

ONE HUNDRED SEVENTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

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February 2, 2021

President Joseph R. Biden  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear President Biden:

As Chairs of congressional committees with jurisdiction over refugee policy, we were deeply dismayed to see the Trump Administration take steps to systematically dismantle the U.S. Refugee Admissions Program (USRAP), regularly violating both the text and the spirit of the Refugee Act of 1980. Although we know that it will take time to rebuild the USRAP, we are heartened by your commitment to set a refugee admissions goal of 125,000 for fiscal year (FY) 2022 and applaud your appointment of professionals with expertise in refugee admissions and resettlement to key positions. We look forward to working with you to restore the United States' longstanding position as a global leader in refugee resettlement. In that spirit, we offer the following recommendations for short- and long-term solutions to rebuild and improve upon this life saving program.

### *1. Restore and Strengthen the Consultation Process*

The Trump Administration repeatedly violated the consultation requirements established by the Refugee Act and codified under section 207(e) of the Immigration and Nationality Act (INA). Specifically, this section requires the annual refugee admissions goal to be set by the President before the beginning of the fiscal year and after designated representatives of the President consult with members of the House and Senate Committees on the Judiciary.<sup>1</sup> The Trump Administration failed to comply with this statutory requirement in FY 2019, 2020 and 2021, declining to consult in a timely or meaningful manner. This approach to the presidential determination and consultation process has undermined Congress's ability to conduct meaningful oversight of U.S. refugee policy—a key component of the Refugee Act.<sup>2</sup>

The consultation process must be restored and strengthened. It is incumbent upon the president to ensure that the consultation is conducted in accordance with INA § 207(e), with

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<sup>1</sup> INA § 207(e); 8 U.S.C. § 1157(e).

<sup>2</sup> See, e.g., Nadler, Lofgren, Feinstein, Durbin Statement Following Consultation with Trump Administration on Refugee Admissions (Oct. 21, 2020), <https://lofgren.house.gov/media/press-releases/durbin-lofgren-feinstein-nadler-call-trump-admin-consult-congress-about-refugee>.

exceptions only when extraordinary circumstances demand, such as those required to comply with COVID-19 safety measures.<sup>3</sup> To ensure that such consultations are meaningful, we recommend that your Administration provide Congress with quarterly updates on the state of the refugee program for populations of interest, including up to date information as to the number of refugees in the pipeline. These updates should be based on information collected by the State Department Bureau of Population, Refugees, and Migration (PRM), the Department of Health and Human Services Office of Refugee Resettlement (ORR), the Department of Homeland Security (DHS), the Department of Justice Federal Bureau of Investigation (FBI), and other agencies as appropriate and practicable.

## 2. *Reallocate Refugee Admissions to Respond to Global Needs, Restoring Access for UNHCR Referrals*

We recommend that your Administration reallocate the refugee admissions goal based on regional needs, ending prohibitions on referrals from the United Nations High Commissioner for Refugees (UNHCR), resuming resettlement based on vulnerability, and increasing flexibility to reallocate such admissions, as necessary. Until FY 2020, refugee admission goals were allocated based on regional needs in Africa, East Asia, Europe, Latin America and the Caribbean, and the Near East and South Asia. In FY 2020 and 2021, the Trump Administration departed from this model in favor of one claiming to prioritize certain groups of refugees—such as those fleeing religious persecution, Iraqis who served alongside our troops, and Central Americans—even as admissions from these three groups were drastically cut from prior years.<sup>4</sup>

This allocation structure severely limited the admission of refugees referred by UNHCR, including many of whom had already begun or completed various stages of the admissions process (often referred to as the USRAP “pipeline”). USRAP has long relied on UNHCR to register and screen refugees, and refer those deemed suitable for resettlement into the USRAP pipeline.<sup>5</sup> The new structure, coupled with historically low admissions numbers, functionally excluded many travel-ready refugees and vulnerable groups including Unaccompanied Refugee Minors (URMs), further delaying the resettlement of thousands who have already spent years

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<sup>3</sup> For the FY2018 and 2021 consultations, the House and Senate Judiciary Committees waived the in-person consultation requirement, setting the precedent for virtual refugee consultations pursuant to INA 207(b) for a future Administration under extraordinary circumstances. In FY2018, the consultation occurred via video conference at the request of Secretary Pompeo. For the FY2021 consultation, the House and Senate Judiciary Committees waived the in-person consultation requirement due to the extraordinary circumstances of the pandemic, and the consultation occurred via teleconference.

<sup>4</sup> See *Presidential Determination on Refugee Admissions for Fiscal Year 2020* (Nov. 1, 2019), <https://www.whitehouse.gov/presidential-actions/presidential-determination-refugee-admissions-fiscal-year-2020/> (hereinafter, FY20 Presidential Determination) and *See Presidential Determination on Refugee Admissions for Fiscal Year 2021* (Oct. 28, 2020), <https://www.whitehouse.gov/presidential-actions/presidential-determination-refugee-admissions-fiscal-year-2021/> (hereinafter, FY21 Presidential Determination); Barbara Strack, *I Oversaw DHS Refugee Affairs. Here Are 3 Ways the Trump Administration Is Trying to Mislead You*, TIME MAGAZINE (Oct. 8, 2019), <https://time.com/5694866/refugee-resettlement-numbers/>.

<sup>5</sup> U.S. Citizenship and Immigration Services, *The United States Refugee Admissions Program Consultation and Worldwide Processing Priorities*, <https://www.uscis.gov/humanitarian/refugees-and-asylum/refugees/united-states-refugee-admissions-program-usrap-consultation-and-worldwide-processing-priorities>; United Nations High Commissioner on Refugees (UNHCR), *Where We Work*, <https://www.unhcr.org/en-us/where-we-work.html>.

waiting.<sup>6</sup> Returning to the regional allocation model would allow the Administration to accept refugees regardless of referral pathway and facilitate the admission of the most vulnerable refugees.

The Trump Administration also departed from the historic practice of adapting to regional needs by allowing PRM professional staff to reallocate admissions, instead requiring the Secretary of State to consult with the Secretary of Health and Human Services, the Secretary of Homeland Security, and the Attorney General prior to reallocating admissions.<sup>7</sup> We encourage you to restore the ability of professional staff to admit pre-screened and vetted refugees as soon as possible, providing the USRAP the flexibility it needs to respond quickly to shifting global demands.

### 3. *Increase Refugee Admissions for FY 2021 to Respond to Refugee Emergencies*

As you are aware, in developing the Refugee Act, Congress purposely provided a mechanism to increase the annual refugee admissions goal to respond to “future and continuing refugee emergencies.”<sup>8</sup> As such, once the admissions goal has been set, INA § 207(b) provides the President with the ability to increase the number of refugees to be admitted if, after an appropriate consultation, the President determines that (1) an unforeseen emergency refugee situation exists; (2) the admission of refugees in response to the emergency is justified by grave humanitarian concerns or is otherwise in the national interest; and (3) the admission of such refugees cannot be accomplished under the current admissions goal.<sup>9</sup> We urge you to respond to various world crises by invoking this authority and increasing the refugee admissions goal for FY 2021.

Congress contemplated that this authority would be used when a crisis resulted in an unexpected impact on countries of first asylum or had an unforeseen impact on refugees, particularly when a U.S. response would alleviate grave humanitarian concerns or promote national interests.<sup>10</sup> This authority has been invoked on four occasions, including when there was a change in administration in the middle of a fiscal year. For example, in 1988, President Bush used this authority to increase his predecessor’s determination of 94,000 admissions to 116,500 to allow for the admission of additional refugees from Eastern Europe and the Soviet Union and reallocate existing priorities accordingly.<sup>11</sup>

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<sup>6</sup> See FY21 Presidential Determination; Written Testimony of Barbara L. Strack, *Hearing on the Current State of the Refugee Program*, House Judiciary Comm., Subcomm. on Immigration and Citizenship (Feb. 27, 2020), <https://docs.house.gov/meetings/JU/JU01/20200227/110569/HHRG-116-JU01-Wstate-StrackB-20200227.pdf>.

<sup>7</sup> *Id.*

<sup>8</sup> House Comm. on the Judiciary, report to accompany H.R. 2816, *The Refugee Act of 1979*, H.R. REPT. No. 96-608 at p. 6 (1979).

<sup>9</sup> Refugee Act of 1980, P.L. 96–212 (codified at INA § 207; 8 U.S.C. § 1157).

<sup>10</sup> H.R. REPT. No. 96-608 at p. 12; Senate Comm. on the Judiciary, report to accompany S. 643, *The Refugee Act of 1979*, S. REPT. No. 96-256 at p. 10 (1979).

<sup>11</sup> See, e.g., Presidential Determination No. 88-16, *Emergency Determination of Additional FY 1988 Refugee Admissions Numbers and Authorization of In-Country Refugee Status Pursuant to Sections 207(b) and 101(a)(42), Respectively, of the Immigration-and Nationality Act* (May 20, 1988).

The world has long been in the midst of the worst refugee crisis in history.<sup>12</sup> UNHCR reports that at the end of 2019, there were 79.5 million forcibly displaced people worldwide—a record high—including 45.7 million internally displaced people (IDPs), 29.6 million refugees, and 4.2 million asylum-seekers.<sup>13</sup> Serious emergencies have arisen or worsened since the Trump Administration set the FY 2021 refugee goal at a meager 15,000. Further, the coronavirus pandemic, climate change, and global insecurity have strained resources in countries of first asylum, leading to precisely the type of emergency situations demanding the invocation of INA § 207(b). The following are just three examples of crises that require an immediate increase in the refugee admissions goal for fiscal year 2021.

***Africa: Political Instability in Tigray Ethiopia.*** In November 2020, long simmering tensions between separatists and the central government in the Tigray region of Ethiopia resulted in military conflict and an unexpected increase in refugees fleeing to neighboring countries.<sup>14</sup> In recent weeks, over 56,000 people have fled from Tigray to Sudan.<sup>15</sup> UNHCR has requested \$147 million to support the initial response, and experts predict as many as 200,000 refugees could flee from the Tigray region.<sup>16</sup> In such circumstances, where a crisis has resulted in “a dramatic increase in the number of refugees in an area of the world where outflows were foreseen but at a substantially lower level,” Congress authorized the President to use his authority under INA § 207(b) to increase the refugee admissions goal.<sup>17</sup>

Congress also authorized the President to increase the refugee admissions goal where such an increase is necessary to “promote regional peace and stability” in an area and “save lives.”<sup>18</sup> As a result of the conflict in the Tigray region, Eritrean refugees in Ethiopia, traditionally a country of first asylum, have been denied essential food and humanitarian assistance.<sup>19</sup> Further, the flow of refugees has threatened the new and fragile peace agreement in Sudan, and U.S. interests throughout the Red Sea region and the Horn of Africa.<sup>20</sup> Authorities in Sudan have indicated that they will be overwhelmed if the current, unexpected flow of refugees

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<sup>12</sup> UNHCR, *Figures at a Glance: Global Trends* (June 5, 2020), <https://www.unhcr.org/en-us/news/press/2020/6/5ee9db2e4/1-cent-humanity-displaced-unhcr-global-trends-report.htm>.

<sup>13</sup> UNHCR, *Global Trends: Forced Displacement in 2019* (June 18, 2020), <https://www.unhcr.org/en-us/statistics/unhcrstats/5ee200e37/unhcr-global-trends-2019.html>.

<sup>14</sup> *Hearing on The Unfolding Conflict in Ethiopia*, House Comm. on Foreign Affairs, Subcomm. on Africa, Glob. Health, Glob. Hum. Rts, and Int’l Orgs (Dec. 3, 2020), <https://foreignaffairs.house.gov/2020/12/the-unfolding-conflict-in-ethiopia>.

<sup>15</sup> UNHCR, *The Refugee Brief: January 8, 2021* (Jan. 8, 2021), <https://www.unhcr.org/refugeebrief/the-refugee-brief-8-january-2021>.

<sup>16</sup> Written Testimony of Susan Stignant, *Hearing on The Unfolding Conflict in Ethiopia*, House Comm. on Foreign Affairs, Subcomm. on Africa, Glob. Health, Glob. Hum. Rts, and Int’l Orgs (Dec. 3, 2020), <https://www.congress.gov/116/meeting/house/111103/witnesses/HHRG-116-FA16-Wstate-StignantS-20201203.pdf> (hereinafter Written Testimony of Susan Stignant for Hearing on Unfolding Conflict in Ethiopia).

<sup>17</sup> H.R. REPT. No. 96-608 at p. 12.

<sup>18</sup> *Id.*

<sup>19</sup> UNHCR, *Ethiopia: Safe access and swift action needed for refugees in Tigray* (Jan. 14, 2021), <https://news.un.org/en/story/2021/01/1082162>.

<sup>20</sup> Written Testimony of Susan Stignant for Hearing on Unfolding Conflict in Ethiopia, at p. 2; Dep’t of State, *Secretary Pompeo’s Call with Ethiopian Prime Minister Abiy* (Nov. 30, 2020), <https://www.state.gov/secretary-pompeos-call-with-ethiopian-prime-minister-abiy>.

continues,<sup>21</sup> and two resettlement centers near the border have already become overcrowded, posing a security threat to refugees.<sup>22</sup>

The FY 2021 presidential determination is insufficient to meet the resettlement needs presented by this crisis—refugee admissions are set at 15,000 and no numbers are allocated to refugees from Africa.<sup>23</sup> Despite this, as of Dec. 9, 2020, over 60,000 refugees in the region were in the pipeline for admission to the United States.<sup>24</sup> Given the limitations of the FY 2021 presidential determination and the large numbers of refugees in the region, an increase in and reallocation of refugee admissions is warranted to respond to this crisis alone.

***Latin America and the Caribbean: Climate Crisis in Central America.*** In November 2020, two deadly hurricanes, Eta and Iota, caused widespread devastation to Nicaragua, Guatemala, El Salvador, and Honduras. In drafting INA § 207(b), Congress authorized the president to increase refugee admissions to respond to “any catastrophic circumstance affecting an asylum area requiring immediate action.”<sup>25</sup> The storms have undeniably had a catastrophic impact on the region. UNHCR reports that Eta alone affected over 4.6 million people in Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, including approximately 1.8 million children.<sup>26</sup> Although experts have long predicted migration from the region to the U.S. southern border over the coming months, reports show that these crises have exacerbated refugee flows to the United States and created life threatening situations in the region.<sup>27</sup>

Regional leaders who had previously been willing to work to stem the tide of migration have indicated the need for urgent assistance in the wake of the coronavirus pandemic, its economic effects, and now, the deadly hurricanes.<sup>28</sup> In addition to providing stability to nationals from impacted countries in the United States, existing emergency and humanitarian aid, and the \$4 billion investment that your Administration has pledged, providing immediate pathways to safety for eligible refugees is essential to providing much needed stability in the region.<sup>29</sup> The FY 2021 presidential determination is insufficient to meet this need, allocating

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<sup>21</sup> Jamey Keatan and Cara Anna, *UN prepares for up to 200,000 Ethiopian refugees in Sudan*, AP NEWS (Nov. 20, 2020), <https://apnews.com/article/sudan-ethiopia-united-nations-kenya-2dff3bd3b156cef1067e3c4286080ff>.

<sup>22</sup> Lisa Schlein, *Ethiopians Continue Streaming Into Sudan, Fleeing Tigray Region Violence*, VOICE OF AMERICA (Jan. 5, 2021), <https://www.voanews.com/africa/ethiopians-continue-streaming-sudan-fleeing-tigray-region-violence>.

<sup>23</sup> FY 2021 Presidential Determination.

<sup>24</sup> Data Provided to the House Judiciary Committee from Refugee Council USA, current as of Dec. 9, 2020.

<sup>25</sup> S. REPT. No. 96-256 at p. 10.

<sup>26</sup> UNICEF, *UNICEF Central America Humanitarian Situation Report No. 3 (Hurricanes ETA and Iota) reporting period 11 - 20 Nov 2020* (Nov. 22, 2020), <https://reliefweb.int/report/honduras/unicef-central-america-humanitarian-situation-report-no-3-hurricanes-eta-and-iota>.

<sup>27</sup> Natalie Kitroeff, *2 Hurricanes Devastated Central America. Will the Ruin Spur a Migration Wave?*, NY TIMES (Dec. 4, 2020), <https://www.nytimes.com/2020/12/04/world/americas/guatemala-hurricanes-mudslide-migration.html>.

<sup>28</sup> Sarah Marsh and Sofia Menchu, *Storms that slammed Central America in 2020 just a preview, climate change experts say*, REUTERS (Dec. 3, 2020), <https://www.reuters.com/article/us-climate-change-hurricanes/storms-that-slammed-central-america-in-2020-just-a-preview-climate-change-experts-say-idUSKBN28D2V6>.

<sup>29</sup> *The Biden Plan to Build Security and Prosperity in Partnership with the People of Central America*, <https://joebiden.com/centralamerica/>; Kevin Sieff, *Honduras president seeks assistance, warns of increased migration in wake of devastating hurricanes*, WASH. POST (Dec. 4, 2020),

only 700 slots for refugees from El Salvador, Guatemala, and Honduras.<sup>30</sup> As of Dec. 9, 2020, 647 refugees were in the pipeline for admission from the entire Latin America and Caribbean region, leaving little flexibility to respond to this crisis.<sup>31</sup>

***Near East and South Asia: Transfer of Rohingya to Bhasan Char Island.*** Bangladesh is host to nearly 900,000 Rohingya refugees, including close to 700,000 refugees who have arrived since 2016.<sup>32</sup> Bangladeshi officials report that current refugee camps in Bangladesh have become overcrowded, leading to an escalation in violence in the camps.<sup>33</sup> Reports also indicate that local resentment has begun to grow against the refugee population. To ease tensions, Bangladesh announced its intention to relocate refugees to Bhasan Char Island in 2019, a remote low-lying island formed roughly 20 years ago in the silt resulting from hurricanes.<sup>34</sup> However, experts have long cautioned that cyclones and flooding may potentially submerge the low-lying island, leaving the lives of those on the island at great risk.<sup>35</sup> Because it is only accessible by boat, resettlement experts are also concerned about the lack of freedom of movement for refugees who wish to leave the island.<sup>36</sup>

On Dec. 4, Bangladesh defied pressure from the international community and began transferring Rohingya refugees to Bhasan Char Island.<sup>37</sup> UNHCR has reported that many of these transfers appear to be involuntary.<sup>38</sup> The risk presented by cyclones and floods to refugees living on the island is a situation of grave humanitarian concern justifying an immediate increase in refugee admissions. According to Department of State data, only 423 Rohingya were admitted to the United States in FY 2020.<sup>39</sup> Increasing admissions by even a fraction of the

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[https://www.washingtonpost.com/world/the\\_americas/honduras-requests-tps-status-trump-administration/2020/12/04/22a076d8-35ad-11eb-8d38-6aea1adb3839\\_story.html](https://www.washingtonpost.com/world/the_americas/honduras-requests-tps-status-trump-administration/2020/12/04/22a076d8-35ad-11eb-8d38-6aea1adb3839_story.html).

<sup>30</sup> Data Provided to the House Judiciary Committee from Refugee Council USA, current as of Dec. 9, 2020.

<sup>31</sup> *Id.*

<sup>32</sup> UNHCR, *Transfer of Rohingya refugees to Bay of Bengal island 'must be voluntary': UN refugee agency* (Dec. 7, 2020), <https://news.un.org/en/story/2020/12/1079392>.

<sup>33</sup> Akbar Hossain, *Far from home, Rohingya refugees face a new peril on a remote island*, BBC NEWS (Oct. 31, 2020), <https://www.bbc.com/news/world-asia-54717686>.

<sup>34</sup> Nazmul Ahasan, *As Bangladesh moves Rohingya to Bhasan Char, UN and aid agencies face a dilemma*, DEVEX (Dec. 11, 2020), <https://www.devex.com/news/as-bangladesh-moves-rohingya-to-bhasan-char-un-and-aid-agencies-face-a-dilemma-98757>.

<sup>35</sup> See Ir. Ubaydur Rahaman Siddiki, Nurul Islam, and Ansari Mohammad Nayeem Aziz, *Cyclonic track analysis using GIS over the Bay of Bengal* (Nov. 2012), [https://www.researchgate.net/publication/306008953\\_Cyclonic\\_track\\_analysis\\_using\\_GIS\\_over\\_the\\_Bay\\_of\\_Bengal](https://www.researchgate.net/publication/306008953_Cyclonic_track_analysis_using_GIS_over_the_Bay_of_Bengal).

<sup>36</sup> Akbar Hossain, *Far from home, Rohingya refugees face a new peril on a remote island*, BBC NEWS (Oct. 31, 2020), <https://www.bbc.com/news/world-asia-54717686>.

<sup>37</sup> Nazmul Ahasan, *As Bangladesh moves Rohingya to Bhasan Char, UN and aid agencies face a dilemma*, *supra* note 34.

<sup>38</sup> UNHCR, *Transfer of Rohingya refugees to Bay of Bengal island 'must be voluntary'*, *supra* note 32. Further, humanitarian organizations have been hesitant to provide necessary aid to refugees recently transferred to the island for fear of showing support for such dangerous placement, making conditions on Bhasan Char Island even worse. See Nazmul Ahasan, *As Bangladesh moves Rohingya to Bhasan Char, UN and aid agencies face a dilemma*, *supra* note 34.

<sup>39</sup> PRM, *Refugee Processing Center – Admissions by Religion and Nationality from Oct. 1, 2019 to Sept. 30, 2020*, on file with the Subcommittee on Immigration and Citizenship; *Myanmar Rohingya: What you need to know about the crisis*, BBC NEWS (Jan. 23, 2020), <https://www.bbc.com/news/world-asia-41566561>.

900,000 Rohingya refugees in the region could provide the United States with leverage necessary to delay additional transfers, reducing the burden on Bangladesh and saving thousands of lives.<sup>40</sup>

#### 4. *Help Those Stuck in the USRAP Pipeline*

As of Dec. 9, 2020, more than 79,000 refugees have been pre-screened by overseas Resettlement Support Centers (RSCs), more than 36,000 refugees have been conditionally approved for resettlement by DHS, and more than 1,000 refugees were approved to travel to the United States. In addition, over the past four years, tens of thousands of refugees who were approved for admission have been prevented from completing resettlement due to the expiration of preclearance checks, including security and medical clearances.<sup>41</sup> In addition to prioritizing the admission of travel ready refugees, we ask that your Administration coordinate an interagency effort to extend or expeditiously renew validity periods for required preclearance checks for individuals whose travel has been delayed as a result of the COVID-19 pandemic, including individuals approved for admission to the United States through the special immigrant visa (SIV) programs for Iraqi and Afghan nationals who assisted our troops.

#### 5. *Restore USCIS Structures*

The Trump Administration also significantly reduced resources allocated to U.S. Citizenship and Immigration Services (USCIS) for refugee adjudications. All principal refugee applicants must undergo an in-person, in-depth interview by a USCIS officer prior to admission into the United States. In 2005, the Bush Administration created the Refugee Corps, a cadre of specially trained USCIS officers dedicated to adjudicating applications for refugee status overseas. These officers travel to multiple locations around the world on “circuit rides” to interview refugees. In addition, USCIS has a small number of officers posted at U.S. embassies who conduct refugee-related adjudications. As of FY 2015, the USCIS Refugee Corp was operational in 64 countries, allowing the U.S. to effectively respond to an increasingly diverse global refugee crisis.<sup>42</sup>

Under the Trump Administration, USCIS announced its intent to end its presence at 13 U.S. embassies by August 2020,<sup>43</sup> prompting criticism from immigration and refugee experts who have decried the move as an additional effort to dismantle the USRAP and diminish critical immigration functions.<sup>44</sup> The Administration also significantly reduced the number of circuit

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<sup>40</sup> To date, U.S. aid and negotiations to stop these transfers have not been successful. See Dep’t of State, *Press Statement by Cale Brown, Principal Deputy Spokesperson on U.S. Position on Relocation of Rohingya Refugees to Bhasan Char* (Dec. 11, 2020), <https://www.state.gov/u-s-position-on-relocation-of-rohingya-refugees-to-bhasan-char/>.

<sup>41</sup> Data Provided to the House Judiciary Committee from Refugee Council USA, current as of Dec. 9, 2020.

<sup>42</sup> Joint Written Testimony of Barbara Strack and Matt Emrich, *Hearing on Oversight of the Administration’s FY 2016 Refugee Resettlement Program: Fiscal and Security Implications*, Senate Comm. on the Judiciary, Subcomm. on Imm. and Nat’l Interest (Oct. 1, 2015), <https://www.dhs.gov/news/2015/10/01/written-testimony-uscis-senate-judiciary-subcommittee-immigration-and-national>.

<sup>43</sup> U.S. Citizenship and Immigration Services, *International Immigration Offices*, <https://www.uscis.gov/about-us/find-a-uscis-office/international-immigration-offices>.

<sup>44</sup> See, e.g., Miriam Jordan, *Trump Administration Plans to Close Key Immigration Operations Abroad*, NY TIMES (Mar. 12, 2019), <https://www.nytimes.com/2019/03/12/us/united-states-citizenship-immigration-uscis.html>; Yeganeh Torbati and Mica Rosenberg, *U.S. immigration agency to close its overseas offices*, REUTERS (Mar. 12,

rides and directed refugee officers to conduct credible fear and reasonable fear interviews—a responsibility traditionally assigned to asylum officers.<sup>45</sup> As a result, many seasoned refugee officers have left the Refugee Corps and morale amongst remaining Corps members is at an all-time low. Given the sweeping nature of the policy changes implemented by the Trump Administration and COVID-19 travel restrictions, significant time and resources will be required to restore USCIS capacity to process 125,000 refugees. However, this process can be facilitated by:

- Pausing any on-going agency initiatives to end USCIS presence at U.S. embassies, and conducting a full evaluation of the impact on USCIS operations of the withdrawal of USCIS personnel from U.S. embassies, including on refugee processing times;
- Rebuilding the Refugee Corps, including by welcoming trained officers with interview experience to rejoin the Corps; and
- Working with Department of State, UNHCR, and RSCs to increase USCIS capacity to conduct online refugee interviews, prioritizing cases that present a low risk of fraud, such as where applicants require a second interview to add a child or family member their case, and cases where applicants are in remote locations that are difficult to access in person.

#### 6. *Immediately Rescind Discriminatory Policies and Reexamine ‘Extreme Vetting’*

We applaud your decision to rescind discriminatory executive orders and revisit the so-called “enhanced vetting” procedures implemented by the Trump Administration.<sup>46</sup> We recommend that your Administration include in this review an examination of vetting procedures imposed on the refugee and special immigrant visa programs, which appeared to be driven by discriminatory intent, rather than national security concerns or fraud prevention.<sup>47</sup> Refugees, including children, from “Security Advisory Opinion (SAO) countries,” most of which are majority Muslim, have been subjected to extensive security checks, which include arbitrary bulk data matching techniques that appear similar to the controversial NSA surveillance technique disclosed in 2013.<sup>48</sup> The use of these techniques has caused years-long delays and resulted in

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2019), <https://www.reuters.com/article/us-usa-immigration-visas/us-immigration-agency-to-close-its-overseas-offices-idUSKBN1QT26C>.

<sup>45</sup> *Proposed Refugee Admissions for Fiscal Year 2019*, Report to Congress from Dep’t of State, Dep’t of Homeland Security, and the Dep’t of Health and Human Services, <https://www.state.gov/wp-content/uploads/2018/12/Proposed-Refugee-Admissions-for-Fiscal-Year-2019.pdf>.

<sup>46</sup> The White House, *Proclamation on Ending Discriminatory Bans on Entry to The United States* (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-ending-discriminatory-bans-on-entry-to-the-united-states/>.

<sup>47</sup> Kathleen Newland and T. Alexander Aleinikoff, *The U.S. Refugee Resettlement Program Is an Unsuitable Target*, MIGRATION POLICY INSTITUTE (Jan. 2017), <https://www.migrationpolicy.org/news/refugee-resettlement-program-unsuitable-target>.

<sup>48</sup> International Refugee Assistance Project, *Debunking ‘Extreme Vetting’: Recommendations to Build Back the U.S. Refugee Admission Program* (Oct. 10, 2020), <https://refugeerights.org/wp-content/uploads/2020/10/Vetting-Report-2020.pdf>; See also, Devlin Barrett, *Surveillance program that gathered Americans’ phone data was illegal, court finds*, WASH. POST. (Sept. 4, 2020), [https://www.washingtonpost.com/national-security/phone-records-surveillance-edward-snowden/2020/09/02/97f26498-ed67-11ea-99a1-71343d03bc29\\_story.html](https://www.washingtonpost.com/national-security/phone-records-surveillance-edward-snowden/2020/09/02/97f26498-ed67-11ea-99a1-71343d03bc29_story.html).

the widespread denial of refugees and special immigrants, including interpreters and translators who served faithfully alongside our troops, raising concerns from the Pentagon and national security experts.<sup>49</sup>

Despite extensive denials, the FY 2021 Presidential Determination labels Somalia, Syria, and Yemen as “high-risk areas of terrorist presence,” barring most refugees from these countries based on their nationality alone.<sup>50</sup> It is important to note, however, that refugees from these countries are also fleeing acts of terrorism and deserve a chance to be resettled in safety. Far from presenting a national security threat, the admission of refugees and special immigrants promotes our security and defense interests. In 2018, former Defense Secretary Jim Mattis stated that reducing refugee numbers, particularly for Iraqi and Afghan translators, “would undermine our diplomatic and military efforts abroad to protect the Homeland . . .”<sup>51</sup> Similarly in a 2019 letter to President Trump, 27 retired generals and admirals urged the Administration to maintain the USRAP which “serve[s] critical national security interests” while offering “life-saving assistance.”<sup>52</sup> In order to improve resettlement efforts, we urge you to direct an interagency effort to:

- Immediately rescind all arbitrary bars on refugee admissions in the FY 2021 presidential determination;
- Conduct a comprehensive review of current refugee and special immigrant visa vetting practices, including discretionary denial procedures, and implement changes to ensure that security checks are thorough, but efficient and fair;
- Dedicate additional resources to improve the processing of background checks for refugees and special immigrants and reduce the backlog; and
- Implement oversight mechanisms to prevent future abuse of our vetting system.

### 7. *Restore Community Based Resettlement Practices*

Lastly, we recommend that you immediately rescind President Trump’s Executive Order 13888, which allows states and localities to opt out of the USRAP.<sup>53</sup> On Jan. 8, 2021, the Fourth Circuit Court of Appeals upheld a lower court injunction blocking implementation of the order, finding that the plaintiffs were likely to succeed on its claim that the order violates the “carefully crafted scheme for resettling refugees that Congress established in the Refugee Act.”<sup>54</sup> Aside

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<sup>49</sup> International Refugee Assistance Project, *Debunking ‘Extreme Vetting’: Recommendations to Build Back the U.S. Refugee Admission Program*, *supra* note 48.

<sup>50</sup> FY 21 Presidential Determination. During briefings with Senate and House Judiciary Committee Staff, Trump Administration officials could provide no other explanation as to why refugees from these countries were specifically targeted in the report.

<sup>51</sup> Dep’t of Defense, *Memorandum for Assistance to the President for National Security Affairs* (Sept. 14, 2018), <https://www.politico.com/f/?id=0000016c-0709-dd54-a17d-7f8b31690002>.

<sup>52</sup> Alicia Caldwell, *Trump Administration Mulls Cutting Refugee Cap, Keeping Iraqi Program*, WALL ST. J. (Sept. 3, 2019), <https://www.wsj.com/articles/trump-administration-mulls-exemption-for-iraqis-in-any-cut-to-refugee-cap-11567526752>.

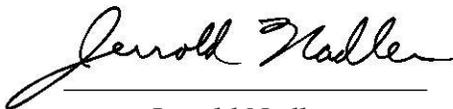
<sup>53</sup> Exec. Order No. 13888, *Enhancing State and Local Involvement in Refugee Resettlement*, 84 FED. REG. 52355 (Oct. 1, 2019), <https://www.federalregister.gov/documents/2019/10/01/2019-21505/enhancing-state-and-local-involvement-in-refugee-resettlement>.

<sup>54</sup> *HIAS, et. al. v. Trump*, No. 20-1160 (4th Cir. 2021). *See also* INA § 412; 8 U.S.C. § 1522.

from being unlawful, the Executive Order politicized refugee resettlement and sowed confusion in communities that sought to welcome refugees.<sup>55</sup> Although 43 states agreed to accept refugees, the Order still pitted states and localities against each other, allowing states to veto refugees even if localities consented to welcoming them.<sup>56</sup> In addition to rescinding this order, we recommend that your Administration return to the previous collaborative approach to refugee resettlement by working with resettlement agencies, states, and localities, considering options such as community and private sponsorship, and working with Congress to ensure that our communities are adequately funded to welcome refugees and help them thrive.

The United States' refugee admissions program represents the best of our nation. As multiple global crises continue to unfold, we must respond with compassion and humanity and work in earnest to rebuild and improve the USRAP. We look forward to partnering with your Administration in this and other endeavors.

Sincerely,



Jerrold Nadler  
Chairman  
House Committee on the Judiciary



Zoe Lofgren  
Most Recent Chair  
Subcommittee on Immigration and Citizenship

cc: Antony J. Blinken, Secretary, U.S. Department of State  
Alejandro N. Mayorkas, Secretary, U.S. Department of Homeland Security  
The Honorable Jim Jordan, Ranking Member, House Committee on the Judiciary

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<sup>55</sup> Kevin Clarke, *Trump's new executive order is making refugee resettlement more difficult*, AMER. JESUIT REV. (Jan. 14, 2020), <https://www.americamagazine.org/politics-society/2020/01/14/trumps-new-executive-order-making-refugee-resettlement-more-difficult>.

<sup>56</sup> Griff Witte, *No refugees allowed? Trump's plan to give states and cities a veto prompts an outcry*, WASH. POST (Oct. 12, 2019), <https://www.washingtonpost.com/national/no-refugees-allowed-trumps-plan-to-give-states-and-cities-a-veto-prompts-an-outcry/2019/10/12/>.