United States

Jailing Refugees

Arbitrary Detention of Refugees in the US Who Fail to Adjust to Permanent Resident Status

HUMAN RIGHTS WATCH

AILA InfoNet Doc. No. 10010566. (Posted 01/05/10)

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Printed in the United States of America
ISBN: 1-56432-588-1
Cover design by Rafael Jimenez

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AILA InfoNet Doc. No. 10010566. (Posted 01/05/10)

DECEMBER 2009 1-56432-588-1

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Each year, the US government sends officials to refugee camps overseas to interview thousands of people displaced by persecution and conflict, classifies a select number as refugees in need of resettlement, and brings those refugees to live in the United States. After one year in the United States, every resettled refugee is required to apply for lawful permanent resident (LPR) status, more familiarly known as a "green card." However, refugees' limited English, ignorance about the requirement, confusion over the legal process, and lack of resources, as well as the government's failure to notify them of the requirement, often prevents them from timely filing to adjust their legal status. In some parts of the country, the consequence of not applying can be lengthy, indefinite and arbitrary detention by Immigration and Customs Enforcement (ICE). The purpose of this report is to encourage legislative and policy changes that will eliminate the potential for indefinite detention of resettled refugees for failure to file for adjustment to lawful permanent resident status after one year in the US.

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I. Overview

David Thomas[1] entered the United States in the year 2000 as a resettled refugee when he was only 13 years old, having fled a civil war in Liberia that had been raging since before he was born. David and his family were among the lucky few who were able to come to the United States as part of the US government's refugee resettlement program, which screens persons overseas to ensure that they meet the definition of a refugee under both US and international refugee law, determines whether they qualify for admission to the United States, and selects those it deems to be of "special humanitarian concern" to come to the United States for resettlement.

In 2000, David began seventh grade in the Rhode Island town where his family was resettled, but adapting to the United States was not easy. After 10 years in a refugee camp with only sporadic schooling, David was eager to learn, but the other students at his school teased him for his second-hand clothes and accent. David took refuge in sports and discovered a talent for football. A stand-out player, he secured a football scholarship for college, but the scholarship was revoked when he suffered a knee injury as a high school senior. Determined to go to college, David enrolled in California State University at Sacramento, where he started as a walk-on for the university football team. His hope was to play hard as a freshman and earn a scholarship to support the cost of his studies.

In 2008, at the age of 21, David's life suffered a dramatic downturn. A fight with his girlfriend (and mother of his two children) landed David in court, where he pled guilty to two misdemeanors: simple battery and damaging telephone equipment. David served thirty days in jail. On January 19, 2009, David completed his sentence. He was excited to return to school, football, and the home he shared with his girlfriend and twin girls in Sacramento. To his surprise, David was taken into custody by Immigration and Customs Enforcement (ICE) for his failure to apply for a green card at the age of 14. Not only could he not return home to his family, but ICE was taking him from California to a detention facility in Eloy, Arizona.

When Human Rights Watch interviewed David, he had been at Eloy Detention Center for seven months. Football season was starting, but David could not play, and hopes of getting a scholarship for the upcoming year were fading. Worse, David had not seen his girlfriend or

[1] The names of all refugees interviewed for this report have been withheld to ensure confidentiality and pseudonyms have been used to identify each interviewee. Full interviews and consent forms are on file with Human Rights Watch's Refugee Policy Program.

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twin two-year-old girls in months. With David unable to work or contribute financially to his family, his girlfriend had fallen behind on rent payments for their apartment and had been forced to move the family to Nevada, where they were living with an aunt.

"I don't know when I can get out," said David. "I want to go back to Sacramento, go back to school. [My girlfriend] needs help with the kids. We just worry about day care and things the kids need."[2]

US law requires all resettled refugees to apply to US Citizenship and Immigration Services (USCIS), the division of the Department of Homeland Security (DHS) that administers immigration benefits, for lawful permanent resident status (LPR) after one year of physical presence in the United States. This process of applying to be an LPR is referred to as adjustment of status. Even refugees who, like David, enter the US as children must apply to adjust their legal status after living in the United States for one year. There is no system in place to alert refugees to this legal requirement in advance of the expiration of their year in the United States.

If refugees do not apply, they are subject to arrest and detention by ICE. However, poor English skills, confusion about the legal process and the costs of application, and the stress of adapting to life in a new country after fleeing persecution mean that many resettled refugees fail to timely apply for adjustment of status. "I didn't know [that I needed to apply for a green card] until I got in here [at Eloy Detention Center]" said David. "[My] mom got a green card for herself and my brothers, but I went to California so she switched responsibility to Dad." David's father never applied for his son's green card. "Now it's up to the judge," said David."[3]

David and unadjusted refugees like him can be forced to endure a long time in immigration detention without ever being formally charged with a legal offense or given the opportunity for bond. In fact, failure to file for adjustment of status is not a chargeable civil or criminal offense.

DHS cites Immigration and Nationality Act (INA) section 209(a) as the legal basis upon which unadjusted refugees are detained.[4] In litigation, the government argues that INA § 209(a)

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[2] Human Rights Watch interview (name changed, E2), Eloy Detention Center, August 26, 2009.

[3] Human Rights Watch interview (name changed, E2), Eloy Detention Center, August 26, 2009.

[4] 8 U.S.C. § 1159(a)(1). ("Any alien who … has been physically present in the United States for at least one year, and … who has not acquired permanent resident status, shall, at the end of such year period, return or be returned to the custody of the Department of Homeland Security for inspection and examination for admission to the United States.")

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requires detention of any resettled refugee who has not acquired lawful permanent resident status one year after arrival.[5] Yet, according to federal regulations, refugees are not allowed to apply to adjust to LPR status before being physically present in the United States for one year.[6] Accordingly, refugees cannot have acquired LPR status after exactly one year in the U.S., and the government's own policy would require it to detain every resettled refugee one year after arrival. In practice, DHS, through its immigration enforcement arm, ICE, targets for detention mainly those resettled refugees who have come to its attention because they have been arrested for or convicted of criminal offenses under state or federal law.

Traditionally, unadjusted refugees detained by ICE have been required to file their green card applications and then have those applications adjudicated before they are released from detention. The application and adjudication process is of indefinite length, sometimes lasting a few months or as long as a year. At the time that a refugee is placed in detention, there is no way to determine how long adjudication of the adjustment application will take. If the green card application is denied and the refugee is determined to be inadmissible as a lawful permanent resident, then the refugee will usually be placed in removal proceedings to determine whether he should be deported to his country of origin.[7] Depending on the speed of the immigration court's docket, removal proceedings can last from 6 to 10 months, during which time the refugee is still required to remain in detention.

A November 10, 2009 policy memo issued by the Phoenix, Arizona Field Office of ICE indicates that the government may now be trying a new approach, placing refugees in removal proceedings before their green card applications are adjudicated,[8] but this procedure would directly violate the holding of the Board of Immigration Appeals (BIA) in *Matter of Garcia-Alzugaray,* 19 I&N Dec. 407, 410 (BIA 1986), which does not permit refugees to be placed in removal proceedings unless their refugee status has been terminated or their green card application has been denied.

In August and October 2009, Human Rights Watch conducted interviews with refugees detained by ICE in Florence and Eloy, Arizona, and in York, Pennsylvania. Most refugees told Human Rights Watch that prior to their detention, they had been unaware of the need to adjust to LPR status after one year in the United States. Those few refugees who did know of

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[5] Brief for Respondents at 4, ¶ 13-14, Dong v. Holder, No. 09-01594 (D. Ariz., August 27, 2009).

[6] 8 C.F.R. § 209.1. (Every alien … who is classified as a refugee … is required to apply to the Service 1 year *after* entry in order for the Service to determine his or her admissibility." (emphasis added)

[7] In the immigration law context, removal is synonymous with deportation.

[8] Memorandum from Katrina S. Kane, Field Office Director, Immigration and Customs Enforcement, Department of Homeland Security, to all Arizona Detention and Removal Operations personnel, November 10, 2009.

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the need to apply for a green card were unaware that there could be negative legal consequences for failure to apply.

The US is required by human rights law to end arbitrary detention. Detention should only be imposed for a clear legal reason, be of a defined duration (which can be renewed, but only if the requirements for detention still apply), and only be carried out as a last resort, with the justification for detention diminishing the longer a person remains detained. Those detained must have their detention reviewed, both when first detained and at regular intervals, by a judicial body with the power to order release. Indefinite detention of resettled refugees, for no compelling reasons is, in most cases, arbitrary.

Detention of unadjusted refugees is unnecessarily traumatizing for refugees and their families. Refugees, by definition, are individuals who have fled their countries of origin due to past persecution or a well-founded fear of future persecution, and they have often suffered extreme trauma and upheaval. ICE's indefinite detention of resettled refugees causes severe psychological stress and anxiety in an already vulnerable population. The families of detainees are also negatively affected by ICE's detention policy. Refugees in detention are unable to work to support their families and may, like David Thomas, be forced to suspend their educations indefinitely. Detention facilities are often located in locations too remote to permit families to visit. The children of detained refugees may be left without parental support and guidance, and detention can be particularly difficult for refugees with very young children.

In addition to having negative consequences for refugees and their families, DHS's policy of detaining unadjusted refugees is unnecessarily costly to US taxpayers. Resettled refugees are not a flight risk, nor do they pose a danger to their communities. Those who have prior criminal convictions serve their sentences for those offenses in full before they are detained by ICE. Permitting unadjusted refugees to file their green card applications without placing them in detention would greatly reduce the cost to US taxpayers and eliminate the disruption of refugees' lives and families. A more durable solution would be to grant lawful permanent resident status to resettled refugees at the time of their admission into the United States.

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II. Recommendations

To the President of the United States:

- Call on Congress to amend the Immigration and Nationality Act to eliminate mandatory DHS custody of refugees who have not acquired lawful permanent resident status after one year in the United States.
- Call on Congress to enact legislation making adjustment to lawful permanent resident status automatic for refugees upon admission to the United States.

To the Congress of the United States:

- Amend INA § 207 to provide lawful permanent resident status to refugees upon admission to the United States.
- Amend INA § 208 to allow lawful permanent resident status to asylees upon the grant of asylum in the United States.
- Delete INA § 209 to eliminate the requirement of adjustment of status after one year and the correlated mandatory custody of unadjusted refugees.
- Provide that the acquisition of lawful permanent resident status for refugees and asylees does not forfeit the rights and benefits they enjoy as refugees in need of international protection.

To the Department of Homeland Security:

Until the Immigration and Nationality Act is amended:

- Stop detaining refugees during the adjustment application process, and instruct Immigration and Customs Enforcement to interpret the requirement that refugees return or be returned to DHS custody to mean that refugees may be required to appear for inspection and examination for admission, but that they should not be detained in the process.
- Rescind those sections of the memorandum entitled, "Removal of Persons Admitted Pursuant to Section 207," issued November 9, 2001 by then General Counsel Bo Cooper, that are inconsistent with the policy of allowing refugees to apply for adjustment of status without being detained.
- Cease classifying unadjusted refugees as arriving aliens or as aliens present without admission or parole, and classify them as being lawfully admitted under INA § 237, thus permitting immigration judges to release on bond refugees unless they pose a clear danger to the community or are a flight risk.
- Ensure that adequate, written notice of the need to adjust to lawful permanent resident status is provided to refugees in a language they understand.

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III. Methodology

In the spring of 2008, a Human Rights Watch researcher visiting immigration detention facilities in Arizona met Charity, a refugee from Liberia, detained for failure to adjust to lawful permanent resident status. Charity had no criminal convictions and prior to her detention had been supporting seven family members, including a child who was still breastfeeding. Since her detention, her family had been evicted and Charity was suffering from medical problems. Human Rights Watch was surprised to learn that resettled refugees like Charity could be held indefinitely without charges and not even as part of a removal proceeding.

A year later, we decided to examine the situation of resettled refugees who, like Charity, are being detained for failure to adjust to LPR status. In August 2009, Human Rights Watch returned to Arizona and interviewed 14 refugees detained by ICE at Florence Service Processing Center and Eloy Detention Center, in Florence and Eloy, Arizona. Several of the individuals interviewed on the Florence Service Processing Center grounds were actually being held in the nearby Pinal County Jail, rather than in a facility designated solely as an immigration detention center. In October of the same year, we interviewed three refugees detained in York County Prison in York, Pennsylvania for failure to adjust their status. Human Rights Watch also spoke with legal aid providers in Arizona, Pennsylvania, Maryland, New York, and Washington, DC, all of whom had worked with refugees detained for failure to adjust, as well as legal aid providers in California, Massachusetts, and Michigan.

Before interviewing any detainee, we obtained both written and oral consent to use the information obtained in the interview. All participants were informed of the voluntary and confidential nature of the interviews and of Human Rights Watch's purpose in conducting the interviews. Interviews lasted from 45 minutes to an hour and were conducted privately. One interview was conducted with a Laotian interpreter, but all other interviews were conducted in English. Participants did not receive any material compensation, legal or social service in return for speaking with us. The names of interviewees have been withheld to ensure confidentiality, and pseudonyms have been used to identify each refugee whose interview is used in this report. Full interviews and consent forms are on file with Human Rights Watch's Refugee Policy Program.

Human Rights Watch wrote to DHS Secretary Janet Napolitano on October 26, 2009 inviting the Department of Homeland Security to comment on our findings and recommendations. On November 24, we received an email message from a DHS official saying that the

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department is reviewing its interpretation and policies relating to INA § 209(a), but that "because there is active litigation on this issue, we are not in a position to provide extensive comment at this time to the letter beyond noting our review and that we are committed to ensuring a consistent nationwide understanding and implementation of the conclusions of that review."[9]

[9] Email from Brandon Prelogar, policy advisor for refugee and asylum affairs, Department of Homeland Security, to Human Rights Watch, November 24, 2009 (email on file with Human Rights Watch).

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IV. Legal Context

US immigration law requires every resettled refugee to adjust his or her status to that of lawful permanent resident after one year of physical presence in the United States. Section 209(a) of the Immigration and Nationality Act (INA) states that any refugee who has not acquired LPR status after one year in the US shall "return or be returned to the custody of the Department of Homeland Security for inspection and examination for admission."[10]

Pursuant to a memo issued in November 2001, ICE interprets INA § 209(a) as authorizing ICE to detain refugees who have not presented themselves to adjust their legal status after one year.[11] As recently as August 27, 2009, the government argued in litigation that INA § 209(a) "not only allows ... detention, it mandates it."[12]

Incongruously, immigration law does not permit refugees to apply for permanent resident status until after they have been physically present in the US for a year.[13] Thus, although the law prohibits refugees from applying for adjustment of status until one year has passed, it appears to require detention if they have not obtained LPR status at the one year mark. A literal interpretation of the law would require that ICE take custody of nearly all resettled refugees after one year in the U.S., because it is technically impossible for any refugee to have independently applied for and obtained LPR status within the required time period. As the government points out, there is one way for a refugee to successfully adjust his status before the one year point and thus avoid detention: "a refugee could marry an [sic] lawful permanent resident or United States citizen and adjust through them."[14] However, barring this extreme tactic, ICE's interpretation of the ambiguous language of INA §209 (a) would require detention of all resettled refugees after one year. In practice, ICE officers in Arizona and Pennsylvania detain primarily those refugees who have completed serving sentences for criminal offenses unrelated to immigration status.

Failure to adjust to LPR status is not a chargeable criminal or civil offense. Thus, resettled refugees may be detained for failure to file for adjustment of status, but the failure to file

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[10] 8 U.S.C. § 1159(a)(1).

[11] Memorandum from Bo Cooper, general counsel, Immigration and Naturalization Services (INS), US Department of Justice, to Michael Pearson, executive associate commissioner for field operations, INS, and Jeffery Weiss, director, Office of International Affairs, INS, November 9, 2001.

[12] Brief for Respondents at 4, ¶ 13-14, Dong v. Holder, No. 09-01594 (D. Ariz., August 27, 2009).

[13] 8 C.F.R. § 209.1.

[14] Brief for Respondents at 4, ¶ 13-14, Dong v. Holder, No. 09-01594 (D. Ariz., August 27, 2009).

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does not constitute a crime for which they are ever charged. Unlike punishments imposed for criminal convictions, where an individual serves a sentence of known duration, the length of detention for resettled refugees is indefinite.[15] Individuals are kept in detention until they have completed their application for adjustment of legal status and that application has been fully adjudicated. This process may last 4-6 months, or in some cases longer than a year. If the initial application for a green card is denied, the applicant is then placed in proceedings to determine removability, which may last an additional 6-10 months, depending on the local court docket. Since DHS classifies detained refugees as "arriving aliens," or as aliens present without admission or parole, they are not eligible for consideration for release from detention under bond during either the adjustment or removal proceedings, and therefore immigration judges lack the authority to determine whether their detention is warranted.

There are indications that DHS is considering changing its interpretation that unadjusted refugees are "arriving aliens," with the result that immigration judges will be able to consider them for bond. A November 10, 2009 policy memo issued by ICE's Phoenix, Arizona Field Office also purports to decrease detention time by only holding refugees for 48 hours without "charges of removability reasonably believed to be applicable to the alien."[16] After that 48-hour period, the refugees must either be released or detained as criminal aliens and placed in removal proceedings. If the Phoenix, Arizona policy were to be adopted nationally, it would appear to address the issue of detention for failure to adjust per se, but it would at the same time raise the troubling—and apparently illegal[17]—prospect of placing refugees in removal proceedings whose refugee status has not been terminated and who have not been adjusted to LPR status. Also, federal regulations contemplate that removal proceedings cannot be commenced until USCIS has decided the adjustment application,[18] which means that, in practice, the Phoenix field office's solution may not shorten detention time at all if removal proceedings are delayed—and detention continues—while waiting for USCIS to adjudicate the adjustment petition. Although these developments indicate that DHS's detention policy can change as the political climate changes, it is troubling that the

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[15] The government maintains that detention of unadjusted refugees is not an unconstitutionally problematic form of indefinite detention, but concedes that a detained refugee lacks "a date certain when…admissibility will be determined." Brief for Respondents at 5, ¶ 3-9, Dong v. Holder, No. 09-01594 (D. Ariz., August 27, 2009).

[16] Memorandum from Katrina S. Kane, Field Office Director, Immigration and Customs Enforcement, Department of Homeland Security, to all Arizona Detention and Removal Operations personnel, November 10, 2009.

[17] *Matter of Garcia-Alzugaray,* 19 I&N Dec. 407, 410 (BIA 1986).

[18] See 8 CFR 209.1(e) (The director will notify the applicant … of the decision of his or her application for admission to permanent residence…. [and] in the same denial notice, inform the applicant of his or her right to renew the request for permanent residence in removal proceedings."

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underlying law is ambiguous enough to permit various field offices to interpret and implement it differently. The law needs to be changed.

The US is a state party to the International Covenant on Civil and Political Rights, which states that no one shall be subject to arbitrary arrest or detention (Article 9). The prohibition against arbitrary arrest or detention means that deprivation of liberty, even if provided for by domestic law, must be necessary and reasonable, predictable, and proportional. This means that detention must only be imposed to meet a legitimate aim, and only in cases where it is necessary and proportionate to do so, that is, alternatives to detention are not possible. An arrest or detention is arbitrary if not carried out in accordance with domestic law, or if the law is itself arbitrary or extremely broadly worded.[19]

The UN Human Rights Committee, which monitors state compliance with the ICCPR and provides authoritative interpretation of the Covenant, explained in reviewing one case that: "arbitrariness" is not to be equated with "against the law," but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.[20]

Due to the growing phenomenon of indefinite detention of migrants and refugees, the UN Working Group on Arbitrary Detention has developed criteria for determining whether the deprivation of liberty of migrants and asylum seekers is arbitrary. Principle Seven requires that a "maximum period should be set by law and the custody may in no case be unlimited or of excessive length."[21]

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[19] Manfred Nowak, U.N. Covenant on Civil and Political Rights. CCPR Commentary (Kehl/Strasbourg/Arlington: N.P.Engel, 2005), p.225.

[20] UN Human Rights Committee, Communication No. 458/1991, A. W. Mukong v. Cameroon (Views adopted on 21 July 1994), in UN doc. GAOR, A/49/40, (vol. II), p. 181, para. 9.8.

[21] United Nations Commission on Human Rights, Report of the Working Group on Arbitrary Detention, E/CN.4/2000/4, December 28, 1999, Annex II, Deliberation No. 5, "Situation Regarding Immigrants and Asylum Seekers," http://www.unhchr.ch/Huridocda/Huridoca.nsf/0811fcbd0b9f6bd5802566730030 6dea/39bc3afe4eb9c8b480256890003e77c2?OpenDocument#annexI.

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V. The Rationale for Automatic Permanent Residence for Resettled Refugees

By the time resettled refugees arrive in the United States they have undergone all the substantive requirements of admission and inspection for permanent residence.
The Department of Homeland Security's US Citizenship and Immigration Services (USCIS) thoroughly screens refugees before they ever set foot in the United States. Most are first interviewed by officers of the UN High Commissioner for Refugees (UNHCR) to determine their refugee status and their need for resettlement. After UNHCR refers specific refugees to the United States for resettlement, they undergo additional interviews and screening by US nongovernmental organizations (NGOs) or the International Organization for Migration (IOM) working under contract with the US State Department. The State Department determines how many refugees will be admitted from each country, and sets the priority countries and categories of humanitarian concern for refugee interviews.

In addition to UNHCR first recognizing them as refugees and referring them to the United States for resettlement, and the NGO or IOM interviews, US CIS officers conduct their own face-to-face refugee status determination interviews and assess the refugees to ensure they are legally admissible to the United States prior to arrival. The State Department must agree that the refugee in question is of special humanitarian concern to the United States. Finally, the refugees' names are submitted to the Federal Bureau of Investigation and other security agencies to ensure that the individual poses no security threat to the United States, and they undergo other security and health checks before arrival.

The purpose of resettlement is to provide refugees—usually those who cannot return home in the foreseeable future—with what is called a "durable solution." Article 34 of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (to which the United States is party) urges contracting states to "as far as possible facilitate the assimilation and naturalization of refugees ... [and] make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings."[22] In the United States, LPR status puts the refugee on track for naturalization.

In 2003, the US State Department asked then-former INS General Counsel David Martin—currently the DHS deputy general counsel—to undertake a study of the US refugee

[22] Convention Relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force April 22, 1954 and Protocol relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force October 4, 1967, ratified by U.S. on November 1, 1968.

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resettlement system and to suggest wide-ranging reforms. The resulting book, *The United States Refugee Admissions Program: Reforms for a New Era of Refugee Resettlement*, suggested admitting refugees as lawful permanent residents. Martin said that the requirement that refugees adjust their status after one year in the United States "creates an additional burden for them and requires that the DHS process tens of thousands of lengthy applications each year."[23] Martin observed that previous reforms improved screening for fraud and security concerns prior to a resettled refugee's admission to the United States, and that "the real question is whether the [adjustment] process is cost effective—whether the nature or quantity of the information gained in a handful of cases is worth this large volume of additional and largely duplicative work."

For those who suggest that the delayed adjustment requirement enables DHS better to identify and remove criminal aliens, Martin further noted, "A refugee who commits a crime of virtually any degree of seriousness within the first few years after admission would be fully subject to removal, even if initially admitted as an LPR."

Although Martin's book was specifically about reforming the US refugee resettlement program, his argument that resettled refugees should be granted LPR status at the time they are admitted to the US can be extended to apply to refugees who are granted US asylum. Like resettled refugees, asylum applicants also undergo an extensive screening process, including screening for possible grounds of inadmissibility, at the time that their asylum applications are adjudicated. Both asylees and resettled refugees are deemed to warrant protection by the United States due to their histories of past persecution or well founded fear of future persecution. Granting LPR status to both groups would minimize the current discrepancies in the treatment of these two categories of refugees, and eliminate redundancies in the current legal regime.

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[23] David A. Martin, *The United States Refugee Admissions Program: Reforms for a New Era of Refugee Resettlement*, p. 110.

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VI. Findings: Arbitrary and Indefinite Detention of Unadjusted Refugees

In our interviews at immigration detention facilities in August and October, 2009, Human Rights Watch found great similarities among the experiences of detained, unadjusted refugees. The following section outlines the typical experience of a resettled refugee detained for failure to adjust to lawful permanent resident status.

Resettled Refugees Have Fled War and Upheaval

In U.S. law, refugees are defined as individuals who are outside their country of nationality or habitual residence who are unable or unwilling to return because of persecution or a well-founded fear of persecution.[24] Like all other refugees, the detained resettled refugees interviewed by Human Rights Watch come from backgrounds of war and extreme upheaval. Many refugees suffered severe trauma and hardship before escaping to safety.

> "My whole childhood was war," said Joseph Kamara, who was born in Liberia. "My mother was raped, my uncle was beheaded at the age of nine before me." (that is, when Joseph was nine) In 2001, the US government resettled Joseph in Oakland, California.[25]
>
> "My mom died in front of my face," said Samuel Khater of Sudan. "I was so excited ... to get out of the war. It feel good, it feel good to be out of war and trouble."[26]
>
> James Sasa was tortured and persecuted for his political involvement in Sudan. "I was starving. People were killed. It was a war zone. We were in a big insurgent area." He escaped to Ethiopia in 1996, where he spent two years in a refugee camp before being resettled in the US.[27]

Refugees often spend years in refugee camps or other temporary communities before being selected for resettlement by the US government. Although most refugees are happy to

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[24] The refugee definition in US law is broader than the international refugee definition insofar as it includes not only people with a well-founded fear of future persecution, but victims of past persecution as well.

[25] Human Rights Watch interview (name changed, F1), Florence Service Processing Center, August 25, 2009.

[26] Human Rights Watch interview (name changed, F6), Florence Service Processing Center, August 25, 2009.

[27] Human Rights Watch interview (name changed, F4), Florence Service Processing Center, August 25, 2009.

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escape to the safety and stability of the United States, adaptation to the American way of life can be challenging. A war zone or refugee camp is worlds apart from a typical American neighborhood. Moreover, many refugees know minimal English and have had only sporadic schooling due to war and instability in their own countries and the harsh conditions of refugee camps. They may also suffer from post-traumatic stress disorder or other anxieties caused by war.

> Adam Tombe was 16 when he arrived in the US, after growing up in the midst of war in Sudan. "Coming to the US, it was like a dream come true. I was happy going back to school. In Cairo, the two years [in an urban refugee camp] I didn't go to school." But adjustment was difficult for Adam. "I know I have an anger problem," he said. "We kinda don't have kids there [in Sudan]. Kids have to grow up fast, eight, nine years old, they're adults."[28]

> "We came from a 14-year civil war," explained David Thomas. "People were fleeing for their life. We moved to a refugee camp in Accra, Ghana, when I was three. I was 13 when we came to the US. When I came here, basically I was hungry to learn. I started going to school in Rhode Island. [But] I would go to school and kids would tease me about my clothes.[29]

Many Resettled Refugees Do Not Know of the Need to Adjust their Legal Status

Many resettled refugees do not understand that after one year in the United States they are required to adjust their immigration status by applying to become lawful permanent residents. There is no expiration date on the I-94 card that resettled refugees receive upon entry to the US, so refugees often assume that they have permanent permission to live in the United States. Even those refugees who do know that they should apply for a status adjustment—or a green card—may not realize that they must apply exactly after one year of physical presence in the United States. Minimal English language skills increase the likelihood that refugees will fail to understand the need to apply for adjustment. Moreover, the government does not remind refugees of the need to adjust, and in fact will even issue travel documents to refugees who have not adjusted, allowing them to travel outside the US. Prior to their arrest by ICE and subsequent placement into immigration detention, none of the refugees interviewed by Human Rights Watch had been aware of the potential consequences of failure to adjust.

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[28] Human Rights Watch interview (name changed, E4), Eloy Detention Center, August 26, 2009.

[29] Human Rights Watch interview (name changed, E2), Eloy Detention Center, August 26, 2009.

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> Adam Tombe was 16 when he arrived in the US from Sudan. "I didn't know anything," he said. "And my mother didn't speak English then."[30]
>
> Deus Rwelengira said, "I never know about immigration honestly. I had the application, but I didn't think it was mandatory. In 2005 they give me a travel document and didn't mention [the green card]. When my mom applied for a green card I was [away from home] in JobCorps. I didn't know I needed to do it."[31]
>
> "Nobody even mentioned [adjustment] to me," said Samuel Khater. "They gave us the I-94. There is no expiration date.... How am I going to know?"[32]

Even refugees who are children are not exempted from the adjustment of status requirement. If their parents do not file an adjustment application for them, these young refugees can be overlooked by the immigration system.

> Sebastian Lumbwi was only eight when he was resettled from the Democratic Republic of Congo. Sebastian did not know about the adjustment requirement: "I was eight years old. My father passed away. When I got older I realized I needed [to apply for a green card], but I didn't know it was mandatory."[33]
>
> "At the beginning, my dad was telling me [about the need to apply for a green card]," said Youssouf Dagano, who was 17 when he arrived in the US from Burkina Faso. "I thought he'd probably take care of all that. I never thought about [the possibility of detention]."[34]
>
> Safi Watende arrived in the US when he was 15. "I didn't know [that I had to adjust my status]. I think I heard that I was supposed to adjust after 2 ½ years."[35]

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[30] Human Rights Watch interview (name changed, E4), Eloy Detention Center, August 26, 2009.

[31] Human Rights Watch interview (name changed, F7), Florence Service Processing Center, August 25, 2009.

[32] Human Rights Watch interview (name changed, F6), Florence Service Processing Center, August 25, 2009.

[33] Human Rights Watch interview (name changed, E6), Eloy Detention Center, August 26, 2009.

[34] Human Rights Watch interview (name changed, F5), Florence Service Processing Center, August 25, 2009.

[35] Human Rights Watch interview (name changed, F2), Florence Service Processing Center, August 25, 2009.

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David Thomas was unaware of his unadjusted status until he was taken into detention. "Tell you the truth, I didn't know until I got in here. Mom got a green card for herself and my brothers, but I went to California so she switched responsibility to Dad."[36]

Liberian refugee William Johnson came to the United States at age 14 after having spent the previous seven years in a refugee camp in Ghana. "During my first year here, nobody told me nothing about more paperwork," he said. "By the time I left my home and my mother I was 17 years old and by then it was already too late to file for a green card. But then I got into trouble."[37]

Indefinite Detention of Refugees Upsets Families and Disrupts the Lives of Children

Unadjusted refugees receive no warning before being placed in indefinite detention. Refugees are transported to detention facilities and then held until their status adjustment applications are processed and adjudicated. This application process can last from a few months to over a year. Separation from loved ones and the inability to provide financial support to one's family are the inevitable consequences of such detention. The results can be devastating, particularly for those detainees with young children.

Sebastian Nyembo has not spoken to his two children, ages seven and four, since he arrived at Eloy Detention Center in April 2009. His son has sickle cell anemia, which requires expensive medical care, but Sebastian has been unable to provide for the children since his detention. "My wife she been going through a lot," he said. "[The] house went for foreclosure."[38]

The apartment David Thomas shared with his girlfriend and children was also lost after his detention. The family was forced to move to Nevada, where they are living with an aunt. "We ... worry about day care and things the kids need," said David. David's girlfriend would like to go back to school, but must look for a job in order to support their kids. "I have to deal with that

[36] Human Rights Watch interview (name changed, E2), Eloy Detention Center, August 26, 2009.

[37] Human Rights Watch interview (name changed, Y3), York County Jail, October 14, 2009.

[38] Human Rights Watch interview (name changed, E6), Eloy Detention Center, August 26, 2009.

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> every day when I call," said David. "I killed my future and kinda killed her future, too."[39]

> Samuel Khater's five kids have been forced to live with his step-mother, who also has two children of her own. "Imagine putting that heavy weight [of raising children] on someone who is not even close to them. It don't feel right.... My son is 13. If he starts selling drugs, if he ends up in jail, whose fault is that? It's my fault. Almost five months I never see my kids. Inside of me I'm really crying."[40]

Immigration detention centers often serve several states, and are located in remote settings. This isolation effectively prohibits most families from visiting detained loved ones.

> Deus Rwelengira's two six-year-old children live with their mother in Utah. Deus, who is detained hundreds of miles away in Arizona, says he calls them often, but, "It is kind of stressful. They ask me the same questions: 'When are you coming home?'" None of his family has visited Deus since his detention. "I don't want them to waste the time to drive 12-15 hours for a 25 minute visit."[41]

> "I just worry [about] my kids," said Kye Jhin. Kye came to the US from Laos in 1998. His children, eight-year-old twins, were born in the US. "They don't know where I am. Last time I make a phone call to talk to my son. 'Daddy daddy I miss you come home quickly.' If they still [had] a mother [things would be different], but they don't have a mother. It is very hard, very difficult."[42]

In addition to the geographic remoteness of detention facilities, many refugees are embarrassed by their detention and are reluctant to subject their children to the ordeal of seeing a parent detained.

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[39] Human Rights Watch interview (name changed, E2), Eloy Detention Center, August 26, 2009.

[40] Human Rights Watch interview (name changed, F6), Florence Service Processing Center, August 25, 2009.

[41] Human Rights Watch interview (name changed, F7), Florence Service Processing Center, August 25, 2009.

[42] Human Rights Watch interview (name changed, F8), Florence Service Processing Center, August 25, 2009.

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> Kaipo Makan's nine-year-old son lives in California. He does not know that Makan is in detention. "He knows I'm away. He's a smart kid. But I didn't want to tell him. He tells his mom, 'Daddy has a secret.' But I don't want to tell him until I can tell him face to face."[43]

> Youssouf Dagano's three children are aged eight, four, and almost a year. For two years, he took care of the children while his fiancée worked. "I don't want them to visit. For them, dad is somewhere on vacation. I told [my fiancée], 'Tell them what you gotta tell them but don't tell them I'm in here.'"[44]

Detention Conditions Are Highly Stressful for Refugees

The psychological stress caused by separation from family, and by the detention itself, can be very damaging. Many refugees spoke about the humiliation of being treated indistinguishably from migrants who enter the US illegally. Detainees are upset that the same government that has selected them for admission to the US will then place them in indefinite federal detention. Although many of the refugees detained for failure to adjust have criminal convictions, they have already completed the punitive sentences imposed upon them by the criminal justice system before they are placed in immigration detention for failure to adjust. In many cases, the incarceration imposed for the refugees' criminal offenses is shorter than the time they spend in immigration detention.

> Adam Tombe represents a typical case: "I had an argument with my uncle. He called the police. I had a disorderly conduct charge and went to jail for one week. On my way out there was the ICE hold." [45]

> Kye Jhin served some time for a methamphetamine charge. "[The] judge told me, 'You can get released, report to a probation officer. Go to class and AA meetings.'" But instead of being allowed to serve his probation, Kye was taken to Florence. "The Immigration they, they say that the problem is that I did not adjust."[46]

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[43] Human Rights Watch interview (name changed, E1), Eloy Detention Center, August 26, 2009.

[44] Human Rights Watch interview (name changed, F5), Florence Service Processing Center, August 25, 2009.

[45] Human Rights Watch interview (name changed, E4), Eloy Detention Center, August 26, 2009.

[46] Human Rights Watch interview (name changed, F8), Florence Service Processing Center, August 25, 2009.

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The detention experience is worse for those who suffer from post-traumatic stress disorder caused by war.

> "In here I don't feel safe," said Deus Rwelengira, who is detained in Florence. "It's very stressful in here."[47]

> "They put us together with American criminals," said John Deng, a Sudanase refugee held at York County Prison. "People are always fighting. The American criminals don't like us. They tell us to go back to our country."[48]

> Joseph Kamara is being detained in Pinal County Jail. "I thought I had a good status," he said. "You claim that you're saving me from a war....ten in a cell and we uses one toilet. That alone is just really stressful for me."[49]

> "At least I was free [in Sudan]," said James Sasa. "You develop a different mentality in custody.... I was of much more better intelligence before incarceration. I have trouble concentrating; I lose focus.... We get this fear from the [guards'] uniforms ... you are inferior human for them."[50]

Detention is Indefinite and Administrative Delays are Common

Unlike criminal detention or probation, where individuals serve sentences of known duration, unadjusted refugees do not know what the length of their detention will be. While in detention, refugees must file a written application for adjustment of status, undergo a physical examination, and complete required vaccinations. They are then interviewed, after which their application to adjust is either granted or denied. If their green card is denied, hearings are initiated in immigration court to determine whether the refugee is removable—that is, whether they have forfeited their right to safety in the US and are eligible to be returned to their country of origin. Often, refugees are unaware of how their cases are proceeding and unsure of what the next steps in the process will be.

> Safi Watende is unsure what will happen to him next. "The good thing is when I went in front of the judge, he said he didn't find enough evidence to

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[47] Human Rights Watch interview (name changed, F7), Florence Service Processing Center, August 25, 2009.

[48] Human Rights Watch interview (name changed, Y1), York County Jail, October 14, 2009.

[49] Human Rights Watch interview (name changed, F1), Florence Service Processing Center, August 25, 2009.

[50] Human Rights Watch interview (name changed, F4), Florence Service Processing Center, August 25, 2009.

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> deport me.... I asked my deportation officer what will happen next, but he said, 'My job is only to help you get deported.'"[51]
>
> "I really don't know exactly what they are doing," said Kye Jhin. "You cannot talk to them."[52]
>
> David Thomas tries to help fellow detainees to better understand the legal process. "I spend most of my time in the library. Help people out. Some people don't even know what's going on."[53]

The adjustment application process is often drawn out and delayed. Many refugees struggle to find what can amount to hundreds of dollars to pay for the required physical examination and vaccinations.[54] Even if they find the money to pay for their medical expenses, the physical exams are not conducted at the detention sites, so detainees often wait weeks for transportation to the doctor.

> Samuel Khater has been in Florence for five months. He has been told that he needs to find $110 before he can have the required physical and immunization regimen. "How am I gonna get that money? That's the only thing I'm waiting for. I gotta find somebody [to pay]."[55]
>
> "I need to be taken to [the Phoenix suburb of] Chandler for a physical," said Kaipo Makan. "I've been here for three months and nothing's been done. I turned in my paperwork in June or early July."[56]
>
> "[It's the] same every day," said Kye Jhin. "Just waiting, waiting, waiting. I ask my deportation officer. She say same thing, just wait."[57]

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[51] Human Rights Watch interview (name changed, F2), Florence Service Processing Center, August 25, 2009.

[52] Human Rights Watch interview (name changed, F8), Florence Service Processing Center, August 25, 2009.

[53] Human Rights Watch interview (name changed, E2), Eloy Detention Center, August 26, 2009.

[54] Letter to Secretary of Homeland Security Janet Napolitano from 34 NGOs, including Human Rights Watch, June 18, 2009, page 1. On file with Human Rights Watch.

[55] Human Rights Watch interview (name changed, F6), Florence Service Processing Center, August 25, 2009.

[56] Human Rights Watch interview (name changed, E1), Eloy Detention Center, August 26, 2009.

[57] Human Rights Watch interview (name changed, F8), Florence Service Processing Center, August 25, 2009.

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Refugees who endure prolonged waiting in detention, far away from families and loved ones and uncertain of what will happen to them next, often lose the will to support their own cases—even when they are legally entitled to be released and remain in the US

> Deus Rwelengira arrived at an Arizona detention facility on April 10. His green card application was denied, and Deus does not know what will happen to him next. "It's very stressful in here. You don't get much information. I don't know what I'm fighting for. I'm just barely finding out what's going on with my case.... I talk to the lawyer—they tell me it's gonna be another eight months. I don't wanna fight. The outcome ... there's nothing guaranteed. The only thing I want is a green card and they denied me that."[58]

> "I'm a good person, a good hearted person," said Sebastian Nyembo. "But I'm gonna give up, I don't have no fight in me."[59]

Detention of Unadjusted Refugees is Unnecessarily Costly

> They spend taxpayers' money to hold us," said Kaipo Makan. "It makes no sense."[60]

Detention of unadjusted refugees is an expensive undertaking. In Arizona, detainees reported to Human Rights Watch that they were being kept in detention for periods ranging from five months to over a year. The fact of being an unadjusted refugee does not, by itself, mean that they automatically pose a danger to their communities or are a flight risk. Those who have prior criminal convictions serve their sentences for those crimes, in full, before they are detained by ICE for status adjustment purposes. Detaining refugees for indefinite periods of time and without the possibility of bond, is unnecessarily traumatizing for refugees and their families and unnecessarily costly for US taxpayers.[61]

> "They could make the process faster," said Kaipo Makan, who arrived at Eloy on June 5, 2009. "The hardest thing is being away from the people I love ...

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[58] Human Rights Watch interview (name changed, F7), Florence Service Processing Center, August 25, 2009.

[59] Human Rights Watch interview (name changed, E6), Eloy Detention Center, August 26, 2009.

[60] Human Rights Watch interview (name changed, E1), Eloy Detention Center, August 26, 2009.

[61] DHS reports that the cost of detention varies per facility, but can exceed $100 per day. The most expensive alternative to detention costs a mere $14 per day. U.S. Department of Homeland Security, "Ice Detention Reform: Principles and Next Steps," October 6, 2009, http://www.dhs.gov/xlibrary/assets/press_ice_detention_reform_fact_sheet.pdf (accessed October 23, 2009).

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[We] could [file the application] from outside. They could use electronic monitoring or something."[62]

"I don't know what's gonna happen now," said James Mwanza. "They're just keeping us in jail. I went to the library to check on [INA section] 209. It doesn't say that they can keep you in detention. They treat you like you're a criminal. They need to do something even if it's not for me."[63]

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[62] Human Rights Watch interview (name changed, E1), Eloy Detention Center, August 26, 2009.

[63] Human Rights Watch interview (name changed, E3), Eloy Detention Center, August 26, 2009.

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VII. Conclusion

Indefinite detention is an extreme and unnecessarily punitive measure to impose upon refugees who have merely failed to timely file for adjustment of legal status. The majority of resettled refugees interviewed by Human Rights Watch said that before their detention, they were unaware that filing for adjustment of status was mandatory. They were confused that the same government that had selected them to be brought to the safety of the United States would then disrupt their lives and families by detaining them indefinitely solely for the failure to submit paperwork.

Section 209(a) of the Immigration and Nationality Act is not just unnecessary, but harmful and wasteful. Because INA § 209(a) requires refugees to have acquired lawful permanent resident status after one year or face custody, while regulations prevent refugees from even applying for adjustment of status before the one year mark,[64] full compliance with the law is virtually impossible. Strict enforcement of the law would require ICE to detain *all* refugees resettled in the United States because none can have acquired lawful permanent resident status until after one year.

Some might argue that the current law should remain unchanged because it gives US immigration authorities an opportunity to examine refugees after one year to see if they should be removed because of criminal behavior. This report's central recommendation that refugees be admitted with lawful permanent resident status would still allow US immigration authorities to put criminals into removal proceedings. Under existing law, US immigration authorities have ample grounds for initiating removal proceedings against lawful permanent residents convicted of crimes and for detaining them during those proceedings.

This report urges a legislative change that would recognize the thorough vetting—including an admissibility determination sufficient to warrant the granting of lawful permanent resident status—that occurs prior to resettled refugees' arrival in the United States and during the asylum process for refugees who are granted asylum within the United States. The legislative change would fulfill the purpose of providing refugees with a durable solution to their plight by providing them with permanent resident status upon admission to the United States or upon the grant of asylum in the United States. In the meantime, ICE should cease its practice of detaining unadjusted refugees and permit them to file for adjustment from their own homes and communities.

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[64] 8 C.F.R. § 209.1.

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VIII. Acknowledgements

This report was researched and written by Janna Rearick, a University of Michigan Law School fellow at Human Rights Watch. The report was also researched and edited by Bill Frelick, refugee policy director. The report was edited by Iain Levine, director of the Program Office. Clive Baldwin, senior legal advisor, conducted the legal review. The report was also edited by Alison Parker, deputy director of the US Program and Zama Coursen-Neff, deputy director of the Children's Rights Division. Kara Hartzler of the Florence Immigrant and Refugee Rights Project, Melanie Nezer of the Hebrew Immigrant Aid Society, Susannah Vance and Leslie Vélez of the Lutheran Immigration and Refugee Service, and Helen Butcher provided additional comments. Valerie Kirkpatrick and Grace Choi provided editorial and production assistance.

Human Rights Watch expresses its sincere appreciation to the organizations who lent their support and expertise to this project. The Florence Immigrant and Refugee Rights Project was both an indispensable partner and a driving force behind this project, and continues to provide much-needed advocacy on this issue. The Lutheran Immigration and Refugee Service, the Pennsylvania Immigration Resource Center, and CAIR Coalition also provided invaluable assistance and dialogue.

In addition, we recognize our colleagues at The Hebrew Immigrant Aid Society, Amnesty International USA and other members of the NGO working group for their ongoing research, advocacy, and insight.

We would like to extend particular thanks to the Office of Policy at US Immigration and Customs Enforcement and to the ICE Phoenix and Philadelphia field offices for their assistance in arranging our facility visits and their willingness to accommodate our schedule and interview requirements. Andrew Strait at the Office of Policy, Phillip Crawford at Florence Service Processing Center, Marcos Charles at Eloy Detention Center, and Joseph Dunn at York County Prison were all exceedingly helpful. We also express our gratitude to facility officials and personnel at Florence Service Processing Center, Eloy Detention Center, Pinal County Adult Detention Center, and York County Prison.

Finally, Human Rights Watch thanks those resettled refugees who spoke to us from detention facilities in Arizona and Pennsylvania. All those who spoke with Human Rights Watch interviewers did so knowing that no personal benefit could accrue to them through the interview process, and shared their experiences motivated by the desire to contribute positively to the lives of future unadjusted, resettled refugees.

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Appendix: Human Rights Watch's Proposed Legislative Modifications to INA §§ 207-209

8 U.S.C.A. § 1157
INA 207

§ 1157 Annual admission of refugees and admission of emergency situation refugees

(a) Maximum number of admissions; increases for humanitarian concerns; allocations

...

(2) Except as provided in subsection (b) of this section, the number of refugees who may be admitted as lawful permanent residents under this section in any fiscal year after fiscal year 1982 shall be such number as the President determines, before the beginning of the fiscal year and after appropriate consultation, is justified by humanitarian concerns or is otherwise in the national interest.

...

(b) Determinations by President respecting number of admissions for humanitarian concerns

If the President determines, after appropriate consultation, that (1) an unforeseen emergency refugee situation exists, (2) the admission of certain refugees in response to the emergency refugee situation is justified by grave humanitarian concerns or is otherwise in the national interest, and (3) the admission to the United States of these refugees cannot be accomplished under subsection (a) of this section, the President may fix a number of refugees to be admitted to the United States as lawful permanent residents during the succeeding period (not to exceed twelve months) in response to the emergency refugee situation and such admissions shall be allocated among refugees of special humanitarian concern to the United States in accordance with a determination made by the President after the appropriate consultation provided under this subsection.

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(c) Admission by ~~Attorney General~~ the Secretary of Homeland Security[65] of refugees as lawful permanent residents; criteria; admission status of spouse or child; applicability of other statutory requirements; termination of refugee status of alien, spouse or child

(1) Subject to the numerical limitations established pursuant to subsections (a) and (b) of this section, the ~~Attorney General~~ Secretary of Homeland Security may, in the ~~Attorney General's~~ Secretary's discretion and pursuant to such regulations as the ~~Attorney General~~ Secretary may prescribe, admit any refugee who is not firmly resettled in any foreign country, is determined to be of special humanitarian concern to the United States, and is admissible (except as otherwise provided under paragraph (3)) under this chapter. Any alien so admitted shall, notwithstanding any numerical limitations specified in this Act, be regarded as a refugee lawfully admitted to the United States for permanent residence as of the date of such alien's arrival in the United States.[66]

(2)(A) A spouse or child (as defined in section 1101(b)(1)(A), (B), (C), (D), or (E) of this title) of any refugee who qualifies for admission as a lawful permanent resident under paragraph (1) shall, if not otherwise entitled to admission under paragraph (1) and if not a person described in the second sentence of section 1101(a)(42) of this title, be entitled to the same lawful permanent resident admission status as such refugee if accompanying, or following to join such refugee and if the spouse or child is admissible (except as otherwise provided under paragraph (3)) as an immigrant under this chapter. [67] Upon the spouse's or child's admission to the United States, such admission shall be charged against the numerical limitation established in accordance with the appropriate subsection under which the refugee's admission is charged.

(B) An unmarried alien who seeks to accompany, or follow to join, a refugee parent granted lawful permanent resident status ~~admission as a refugee~~ under this subsection, and who was under 21 years of age on the date on which such parent applied for refugee status under

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[65] The change from Attorney General to Secretary of Homeland Security is a technical amendment that reflects current usage and practice.

[66] Admitting refugees with lawful permanent resident status will benefit the refugees themselves, as they will no longer have to wait one year before adjusting their status, and will also benefit the Department of Homeland Security, by eliminating the processing of thousands of adjustment applications each year. Refugees already undergo inspection for admission as part of being examined and processed for refugee status and U.S. resettlement, and the subsequent examination and processing of adjustment applications is largely duplicative.

[67] This provision recognizes the special needs of refugees to reunify families that are often separated in the course of their persecution, flight from persecution, and onward movements. Even after adjusting to lawful permanent resident status, this provision will allow refugees to continue—as in present practice—to petition for relatives to join them using the I-730 form and not only the I-130 form used by lawful permanent residents that often results in long delays for family reunification.

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this section, shall continue to be classified as a child for purposes of this paragraph, if the alien attained 21 years of age after such application was filed but while it was pending.

(3) The provisions of paragraphs (4), (5), and (7)(A) of section 1182(a) of this title shall not be applicable to any alien seeking admission to the United States under this subsection, and the ~~Attorney General~~ Secretary of Homeland Security may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Any such waiver by the ~~Attorney General~~ Secretary shall be in writing and shall be granted only on an individual basis following an investigation. The ~~Attorney General~~ Secretary shall provide for the annual reporting to Congress of the number of waivers granted under this paragraph in the previous fiscal year and a summary of the reasons for granting such waivers.

~~(4) The refugee status of any alien (and of the spouse or child of the alien) may be terminated by the Attorney General pursuant to such regulations as the Attorney General may prescribe if the Attorney General determines that the alien was not in fact a refugee within the meaning of section 1101(a)(42) of this title at the time of the alien's admission.~~

(4) Aliens (and the spouses and children of such aliens) admitted as lawful permanent residents under paragraphs (c)(1) and (c)(2)(A) retain their protected status as refugees within the meaning of section1101(a)(42) until naturalization under section 1427 unless the Secretary of Homeland Security determines that[68]

(A) the alien was not in fact a refugee within the meaning of section 1101(a)(42) of this title at the time of the alien's admission;[69]

(B) the alien no longer meets the conditions described in section 1101(a)(42) of this title owing to a fundamental change in circumstances;[70]

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[68] This provision brings U.S. law into conformity with international refugee law, under which refugee status ceases only when the refugee "has acquired a new nationality, and enjoys the protection of his new nationality." (art. 1.C(3).) The Refugee Convention further holds that contracting states shall "make every effort to expedite naturalization proceedings" for refugees (art. 34). Ironically, although lawful permanent resident status is a necessary step toward naturalization, in certain instances it has had the anomalous effect of stripping individuals of protections they had enjoyed as refugees. (See Smriko v. Ashcroft, 387 F.3d 279 (3d Cir. 2004).)

[69] Under current law, this is the only basis upon which refugee status can be terminated in U.S. law. (INA § 207(c)(4)).

[70] This and the following subclauses makes the termination of refugee status the same for refugees whether they are admitted under INA section 207 or granted asylum under INA section 208 and brings the grounds of cessation and exclusion into conformity with international refugee law.

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(C) the alien has voluntarily availed himself or herself of the protection of the alien's country of nationality or, in the case of an alien having no nationality, the alien's country of last habitual residence, by returning to such country with permanent resident status or the reasonable possibility of obtaining such status with the same rights and obligations pertaining to other permanent residents of that country;[71]

(D) the alien has acquired a new nationality and enjoys the protection of the country of his or her new nationality;

(E) the alien was firmly resettled in another country prior to arriving in the United States;

(F) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

(G) the alien, ~~having~~ has been convicted by a final judgment of a particularly serious crime~~,~~ and constitutes a danger to the community of the United States;[72]

(H) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;

(I) there are reasonable grounds for regarding the alien as a danger to the security of the United States:

(i) the alien is described in subclause (I), (II), (III), (IV), or (VI) of section 1182(a)(3)(B)(i) of this title or section 1227(a)(4)(B) of this title (relating to terrorist activity), unless, in the case only of an alien described in subclause (IV) of section 1182(a)(3)(B)(i) of this title, the ~~Attorney General~~ Secretary of Homeland Security determines, in the ~~Attorney General's~~ Secretary's discretion, that there are not

[71] Casual returns to the country of origin, such as a brief family visit, would not forfeit refugee status. International refugee law holds that refugee status ceases only when the refugee has voluntarily "re-established himself" in the country he left (art. 1(c)(4) or has voluntarily re-availed himself of the protection of the country of his nationality.

[72] In *Forced Apart: Families Separated and Immigrants Harmed by United States Deportation Policy*, Human Rights Watch has previously called for this change in the INA, arguing the need for a two pronged test prior to removal of a refugee: first to examine both the seriousness of the crime committed and then to separately assess the future danger such refugee represents to the community of the United States. The July 2007 report is accessible at: http://www.hrw.org/en/reports/2007/07/16/forced-apart-0.

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reasonable grounds for regarding the alien as a danger to the security of the United States.

(5) Removal when refugee status is terminated
An alien described in subclauses (A)(B)(C)(D)(E)(F)(G)(H)(I) of paragraph (4) loses protected refugee status but retains lawful permanent resident status.[73] Such alien is then subject to any applicable grounds of inadmissibility or deportability under section 1182(a) and 1227(a) of this title, and the alien's removal or return shall be directed by the ~~Attorney General~~ Secretary of Homeland Security in accordance with sections 1229a and 1231 of this title.

...

8 U.S.C.A. § 1158
INA 208

§ 1158 Asylum

(a) Authority to apply for asylum

(1) In general

Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.

...

(b) Conditions for granting asylum

(1) In general

[73] Before initiating removal proceedings to send a lawful permanent resident refugee back to a country where he or she could face a risk of serious harm, the burden would be on the government to first terminate refugee status before initiating removal proceedings. Refugees should not lose the right not to be returned to persecution merely because they are also recognized as lawful permanent residents.

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(A) Eligibility
The Secretary of Homeland Security or the Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Secretary of Homeland Security or the Attorney General under this section if the Secretary of Homeland Security or the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title.

...

(2) Exceptions

(A) In general
Paragraph (1) shall not apply to an alien if the Attorney General determines that-
(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;
(ii) the alien, ~~having~~ has been convicted by a final judgment of a particularly serious crime~~;~~ and constitutes a danger to the community of the United States;[74]
(iii) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;
(iv) there are reasonable grounds for regarding the alien as a danger to the security of the United States;
(v) the alien is described in subclause (I), (II), (III), (IV), or (VI) of section 1182(a)(3)(B)(i) of this title or section 1227(a)(4)(B) of this title (relating to terrorist activity), unless, in the case only of an alien described in subclause (IV) of section 1182(a)(3)(B)(i) of this title, the Attorney General determines, in the Attorney General's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; or
(vi) the alien was firmly resettled in another country prior to arriving in the United States.

...

(3) Treatment of spouse and children

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[74] See Human Rights Watch, *Forced Apart: Families Separated and Immigrants Harmed by United States Deportation Policy*, accessible at: http://www.hrw.org/en/reports/2007/07/16/forced-apart-0.

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(A) In general
A spouse or child (as defined in section 1101(b)(1) (A), (B), (C), (D), or (E) of this title) of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, be granted the same status of refugee lawfully admitted to the United States for permanent residence as the alien granted asylum ~~the alien~~ if accompanying, or following to join, such alien.

(B) Continued classification of certain aliens as children
An unmarried alien who seeks to accompany, or follow to join, a parent granted asylum under this subsection, and who was under 21 years of age on the date on which such parent applied for asylum under this section, shall continue to be classified as a child for purposes of this paragraph and section 1159(b)(3) of this title, if the alien attained 21 years of age after such application was filed but while it was pending.

(c) Asylum status

(1) In general
~~In the case of~~ An alien granted asylum under subsection (b) of this section~~, the Attorney General~~ shall, notwithstanding any numerical limitation specified in this Act, be regarded as a refugee lawfully admitted to the United States for permanent residence as of the date on which such alien was granted asylum provided that such alien is admissible (except as otherwise provided under paragraph (2)[75] as an immigrant under this chapter at the time of granting of asylum.[76]

(2) The provisions of paragraphs (4), (5), and (7)(A) of section 1182(a) of this title shall not be applicable to any alien granted asylum in the United States under this subsection, and the Attorney General or the Secretary of Homeland Security may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Any such waiver by the Attorney General or the Secretary shall be in writing and shall be granted only on an individual basis following an investigation. The Attorney General or the Secretary shall provide for the annual reporting to Congress of the number of waivers granted under this paragraph in the previous fiscal year and a summary of the reasons for granting such waivers.

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[75] The essential language on waivers for certain grounds of inadmissibility is taken from INA section 209 (b)(5) and (c).

[76] This amendment establishes that whether refugees are inspected and admitted from overseas or inspected and granted asylum in the United States, all individuals recognized as refugees will enjoy the same rights and benefits.

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~~(A) shall not remove or return the alien to the alien's country of nationality or, in the case of a person having no nationality, the country of the alien's last habitual residence;~~

~~(B) shall authorize the alien to engage in employment in the United States and provide the alien with appropriate endorsement of that authorization; and~~

~~(C) may allow the alien to travel abroad with the prior consent of the Attorney General.~~

~~(2) Termination of asylum~~
~~Asylum granted under subsection (b) of this section does not convey a right to remain permanently in the United States, and may be terminated if the Attorney General determines that:~~

(3) Protected refugee status for aliens granted asylum
Aliens granted asylum under subsection (b) of this section (and the spouses and children of such alien) and admitted as lawful permanent residents under paragraph (c)(1) of this section retain their protected status as refugees within the meaning of section1101(a)(42) until naturalization under section 1427.

(4) Exceptions
The protected refugee status of an alien granted asylum and admitted as a lawful permanent resident may be terminated if the Attorney General determines that

(A) the alien was not in fact a refugee within the meaning of section 1101(a)(42) of this title at the time the alien was granted asylum;[77]

(B) the alien no longer meets the conditions described in subsection (b)(1) of this section owing to a fundamental change in circumstances;

(C) the alien meets a condition described in subsection (b)(2) of this section;

~~(D) the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the~~

[77] This additional ground for termination of refugee status, applicable to a person granted asylum, is intended to bring into conformity the provisions relating to termination of refugee status for admitted refugees under INA section 207 and for persons granted asylum under INA section 208.

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~~alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien is eligible to receive asylum or equivalent temporary protection;~~[78]

(D) the alien has voluntarily availed himself or herself of the protection of the alien's country of nationality or, in the case of an alien having no nationality, the alien's country of last habitual residence, by returning to such country with permanent resident status or the reasonable possibility of obtaining such status with the same rights and obligations pertaining to other permanent residents of that country;

(E) the alien has acquired a new nationality and enjoys the protection of the country of his or her new nationality.

(5) Removal when protected refugee status ~~asylum~~ is terminated
An alien described in paragraph (4) forfeits protected refugee status but retains lawful permanent resident status. Such alien is then subject to any applicable grounds of inadmissibility or deportability under section 1182(a) and 1227(a) of this title, and the alien's removal or return shall be directed by the Attorney General in accordance with sections 1229a and 1231 of this title.

8 U.S.C.A. § 1159

INA 209

§ 1159 Adjustment of status of refugees

~~(a) Criteria and procedures applicable for admission as immigrant; effect of adjustment~~

~~(1) Any alien who has been admitted to the United States under section 1157 of this title-~~

~~(A) whose admission has not been terminated by the Secretary of Homeland Security or the Attorney General pursuant to such regulations as the Secretary of Homeland Security or the Attorney General may prescribe,~~
~~(B) who has been physically present in the United States for at least one year,~~
~~and~~

[78] This subclause is deleted because it does not relate to cessation of refugee status in international refugee law and would more appropriately be a consideration at the time of deciding an asylum claim rather than during termination of the status of a person already recognized as a refugee, as suggested in INA section 208(a)(2)(A).

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~~(C) who has not acquired permanent resident status,~~

~~shall, at the end of such year period, return or be returned to the custody of the Department of Homeland Security for inspection and examination for admission to the United States as an immigrant in accordance with the provisions of sections 1225, 1229a, and 1231 of this title.~~

~~(2) Any alien who is found upon inspection and examination by an immigration officer pursuant to paragraph (1) or after a hearing before an immigration judge to be admissible (except as otherwise provided under subsection (c) of this section) as an immigrant under this chapter at the time of the alien's inspection and examination shall, notwithstanding any numerical limitation specified in this chapter, be regarded as lawfully admitted to the United States for permanent residence as of the date of such alien's arrival into the United States.~~

~~(b) Maximum number of adjustments; recordkeeping~~

~~The Secretary of Homeland Security or the Attorney General, in the Secretary's or the Attorney General's discretion and under such regulations as the Secretary or the Attorney General may prescribe, may adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum who-~~

~~(1) applies for such adjustment,~~
~~(2) has been physically present in the United States for at least one year after being granted asylum,~~
~~(3) continues to be a refugee within the meaning of section 1101(a)(42)(A) of this title or a spouse or child of such a refugee,~~
~~(4) is not firmly resettled in any foreign country, and~~
~~(5) is admissible (except as otherwise provided under subsection (c) of this section) as an immigrant under this chapter at the time of examination for adjustment of such alien.~~

~~Upon approval of an application under this subsection, the Secretary of Homeland Security or the Attorney General shall establish a record of the alien's admission for lawful permanent residence as of the date one year before the date of the approval of the application.~~

~~(c) Applicability of other Federal statutory requirements~~

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~~The provisions of paragraphs (4), (5), and (7)(A) of section 1182(a) of this title shall not be applicable to any alien seeking adjustment of status under this section, and the Secretary of Homeland Security or the Attorney General may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.~~

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Jailing Refugees

Arbitrary Detention of Refugees in the US Who Fail to Adjust to Permanent Resident Status

This report examines the situation of resettled refugees in the United States who are detained for failure to file for legal permanent resident status. U.S. law requires resettled refugees to file for adjustment to legal permanent resident status after living in the US for one year.

Although the law is not applied uniformly, Immigration and Customs Enforcement (ICE) interprets section 209(a) of the Immigration and Nationality Act as mandating detention of unadjusted refugees until they have filed for adjustment and their applications have been adjudicated. In Arizona, where Human Rights Watch conducted most of its interviews, refugees were sometimes detained for several months, and in some cases longer than a year, without being formally charged with any legal offense.

The majority of refugees interviewed by Human Rights Watch said that before their detention, they did not know they were required to file for adjustment of status. Most refugees believed that filing for adjustment of status was optional, and were unaware of any potential legal repercussions for failure to file after one year. ICE's prolonged detention of refugees is unnecessarily traumatic both to refugees and their families, and costly to the U.S. government. It appears to be arbitrary and unnecessary. The detained refugees do not pose a danger to their communities, nor are they a flight risk. Their detention separates them from spouses and children, interrupts their education, results in loss of jobs, and often re-traumatizes those who suffer from post-traumatic stress disorder.

This report urges changing the law that currently permits the detention of unadjusted refugees by granting legal permanent residence to all recognized refugees in the US, given that their cases have already been considered in depth. In the meantime, ICE should stop detaining unadjusted refugees and permit them to file for adjustment from their own homes and communities.

Many of the refugees interviewed by Human Rights Watch for this report were being detained at the Eloy Detention Center, located in a remote, desert environment about seven miles from the town of Eloy in Pinal County, Arizona.

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