

Legal Sidebar

Can States and Localities Bar the Resettlement of Syrian Refugees Within Their Jurisdictions?

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Responding to [reports that](#) one individual involved in the [Paris attacks](#) was carrying a Syrian passport (which [subsequent reports](#) indicate may have been fake or stolen), a [number of governors](#) have recently expressed an intention to restrict the resettlement of Syrian refugees within their states. These announcements have prompted questions about states' authority in the refugee resettlement process and, particularly, whether a state concerned about the resettlement of Syrian refugees within its jurisdiction may take action to forestall or prevent such resettlement.

It is not always clear from a governor's statements what he or she means when saying, for example, that a state "[will temporarily suspend accepting new Syrian refugees](#)." However, as this Sidebar explains, states would appear to have some discretion as to the terms on which state agencies participate in the federally funded [refugee resettlement program](#), although a state likely could not opt to participate actively in the resettlement of refugees from some countries but not others. In contrast, a state lacks the power to prohibit a Syrian refugee admitted into the United States from physically entering or remaining within the state's jurisdiction.

State Agency Participation in the Federally Funded Refugee Resettlement Program

A [refugee](#) is a person outside his or her home country, and unable or unwilling to return to that country, because of persecution, or a well-founded fear of persecution, on account of race, religion, nationality, political opinion, or membership in a particular social group. [Tens of thousands of refugees are admitted into the United States each year](#) for resettlement, and over a thousand persons fleeing Syria have been admitted as refugees into the United States in recent years.

The [Refugee Resettlement Program](#), administered by the Office of Refugee Resettlement (ORR) within the U.S. Department of Health and Human Services, is intended to assist in [the "effective resettlement of refugees and promote economic self-sufficiency as quickly as possible."](#) Among other things, ORR may provide funding to states which submit to ORR and have approved [plans to assist in the resettlement of refugees within their jurisdictions](#) (e.g., by coordinating cash and medical assistance with support services; ensuring that language training and employment services are made available to refugees). The development and approval of such a plan is a [precondition](#) for a state to receive certain funds appropriated for the initial resettlement of refugees and services for refugees. Although ORR is [statutorily required](#) to consult with the states "regularly" about the "intended distribution of refugees ... before their placement" in the state, it is not required to obtain a state's approval before placing a refugee within the state's jurisdiction.

States can be seen to have some discretion as to whether their agencies participate in the federally funded refugee resettlement program. Nothing in federal law purports to require that states seek or receive federal refugee resettlement funds, and the Tenth Amendment [proscribes Congress](#) from directly "commandeering" the states to administer a federal regulatory scheme. Thus, a state that previously made provisions for state agencies to participate in the federally funded refugee resettlement program could terminate these agencies' participation, provided it complies with any conditions as to the time and manner of termination that it may have agreed to as a condition of its funding agreements.

It is important to note, however, that a state's ability to participate in the federally funded Refugee Resettlement

Program as to some refugees, but not as to others (e.g., Syrian refugees), would appear to be much more limited than its ability to entirely terminate its participation in the program. The [federal statute](#) authorizing programs for providing assistance to refugees expressly requires that “[a]ssistance and services funded under this section shall be provided to refugees without regard to race, religion, nationality, sex, or political opinion,” and the [regulations](#) implementing this statute call for this proviso to be incorporated into states’ plans. Because any distinction between Syrian and non-Syrian refugees would seem to be based on nationality, such differentiation in treatment would appear impermissible under the controlling federal statute and its implementing regulations (along with the terms of a previously approved plan that had been submitted by the state to ORR as a condition to receive grant money). The same would appear to be true as to distinctions between Christian refugees and Muslim refugees, for example, which would be based on religion.

State Attempts to Bar Refugee Resettlement Within Their Jurisdictions

Any attempt by a state to bar the federal government, or a private party acting pursuant to an agreement with the federal government, from resettling refugees within the state’s jurisdiction would appear susceptible to serious legal challenges. Here, the states’ authority would be significantly restricted by the [Supremacy Clause](#) and Fourteenth Amendment to the U.S. Constitution.

Federal law expressly defines who [qualifies as a refugee](#) and provides for the [admission of refugees](#) into the United States, as well as for the [adjustment of refugees’ status](#) to that of lawful permanent residents (LPRs) after they have been present in the United States for a year. Given these provisions, any state restriction that purported to bar particular refugees—admitted to the United States by the federal government—from entering or remaining within its jurisdiction would likely be seen to be preempted, as the Supreme Court has repeatedly ruled that the federal government has exclusive authority to determine “[who should and should not be admitted to the country, and the conditions under which a legal entrant may remain.](#)”

Moreover, the [Fourteenth Amendment](#) has been seen to [protect aliens, as well as citizens](#), when it provides that no state shall “deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.” Because the [right to travel between states](#) has been seen as one of the liberties protected by the Fourteenth Amendment, any state restriction that purported to bar aliens admitted to the United States from entering or remaining in that state could also be found to run afoul of the Fourteenth Amendment. As the Supreme Court has [observed](#), when an alien is granted “the privilege of entering and abiding in the United States,” he or she also obtains the privilege of “entering and abiding in any State in the Union.”

Accordingly, a state measure that attempted to prohibit the settlement of a lawfully admitted alien within its jurisdiction would face more serious legal consequences than simply declining to actively assist the federal government in the resettlement of refugees (while still permitting such aliens to reside within the jurisdiction).

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