

UNITED NATIONS  
HIGH COMMISSIONER  
FOR REFUGEES



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HAUT COMMISSARIAT  
POUR LES REFUGIES

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**VIA FACSIMILE (202-224-2417) & FIRST CLASS MAIL**

The Honorable Senator Edward M. Kennedy  
Senate Judiciary Committee  
Washington, DC 20510

Re: Immigration Reform and the Reorganization of Homeland Defense – “Homeland Security Act of 2002”

Dear Senator Kennedy,

The “Homeland Security Act of 2002” will affect, among others, asylum seekers and refugees in the United States. As you are aware, the Office of the United Nations High Commissioner for Refugees (UNHCR) is mandated by the United Nations General Assembly to provide international protection to refugees and to assist governments in providing permanent solutions to their problems. In addition, under UNHCR’s Statute in conjunction with Article II of the 1967 Protocol Relating to the Status of Refugees (Protocol), to which the United States is a party, UNHCR has the duty of supervising the application of the Protocol. UNHCR supports the goal of the proposed legislation to combat the global threat of terrorism and shares States’ concerns with regard to terrorism, which represents a serious threat to society and causes great human suffering.

It is within this particular context that UNHCR makes the following comments. Our concerns specifically address the Administration’s proposal to incorporate the Immigration and Naturalization Service (INS) into the Department of Homeland Security and the impact that such a reorganization may have on asylum seekers and refugees in the United States.

According to the Administration’s plan, INS would be placed under the Border and Transportation Security division in the new Department of Homeland Security. UNHCR is concerned that incorporating the INS as proposed could mean that the protection needs of refugees and asylum seekers in the United States would not be adequately addressed. Placing responsibility for asylum and refugee status determination procedures in an anti-terrorism agency may not respond effectively to the basic needs of vulnerable refugees and the requirements for an efficient and appropriate processing of asylum claims.

In light of these concerns, UNHCR offers the following recommendations:

- (1) Reorganization proposals such as those proposed to create the new Department of Homeland Security should distinguish between functions related to asylum and refugee protection and functions related to fighting terrorism.
- (2) Any suggested reorganization of the INS should give functions related to asylum and refugee issues a high priority with appropriate organizational authority and control over necessary resources, and should not subsume these functions in a bureaucracy devoted to security concerns. The particular vulnerabilities of asylum seekers at ports of entry, for example, must be addressed by staff that is well trained in security concerns yet equally aware of refugee and related human rights obligations as well as being sensitive to the trauma of the refugee experience.
- (3) Adjudication functions related to determination of asylum claims and appeals, by the asylum office, immigration courts, and administrative and judicial review courts, should remain sufficiently independent to ensure fair and objective determination of refugee claims based on United States and international refugee law.
- (4) Unless there is compelling evidence that an asylum seeker may be a threat to the security of the United States, detention authority should not be in the hands of the Department of Homeland Security but rather in the hands of an independent adjudicator.
- (5) The care and custody of unaccompanied child asylum seekers should be moved to an independent office with expertise in child welfare. UNHCR supports the goals of the Unaccompanied Alien Child Protection Act of 2001, which would establish an independent office with responsibility over the care of unaccompanied children who arrive in the United States and provide unaccompanied children in immigration proceedings with appointed attorneys and guardians. It would also ensure that children would be not held in detention facilities, whether federal or local, absent exceptional circumstances.

The United States has continuously demonstrated a leadership role in responding to the plight of refugees and victims of human rights violations worldwide. While UNHCR recognizes the legitimate interest of the United States to fight global terrorism, we are concerned that placement of the INS, including all functions related to asylum and refugees, in a defense and security-oriented agency may not meet the particular and specialized requirements for an agency responsible for asylum seekers and refugees. We hope that our suggestions will assist you and the relevant committees in drafting a bill that ensures that security concerns are met, while also guaranteeing the international protection of refugees in need of protection, who often are escaping from terrorist groups and States who support terror.

Sincerely,

Ms. Guenet Guebre-Christos  
Regional Representative