



Welcome the stranger.
Protect the refugee.

Testimony of Mark Hetfield, President and CEO, HIAS
United States Commission on Religious Freedom (USCIRF)
[Hearing on Refugees Fleeing Religious Persecution](#)
February 10, 2020

I am a proud alumnus of the USCIRF staff, having directed the Commission's refugee and asylum work from 2003 to 2006. Today, I represent HIAS which, in addition to being the Jewish community's global refugee agency, is one of nine national refugee organizations working in partnership with the U.S. government to resettle refugees across our great country. At HIAS, we used to welcome refugees because *they* were Jewish but today, we welcome refugees because *we* are Jewish.

Under international and domestic law, the U.S. is *obligated* to protect asylum seekers at and within our borders from being returned to a place where they could face persecution based on religion, race, nationality, political opinion, or social group. In contrast, the U.S. offers refugee resettlement on a *discretionary* basis to a limited number of people outside of our borders, in order to advance humanitarian priorities of the United States.

To lead by example and ensure that people who flee religious persecution find refuge, the United States must have a well-functioning asylum and refugee process. At this time, we do not.

[In the International Religious Freedom Act of 1998 \(IRFA\)](#), Congress recognized that *all* asylum seekers and refugees are in the same proverbial boat – whether they fled their homeland due to persecution on account of religion, race, nationality, political opinion, or social group. Title VI of IRFA includes provisions concerning asylum seekers and refugees in general as well as those who flee religious persecution in particular.

In the United States, refugee resettlement and asylum are very much entangled in the broken U.S. immigration system, which is decades overdue for comprehensive reform, now burdened with a backlog of [1.3 million cases in immigration courts](#) – including many asylum claims, on top of [nearly 600,000 affirmative asylum cases backlogged within DHS](#). It will be hard to fix the broken U.S. asylum system without repairing the imploding immigration framework within which it sits.

To be sure, Congress should reform our broken asylum, refugee, and immigration systems, to better protect people who flee religious persecution. Even without legislation, however, the executive branch can and should take significant steps to reform these systems, so the U.S. can once again lead by example. President Biden, with his executive orders and Proposed FY2021 Emergency Presidential Determination for the U.S. Refugee Admissions Program, is off to a good start.

With regard to refugee resettlement, in his first month in office then-President Trump told the [Christian Broadcasting Network \(CBN\) that he would end what he called unfair treatment of Christian refugees](#). Under President Trump, the *percentage* of refugees resettled to the United States who were Christian soared from 44% in 2016 to 79% in 2019. But [the actual number of Christians resettled to the United States plummeted over 36%, from 37,521 to 23,754](#). I mention this to underscore that the best way to help more refugees who have fled religious persecution is to help *more* refugees, not to replace one form of discrimination with another.

For that reason, HIAS welcomes [the Biden Administration's intention to resettle 125,000 refugees to the United States in FY2022, up from 15,000 in FY2021, the lowest refugee ceiling in the history of the program](#). A target of 125,000, [while not breaking any records](#), would demonstrate American leadership to share responsibility with those [developing nations that host 80% of the world's refugees](#).

HIAS welcomes President Biden's [Executive Order](#) to “promptly” permit the use of video and audio teleconferencing to expand refugee adjudication capacity. This can't happen promptly enough. For years, HIAS has argued that, as the U.S. routinely uses video-conferencing to deport people, we can surely use videoconferencing to resettle refugees whose lives are in danger and who are in locations inaccessible to DHS officers. Now, in a pandemic, remote interviews are

the *only* way for a DHS officer to safely access many refugee applicants. Yet DHS regulations don't allow it.

Likewise, HIAS embraces the Biden Administration's intention (stated in its Proposed Emergency Presidential Determination on Refugee Admissions for FY2021) to reunite many more refugee families (by removing nationality restrictions on the Priority 3 family reunification category, by increasing flexibility to resettle non-nuclear family members who shared the same household, and to further broaden family reunification possibilities through private sponsorships). This change would benefit *all* refugees, including those fleeing religious persecution.

I am pleased that other witnesses today will address the need for security vetting improvements. They have deeper insights than I into that opaque process. What I can tell you is that, since 2001, the United States has resettled – without incident – over 33,000 Iranian Jewish, Christian, Baha'i, Mandaean, and other Iranian religious minorities processed with HIAS' assistance in Austria. Since February 2017, presumably due to complications arising from U.S. security vetting procedures, this longstanding escape route from Iran to religious freedom in the United States has been shut down – not by Iran, but by the United States. HIAS is pleased to see in the Proposed FY2021 Emergency Presidential Determination that the Biden Administration reports progress toward reopening the program for Iranian religious minorities.

The opacity, inefficiencies, and lack of accountability in U.S. security vetting disproportionately impact religious minorities fleeing the Middle East. We welcome the review of security vetting promised in [President Biden's recent executive order of February 4, 2021](#).

HIAS welcomes indications in the Proposed FY2021 Emergency Presidential Determination that the State Department intends to consult U.S. Citizenship and Immigration Services (USCIS) and the UN Refugee Agency (UNHCR) specifically to improve resettlement access for religious and ethnic minorities from Syria and Iraq, for Uighurs from China, and for Rohingya from Burma. We encourage the Commission to serve as a resource to support this process.

In terms of asylum, in [Section 605 of IRFA](#), Congress authorized USCIRF to monitor the treatment of asylum seekers subject to expedited removal, which impacts, but extends beyond, those who flee religious persecution.

On February 2, President Biden issued an [executive order mandating a comprehensive review of expedited removal to be completed within 120 days](#). USCIRF is well ahead of the Biden Administration as – in [2005](#) and [2016](#) – you have already completed two such reviews. I urge the Commission to engage with the Biden Administration to ensure that it addresses [the Commission's most important recommendations](#), including:

- (1) End DHS' longstanding practice of detaining all arriving asylum seekers in jail-like facilities and actual jails, a practice that has essentially criminalized asylum in the United States;
- (2) USCIRF has documented that asylum seekers are frequently mistreated – detained inappropriately and/or returned to places where their lives would be in danger, in violation of DHS' own policies and procedures. Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE) and U.S. Citizenship and Immigration Services (USCIS) should implement meaningful quality assurance procedures, including recording and monitoring interviews, making the recordings available to applicants and their attorneys, and using recordings of interviews to ensure that DHS' own policies – designed to protect asylum seekers – are actually being followed by DHS officers. USCIRF has demonstrated that existing DHS training and file reviews do not suffice.
- (3) The same is true of the U.S. Department of Justice's Executive Office for Immigration Review (EOIR). USCIRF has documented that the lack of meaningful quality assurance among immigration judges makes the outcome of an asylum case far more dependent on the judge assigned than on the strength of the asylum claim. (A finding subsequently echoed by scholars from Georgetown Law Center in their book [Refugee Roulette](#).)
- (4) Likewise, USCIRF has demonstrated that an asylum seeker with legal representation is [eleven times more likely to receive asylum](#) than someone without legal counsel. Asylum hearings before an immigration court are inherently unfair when an unrepresented asylum seeker has to argue their own case against an ICE Trial Attorney. At a minimum, [EOIR's Legal](#)

[Orientation Program](#) and public-private partnerships that facilitate representation of asylum seekers should be expanded to reach all asylum seekers in adversarial proceedings, not just a select few.

- (5) Expedited removal has many moving parts across multiple agencies and departments and cannot protect asylum seekers unless those parts are coordinated. USCIRF has urged the appointment of a high-ranking DHS official who would be empowered and resourced to address issues related to asylum and expedited removal. With the expansion of expedited removal and other border-oriented initiatives impacting asylum seekers, that position is needed now more than ever.

One more element since the USCIRF studies were done, however, warrants your attention:

Under international human rights law as well as U.S. asylum law, the United States may not turn away people at our frontier who may have a well-founded fear of persecution on the basis of religion or the other four grounds. For that reason, U.S. law requires that people who express a fear of return cannot be turned away without being screened for “credible fear.” On March 20, 2020, the Trump Administration, however, [used the pandemic to justify turning away all asylum seekers under an old public health law \(42 USC 265\)](#) which predates not only the 1996 expedited removal law, but the 1951 Refugee Convention. [The Biden Administration has continued using “Title 42” to exclude adult asylum seekers.](#)

In 2005 and again in 2016, USCIRF extensively documented that the United States is violating its own laws in its treatment of arriving asylum seekers. Not only has this problem continued unabated through four presidential administrations since the first USCIRF study, but under Title 42, the United States has raised its inappropriate treatment of asylum seekers to a whole new level.

Thank you for your commitment to human rights, to refugee protection, and for this opportunity to testify today.