



Department of Justice

WRITTEN STATEMENT

OF

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DEPARTMENT OF JUSTICE**

BEFORE THE

**SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY,
AND CITIZENSHIP
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

CONCERNING

**“OVERSIGHT HEARING: U.S. REFUGEE ADMISSIONS
AND POLICY”**

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Written Statement of Rachel L. Brand
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“Oversight Hearing on U.S. Refugee Admissions and Policy”
before the Senate Committee on the Judiciary, Subcommittee on Immigration, Border
Security and Citizenship

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Dear Chairman Cornyn and Ranking Member Kennedy,

Thank you for inviting me to provide this written statement on the role of the Department of Justice in the admission of refugees to the United States.

President Bush has rightly said that America is and has always been “the great hope on the horizon, an open door to the future, a blessed and promised land.” In fact, the Attorney General himself is the grandchild of immigrants and has said that his family achieved the American dream. He has made improving both the immigration laws and the immigration adjudication process high priorities. The Department of Justice is thus committed to playing its part in ensuring a fair and manageable immigration system. And the refugee and asylum programs are crucial parts of this system, since they offer the promise of freedom and safety to some of the world’s most downtrodden.

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 undermining 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 bona fide refugees into the United States. Rather, my goal is to explain the full scope of considerations at stake.

It is important to understand that the Administration’s counter-terrorism efforts are proactive. We investigate threats before they materialize, rather than just tracking down culprits after an attack has happened. Thus, in addition to prosecuting those who commit acts of terrorism, we prosecute those who plan attacks and those who provide material support to attackers and potential attackers.

Just as we have a proactive counter-terrorism strategy, the existing legislative scheme for refugee 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 Immigration and Nationality Act (“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 for government authorities to protect U.S. citizens’ safety in cases where the after-the-fact remedy of criminal prosecution is not sufficient.

I 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 organizations or individuals engaged in terrorist activity, as defined in the INA, does not apply to a particular alien. Exercising this authority would permit that alien who has provided such support 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 role in protecting national security, advancing foreign policy, and implementing immigration law and refugee policy.

The Department’s expertise in investigating, disrupting, and prosecuting terrorist plots is a crucial element in this process. For example, 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.

Careful scrutiny of applicants for refugee status who have provided material support to a terrorist organization, as defined in the INA, is therefore warranted. Such scrutiny requires high-level decision-making that accounts not just for individual circumstances, but also for the large-scale impact of a decision on the U.S. government’s counter-terrorism policies.

I believe that important national security interests and counter-terrorism efforts are not incompatible with our nation’s 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.

Thank you for this opportunity to provide a written statement on this important issue.