Department of Justice

STATEMENT

OF

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BEFORE THE

COMMITTEE ON INTERNATIONAL RELATIONS
SUBCOMMITTEE ON AFRICA, GLOBAL HUMAN RIGHTS
AND INTERNATIONAL OPERATIONS
U.S. HOUSE OF REPRESENTATIVES

CONCERNING

"CURRENT ISSUES IN U.S. REFUGEE PROTECTION AND RESETTLEMENT"

PRESENTED ON

MAY 10, 2006

Hearing before the House International Relations Committee, Subcommittee on Africa, Global Human Rights and International Operations
May 10, 2006

Dear Chairman Smith, Ranking Member Payne, and members of the Subcommittee:

Thank you for inviting me to testify on the subject of the admission of refugees who have provided material support to terrorist organizations as defined in the Immigration and Nationality Act ("INA") and on the implementation of the training provisions of the International Religious Freedom Act of 1998. In major part, my testimony will address the material support issue, although I will briefly discuss the training implementation at the end of my remarks.

As an initial matter, let me put the question of admission of refugees who have provided material support under the INA in context. Attorney General Gonzales has stated on many occasions that the fight against terrorism is the number one priority of the Department of Justice. Congress has contributed greatly to our successes, first with the enactment of, and then with the recent reauthorization of, the USA PATRIOT Act.

The Department's counter-terrorism efforts are proactive. Thus, in addition to prosecuting those who commit acts of terrorism or plan terrorist attacks, the Department prosecutes those who provide material support to terrorists. We know from experience that terrorists need an infrastructure to operate. They need to raise funds, maintain bank accounts and transfer money, communicate with each other, obtain travel documents, train personnel, and procure equipment. The people who perform these functions may not commit terrorist acts themselves, but the front-line terrorists could not operate without them. The material support statutes in the criminal and immigration contexts are designed to reach these individuals and shut down the terrorist infrastructure. Our fight against material support for terrorism is thus part and parcel of our overall counter-terrorism strategy.

With this in mind, we can more fully appreciate the interests at stake in considering the admission of refugees who have provided material support to a terrorist organization or an individual that has engaged in terrorist activity as defined in the INA..

The United States is, of course, a compassionate nation. We are a nation of immigrants and a nation of refugees. In fact, I understand that the United States currently admits far more refugees each year than any other country. Having said that, we are also engaged in a long war against terrorism. Any actions we take with regard to the admission of refugees must not conflict with or undermine our counter-terrorism strategy—by admitting persons who pose a security threat to this country, by complicating positions the government takes in litigation, or by sending inconsistent messages to the world about our policy toward acts of terror. I do not mean to diminish the importance of admitting bone fide refugees into the United States. Rather, my goal is to explain the full scope of considerations at stake.

Just as we have a proactive counter-terrorism strategy, the existing legislative scheme for admissions is, and historically has been, preventive—that is, designed to prevent undesirable aliens from entering the United States. Congress strengthened that scheme in the USA PATRIOT and REAL ID Acts, with objective standards and a presumption against the admission of aliens involved with terrorist organizations or individuals engaged in terrorist activities. As you are aware, the INA now contains broad definitions of some relevant terms, particularly "terrorist activity," "engaged in terrorist activity" (which includes provision of material support) and "organization [that has engaged in terrorist activity]". The definitions are broad, however, for good reasons. They can be used for homeland security and immigration litigation purposes to prevent aliens who present risks to the United States or its citizens from entering or staying in the United States—even if their activities are not criminal under the narrower definitions in the criminal code and not prosecutable under the harder-to-meet criminal burden of proof. They provide alternative courses of action positions for government authorities to protect U.S. citizens' safety in cases where the after-the-fact remedy of criminal prosecution is not sufficient.

We recognize that the breadth of these provisions may in some instances bar admission of individuals and groups who do not present such risks and to whom the United States is sympathetic. Congress addressed these concerns to some extent by providing the Secretaries of State and Homeland Security the authority to exercise their sole and unreviewable discretion, on a case-by-case basis, that the provision barring persons who have provided material support to terrorist organizations, as defined in the INA, does not apply to a particular alien. Exercising this authority would permit that alien to enter the United States so long as he met all other requirements for admission. The law also requires that the relevant Secretary must consult with the other Secretary and the Attorney General. This scheme allows for the broadest consideration of all factors relevant to the case—the foreign policy considerations, the counter-terrorist strategy considerations, the immigration considerations, and the litigation risks. It properly includes the Department of State, the Department of Homeland Security, and the Department of Justice, each of which has an important, and different role, in protecting national security, promoting foreign policy, and implementing immigration law and refugee policy.

As you are aware, last week the Secretary of State did exercise her authority under the statute, after consultation with the Attorney General and Secretary of Homeland Security, to allow for admission of certain Karen refugees from the Tham Hin camp in Thailand, so long as they meet all other requirements for admission. Through the interagency process, the Attorney General was satisfied that the Karen National Union did not pose a threat to the United States and that exercising the statutory authority on the behalf of certain refugee applicants who provided material support to the KNU would not unduly compromise other U.S. government interests.

In sum, it is the Administration's view that important national security interests and counter-terrorism efforts are not incompatible with our nation's historic role as the

world's leader in refugee resettlement. While we must keep out terrorists, we can continue to provide safe haven to legitimate refugees. Due to national security imperatives, there have been recent changes to the law as well as to the process and we continue to work on ways to harmonize these two important policy interests. It was an important step to have moved forward on the ethnic Karen Burmese refugees in Thailand, and we are continuing to look at further steps necessary to ensuring the harmonization of national security interests with the refugee program.

With regard to the training required by International Religious Freedom Act of 1998 (IRFA), the Department is pleased to report that they have been fully implemented. Since enactment of IRFA, the Executive Office for Immigration Review has completed the required training on religious persecution in accordance with the Act. For example, at this year's upcoming Immigration Judge training conference, the panel on religious freedom will include the Director for International Refugee Issues and the Deputy Director for Policy from the United States Commission on International Religious Freedom and a representative from the Office of International Religious Freedom from the State Department. A similar training was held in October 2005 for the Board of Immigration Appeals. Additionally, all staff is kept up to date on current asylum and refugee law by various means including coursework for incoming Immigration Judges, internet library updates, and relevant case law summaries.

In addition to the statutorily required training of Immigration Judges, the Civil Division's Office of Immigration Litigation (OIL) provides training of government personnel through conferences and seminars on immigration law that routinely address the statutory and regulatory provisions that govern asylum and refugee status. Last month, for example, at OIL's Tenth Annual Immigration Litigation Conference, the program including presentations by the staff of the United States Commission on International Religious Freedom. Such training is available to all government personnel, including the staff and adjudicators of the Executive Office for Immigration Review and the Department of Homeland Security. OIL also provides training through websites, monthly bulletins, and case-specific counseling.

Mr. Chairman, that concludes my prepared statement. I would be pleased to take the Subcommittee members' questions at this time.