection Under United States Law

In addition to international law, the United States has its own legislation and policies pertaining to refugees from all over the world, including Iraq. The United States regulates the admission and resettlement of ref-

60. See H.R. 3674, 110th Cong. § 2 (2007) ("Palestinian refugee camps in Iraq near the Syrian and Jordanian borders remain in dire need of humanitarian assistance."); see also Iraq-Syria: Plight of Palestinian Refugees in Border Camps Worsens, supra note 54 (describing plight of stateless Palestinian refugees along border). The Iraqi government does not recognize Iraqis of Palestinian decent as citizens, even persons born and raised in Iraq, and refuses to issue them Iraqi passports. See Iraq-Syria: Plight of Palestinian Refugees in Border Camps Worsens, supra note 54 (reporting on how Iraqi-Palestinians who cannot get through international borders into neighboring countries are then unable to return to their homes in Iraq); see also Iraq: The World's Fastest Growing Refugee Crisis, Refugees International (Aug. 29, 2007), http://www.refugeesinternational.org/content/article/detail/9679 ("Three hundred and seventy-two Palestinians from Iraq are living near the Al Tanf border crossing between Iraq and Syria in a makeshift refugee camp located in the no man's land between both borders."). Similar camps also exist in Jordan. See Iraq: The World's Fastest Growing Refugee Crisis, supra (reporting on dozens of Palestinians languishing since April 2003 and awaiting resettlement). Palestinian Iraqis are among targeted groups frequently attacked by gunmen and have significant incentive to flee Iraq. See id. ("Many Iraqis resent the preferential treatment Palestinians received under Saddam Hussein's regime. As a result, several militia and sectarian groups have singled out Palestinians as recipients of a collective "fatwa" (or death sentence."); see also Wadie Said, The Palestinians in Lebanon: The Rights of the Victims of the Palestinian-Israeli Peace Process, 30 COLUM. HUM. RTS. L. REV. 315 (1999) (providing further discussion of difficulties facing Palestinian refugees as stateless individuals in Middle East). Another group of vulnerable third country nationals is the Iranian Kurds. See Iraq: The World's Fastest Growing Refugee Crisis, supra (reporting that over 500 Iranian Kurds live in refugee camps in Jordan or along Iraqi-Jordanian border).


62. See Daniel J. Steinbock, The Qualities of Mercy: Maximizing the Impact of U.S. Refugee Resettlement, 36 U. MICH. J. L. REFORM 951, 954-55 (2003) (describing three main legal purposes for refugee resettlement in United States). The United States chooses refugees for resettlement based on (1) the need to remove "persons from situations that put their lives or well being at serious risk," (2) "to further U.S. foreign policy goals" or (3) to "facilitate family reunion, recruit skilled labor, or further other traditional immigration purposes." See id. (examining three bases for which United States will resettle refugees). In the United States, the task of
ugees through the Immigration and Nationality Act. Further, the United States is a party to the 1967 Protocol relating to the Status of Refugees and must adopt policies to be in compliance with these international obligations. In its relevant parts, the Protocol preserved the basic obligations of the 1951 Convention, incorporated its definition of a refugee and modified the Convention to address the changing characteristics of modern refugee crises. Under the system, refugees may apply for resettlement in the United States based on a compelling need, a referral from the UNHCR, their membership within certain vulnerable minority groups or on the principle of family reunification if the applicant has family members already living in the United States. Additionally, the United States resettling refugees is further complicated by the lack of a single agency to deal with refugee issues, and instead, the involvement of many federal agencies with their own mandates. See Fredriksson, supra note 35, at 758-59 (discussing responsibilities regarding refugee resettlement for Department of State, Department of Health and Human Services, Department of Justice, and to smaller extent, Department of Labor).


65. See Protocol Relating to the Status of Refugees, supra note 52, art. 1 (setting out general provisions and obligations of Protocol); INS v. Cardoza-Fonseca, 480 U.S. 421, 438 (1987) (“Although the United States has never been party to the 1951 Convention, it is a party to the Protocol, which incorporates the Convention’s definition [of a refugee] in relevant part.”); see also Most Frequently Asked Questions About the Refugee Convention, Refugees, Vol. 2, No. 123, at 16 (2001), available at http://www.unhcr.org/publ/PUBL/3b5e90ea0.pdf (describing main functions and modifications of 1967 Protocol). The 1951 Convention provides the following definition for a refugee:

As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Convention Relating to the Status of Refugees, supra note 52, art. 1, § A(2). The Protocol “removes the geographical and time limitations written into the original Convention under which mainly Europeans involved in events occurring before 1 January 1951, could apply for refugee status.” Most Frequently Asked Questions About the Refugee Convention, supra (explaining how Protocol moved beyond refugee issues stemming from World War II to address changing refugee crisis of late twentieth century).

66. See Margesson, supra note 40, at 12-13 (describing basic prioritization system Department of State utilizes for refugee admission and resettlement in United States). The priority categories cover: (1) “compelling protection cases and individuals for whom no durable solution exists, who are referred to the U.S. refugee program by the [UNHCR], a U.S. embassy, or a designated nongovernmental organization”; (2) “groups of special humanitarian concern to the United States,” including “specific groups within certain nationalities, clans, or ethnic groups”;

http://digitalcommons.law.villanova.edu/vlr/vol53/iss2/5
Department of State recently created the Iraqi Refugee and Internally Displaced Persons Task Force to take charge of coordinating assistance and resettlement for Iraqi refugees and internally displaced persons in Iraq and the surrounding area.67

The terrorist attacks of September 11 and the United States' subsequent military engagements in Iraq and Afghanistan have profoundly affected United States' refugee policies.68 For example, a limited number of individuals and their families who worked for the United States military and meet certain specified conditions now qualify for special immigrant visas.69 To allow for this program, Congress added a provision to the National Defense Authorization Act for Iraqi or Afghani translators who worked directly with the United States Armed Forces for a period of at least (3) "family reunification cases involving spouses, unmarried children under age 21, and parents of persons who were admitted to the United States as refugees or granted asylum." *Id.* (detailing composition of three prioritized categories for refugee admission and resettlement into United States).


    Our key immediate objectives are to assist internally displaced Iraqis and Iraqi refugees by building up the capacities of UN agencies and NGOs. This includes increasing opportunities for permanent resettlement for the most vulnerable Iraqis, to establish specialized programs to assist Iraqis who are at risk because of their employment or close association with the United States Government, to work diplomatically with regional governments through bilateral and multilateral channels to uphold the principle of first asylum.


68. *See* Waibsnaider, *supra* note 26, at 391-92 (discussing how United States' war on terror was primary motivation for changes in refugee admissions policies for Iraq).

69. *See* National Defense Authorization Act for Fiscal Year 2006, Pub. L. No. 109-163, § 1059, 119 Stat. 3136, 3443 (adding provision giving special consideration for former Iraqi or Afghani translators who worked for United States military). The individual must obtain both proof issued by the United States Armed Forces that he or she worked as a translator for at least twelve months and a written recommendation from a General in the chain of command of the United States Armed Forces unit that the translator supported. *See id.* § 1059(b)(1), 119 Stat. at 3444 (describing requirements for special status visas that are available to former Iraqi or Afghani interpreters who worked for United States military); *see also* U.S. Dep't of State, *Immigrant Visas: Information on Special Immigrant Status for Persons Serving as Translators with the United States Armed Forces* (Aug. 29, 2006), available at http://iraq.usembassy.gov/iraq/special_immigrant_visa.html (describing requirements of program for special immigrant status).
least twelve months. 70 Once translators receive adjusted status or their immigrant visas, their spouses and non-adult children may also qualify to join them in the United States. 71

IV. NECESSITY OF REFORM IN UNITED STATES IMMIGRATION LAW AND POLICY PERTAINING TO IRAQI REFUGEES

Though certain protections exist for Iraqi refugees, there are ample shortcomings of both the UNHCR and the United States refugee resettlement program. 72 First, some of the seemingly basic requirements for refugee resettlement may prove unreasonably burdensome for many refugees due to the realities of the Iraqi refugee crisis. 73 Second, the United States government has failed to effectively implement a well-designed program for refugee resettlement. 74 Third, the material support provision imbedded in the Immigration and Nationality Act unreasonably prevents thousands of harmless Iraqi refugees from resettling in the United States because it has an overly-broad definition of a terrorist organization and it fails to create a duress exception to the resettlement bar. 75

70. See National Defense Authorization Act for Fiscal Year 2006 § 1059, 119 Stat. at 3443 (adding provision giving special consideration for former Iraqi or Afghani translators who worked for United States military). The provision allows the Secretary of Homeland Security to provide a translator with special immigrant status under the Immigration and Nationality Act. See id. § 1059(a) (detailing provision of special immigrant status).

71. See id. § 1059(b)(2), 119 Stat. at 3444 (providing for resettlement of immediate family members of Iraqi and Afghani translators approved for refugee resettlement in United States).

72. See Acer, supra note 45, at 1368-69 (discussing long delays in resettlement of Iraqi refugees in United States); see also Jennie Pasquarella, Victims of Terror Stopped at the Gate to Safety: The Impact of Material Support to Terrorism Bar on Refugees, 13 No. 3 HUM. RTS. BRIEF 28, 29-32 (2006), available at http://www.wcl.american.edu/hrbrief/13/133.pdf?rd=1 (criticizing problems with United States immigration law and policy). Pasquarella writes that three major problems exist: (1) current immigration law and policy operates under a definition of terrorism that commingles refugees with terrorists; (2) the material support provision of the Immigration and Nationality Act includes immaterial support; and (3) refugees victimized by terrorists have no duress defense. See id. (discussing significant problems posed by United States immigration law and policy for Iraqi refugees). Additionally, the United States failed to achieve its goal for the number of Iraqi refugees that it resettles. See Jamie Tarabay, Bombings Underscore U.N. Report on Iraqi Deaths, NAT'L PUB. RADIO, Jan. 16, 2007, http://www.npr.org/templates/story/story.php?storyId=6874414 (reporting that “the U.S. government fell short of its pledge to resettle 500 Iraqi refugees in the 2006 fiscal year” and only resettled 202 individuals).

73. For a discussion of the requirements Iraqis must meet before qualifying for refugee resettlement in the United States, see infra notes 76-80 and accompanying text.

74. For a discussion of the United States government’s implementation of existing refugee resettlement programs, see infra notes 81-85 and accompanying text.

75. For a discussion of the material support bar for refugees, see infra notes 86-117 and accompanying text.
A. Unreasonable Burden Placed on Iraqi Refugees by United States Resettlement Requirements

Iraqi refugees encounter unreasonable difficulty in receiving protection from the United States government.\(^{76}\) Asylum protection is only available to Iraqis who physically make it to the United States and offers no protection to the millions of refugees who remain in the Middle East.\(^{77}\) Meeting the burden of proof for refugees seeking protection in the United States is no easy task, and immigration judges have occasionally required excessive showings of proof on the applicant's part.\(^{78}\) Complicat-

\(^{76}\) See Elias v. Gonzales, 490 F.3d 444, 452-53 (6th Cir. 2007) (rejecting Board of Immigration Appeals' affirmation of immigration judge's decision denying Iraqi Chaldean's request for asylum). In Elias, the Sixth Circuit also found that the immigration judge had badgered the Iraqi refugee, that he was inappropriately sarcastic and that his intemperate behavior had negatively affected the Iraqi's testimony. See id. at 52 (noting improper behavior of immigration judge). Other courts have similarly denied legal protection to Iraqis. See Gulla v. Gonzales, 498 F.3d 911, 917-19 (9th Cir. 2007) (rejecting Board of Immigration Appeals' affirmation of immigration judge's decision to deny Iraqi Chaldean's request for asylum, despite demonstrating credible evidence of past persecution and likelihood of future persecution and torture if he returned to Iraq). In Gulla, the Ninth Circuit held that the immigration judge ignored not only the significance of the presence of the refugee's family in the United States, but also the complexity of balancing discretionary factors when considering whether the refugee should have previously applied for protection in other counties. See id. (rejecting previous holding of immigration judge). Other courts have applied a very narrow definition for what constitutes torture. See Al-Saher v. INS, 268 F.3d 1143, 1147-48 (9th Cir. 2001) (rejecting Board of Immigration Appeals' holding that Iraqi man's arrests did not amount to torture, when those arrests included beatings and being burned with cigarettes). In Al-Saher, where the Board of Immigration Appeals had previously affirmed deportation of the Iraqi refugee, the Ninth Circuit went on to remand the case to the Board. See id. at 1148 (ruling that Board of Immigration Appeals shall grant withholding of removal).

\(^{77}\) See Immigration and Nationality Act, 8 U.S.C. § 1158(a)(1) (2005) (stating that authority to apply for asylum applies to "any alien who is physically present in the United States or who arrives in the United States") (emphasis added). Iraqi asylum-seekers were further disadvantaged by Operation Liberty Shield, a program put forth in part by the United States Department of Homeland Security. See Acer, supra note 45, at 1379 (describing policy whereby United States government detained all asylum-seekers from nations where al-Qaeda, al-Qaeda sympathizers and other terrorist groups operate). Asylum-seekers from these Arab countries were universally detained, including those who met the required parole criteria and posed no threat to the public. See id. (discussing effect of Operation Liberty Shield for Arab asylum-seekers).

\(^{78}\) See INS v. Cardoza-Fonseca, 480 U.S. 421, 449 (1987) (rebuffing attempts by Board of Immigration to place excessively-high burden of proof on refugees seeking asylum in United States). At deportation proceedings against a Nicaraguan citizen who sought protection from political persecution in her home country, the immigration judge applied the same standard in evaluating her claim for withholding deportation as he did in evaluating her application of asylum. See id. at 424-25. (discussing burden of proof that applicant must meet). On appeal, the Board of Immigration Appeals affirmed and imposed a burden of proof requiring her to show that it is more likely than not that she will be persecuted in her home country. See id. at 425 (discussing Board's ruling on required burden of proof). The Supreme Court ruled otherwise, holding that the standard of proof imposed
ing matters further, Iraqi refugees who first fled to Syria or Jordan to escape violence before turning to the United States for safety may be ineligible for both refugee and asylum protection because they did not come directly from Iraq to the United States. Courts in the United States have not clearly decided whether such refugees are considered firmly resettled under the law and thereby barred from refugee resettlement and asylum protection in the United States.

B. Failure to Implement Refugee Resettlement Programs for Iraqi Refugees

Another serious shortcoming with the United States immigration policy towards Iraqis is its overwhelming failure to implement resettlement by the Board of Immigration Appeals was excessive and too restrictive. See id. at 449-50 (rejecting Board of Immigration Appeals’ ruling). The Court stated that “[o]ur holding today increases that flexibility [given to the United States in the Refugee Act of 1980] by rejecting the Government’s contention that the Attorney General may not even consider granting asylum to one who fails to satisfy the strict § 243(h) standard [for withholding deportation].” Id. (summarizing its ruling on burden of proof that is required for applicant).

79. See Eligibility for Admission of Refugees, 8 C.F.R. § 207.1 (2007) (barring any applicant who has become firmly resettled in foreign country from receiving refugee resettlement in United States). Under United States immigration law, “[a] refugee is considered to be ‘firmly resettled’ if he/she has been offered resident status, citizenship, or some other type of permanent resettlement by a country other than the United States and has travelled to and entered that country as a consequence of his/her flight from persecution.” Id. § 207.1(b) (providing definition for “firmly resettled”). Further, a refugee who claims not to be firmly resettled must establish that the conditions of his or her residence in that country are so restrictive as to deny resettlement. See id. § 207.1(c) (detailing required showings for refugee applicants who must prove they are not firmly resettled in another country).

80. See 8 C.F.R. § 207.1(c) (limiting consideration to conditions under which other residents of the country live). Under the Code, judges consider: (1) “[w]hether permanent or temporary housing is available to the refugee in the foreign country”; (2) the “nature of employment available to the refugee in the foreign country,” and (3) “other benefits offered or denied to the refugee by the foreign country which are available to other residents,” such as the right to property ownership, travel documentation, education, public welfare and citizenship. See id. (listing considerations for firm resettlement analysis); see also 8 C.F.R. § 207.1 (providing similar definition of firm resettlement for asylum proceedings). But see Gulla, 498 F.3d at 917-18 (stating that courts should also consider claimant’s safety, whether orderly refugee procedures were available to help refugees in any country they passed through, whether claimant made any attempts to seek asylum before coming to United States and whether claimant had reasonable fears discouraging application to other countries). In Gulla, the Ninth Circuit stressed that the immigration judge should consider the general context through which the refugee has fled his or her home country. See id. at 918 (recommending that immigration judges undertake more contextual approach for firmly resettled analysis). Specifically, the court states that anti-Arab tensions that exist following the terrorist attacks of September 11 might discourage many refugees from initiating the asylum process until they are actually inside the United States, as opposed to other countries through which they have travelled along the way. See id. (illustrating possible factors that immigration judges might consider).
programs in a timely manner. The numbers that the United States allocated for refugee resettlement in 2006 and 2007—both the number first proposed by the Department of State as the intended goal and the much lower number of Iraqi refugees that actually resettled in the United States—were significantly inadequate given the magnitude of the Iraqi refugee crisis. The United States established a goal to resettle 7,000 Iraqi refugees in 2007, but only weeks later, adjusted this number to only 2,000 individuals. While some Iraqi Christians are obtaining refugee resettlement in the United States, other vulnerable groups remain largely forgotten. The United States government’s failure to allocate sufficient personnel and funding continues to delay the already slow resettlement process.

C. The Material Support Provision of the Immigration and Nationality Act

Shortcomings in recent legislation designed to combat terrorism further inhibit many refugees from obtaining legal protection in the United States. Since Congress passed the Immigration Act of 1990, any person

81. See H.R. 2486, 110th Cong. § 2 (2007) (discussing current failure of United States government to process Iraqi refugees). The proposed legislation finds that the United States government has previously resettled massive amounts of refugees in a short period of time. See id. (recognizing that between May 1, 1975 and December 20, 1975, United States government facilitated movement of over 131,000 South Vietnamese political refugees to United States). The United States government has resettled significantly fewer Iraqi refugees over a greater length of time. See id. (finding that United States admitted 692 Iraqi refugees between 2003 and 2007).

82. See H.R. 3674, 110th Cong. §§ 7-8 (2007) ("The United States pledged to resettle 7,000 Iraqi refugees in 2007, later reduced to 2,000, a commitment which has yet to be met."); Tarabay, supra note 72 (discussing how United States government “fell short of its pledge to resettle 500 Iraqi refugees in the 2006 fiscal year . . . it only resettled 202").

83. See Iraqi Refugees: Resettlement Questions and Answers, REFUGEE COUNCIL USA (Sept. 5, 2007), available at http://www.refugeesinternational.org/content/article/detail/10173 (reporting on likely number of Iraqi refugees that United States will process in 2007).

84. See id. (discussing how Brazil has agreed to resettle 100 Palestinian Iraqis, while United States has taken only four).

85. See Crocker Urges Iraq Refugee Action, BBC News, Sept. 17, 2007, http://news.bbc.co.uk/2/hi/middle_east/6998372.stm (reporting that United States Department of Homeland Security has only small number of officers in Jordan to conduct security reviews of Iraqi refugees). Due to insufficient staffing, resettlement applicants must wait eight to ten months after being referred to United States authorities by the UNHCR. See id. (suggesting current list of 10,000 applicants UNHCR recommended to United States might take two years to process).

who gives material support to terrorists or a terrorist organization is barred from resettlement in the United States.\textsuperscript{87} Congress's definition of material support was significantly broad, and includes monetary contributions such as ransom payments.\textsuperscript{88} Following the terrorist attacks of September 11, Congress passed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act and the Real I.D. Act, meant in part to amend this provision in the Immigration and Nationality Act.\textsuperscript{89} The legislation provides that the ban applies if material support is given not just to groups recognized as terrorist organizations by the United States Department of State, but, additionally, to any "group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, terrorist activity."\textsuperscript{90} Since the definition of terrorist activity under United


\textsuperscript{88} See Immigration and Nationality Act, 8 U.S.C. § 1182(a)(3)(B)(iv)(VI) (stating provision regarding material support for terrorists or terrorist organizations). The term "material support" means any property or service, including "currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel and transportation." See 18 U.S.C. § 2239A(b)(1) (2006). The Third Circuit has also found that it was not arbitrary or capricious for an administrative agency to determine refugees who provided food and set up tents for a religious congregation that might have contained members of a militant sect constituted material support. See Sing-Kaur v. Ashcroft, 385 F.3d 293, 298-99 (3d Cir. 2004) (defining material support).


\textsuperscript{90} See Immigration and Nationality Act, 8 U.S.C. § 1182(a)(3)(B)(i)-(III)(a)(3)(B)(vi)(I)-(III) (2005) (describing three tiers of terrorist organizations). Tier I terrorist organizations, known as foreign terrorist organizations, are designated by the United States Secretary of State. See "Material Support" and Related Bars to Refugee Protection Summary of Key Provisions of the Immigration and Nationality Act, supra note 87, at 1 ("The consequences of a Tier I designation includes freezing of organizational assets, criminal prosecutions for those found to have provided 'material support' to . . . [a foreign terrorist organization], and inadmissibility to the United States for those who provide support to or are affiliated with . . . [the organization]."). Tier II terrorist organizations are also designated by the Department of State, but association or support for them does not invite criminal consequences. See id. ("The consequences of a Tier II designation is primarily in-
States immigration law is broad in nature, many unorganized but armed militias roaming Iraq classify as official terrorist organizations under the law.\textsuperscript{91}

1. \textit{Material Support Provided Under Duress}

The recent amendments to the Immigration and Nationality Act pose significant problems for many Iraqis who gave money away under threat of death to themselves or their families.\textsuperscript{92} As one Board of Immigration Appeals judge declared, the material support provision is "breathtaking in its scope."\textsuperscript{93} Further, the law creates no exception for those cases where individuals provide the support involuntarily or under great duress.\textsuperscript{94} Technically, refugees can assert a defense that they did not have actual or constructive knowledge that they were supporting a terrorist organization.\textsuperscript{95} The Board of Immigration Appeals, however, rejected the argument that a link must exist between the provision of material support and the intended use of the assistance by the terrorist organization to further terrorist activity.\textsuperscript{96}

Though it does not textually exist in the legislation, an exception to the material support bar might exist where support was not given voluntarily, but rather, under duress.\textsuperscript{97} The Supreme Court has long-recognized admissibility to the United States for those who provide support to or are affiliated with the organization.

Tier III terrorist organizations are any group of individuals who engage in terrorist activity. \textit{See id. at 1-2.} ("[E]ssentially any resistance or rebel group that is engaged in armed conflict with its government would be considered a 'Tier III' terrorist organization."). At present, three groups operate in Iraq that the Department of State recognizes as terrorist organizations. \textit{See U.S. Dep't of State, Foreign Terrorist Organizations (FTOs) (2006), available at http://www.state.gov/s/ct/rls/fs/37191.htm (listing Ansar al-Islam, al-Qa’ida and Tanzim Qa’idat al-Jihad fi bilad al-Rafidayn).}

\textsuperscript{91.} \textit{See Immigration and Nationality Act, 8 U.S.C. § 1182(a)(3)(B)(iii)(V) (2005) (defining “terrorist activity” as including “the use of any explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.”).}

\textsuperscript{92.} For a discussion of potential problems for Iraqi refugees posed by new legislation, see \textit{infra} notes 93-96 and accompanying text.


\textsuperscript{94.} \textit{See Pasquarella, supra note 72, at 28 (describing principal problems with material support bar in Immigration and Nationality Act).}

\textsuperscript{95.} \textit{See Immigration and Nationality Act, 8 U.S.C. § 1182(a)(3)(B)(iv)(IV) (2005) (providing that alleged act does not constitute material support if “the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization”).}

\textsuperscript{96.} \textit{See In re S-K-, 23 I. & N. Dec. at 943-44 (limiting defense available to material support bar when claimant claims to have lacked actual or constructive knowledge that organization was terrorist organization).}

\textsuperscript{97.} \textit{See Arias v. Gonzales, 143 F. App’x. 464, 468 (3d Cir. 2005) (holding that Colombian man was denied permanent entry into United States because he volun-
duress as a defense in criminal law. Further, the Court has suggested that individuals may be able to raise duress as a common law defense in criminal proceedings even when the conduct in question violates criminal statues that lack any express duress exception. The Supreme Court previously found duress to exist when one demonstrates that, "given the imminence of the threat," violation of the law "was his only reasonable alternative." Even if a duress exception to the material support bar does exist, however, recent rulings suggest it will not prove to be an effective alternative. In past cases, the Supreme Court seemingly maintains that duress might not necessarily exist even when one acts under the threat of death to one's family members. Immigration judges through-

98. See United States v. Bailey, 444 U.S. 394, 409 (1980) (describing use of duress as common law defense for criminal charges in context of prison escape). Under the common law, "[d]uress was said to excuse criminal conduct where the actor was under an unlawful threat of imminent death or serious bodily injury, which threat caused the actor to engage in conduct violating the literal terms of the criminal law." See id. (describing historic common law distinction between duress and necessity).

99. See id. at 410 (refraining from speculation as to whether duress is or is not available defense where law does not specifically provide for it). Justice Blackmun argued for the existence of an implied defense of duress, at least in the context of the prison escape case before him. See id. at 424-25 (Blackmun, J., dissenting) ("Congress in so many words has not enacted specific statutory duress or necessity defenses that would excuse or justify commission of an otherwise unlawful act. The concept of such a defense, however, is 'anciently woven into the fabric of our culture.'") (citation omitted). Further, though "the Court [in Bailey] declines to address the issue, it at least implies that it would recognize the common-law defenses of duress and necessity to the federal crime of prison escape . . . ." Id. at 425.

100. See id. at 410-11 (describing standard for showing duress in context of prison escape); see also Fedorenko v. United States, 449 U.S. 490, 512 n.34 (1981) (holding that duress did not exist under circumstances for former Nazi concentration camp guard, but recognizing that "[o]ther cases may present more difficult line-drawing problems"): Hernandez v. Reno, 258 F.3d 806, 813 (8th Cir. 2001) ("Under Fedorenko, a court faced with difficult 'line-drawing problems' should engage in a particularized evaluation in order to determine whether an individual's behavior was culpable . . . .").

101. See Bailey, 444 U.S. at 411 (applying standard of duress).

102. See id. at 411 n.8 (discussing when duress might exist) (citing to R.I. Recreation Ctr., Inc. v. Aetna Cas. & Sur. Co., 177 F.2d 603, 605 (1st Cir. 1949)). In R.I. Recreation Center, Inc., the court held that a person acting under threat of death to his relatives still could be found guilty for committing a crime if that person had opportunity to contact police beforehand. See R.I. Recreation Center, Inc., 117 F.2d at 605 (holding that person "was free to telephone the police himself" and was not acting "under the muzzles of the bandits' guns"). According to the court, "'[c]oercion which will excuse the commission of a criminal act must be immediate and of such nature as to induce a well-grounded apprehension of death or serious bodily injury if the act is not done.'" Id. (providing standard necessary for showing duress).
out the country have similarly set the bar extraordinarily high for finding duress, and other judges have refused to consider the defense at all.\textsuperscript{103} Following suit, the Department of Homeland Security has also refused resettlement for many refugees who were forced at gunpoint into manual labor by terrorist organizations.\textsuperscript{104}

The application of such a strict interpretation essentially prohibits refugee assistance to thousands of Iraqis who have paid ransoms to terrorist kidnappers threatening to kill their loved ones.\textsuperscript{105} Kidnappings of regular civilians by various gangs and organizations remain widespread throughout Iraq.\textsuperscript{106} This provision of the Immigration and Nationality Act, while particularly problematic for Iraqis, affects refugees throughout the world.\textsuperscript{107} Exemplifying the overly-broad scope that the provision inadvertently entails, the Department of Homeland Security has conceded that a literal interpretation of the law bars entry into the United States for the

\textsuperscript{103} See Jennie Pasquarella, Blaming Terror’s Victims: U.S. Immigration Law Unfairly Denies Refuge to Those Forced to Help Rebels, \textit{Legal Times}, Vol. 29, No. 22, May 29, 2006, at 2, available at https://141.161.16.100/news/documents/LegalTimesArticle5-29-06.pdf (citation omitted) (discussing immigration judge’s refusal to considered involuntariness of refugee’s actions and holding that he had provided material support). A Sri Lankan organization, which the court held was a terrorist organization, had kidnapped the refugee. See id. (describing facts of case). The group forced the kidnapped refugee to pay 50,000 rupees for his release, which the immigration judge held was material support under the law. See id. (discussing immigration judge’s holding).

\textsuperscript{104} See id. at 1 (explaining that under new law, Department of Homeland Security refuses resettlement to refugees who performed laundry services for guerrillas at gunpoint and under threat of death).


\textsuperscript{107} See Mark Fleming, Emi MacLean & Amanda Taub, Unintended Consequences: Refugee Victims of the War on Terror, 37 \textit{Geo. J. Int’l L.} 759, 763-66 (2006) (reporting on how strict application of new legislation, specifically provision regarding material support for terrorist organizations, has prevented many Colombians that fled guerrilla violence in their home country from effectively seeking asylum or refugee protection in United States).
Iraqi individual who worked with the United States Marines to rescue kidnapped soldier Jessica Lynch.\textsuperscript{108}

2. Material Support Obstacles for Translators

For many individuals who worked as translators for the United States military, however, the eligibility requirements for special immigrant status present a significant obstacle.\textsuperscript{109} Individuals must obtain both proof from the United States military that they worked as translators and a favorable letter of recommendation from the General under which they worked.\textsuperscript{110} This can be a very difficult and time-consuming task for a refugee living in a UNHCR camp or Syrian slum with little access to phones or internet.\textsuperscript{111} The I-360 application form for special immigrants has yet to be updated for translators, which could make the process even more confusing.\textsuperscript{112} The processing of the I-360—which is free for some groups applying as special immigrants—costs hundreds of dollars for Iraqi translators, many of whom have spent most of their savings fleeing Iraq.\textsuperscript{113} In addition, the

\textsuperscript{108.} See Pasquarella, supra note 103, at 2 (explaining how under strict interpretation of law, United States Marines would qualify as Tier III terrorist organization because they fought against established Iraqi government).

\textsuperscript{109.} For a discussion of the requirements for special immigrant visas for Iraqi translators, see infra notes 110-14 and accompanying text.

\textsuperscript{110.} See Immigrant Visas: Information on Special Immigrant Status for Persons Serving as Translators with the United States Armed Forces, supra note 69 (describing resources available through United States government to former Iraqi or Afghani interpreters who worked for United States military). For translators who worked with the United States Navy, a Flag Officer is acceptable. See id. (clarifying requirement for resettlement consideration for former military translators).

\textsuperscript{111.} See Curry, supra note 28 (describing living conditions for Iraqi refugees in Middle East); Miller, supra note 24 (describing high levels of poverty for Iraqi refugees); Palmer, supra note 33 (discussing limited resources that many Iraqi refugees, especially females, have in their host countries).

\textsuperscript{112.} See U.S. Dept. of Homeland Security, I-360, Petition for Amerasian, Widow(er) or Special Immigrant, OMB No. 1615-0020 (2007), available at http://www.uscis.gov/files/form/i-360.pdf (providing application for special immigrant visa). There is no mention of Iraqi translators on the form, and Iraqis must describe in the section titled “Other” why they are eligible for the special immigrant visa. See id. (describing layout of I-360 Form). The form is also available to (a) Amerasians, (b) widowers of a United States citizen who died within the past two years, (c) special immigrant juveniles, (d) special immigrant religious workers, (e) special immigrant based on employment with the Panama Canal Company, Canal Zone Government or United States Government in the Canal Zone, (f) special immigrant physicians, (g) special immigrant international organization employees or family members, (h) special immigrant armed forces members, (i) self-petitioning spouse of abusive United States citizen or lawful permanent resident or (j) self-petitioning child of abusive United States citizen or lawful permanent residents. See id. (listing categories of eligible individuals for special visa).

\textsuperscript{113.} See Immigrant Visas: Information on Special Immigrant Status for Persons Serving as Translators with the United States Armed Forces, supra note 69 (noting costs and requirements of I-360 application for Iraqi and Afghani translators). Iraqis applying for the special immigrant visa must pay $375 to even be considered. See id. (imposing application fee for processing I-360). Amerasians, special immigrant juveniles and self-petitioning battered or abused spouses, parents or children of
United States has limited its special visa protection to no more than fifty translators per year. 114

3. Material Support Obstacles with Documentation

Iraqis also face the same basic problems of qualifying for legal protection that almost all refugees throughout the world must face. 115 One would expect that "forced displacement, violence, lack of infrastructure, illness and lack of stability are not ideal conditions for preserving formal identity documents such as passports, birth certificates, or marriage certificates." 116 Refugees, therefore, face the added challenge of preserving the documents that prove who they are, saving proof that shows why they are refugees and proving that they are not involved with terrorism. 117

V. PROPOSAL FOR REFORMING UNITED STATES IMMIGRATION LAW AND POLICY PERTAINING TO IRAQI REFUGEES

There is a growing need to reform the United States immigration law and policy that govern Iraqi refugee resettlement. 118 The United States should take a greater role in addressing the Iraqi refugee crisis. 119

United States citizens or permanent residents pay no fees for the I-360. See U.S. Citizen and Immigration Services, Petition for Amerasian, Widow(er) or Special Immigrant, http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=95be2c21e6855d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD (setting out application fees for different individuals seeking special immigrant status). While a translator can request a fee waiver upon submission of the I-360, if the waiver is denied, the petition and all supporting documents will be returned and the place in line will not be retained. See Immigrant Visas: Information on Special Immigrant Status for Persons Serving as Translators with the United States Armed Forces, supra note 69 (describing conditions of fee waiver).


115. See Cianciarulo, supra note 54, at 481 (discussing universal problems confronting refugees throughout world).

116. See id. (describing problems refugees face with preserving relevant documents).

117. See id. (discussing challenges presented to refugees seeking resettlement who do not possess sufficient documentation to prove their identity and other relevant characteristics).

118. See S. 1651, 110th Cong. § 2 (2007) (discussing reasons for United States government to reform its immigration law and policy). The proposed legislation warns that "[i]f [the Iraqi refugees'] needs are not quickly and adequately met, these populations could become a fertile recruiting ground for terrorists." Id. (urging United States to take action to address growing humanitarian crisis of Iraqi refugees).

119. See id. (recognizing that while "United States cannot resettle all of Iraq's refugees in the United States," it still "has a fundamental obligation to help the vast number of Iraqis displaced in Iraq and throughout the region by the war and the associated chaos, especially those who have supported America's efforts in Iraq").
Though the UNHCR's work and leadership should be praised, it cannot provide the sole remedy to the ever-growing crisis. The United States Congress should amend the material support provision so that refugees who paid ransoms under duress are not disqualified from resettlement. The United States government should also modify its existing special immigrant program by enacting a special visa that is more accessible to Iraqis who formally worked for the United States military or who are members of vulnerable minorities. Finally, the United States should increase the number of Iraqi refugees allowed into the United States and expedite their resettlement.


121. See “Material Support” Litigation; Contact Human Rights First, AMERICAN IMMIGRATION LAW FOUNDATION LEGAL ACTION CENTER LITIGATION CLEARINGHOUSE NEWSLETTER, Vol. 1, No. 17, Sept. 27, 2006, at 1-2, available at http://www.ailf.org/lac/litclearinghouse/litclr_newsletter_92706.pdf (describing work of “gathering examples of asylum seekers affected by this bar to help policy makers understand that genuine refugees should not improperly be denied asylum under these overly broad definitions.”). The author notes that hundreds of refugees “are being impacted by the government’s application of the ‘material support’ provision of the terrorist activity ground of inadmissibility.” Id. at 1 (describing effects of existing material support provision).

122. See S. 1651, 110th Cong. § 4 (2007) (proposing that certain groups of Iraqis receive priority status for refugee resettlement). The proposed legislation extends prioritization to (1) “Iraqis who were employed by, or worked for or directly with the United States Government, in Iraq”; (2) Iraqis who were employed in Iraq by either “a media or nongovernmental organization based in the United States” or “an organization or entity that has received a grant from, or entered into a cooperative agreement or contract with, the United States Government”; (3) the immediate family members of these individuals; and (4) “Iraqis who are members of a religious or minority community” and who have close family members in the United States. See id. (listing groups of Iraqis who are eligible for priority refugee resettlement). The United States House of Representatives has proposed similar legislation. See H.R. 3674, 110th Cong. §§ 7-8 (2007) (prioritizing resettlement for Iraqis who “were employed by the United States Government, United States companies, and nongovernmental organizations” or who “are members of particularly vulnerable refugee populations, including Iraqis from ethnically mixed families and Iraqis who are members of religious or other minority groups”).

123. See H.R. 3674, 110th Cong. § 8 (2007) (proposing that Secretary of Homeland Security and Secretary of State work to make refugee resettlement for Iraqi refugees more efficient, and, additionally, increase annual resettlement quota to admit up to 20,000 Iraqis annually).
A. Amending the Material Support Provision of the Immigration and Nationality Act

The United States should amend the Immigration and Nationality Act and its material support provision to narrow the overly-broad definition of a terrorist organization.\(^{124}\) The literal interpretation of the current law classifies American allies, such as the Northern Alliance in Afghanistan, as terrorist organizations.\(^{125}\) The Department of Homeland Security has even admitted to the Board of Immigration Appeals that the United States military is a terrorist organization under a straightforward reading of the statute.\(^{126}\) This absurdity demonstrates how dangerously ambiguous the law is and, further, how it can disadvantage innocent refugees who need the United States' legal protection.\(^{127}\)

The legislature should also amend the material support provision of the Immigration and Nationality Act to create an exception for support given under duress.\(^{128}\) The United States government has waived the application of the material support bar before, and it should do the same for many groups of Iraqi refugees, especially those who worked for the United States military.\(^{129}\) Though the law does allow for either the Secretary of

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\(^{125}\) See Fleming, supra note 107, at 780-81 (discussing broad description of terrorist organization in Immigration and Nationality Act that “appl[ies] equally to organizations that the U.S. government opposes and supports”). Fleming writes that an Afghani “who provided support to Afghanistan’s Northern Alliance in the 1990s would be barred from entry even though the North Alliance was fighting the Taliban government, a regime the U.S. government considered illegitimate.” Id. at 781 (illustrating breadth of definition for terrorist organization under Immigration and Nationality Act).

\(^{126}\) See id. at 781 n.86 (citation omitted) (discussing broad definition of terrorist organization in Immigration and Nationality Act). Under the current definition of terrorist organization in the law, the United States Marines would qualify as a Tier III organization because “their activity was unlawful during the U.S. occupation of Iraq under Iraqi law and they were fighting against an established government.” Id. (explaining how United States military could classify as terrorist organization).

\(^{127}\) See “Material Support” Litigation; Contact Human Rights First, supra note 121, at 1-2 (“Human Rights First, a[n] . . . organization that is coordinating the work on this issue, reports that many of the cases affected by the ‘material support’ provision involve refugees who provided money to ‘terrorist organizations’ under duress and refugees who supported pro-democracy groups that fought repressive regimes.”).

\(^{128}\) See id. (discussing efforts “to help policy makers understand that genuine refugees should not improperly be denied asylum under these overly broad definitions”).

\(^{129}\) See Pasquarella, supra note 103, at 3 (describing last May’s decision by Departments of State, Justice and Homeland Security to waive application of mate-
State or the Secretary of Homeland Security to waive the material support provision in limited circumstances, it makes no explicit mention of duress. Further, the government has granted a waiver on only three occasions, none of which included Iraqi refugees.

The Department of State has said that the Immigration and Nationality Act should achieve a better balance between humanitarian commitments and national security concerns. A proposed solution to the problem would refine the duress exception to the material support provision. Under the proposed change to the Immigration and Nationality Act, the Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, or the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, to waive the material support provision. See id. (granting government officials authority to grant material support waiver). This waiver can be granted by determining that the provision need not apply to a particular refugee who has materially supported a terrorist organization, or alternatively, that classification as a Tier III terrorist organization does "not apply to a group solely by virtue of having a subgroup within the scope of that subsection." See id. (describing application of material support waiver). Though it is possible for it to do so, the government has never granted a waiver in cases where material support was given under duress. See The Plight of Iraqi Refugees: Hearing Before the S. Comm. on the Judiciary, 110th Cong. (2007) (statement of Sen. Patrick Leahy, S. Comm. on the judiciary), available at http://leahy.senate.gov/press/200701/011607.htm (commenting on rare application of material support waiver, and that "the waiver authority, although available, has never been used in cases of coercion").

130. See Real I.D. Act, Pub. L. No. 109-13, § 104, 119 Stat. 231, 309 (2005) (amending Immigration and Nationality Act to create waiver of material support provision). The amendment allows either the Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, or the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, to waive the material support provision. See id. (granting government officials authority to grant material support waiver). This waiver can be granted by determining that the provision need not apply to a particular refugee who has materially supported a terrorist organization, or alternatively, that classification as a Tier III terrorist organization does "not apply to a group solely by virtue of having a subgroup within the scope of that subsection." See id. (describing application of material support waiver). Though it is possible for it to do so, the government has never granted a waiver in cases where material support was given under duress. See The Plight of Iraqi Refugees: Hearing Before the S. Comm. on the Judiciary, 110th Cong. (2007) (statement of Sen. Patrick Leahy, S. Comm. on the judiciary), available at http://leahy.senate.gov/press/200701/011607.htm (commenting on rare application of material support waiver, and that "the waiver authority, although available, has never been used in cases of coercion").


132. See U.S. Refugee Admissions and Policy: Hearing Before the Subcomm. on Immigration, Border Security and Citizenship of the Comm. on the Judiciary, supra note 124, at 55 (emphasizing that central focus of United States refugee program is "to achieve a balance between humanitarian commitments and national security concerns").

133. See id. (suggesting that terrorism and material support for it should be defined better). Assistant Secretary Sauerbrey states that "[t]errorism as com-
Act's duress exception, refugees must establish that they acted under duress and that they will not threaten national security, but they need not prove that the kidnappers were not considered members of official terrorist organizations.134

Judges should also interpret the Immigration and Nationality Act accordingly and, as such, avoid overly strict applications of the material support bar.135 In the past few years, the American court system has repeatedly checked the federal executive and legislative branches when, in the name of national security, laws and regulations have undermined the rights of aliens and subjected them to injustice.136 Additionally, courts

monly understood includes acts intended to intimidate or coerce a civilian population or to influence the policy of a government by intimidation or coercion. Terrorism is not understood to include paying a ransom to obtain the release of a kidnapped child.” Id. (illustrating what should constitute terrorism under Immigration and Nationality Act).

134. See id. at 56 (listing three elements for proposed definition of duress). Under the proposed definition, the three elements of duress are: (1) “an individual must show that he or she was faced with what a reasonable person would deem a threat of death or serious bodily harm against him or herself or someone else”; (2) “the individual must show that he or she acted necessarily and reasonably to avoid this threat” and (3) “even where the applicant has established that he or she acted under duress, the adjudicator must affirmatively determine that the refugee or asylum seeker will not threaten the security of United States nationals or the national security of the United States.” Id. (explaining meaning of each of three elements of duress). The proposal continues, noting that even if a refugee applicant does prove that any material support he or she gave to a terrorist organization was done under duress, that this person can be denied resettlement on other grounds. See id. (providing other justifications for denying refugee resettlement in order to ensure national security). “These include engaging in terrorist activities, espousing terrorism, inciting terrorism, receiving military training from a designated terrorist organization, [or] . . . soliciting others to join a designated terrorist organization.” Id. (listing possible grounds for denial of refugee resettlement).

135. Cf. Norman Abrams, The Material Support Terrorism Offenses: Perspectives Derived from the (Early) Model Penal Code, 1 J. Nat’l Sec. L. & Pol’y 5, 31 (2005) (warning that there is danger in “[e]xpansive interpretation of the material support offenses” as found in Model Penal Code for both federal and state criminal law). Abrams writes that while “[i]t might be argued that an expansive approach to statutory interpretation . . . can be justified, given the importance of providing law enforcement with tools adequate to deal with the extremely serious dangers that terrorism poses,” such an interpretation could have a significant impact on society and on democratic values. See id. (arguing against broad interpretation of material support laws). Instead, he notes that “[i]f the government finds itself hamstrung in its anti-terrorism enforcement by judges who give the material support categories a more normal reading,” then it can amend the statute to make the intended meaning of the material support law clearer. See id. (advocating for moderate interpretation of material support law).

136. See, e.g., Rasul v. Bush, 542 U.S. 466, 480-81 (2004) (holding that United States court system had authority and jurisdiction to decide whether aliens detained at military prison in Guantanamo Bay were rightfully imprisoned). In Rasul, the claim was brought by two British nationals and other foreign nationals captured in Afghanistan. See id. at 470-71 (detailing facts of case). The Supreme Court has heard other similar challenges. See Hamdi v. Rumsfeld, 542 U.S. 507, 557 (2004) (holding that United States citizen detained as enemy combatant at Guantanamo is entitled to due process absent suspension of writ of habeas corpus.
have long-upheld the practice of interpreting statutes in ways that prevent absurd results.\textsuperscript{137} Penalizing victims of terrorism would surely be an unintended consequence of an act legislated to combat terrorism, and therefore, judges should prevent these outcomes.\textsuperscript{138}

Further, a judge’s failure to recognize an inherent duress exception to the material support bar in asylum proceedings could violate international legal conventions to which the United States is a member.\textsuperscript{139} If expelling refugees would subject them to persecution based on their race, religion or membership in a certain social or political group—as is the reality for many Iraqis refugees—the United States cannot legally expel these individuals unless they pose a threat to national security.\textsuperscript{140} If a refugee’s only association with terrorism was material support involuntarily given under duress, especially for those whose support came in the form of ransoms for family members kidnapped by terrorist groups, there are

by Congress). In \textit{Hamdi}, the Afghan Northern Alliance had captured an individual, who held joint United States and Saudi Arabian citizenship, fighting against the United States military alongside the Taliban in Afghanistan. See id. at 510 (detailing facts of case). A recent case also demonstrated the Supreme Court’s willingness to restrain government actions that undermine international law. See \textit{Hamdan} v. Rumsfeld, 126 S. Ct. 2749, 2759-60 (2006) ("[T]he military commission convened to try Hamdan lacks power to proceed because its structure and procedures violate both the [Uniform Code of Military Justice] and the Geneva Conventions."). In \textit{Hamdan}, a Yemeni citizen captured in Afghanistan and imprisoned at Guantanamo Bay, was charged with conspiracy to commit terrorism for acting as Osama bin Laden’s driver in Afghanistan. See id. at 2760-61 (detailing facts of case). Four Justices also held that the law of war prohibits military commissions from trying the offense with which Hamdan was charged. See id. at 2759-60 (rejecting military commissions’ assertion of authority to hear case).

\textsuperscript{137} See United States v. Hodge, 321 F.3d 429, 434 (3d Cir. 2003) (citation omitted) (stating that avoiding “intended or absurd results” is “deeply rooted rule of statutory construction”).

\textsuperscript{138} See 151 CONG. REC. H454 (2005) (statement of Rep. F. James Sensenbrenner, Jr., Chairman, H. Comm. on Judiciary) ("The Real ID Act will reduce the opportunity for immigration fraud so that we can protect honest asylum seekers and stop rewarding the terrorists and criminals who falsely claim persecution.") (emphasis added).

\textsuperscript{139} See Protocol Relating to the Status of Refugees, supra note 52, art. I (adopting relevant provisions of 1951 Convention Relating to Status of Refugees). Under Article 33 of the 1951 Convention, the United States cannot expel a refugee seeking asylum back to face persecution in his or her former country unless “there are reasonable grounds for regarding [the refugee] as a danger to the . . . country in which he is.” Convention Relating to the Status of Refugees, supra note 52, art. 33 (describing scenario where refugee may be legally expelled from country).

\textsuperscript{140} See Protocol Relating to the Status of Refugees, supra note 52, art. I (incorporating relevant provisions of 1951 Convention Relating to Status of Refugees). Under Article 33 of the 1951 Convention, “[n]o Contracting States shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” Convention Relating to the Status of Refugees, supra note 52, art. 33 (prohibiting signatory states from engaging in refugee refoulement).
no grounds for considering that individual a threat to the United States' national security. 141

While judges should make an effort to rule sensibly, amending the Immigration and Nationality Act remains the most effective means of addressing this problem. 142 The judiciary is bound by legal precedent that promotes a strict interpretation of the material support provision. 143 The express language classifies any monetary contribution as material support, and so long as the statutory language remains the same, ransom payments likely will continue to disqualify many refugees for resettlement. 144

B. Special Status Visas for Iraqi Refugees

The United States government should create a priority status in a special visa for the most vulnerable Iraqi refugees and minority populations. 145 In the past, the United States government has effectively responded to religious persecution of minorities throughout the world through special refugee resettlement. 146 For example, the United States

141. See Pasquarella, supra note 103, at 2-3 (arguing that material support bar violates international law when applied to refugees who gave support under duress).

142. See U.S. Refugee Admissions and Policy: Hearing Before the Subcomm. on Immigration, Border Security and Citizenship of the Comm. on the Judiciary, supra note 124, at 55 (stating that "[t]he time has come" for Congress to "resolve the outstanding areas of disagreement" concerning material support and terrorist organization provisions of Immigration and Nationality Act).

143. See, e.g., Boim v. Quranic Literacy Inst., 291 F.3d 1000, 1015 (7th Cir. 2002) ("Congress' goal of cutting off funding for terrorism would be seriously compromised if terrorist organizations could avoid liability by simply pooling together small donations to fund a terrorist act."); Humanitarian Law Project v. Reno, 205 F.3d 1130, 1136 (9th Cir. 2000) (citation omitted) ("[O]rganizations that engage in terrorist activity are so tainted by their criminal conduct that any contribution to such an organization facilities that conduct.") (emphasis added); see also Singh-Kaur v. Ashcroft, 385 F.3d 293, 299 (3d Cir. 2004) (holding that provision of food and setting up tents constituted material support for terrorism).

144. See Immigration and Nationality Act, 8 U.S.C. § 1182(a)(3)(B)(iv)(VI) (2006) (stating that material support exists when one provides "funds, transfer of funds, or other material financial benefit . . . to a terrorist organization").

145. See S. 1651, 110th Cong. § 4 (2007) (proposing that certain groups of vulnerable Iraqis receive priority consideration for refugee resettlement); see also Kirk W. Johnson, Op-Ed., "Hounded by Insurgents, Abandoned by Us," N.Y. TIMES, Apr. 18, 2007, available at http://www.nytimes.com/2007/04/18/opinion/18johnson.html?_r=1&oref=slogin (quoting Sen. Jon Kyl). Sen. Kyl stated that "'[i]f we would have people in Iraq, or elsewhere in the world, trust us and work with us, then we need to take care that the United States maintains a reputation for trustworthiness and for taking care of its friends.'" Id. (urging United States to help its supporters and allies in Iraq). He continued, saying that "'[t]he world will be watching and judging how America treats people who are seen to be on our side'" and that the United States "cannot afford to foster a perception of unfairness that will make it more difficult for the United States to recruit supporters in the future." Id. (discussing potential stakes of United States government's policy decisions in Iraq).

146. See Act of Nov. 21, 1989 (Lautenberg Amendment), Pub. L. No. 101-167, § 599(D), 103 Stat. 1195, 1261-1263 (approving special cultural preferences for resettling refugees of certain religious groups). Specifically, the Lautenberg
Congress created a presumption of refugee status for persecuted Christian and Soviet Jewish refugees seeking resettlement during the 1990s. Congress should duplicate these efforts with the current refugee crisis in Iraq and create a presumption of refugee status for Iraqi Christians, such as members of the Chaldean Church who consistently suffer violent attacks by extremist groups within the country.

The United States also provided special immigrant visas in the past for individuals targeted for their affiliation with the United States military, and this program’s success should guide current efforts to help Iraqi translators needing resettlement in the United States. The Amerasian Visa was specifically designed to help families in South East Asia who suffered harassment and discrimination because of their affiliation with American military troops in the region during the 1960s and 1970s. A humanitarian crisis developed in South East Asia for children of Asian mothers who conceived with a United States serviceman. These children, often referred to as bui doi or dust children, largely were born in Vietnam during

Amendment identified Soviet Jews, Soviet Evangelical Christians and active members of the Ukrainian Catholic Church and the Ukrainian Orthodox Church as special religious minorities. See id. (authorizing special consideration to certain religious minorities). Also, fifty-four United States Senators in 1989 wrote to then Secretary of State James Baker and Attorney General Richard Thornburgh calling “on the administration to return to the policy of regarding all Soviet Jews as refugees, noting the history of anti-Semitism in Russia and the Soviet Union.” Victor Rosenberg, Refugee Status for Soviet Jewish Immigrants to the United States, 19 Touro L. Rev. 419, 432 (2003) (citation omitted) (illustrating past examples of congressional efforts encouraging administration to expedite refugee resettlement). Congress continues to renew the Lautenberg Amendment every year. See Waibsnaider, supra note 26, at 402 (describing continued congressional precedent for giving special protection to religious minority refugees); see also Barry Sautman, The Meaning of “Well-Founded Fear of Persecution” in United States Asylum Law and in International Law, 9 FORDHAM INT’L L.J. 483, 483-84 (1985) (discussing how United States government has formally favored and assisted Jewish refugees from the Soviet Union, as well as Cubans and Indochinese).

147. See Rosenberg, supra note 146, at 433 (discussing presumption of refugee status that Congress granted to certain Christians and Jews from specified countries). The presumption of refugee status meant that the Immigration and Naturalization Service would presume the individual to be a refugee unless there is contrary evidence, though they would still undergo personal interviews and be subject to annual ceilings on admissions of refugees. See id. (discussing meaning of presumption of refugee status).


149. See Act to Amend the Immigration and Nationality Act to Provide Preferential Treatment in the Admission of Certain Children of United States Armed Forces Personnel, Pub. L. No. 97-359, 96 Stat. 1716, 1716 (1982) (granting special consideration to Amerasian children seeking visas to resettle in United States); see also S. 1651, 110th Cong. § 4 (2007) (proposing that Iraqis who have worked for the United States, as well as their families, receive priority for resettlement).

150. See Cianciarulo, supra note 54, at 485 n.149 (noting that Amerasian Visa focused on families from Cambodia, Korea, Laos, Thailand and Vietnam).

151. See id. at 485-86 (describing historical context that gave rise to Amerasian Visa).
the 1960s and 1970s. When the United States withdrew from Asia and communist regimes took power in most countries in the region, the new governments, and society in general, began targeting these Amerasian children and their families.

The United States Congress responded to the crisis by creating a special, non-refugee immigrant visa for Amerasian children to come to the United States and gain permanent residency. The law, which Congress passed in 1982, amended the Immigration and Nationality Act to provide preferential treatment to these children by granting them admission into the United States. The Amerasian Homecoming Act of 1987 granted the same preferential treatment to the mothers and specified family members of the children. Since the inception of this legislation, approximately 23,000 Amerasians and 67,000 of their relatives have immigrated to the United States on an Amerasian Visa, totaling 90,000 visa issuances in all. Though some Iraqi translators are currently eligible for a special status visa, the government could develop a more effective program that is specially designed for translators, does not cost hundreds of dollars to ap-


153. See Cianciarulo, supra note 54, at 485-86 (“After the withdrawal of U.S. troops and the rise of the communist government in Vietnam, children of U.S. servicemen, and often the children’s mothers, became the targets of brutality . . . .”).


156. See Amerasian Homecoming Act Making Further Continuing Appropriations for the Fiscal Year 1988, and for Other Purposes, Pub. L. No. 100-202, § 584, 101 Stat. 1329-183 (1987) (extending special consideration not just to Amerasian children, but also to their immediate family).

157. See Johnson, supra note 152 (reporting on number of Amerasians and their family members resettled in United States under Amerasian Visa).
ply and does not place a cap on yearly candidates. The success of the Amerasian program demonstrates its applicability to other humanitarian crises where victims are targeted, in part, due to their past affiliation with American military personnel.

C. Increase and Expedite Resettlement of Iraqi Refugees in the United States

The United States should increase the number of refugees that it resettles each year. Syria and Jordan cannot absorb the entirety of Iraqi refugees on their own. For practical reasons, burden sharing and mutual accountability should exist among the international community to cope with the growing number of refugees. Additionally, the United States should expedite the current processing program it has established in the region for refugee resettlement.


159. See Husarska, Refugee Scandal, supra note 38 (describing violent targeting of Iraqi interpreters for their past affiliation with United States military); Johnson, supra note 38 (reporting on similar violence against Iraqi interpreters employed by American government).

160. See Iraqi Refugee and Internally Displaced Persons Humanitarian Assistance, Resettlement, and Security Act of 2007, H.R. 3674, 110th Cong. § 8(c) (proposing that up to 20,000 Iraqis can be accepted into United States as refugees during each of fiscal years 2008, 2009 and 2010).

161. See Refugee Crisis in Iraq Act, S. 1651, 110th Cong. § 2 (2007) (“Iraq refugees are a significant financial burden on countries in the region. The Iraq Study Group concluded that if the refugee crisis ‘is not addressed, Iraq and the region could be further destabilized.’”); H.R. 3674 § 82(10c) (“The massive flow of Iraqi refugees into neighboring host countries has overwhelmed existing social, economic, and security capacities of such countries.”).

162. See Farmer, supra note 120, at 82 (discussing need for UNHCR, non-governmental organizations and other international actors to share accountability). Farmer writes that “[i]nternational actors must recognize that the realization of human rights of refugees cannot be the sole responsibility of host states, and that a multi-layered accountability system is desperately needed.” Id. (calling for increased international accountability). There is an important need for nations to share the burden of the current refugee crisis. See Steinbock, supra note 62, at 985 (describing three basic reasons for international burden sharing with refugee resettlement). Burden sharing is optimal because (1) “refugees do not move evenly around the globe, both because refugee-producing events are concentrated in particular countries or regions, and because most refugees cannot seek sanctuary far from their countries of origin[,]” (2) “despite the benefits individual refugees might ultimately bring, refugee-receiving countries regard refugees as an unwanted burden in just about every way imaginable” and (3) “countries vary widely in their abilities to cope with refugees in their territory.” See id. (providing reasons why United States immigration law should reflect burden sharing obligations regarding refugee resettlement).

163. See H.R. 3674 § 8(a) (proposing that refugee resettlement for Iraqi refugees be made more efficient). “[T]he Secretary of Homeland Security, in cooperation with the Secretary of State, shall make every effort to streamline the screening and security investigations processes for assessing the eligibility of Iraqi applicants...
The persistence of undue political influence that limits refugee resettlement of Iraqis in the United States should cease. Political considerations continue to infuse bias into the United States refugee resettlement program, a problem that has historically plagued refugee resettlement legislation in the United States. The government's refusal to increase refugee resettlement for Iraqis stems, in part, from its continuing reluctance to face certain political ramifications. In other scenarios where the United States played a role in creating vulnerable groups of refugees through military incursions into foreign countries, the government refused to resettle significant numbers of refugees in the areas under its military control until after its withdrawal. The United States government has recognized the need to increase refugee resettlement, and it should not reject thousands of refugees for the sake of saving face and attempting to portray stability in Iraq. Instead, as it did during the violent conflict in Kosovo during the 1990s, the government should promptly for refugee status in the United States.” Id. (urging administration to expedite resettlement of Iraqi refugees).

164. For a discussion of the history of political influence on immigration law and policy in the United States, see infra notes 165-66 and accompanying text.


166. See Bockley, supra note 165, at 271 (describing how during height of Cold War, only 2,000 of 1.5 million refugees admitted to United States came from non-communist countries). During this time, the United States ignored refugees who fled governments supported by the United States and disproportionately admitted refugees from countries whose governments the United States opposed. See id. (describing pattern of refugee resettlement that emerged in United States government during Cold War); Sautman, supra note 146, at 184-86 (discussing how United States has usually held emigrants from non-Communist countries to higher standard of proof than those refugees from Communist countries in showing that they are refugees and not economic migrants).

167. See Bockley, supra note 165, at 276 (“Many Americans felt a sense of obligation to a people that the United States had supported [in Southeast Asia] and then abandoned.”); Waibsnaider, supra note 26, at 403 (discussing resettlement of Vietnamese, Laotian and Cambodian refugees in United States following country’s military disengagement in Southeast Asia).

168. See Refugee Crisis in Iraq Act, S. 1651, 110th Cong. § 2 (2007) (setting out how United States has recognized need to increase refugee resettlement of Iraqis). The proposed legislation finds that “[i]n April 2007, Assistant Secretary of State Ellen Sauerbrey said the United States ‘could resettle up to 25,000 Iraqi refugees’ this year.” Id. (finding that United States government has capacity to substantially increase refugee resettlement).
identify and resettle the most vulnerable refugees placed in crises partly because of United States actions abroad. 169

The United States should do more to expedite the existing resettlement plans for Iraqi refugees. 170 Important national security concerns and corresponding heightened security screenings come at a cost, and as such, some harmless refugees likely will be denied resettlement in the United States. 171 But for thousands of Iraqi refugees that raise no security concerns, the problem is not with the security requirements themselves, but rather, the lack of personnel and resources allocated for processing the refugees. 172 Indeed, the Department of State has announced that with proper funding from the federal government, the United States could resettle 20,000 Iraqi refugees by the end of 2007 alone. 173 Congress placed heavy pressure on the government to remedy delays in previous decades when government agencies failed to effectively expedite refugee resettlement, and it should do the same now. 174

169. See Steinbock, supra note 62, at 987 (discussing how after bombings by United States military in Kosovo that set off regional conflict, United States government felt obligated to reduce suffering “among a population for which it felt some special responsibility”). The United States ultimately resettled over 14,000 refugees from Kosovo. See id. (describing refugee resettlement during Kosovo conflict).

170. See Iraqi Refugee and Internally Displaced Persons Humanitarian Assistance, Resettlement, and Security Act of 2007, H.R. 3674, 110th Cong. § 2 (“Current United States policies governing the processing of refugees constrain the Department of Homeland Security from expediting the screening procedures and increasing the number of Iraqi refugees accepted into the United States.”).

171. See Remarks to S. Judiciary Comm. Hearing on Iraqi Refugees, 110th Cong. (2007) (statement of Ellen Sauerbrey, Asst. Sec’y for Population, Refugees and Migration, U.S. Dep’t of State), available at http://www.state.gov/g/prm/rls/82085.htm (stating that one reason that “so few Iraqis . . . have come into the United States since 2003 is because of an enhanced security review that has been required that has made it very difficult for these Iraqi refugees who have been referred to us by UNHCR to pass through the screening mechanism.”).

172. See Randall Fenlon, Current Development, International: Creation of a New Iraq Refugee Task Force, 21 GEO. IMMIGR. LJ. 333, 334 (2007) (discussing most pressing tasks for newly-created task force in United States Department of State). Fenlon writes that “[m]ost significantly, the task force has been instrumental in developing a plan to accelerate the resettlement of about 7,000 Iraqis to be referred by the UNHCR within the next nine months.” Id. (describing work of task force).


174. See Rosenberg, supra note 146, at 483 (describing efforts of Congress to influence specific immigration policy of Department of State) (citing to 135 CONG. REC. 3, 155 (1989)). A contingent of fifty-four United States Senators wrote a letter to Secretary of State James Baker and Attorney General Richard Thornburgh to express their concern over year-long delays with processing refugee applications
D. Security Concerns

The proposed reforms to immigration law and policy towards Iraqi refugees do not undermine the national security of the United States. 175 Applicants applying through the UNHCR must overcome several security safeguards before their claims are ever referred to the United States government. 176 Upon receiving an application from the UNHCR, the United States runs the applicant's information through several databases to detect possible security concerns. 177 Further, all cases are referred to the FBI and the CIA for their own security reviews. 178 Compared to other means of entrance to the United States, refugee resettlement has historically been relatively secure. 179 In fact, security checks are so thorough that they for Soviet Jews in Moscow and the denial of refugee status to a group of Soviet Jews temporarily in Rome. See id. at 132 (discussing content of Senators' letter).

175. Cf. Crocker Urges Iraq Refugee Action, supra note 85 (suggesting that United States government can solve problems in current refugee resettlement by allocating more resources and personnel to resettlement program). Ambassador Crocker notes that the Department of Homeland Security has only a handful of officers in Jordan to conduct security reviews of Iraqi refugees. See id. (discussing how lack of personnel, not extent of security checks themselves, force applicants to wait eight to ten months after being referred to United States by UNHCR before further processing commences). For a discussion of security concerns raised by the proposed reforms, see infra notes 176-88 and accompanying text.

176. See Iraqi Refugees: Resettlement Questions and Answers, supra note 83 (detailing UNCHR security checks for applicants seeking resettlement). These checks entail verifying that the applicant has not committed acts against humanity or war crimes, and also, may entail up to six investigative interviews. See id. ("UNCHR staff is trained to identify a range of exclusions 'triggers,' which lead to a more rigorous examination and possible disqualification from resettlement.").

177. See id. (detailing mandatory screening of all Iraqi refugees). The required security checks include checking an applicant's fingerprints and photograph against multiple databases, and reviewing the files of all the applicant's relatives already living in the United States in order to confirm the applicant's credibility. See id. (listing various security screenings refugee applicants must undergo).

178. See id. (discussing enhanced threshold Iraqi refugees must overcome to pass Security Advisory Opinions of FBI and CIA). Once an Iraqi applicant makes it through all security checks, the individual's case will return to the Department of State for a final review and ultimate decision regarding resettlement. See id. (describing final stages of security checks for refugee resettlement in United States).

179. See Cianciarulo, supra note 54, at 461 (2005) (discussing how special immigrant visa for women and children refugees can also be implemented without undermining national security). None of the September 11, 2001 terrorists were refugees or applicants for refugee status. See id. at 482 (noting that United States "continued its expedited processing of non-immigrant visas in Saudi Arabia . . . despite the fact that thirteen of the eighteen hijackers from Saudi Arabia and the United Arab Emirates had received their visas through expedited processing"); see also THOMAS R. ELDRIDGE ET AL., NAT'L COMM'N ON TERRORIST ATTACKS UPON THE UNITED STATES, 9/11 AND TERRORIST TRAVEL 116 (2004), available at http://www.9-11commission.gov/staff_statements/911_TerrTrav_Monograph.pdf (discussing dangers of expedited non-immigrant visas, especially those not requiring preliminary interviews with government official). The report finds that "[Department of] State officials did approve incomplete visa applications and did expedite the issu-
are in-part blamed for the government's inability to efficiently resettle thousands of Iraqi refugees.180

The United States government can expedite Iraqi refugee resettlement without raising significant security concerns.181 Instead of cutting security checks, the United States government should dedicate more resources to processing refugees abroad.182 In the immediate future, the United States should fast-track security checks, significantly increase the number of officers in Jordan, raise pressure on the Syrian government to issue visas to Department of Homeland Security officials and arrange interviews with officials from Washington by video link.183 Some progress has been made on these fronts, but more should be done.184 The comprehensive security screenings for refugees that have been in place for the past decade have worked efficiently.185 Relevantly, no terrorists or suspected terrorists have ever entered into the United States through its refugee resettlement program.186 In addition, the United States can better utilize provisions within the 1967 Protocol relating to refugees that already allow for refusal of resettlement for certain security reasons, rather than

ance of visas, requiring few interviews . . ." Id. (discussing relatively lax security screening for expedited visas).

180. See Remarks to S. Judiciary Comm. Hearing on Iraqi Refugees, supra note 171 (explaining how numerous security checks for each individual applicant prevent quick resettlement for many refugees).

181. Cf Crocker Urges Iraq Refugee Action, supra note 85 (suggesting ways United States government can act to make refugee resettlement more efficient).

182. See Iraqi Refugee and Internally Displaced Persons Humanitarian Assistance, Resettlement, and Security Act of 2007, H.R. 3674, 110th Cong. § 8(b) (proposing that Secretary of Homeland Security "increase by 100 percent the number of personnel of Department of Homeland Security who conduct security reviews of Iraqi applicants for refugee status in the United States"); Refugee Crisis in Iraq Act, S. 1651, 110th Cong. § 3(a) (2007) (proposing that Secretary of State establish refugee processing facilities in Iraqi and in countries in region).

183. See Crocker Urges Iraq Refugee Action, supra note 85 (reporting on Ambassador Crocker's suggestions for processing backlog of refugees referred for resettlement through UNHCR). Other government officials have blamed delays on the Department of State and the Overseas Processing Entities Agency, which performs initial screenings and medical examinations of applicants. See id. (recounting debate over how best to improve pace of refugee processing).

184. See Remarks to S. Judiciary Comm. Hearing on Iraqi Refugees, supra note 171 (describing new system that aims to expedite processing of certain Iraqi refugees pre-chosen to leave Iraq). The system, developed in conjunction with the UNHCR, provides the UNHCR with information for people who the United States government has already chosen for resettlement but who are still relocating in surrounding countries "so that we can alert them to immediately process." See id. (describing workings of expedited system, but also, providing only one example of its effective implementation).

185. SeeWaibsnaider, supra note 26, at 422 (noting that none of September 11 hijackers were refugees or were seeking refugee status in United States).

186. See id. (stating that no known terrorist activity has resulted from refugee admissions).
promulgating new and increasingly burdensome legislative regimes.\footnote{187} National security is certainly important, but needless security checks in excess of the sufficient screening already in existence only further delays the already-inadequate refugee resettlement program.\footnote{188}

VI. CONCLUSION

The growing humanitarian crisis affecting millions of Iraqi refugees requires the increased attention of the United States, whose actions to date have been ineffective.\footnote{189} Over four million Iraqis have fled their homes to escape increasing violence in Iraq, and living conditions for refugees remain poor.\footnote{189} Former translators for the United States military and members of vulnerable minorities are particularly in need of resettlement.\footnote{191} The current legal protection offered by the United States, though well-intended, is inadequate and excludes thousands of worthy refugees from resettlement in the United States.\footnote{192}

The United States government should reform its existing immigration law and policy in order to make resettlement of Iraqi refugees more effective.\footnote{193} The United States government should amend the material support provision in the Immigration and Nationality Act so that it no longer

\footnote{187. See Convention Relating to the Status of Refugees, \textit{supra} note 52, art. 33 (providing exception to prohibition of refoulement for security reasons). The Convention states:

The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

\textit{Id.} (detailing grounds for expelling refugees); see also Gilbert, \textit{supra} note 57, at 1 ("That the Convention Relating to the Status of Refugees 1951 and its 1967 Protocol might have already made provision for applicants for refugee status who have committed serious international crimes, such that, if properly applied, they are denied the protection of the Convention, was also ignored.").

188. See Remarks to Senate Judiciary Committee: Hearing on Iraqi Refugees, \textit{supra} note 171 (explaining how numerous security checks delay refugee resettlement process for many applicants).

189. See Refugee Crisis in Iraq Act, S. 1651, 110th Cong. § 2 (2007) (stating need for increased help by United States in addressing needs of Iraqi refugees).

190. See id. (finding that 2 million Iraqi refugees have significant humanitarian needs that countries are not meeting); Iraqi Refugee and Internally Displaced Persons Humanitarian Assistance, Resettlement, and Security Act of 2007, H.R. 3674, 110th Cong. § 2 (2007) (finding that millions of displaced Iraqis are living in "[i]ncreasing destitution and poverty").


192. See Raghavan, \textit{supra} note 46 (discussing how United States refugee resettlement program has been slow and inefficient thus far).

193. See H.R. 3674 § 3 (asserting "United States must demonstrate its commitment to resettle Iraqi refugees"). The proposed legislation also notes that Iraqi refugees will continue to have a high impact on regional security, and their well-
prevents thousands of refugees from resettlement for actions carried out under duress. The judiciary, while respecting Congress’s desire to provide a broad definition for terrorist organizations, should apply the law in a sensible manner that does not produce unintended and unjust results for refugee resettlement. The United States government should also redesign its special immigrant visa to give official resettlement prioritization to Iraqis who formally worked for the United States military or who are members of vulnerable minorities. Additionally, the United States should increase the number of Iraqi refugees allowed into the country and expedite their resettlement. Taken together, these proposed reforms will allow the United States to expeditiously process the most vulnerable Iraqis for resettlement, maintain stringent security procedures for screening refugees and improve the ever worsening crisis affecting millions of Iraqis.

Kevin Walsh

being must be considered within overall United States policy in Iraq. See id. (stating “sense of Congress” in making its proposal).

194. See “Material Support” Litigation; Contact Human Rights First, supra note 121, at 1 (discussing how material support provision has prevented hundreds of individuals from receiving legal protection from United States).

195. See United States v. Hodge, 321 F.3d 429, 434 (3d Cir. 2003) (stating that judges have historically made rulings to prevent unintended or absurd results).

196. See Refugee Crisis in Iraq Act, S. 1651, 110th Cong. § 4 (2007) (proposing that certain groups of Iraqis, including those who worked for United States military and members of certain minorities, receive priority resettlement in United States); H.R. 3674 § 7 (proposing similar legislation).

197. See H.R. 3674 § 8 (proposing that Secretary of Homeland Security and Secretary of State work to make refugee resettlement for Iraqi refugees more efficient, and additionally, to increase annual resettlement allowance up to 20,000 Iraqis annually).

198. See 153 CONG. REC. H7079 (daily ed. June 26, 2007) (statement of Rep. Blumenauer) (discussing potential effectiveness of proposed reform to immigration law and resettlement policy). Changes proposed in H.R. 2265 would “allow for more Iraqis to be granted refugee status in the United States.” See id. (urging House to adopt Resolution). Implementing these proposals will allow for more resettlement, and in some part, alleviate the refugee crisis. Crocker Urges Iraq Refugee Action, supra note 85 (proposing changes to United States refugee resettlement program to allow for safe but more efficient resettlement).