



## Overview of Refugee Resettlement in the United States

by Kristie De Peña

---

March 2017

### *Executive Summary*

Refugee resettlement is an increasingly divisive issue in the United States. Our commitment to international laws and norms compels us as a nation to provide refuge to those fleeing the same war and violence we condemn, but national security concerns threaten the continuation of our global humanitarian responsibilities.

Many lawmakers have concerns about resettling Muslim populations of refugees coming from Middle Eastern countries—primarily Syria—due to their potential ties to terrorist organizations.

In order to thoughtfully address the national security concerns regarding refugee resettlement, it is important to understand who refugees are, how they are vetted prior to coming to the United States, who bears the financial responsibility of resettlement, and how states can ensure resettlement efforts do not impact the health and safety of their populations.

This report provides an overview and evaluation of controlling federal laws that guide current refugee resettlement processes in the United States, the federal screening process, the three main approaches to providing refugee resettlement assistance in the states, and an overview of state lawsuits refusing Syrian refugees and challenging refugee resettlement.

Recommendations for mitigating risk while maintaining a robust resettlement program include increased information-sharing between the federal government and states, and consideration of state recommendations when it comes to settling refugees. Although the federal government retains explicit control over refugee resettlement in every state, these are areas ripe for cooperative improvement.

## *Introduction*

Refugees are people who flee their homes in fear for their lives, seeking refuge in countries that provide opportunity, safety, and hope for a better future. Pursuant to United States law, refugees are individuals who: 1) are located outside of the United States; 2) are of special humanitarian concern to the United States; 3) can demonstrate that they were persecuted or that they fear persecution due their race, religion, nationality, political opinion, or because of their membership in a particular social group; 4) are not firmly resettled in another country; and, 5) who are otherwise admissible in the United States.<sup>1</sup>

More than 65.3 million people worldwide are forcibly displaced as a result of conflict and persecution, or natural disasters.<sup>2</sup> Two United Nations agencies, the UN High Commissioner for Refugees (UNHCR) and the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), are responsible for safeguarding the rights and well-being of these populations.

## *Refugees*

Across the globe, there are 128 countries with active refugee situations, totaling 21.3 million refugees—over half of whom are under the age of 18—that require resettlement assistance. Children constitute about half of the world’s refugees, and about half of all refugees are women. Approximately two-thirds of the world’s refugees have been in exile for more than five years.

The current refugee crisis in Syria is particularly devastating. Since 2011, 4.9 million Syrians registered as refugees with the United Nations High Commissioner for Refugees (UNHCR). That figure includes 2.1 million Syrians registered by UNHCR in Egypt, Iraq, Jordan, and Lebanon, 2.7 million registered in Turkey, and nearly 30,000 refugees registered in North Africa. Roughly 10 percent of the refugee population is living in refugee camps on the outskirts of safer cities and countries.<sup>3</sup>

Since the start of the conflict, more than 6.5 million people have been displaced inside Syria—meaning they are no longer living in their homes, but still reside in Syria—and 4.9 million have already sought temporary refuge in surrounding countries.<sup>4</sup> Displaced Syrians must escape the violence within Syria and the geographically intimidating borders surrounding the

---

<sup>1</sup> INA § 101(a)(42).

<sup>2</sup> United Nations. Refugees, The Numbers. Available at: <http://www.unhcr.org/en-us/figures-at-a-glance.html>.

<sup>3</sup> Syrian Regional Refugee Response. UNHCR. Available at: <http://data.unhcr.org/syrianrefugees/regional.php>.

<sup>4</sup> UN refugee chief warns Syria displacement set to rise. UNHCR. Available at: <http://www.unhcr.org/580e2cc84.html>.

country in order to leave and register as refugees. At this time, the United Nations Commissioner for Refugees expects the number of refugees and displaced persons inside Syria to grow.<sup>5</sup>

Even if an individual satisfies the legal criteria for status as a refugee, she is not eligible for refugee status if she 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.<sup>6</sup> The purpose of this exception is to prevent individuals previously in positions of power who directed persecutory actions against other individuals from seeking refuge from the current regime in power.

### *Asylees*

Refugees are a distinct population from asylees. An asylee is an alien in the United States or at a port of entry who is found to be unable or unwilling to return to his or her country of nationality, or is seeking the protection of that country because of persecution or a well-founded fear of persecution.<sup>7</sup>

Persecution or the fear thereof must be based on the individual's race, religion, nationality, membership in a particular social group, or political opinion. For example, the political opponent of a powerful regime who suffered imprisonment or threats due to his political beliefs is a good candidate for asylee status.

For persons with no nationality, the country of nationality is considered to be the country in which the alien last habitually resided. Asylees are eligible to adjust to lawful permanent resident status after one year of continuous presence in the United States.<sup>8</sup>

In FY 2013, 25,199 people were granted asylum either affirmatively or defensively. Sixty-one percent (15,266) were granted affirmative asylum—meaning the individual presented himself at a United States port of entry and presented evidence that he is seeking entry as an asylee.

Thirty-nine percent (9,933) were granted defensive asylum—meaning they entered the United States illegally, but presented evidence of a legitimate claim of asylum to pause their removal or deportation from the United States. An additional 13,026 individuals who resided outside the United States were approved for derivative status as immediate family members of principal asylum applicants.<sup>9</sup>

---

<sup>5</sup> UN refugee chief warns Syria displacement set to rise. UNHCR. Available at: <http://www.unhcr.org/580e2cc84.html>.

<sup>6</sup> INA § 101(a)(42).

<sup>7</sup> INA § 208.

<sup>8</sup> Asylee. USCIS. Last accessed 9 May 2016. Available at: <https://www.uscis.gov/tools/glossary/asylee>.

<sup>9</sup> Note that this number reflects travel documents issued to these family members, not their arrival to the United States.

Refugees must apply for permanent resident status one year after their admission into the United States. Oppositely, asylees are not required to apply for permanent resident status after being granted asylum for one year.

### *Federal Oversight of Refugees*

The Constitution of the United States grants the federal government exclusive power over immigration matters, including the power to “establish a uniform Rule of Naturalization.”<sup>10</sup>

For nearly fifty years, the United States has been bound by a series of international obligations concerning the resettlement of refugees, including the rights of refugees to choose their place of residence within their host country and to move freely within that country.<sup>11</sup>

Congress has enacted numerous humanitarian laws implementing the powers granted in the Constitution. The Supreme Court of the United States (SCOTUS) has repeatedly affirmed Congressional power in this area of the law in a number of cases surrounding the Immigration and Nationality Act (INA) and the Refugee Act of 1980, both of which regulate the admission and resettlement of refugees.

Countless provisions in these laws expand and clarify the powers of the federal government to regulate refugees,<sup>12</sup> admit refugees,<sup>13</sup> increase the number of refugees admitted for humanitarian reasons,<sup>14</sup> authorize programs for the domestic resettlement of and assistance for refugees,<sup>15</sup> and to fund the states or public or private nonprofits providing resettlement assistance in the states.<sup>16</sup>

### *Admissibility & Security Screening Process*

In order to apply for status as a refugee, an individual must receive a referral to the United States Refugees Admissions Program (USRAP) for consideration.<sup>17</sup> In consultation with Executive Branch officials, including the President,<sup>18</sup> USRAP establishes “Processing Priorities” that reflect the overall admissions levels and regional allocations of refugees for the upcoming fiscal year.

---

<sup>10</sup> U.S. Const. art. I, § 8.

<sup>11</sup> Legal Obligations of the United States Under Article 33 of the Refugee Convention. Available at: [https://www.justice.gov/sites/default/files/olc/opinions/1991/12/31/op-olc-v015-p0086\\_0.pdf](https://www.justice.gov/sites/default/files/olc/opinions/1991/12/31/op-olc-v015-p0086_0.pdf).

<sup>12</sup> 8 U.S. Code § 1158.

<sup>13</sup> 8 U.S. Code § 1157.

<sup>14</sup> 8 U.S. Code § 1157.

<sup>15</sup> 8 U.S. Code § 1522.

<sup>16</sup> 45 CFR Part 400 - REFUGEE RESETTLEMENT PROGRAM.

<sup>17</sup> “Refugees.” U.S. Citizenship and Immigration Services. Last accessed 28 April 2016. Available at: <https://www.uscis.gov/humanitarian/refugees-asylum/refugees>.

<sup>18</sup> INA § 207.

Refugee applicants are subject to intensive biographic and biometric security checks and medical screenings, coordinated by and through a number of federal law enforcement and intelligence communities.

According to the White House, “refugees undergo more rigorous screening than *anyone* else we allow into the United States.”<sup>19</sup>

The Department of State (DoS) coordinates and manages USRAP Resettlement Support Centers (RSCs) to carry out the administrative and processing functions—file preparation, data collection, and out-processing activities—during the refugee admission process.<sup>20</sup>

United States Citizenship and Immigration Services (USCIS) conducts interviews with all refugee applicants to determine their eligibility for refugee status, including whether they are credible, meet the definition of a refugee, and are otherwise lawfully admissible in the U.S.<sup>21</sup>

The initial security process is detailed by USCIS:<sup>22</sup>

- 1) UNHCR registration and resettlement referral, based on vulnerability and eligibility assessment;
- 2) USRAP RSC conduct pre-screening interview and initiates biographic screening;
- 3) USCIS review biographic results and conducts the eligibility interview; collects biometrics and initiates checks; requests additional background information, if needed; Adjudicates Form I-590; no case is approved until security check results are cleared;
- 4) RSC processes approved cases for travel, including medical exam and sponsorship by a domestic resettlement agency; and
- 5) CBP determines if the applicant is admissible to the United States and admits the applicable refugee into the United States.

Whether an applicant is ‘admissible’ is based on whether she is disqualified based on numerous grounds of inadmissibility, including health-related grounds,<sup>23</sup> criminal grounds,<sup>24</sup> the conviction

---

<sup>19</sup> “The Screening Process for Refugee Entry into the United States.” The White House. November 20, 2015. Available at: <https://www.whitehouse.gov/blog/2015/11/20/infographic-screening-process-refugee-entry-united-states>.

<sup>20</sup> “Refugee Processing and Security Screening.” U.S. Citizenship and Immigration Services. Last accessed 2 May 2016. Available at: <https://www.uscis.gov/refugeescreening>.

<sup>21</sup> “Refugee Processing and Security Screening.” U.S. Citizenship and Immigration Services. Last accessed 2 May 2016. Available at: <https://www.uscis.gov/refugeescreening>.

<sup>22</sup> “Refugee Processing and Security Screening.” U.S. Citizenship and Immigration Services. Last accessed 2 May 2016. Available at: <https://www.uscis.gov/refugeescreening>.

<sup>23</sup> INA § 212 (a)(1).

<sup>24</sup> INA § 212 (a)(2).

of two or more offenses,<sup>25</sup> a reasonable belief that the individual is involved in drug trafficking,<sup>26</sup> or prostitution,<sup>27</sup> if the individual commits or conspires to commit human trafficking,<sup>28</sup> and money laundering.<sup>29</sup>

Generally, a foreign national is not admissible if she is deemed a “public charge,”<sup>30</sup> was previously present in the United States without being paroled or admitted,<sup>31</sup> committed fraud or misrepresentation,<sup>32</sup> was previously removed,<sup>33</sup> or does not have proper documentation.<sup>34</sup> Miscellaneous grounds of inadmissibility include practicing polygamists, international child abduction, unlawful voters, those ineligible for citizenship, and foreign nationals who evaded the draft.<sup>35</sup>

Refugees and asylees are often exempt from certain grounds of inadmissibility, for example, allowing them to receive federal funding upon arrival. In the interest of national security, however, certain grounds of inadmissibility cannot be waived. These grounds include: controlled substance trafficking, espionage, sabotage, illegal export of goods or sensitive information, attempting to overthrow the government, terrorist activities, actions resulting in adverse foreign policy impacts, and participation in Nazi persecutions or genocide.<sup>36</sup>

At a high level, two types of security checks are conducted during overseas refugee processing: 1) the security advisory opinion (SAO), and the interagency check (IAC).<sup>37</sup>

All refugees are screened at a minimum by the National Counterterrorism Center (NCC), the Federal Bureau of Investigation (FBI), the Department of Defense (DoD), the Department of State (DoS), and the Customs and Border Patrol (CBP). Syrian refugees must also complete the “Enhanced Syrian Review.” The additional review was added by caseworkers at USCIS to assess each Syrian case and select cases for processing through the Fraud Detection and National Security Directorate office.

---

<sup>25</sup> INA § 212 (a)(2)(B).

<sup>26</sup> INA § 212 (a)(2)(C).

<sup>27</sup> INA § 212 (a)(2)(D).

<sup>28</sup> INA § 212 (a)(2)(H).

<sup>29</sup> INA § 212 (a)(2)(I).

<sup>30</sup> INA § 212 (a)(4).

<sup>31</sup> INA § 212 (a)(2)(I).

<sup>32</sup> INA § 212 (a)(4).

<sup>33</sup> INA § 212 (a)(6).

<sup>34</sup> INA § 212 (a)(6)(C).

<sup>35</sup> INA § 212 (a)(9).

<sup>36</sup> INA § 212 (a).

<sup>37</sup> “Expedited Protection and Resettlement of Refugees.” U.S. Department of State. Last accessed 2 May 2016. Available at: <http://www.state.gov/j/prm/releases/factsheets/2011/181021.htm>.

In 2010, the IAC process was expanded even further with support from more agencies. In 2015, the partners participating in the vetting process launched IAC recurrent vetting to bolster the already rigorous system still more. Now, USCIS partners with offices to run pilot programs to test new screening checks, including social media vetting.

Refugees then undergo multiple interviews and more checks. The interviews are conducted by highly trained officers, who, in addition to all of the standard training required of a Citizenship and Immigration Services (CIS) officer, must also undergo months of specialized Refugee Corps training. Before conducting any interviews, officers must take pre-departure training to prepare for the specific country and population whom they will interview.

Only if it is established that a refugee is who she says she is, and poses no security risk, is she allowed into the country. The refugee bears the burden to prove she is not a threat; no person is entitled entry into the United States, regardless of their situation.

If at any stage in admittance or adjustment of status an adjudicating officer identifies one or more national security indicator(s) or concerns unknown at the time of the refugee grant, the officer must refer to USCIS guidance on disposition of national security cases, including Terrorist Related Inadmissibility Grounds (TRIG) issues for disposition.<sup>38</sup>

### *Medical Screenings*

Two major categories of federal refugee health guidelines exist, published by the Centers for Disease Control (CDC).<sup>39</sup> Overseas medical screening guidelines provide panel physicians guidance on treatments for refugees in the days or weeks prior to departure. U.S.-bound refugees receive vaccinations,<sup>40</sup> and based on their origin, a slew of treatments for presumptive parasitic infections they may have acquired.<sup>41</sup> Particularly given the grim conditions of refugees camps and the less than ideal sanitary conditions, these treatments are extremely necessary.

Facilitating these initial overseas medical screenings are the ‘health profiles’ created by the federal government that provide key health and cultural information for specific refugee groups resettling in the United States. These profiles were created by the World Health Organization, International Organization for Migration, the United Nations High Commissioner for Refugees,

---

<sup>38</sup> USCIS Policy Manual, Volume 7 - Adjustment of Status, Part L - Refugee Adjustment, Chapter 3 - Admissibility and Waiver Requirements. Last updated October 26, 2016. Available at:

<https://www.uscis.gov/policymanual/Print/PolicyManual-Volume7-PartL-Chapter3.html>.

<sup>39</sup> Centers for Disease Control. Refugee Health Guidelines. Available at:

<http://www.cdc.gov/immigrantrefugeehealth/guidelines/refugee-guidelines.html>.

<sup>40</sup> Centers for Disease Control. Vaccination Program for U.S.-bound Refugees. Available at:

<http://www.cdc.gov/immigrantrefugeehealth/guidelines/overseas/interventions/immunizations-schedules.html>.

<sup>41</sup> Centers for Disease Control. Treatment Schedules for Presumptive Parasitic Infections. Available at:

<http://www.cdc.gov/immigrantrefugeehealth/guidelines/overseas/interventions/interventions.html>.

and DoS to help agencies, clinicians, and public health providers focus on the specific needs of certain populations.<sup>42</sup>

Once in the United States, medical providers conduct additional domestic medical screenings in the first 30 to 90 days for every refugee, covering general medical histories, HIV and hepatitis screenings, mental health screenings, testing for sexually transmitted diseases, administering additional immunizations, intestinal parasite and lead screenings, and providing nutrition and growth guidelines.<sup>43</sup> Regardless of the provider, the federal government reimburses all medical screening costs.<sup>44</sup>

Pursuant to the Refugee Act of 1980, the CDC is required to provide for the identification of a refugee determined to have a medical condition affecting the public health that requires treatment, and to notify state and local health officials at the resettlement destination of the refugee's condition, treatment plan, applicable medical records, and then to monitor the refugee to ensure he has received timely and completely treatment.<sup>45</sup>

Any immigrant may be deemed inadmissible, subject to waiver, based on health-related grounds, including refugees who have a communicable disease of public health significance, who fail to present vaccination records and refuse vaccinations, who have or have had physical or mental disorders with harmful behavior, and who are drug abusers or addicts.

### *Refugee Resettlement Structures in the States*

Once a refugee is deemed admissible and is screened, the federal government works with state refugee resettlement organizations to resettle refugees.

There are three main approaches to providing refugee resettlement assistance: 1) a state-administered program, 2) a Wilson/Fish (WF) program, and 3) the public-private

---

<sup>42</sup> Centers for Disease Control. Refugee Health Profiles. Available at: <http://www.cdc.gov/immigrantrefugeehealth/profiles/index.html>.

<sup>43</sup> Centers for Disease Control. Domestic Refugee Health Program. Available at: <http://www.cdc.gov/immigrantrefugeehealth/guidelines/domestic-refugee-questions.html>.

<sup>44</sup> Office of Refugee Resettlement. Cash and Medical Assistance. Available at: <http://www.acf.hhs.gov/orr/programs/cma/about>.

<sup>45</sup> Centers for Disease Control. Domestic Refugee Health Program. Available at: <http://www.cdc.gov/immigrantrefugeehealth/guidelines/domestic-refugee-questions.html>.

partnership (PPP) model.<sup>46</sup> Regardless of how a state structures resettlement, they receive significant federal funding.<sup>47</sup>

Most states are enrolled in the state-administered refugee resettlement program, where they are reimbursed for the full costs of their refugee cash assistance (RCA) and refugee medical assistance (RMA) programs.

The Cash and Medical Assistance (CMA) Program is part of U.S. Department of Health and Human Services Office of Refugee Resettlement's (ORR) Division of Refugee Assistance, and reimburses states for 100 percent of the services provided to refugees, as well as associated administrative costs. States also qualify for additional discretionary grants for different social services, and employment-related services.<sup>48</sup>

Alternately, fourteen states—Alaska, Alabama, Colorado, Idaho, Kansas, Kentucky, Louisiana, Massachusetts, New Jersey, North Dakota, South Dakota, Tennessee, and Vermont—chose to participate in the Wilson/Fish (WF) program. WF programs use voluntary agencies (VolAgs) and other nonprofits to act as “state designees” in order to resettle refugees without significant administrative involvement by the state. In 1984, Congress amended the INA to allow states the ability to establish an alternative to traditional state-administered refugee assistance programs through integrated cash and medical assistance and services, like employment, English as a Second Language (ESL), and other social services.

WF resettlement programs are distinguishable from state-administered programs on a number of funding grounds. First, WF states may choose to administer Temporary Assistance for Needy Families (TANF) benefits instead of RCA in cases where refugees may benefit. WF status often provides refugees all of their resettlement help from ‘one stop shop’ agencies that administer cash assistance, case management, and employment services for refugees in one geographical location.<sup>49</sup> Furthermore, WF programs creatively utilize cash incentives, like bonuses, that are tied directly to the achievement of the employment goals outlined in the refugee’s self-sufficiency plan.

---

<sup>46</sup> The Voluntary Agency Matching Grant Program is also an alternative to traditional state-administered RCA programs and other public cash assistance. Under MG Program, which has sites in most states, voluntary resettlement agencies assume responsibility for resettling refugees and helping them become self-sufficient. These are the same agencies that have cooperative agreements with the Department of State. Under the MG Program, the VolAgs provide a \$1 match for every \$2 federal dollars. Federal funding is drawn from transitional and medical services funds, as determined by the ORR Director.

<sup>47</sup> Office of Refugee Resettlement. Cash and Medical Assistance. Available at: <http://www.acf.hhs.gov/orr/programs/cma/about>.

<sup>48</sup> Office of Refugee Resettlement. Cash and Medical Assistance. Available at: <http://www.acf.hhs.gov/orr/programs/cma/about>.

<sup>49</sup> Office of Refugee Resettlement. Wilson/Fish. Available at: <http://www.acf.hhs.gov/orr/programs/wilson-fish>.

States participating in the WF alternative program are still governed and funded by the federal government, under the purview of the ORR.<sup>50</sup>

Rounding out the rest of the nation, five states—Maryland, Minnesota, Oklahoma, Oregon, and Texas—support their refugees using a public-private partnership (PPP) model, pursuant to another provision of the INA. PPP allows states to establish an RCA program between the local resettlement agencies and that state to administer federal funds. Payment levels under the public/private partnership are often higher than under a state-administered program, perhaps since the model does not include RMA funding.<sup>51</sup>

Interestingly, Wyoming currently has no resettlement program whatsoever, although refugees still resettle in the state.<sup>52</sup>

Once in the United States, refugees are entitled to a number of benefits, including:

- Indefinite status granted upon admission, and work authorization incident to status;
- Derivatives (spouse, unmarried children under the age of 21) may accompany the principal refugee;
- Social and health benefits;
- Ability to apply for adjustment of status after one year, and become a legal permanent resident (LPR); and
- Eligibility for naturalization after five years.

Specifically, refugees are eligible to receive from the federal government's ORR Refugee Social Services, supporting employability services, interpretation and translation assistance, and daycare for children. The Target Assistance Program (TAG) helps refugees obtain employment within one year's participation in the program, in order to achieve self-sufficiency. ORR provides funding through formula and discretionary grants directly to states.

### ***State Lawsuits Refusing Refugees***

Resettlement programs are meant to resettle refugees, and the legal structure of each of the programs supports this goal. Regardless of the resettlement structure, the federal government retains the power to designate a private entity to continue to resettle refugees in every state.

---

<sup>50</sup> 8 U.S. Code § 1521.

<sup>51</sup> Andorro Bruno. *U.S. Refugee Resettlement*. January 2011. Available at: <https://books.google.com/books?id=EpRarm7dPAC&pg=PA13&lpg=PA13&dq=PPP+refugee+model&source=bl&ots=H7pTIyQj3V&sig=hrHSezZNjA9c7vGOI2KQLZYqER8&hl=en&sa=X&ved=0ahUKEwj68qXq7LLPAhUBcT4KHcSaC7QQ6AEIOjAE#v=onepage&q=PPP%20refugee%20model&f=false>.

<sup>52</sup> Casey Tolan. These two states haven't accepted any new refugees in years. *Fusion*. September 2015. Available at: <http://fusion.net/story/198467/refugees-wyoming-montana/>.

However, ORR must, to the extent possible, try to resettle refugees in places where they are welcome and where they will not be a burden on state resources, and the INA provides that the federal government should try to take into account recommendations of the state.<sup>53</sup>

The Supreme Court has acknowledged the need and right of states to regulate immigration-related matters that fall under their traditional police powers, provided they do not conflict with federal immigration law.<sup>54</sup> States should be empowered to explore and experiment with policy that complements and improves federal policy at the local level.

States have a crucial role in refugee resettlement. However, a number of recent legal challenges meant to keep refugees—specifically Syrian refugees—from being resettled in *any* state without jumping through hurdles are designed only to slow or stop the process of resettlement.

### *Gubernatorial Directive Excluding Syrian Refugees*

Last year, Indiana Governor Mike Pence followed up the directive by instructing state employees to withhold the funding owed to the community-based organizations working with refugees in Indiana. When the state refugee resettlement agency, Exodus Refugee Immigration, Inc. attempted to resettle a Syrian family in Indiana, state officials informed Exodus that only non-Syrian refugees were welcome in the state, so they would not receive federal funding for Syrian refugees who were not Syrian nationals.

In response, Exodus filed suit against the Governor, presenting strong evidence supporting its claims that Indiana was promulgating discriminatory practices based on national origin and immigration classification, since Indiana is seeking to exclude resettling *only* Syrian refugees.

Right out of the gate, they face a huge legal hurdle. The Refugee Act of 1980 requires that aid must be provided to all refugees, regardless of their race, religion, nationality, sex, or political opinion, consistent with all federal regulations confirming that the Refugee Act's nondiscrimination provision governs state use of federal funds.

In a recent decision, *Exodus Refugee Immigration, Inc. v. Mike Pence, et. al.*, Judge Richard Posner struck down a directive issued by Governor Pence to state employees to withhold funding owed to community-based organizations trying to resettle Syrian refugees in the state.<sup>55</sup> The judge likened the exclusion of Syrian refugees based on nationality to the exclusion of black people based on race.

---

<sup>53</sup> 8 U.S. Code § 1522.

<sup>54</sup> *De Canas v. Bica*, 424 U.S. 351 (1976).

<sup>55</sup> *Exodus Refugee Immigration, Inc., v. Mike Pence, et. al.* Available at: <http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2016/D10-03/C:16-1509:J:Posner:aut:T:fnOp:N:1838881:S:0>.

## *Consultation Clause Cause of Action*

Last November, Texas Governor Greg Abbott announced that his state would no longer resettle Syrian refugees. The Texas Health and Human Services Commission (HHSC) then sued<sup>56</sup> the federal government and the International Rescue Committee, a nonprofit refugee resettlement group in Texas, alleging their failure to provide adequate information about a refugee family—two parents, two children, and their grandparents—looking forward to a safe life in Dallas.<sup>57</sup>

Texas claimed that resettling the family violated the Refugee Act because the federal government did not consult with the state or provide adequate information about the family, thereby violating the consultation clause.

Consultation is required between the federal and state governments regarding refugees. The ‘consultation clause’ of the Immigration and Nationality Act requires the Director of the Office of Refugee Resettlement to consult at least quarterly with local governments about the resettlement process and intended distribution of refugees. The federal government must also, to the extent possible, take into account the state’s recommendations about where in the state to resettle refugees.<sup>58</sup>

The United States District Court for the Northern District of Texas dismissed the suit, finding that Texas lacked a cause of action to enforce the Refugee Act’s advance consultation requirement.<sup>59</sup> Judge David Godbey, anticipating future suits alleging the failure of the federal government to properly consult with the states, wrote that the consultation language of the Refugee Act is merely “advisory.”

The House Committee on the Judiciary, when considering an 1986 amendment to the Refugee Act, noted that the consultation requirement is “not intended to give States and localities any veto power over refugee placement decisions, but rather to ensure their input into the process and to improve their resettlement planning capacity.”<sup>60</sup>

---

<sup>56</sup> *Texas Health and Human Services Commission v. United States, et.al.* Available at: [https://www.aclu.org/sites/default/files/field\\_document/tx\\_v\\_us\\_and\\_irc\\_order\\_on\\_mtds.pdf](https://www.aclu.org/sites/default/files/field_document/tx_v_us_and_irc_order_on_mtds.pdf).

<sup>57</sup> Diane Solis. “State of Texas pulls request for temporary halt of Syrian refugees, but wants hearing.” December 4, 2015. Available at: <http://www.dallasnews.com/news/politics/2015/12/04/opposition-to-halt-filed-in-dallas-federal-court-on-behalf-of-syrian-refugees>.

<sup>58</sup> 8 U.S. Code § 1522.

<sup>59</sup> ACLU Comment on Texas Refugee Resettlement Ruling. June 16, 2016. Available at: <https://www.aclu.org/news/aclu-comment-texas-refugee-resettlement-ruling>.

<sup>60</sup> House Committee on the Judiciary. 1986 Amendment to the Refugee Act. Available at: <https://www.gpo.gov/fdsys/pkg/STATUTE-99/content-detail.html>.

## *10th Amendment*

The Tennessee legislature directed the Attorney General (AG) of Tennessee to file the first lawsuit based on a 10th Amendment argument, which states that the federal government possesses only powers delegated to it by the U.S. Constitution, thereby reserving all other powers for the states.

In July 2016, however, the AG passed on filing the lawsuit challenging the federal government's control over refugee resettlement, suggesting that the 10th Amendment challenges are unlikely to provide a viable basis for legal action. The legislature is authorized to choose outside counsel to pursue the lawsuit, but they haven't taken any action to date.<sup>61</sup>

## *Health and Safety*

Early last year, Alabama Governor Robert Bentley sued the federal government, citing Alabama's need to 'track' refugees, to ensure they do not harbor terrorist ideology or communicable diseases, rendering medical screenings a patsy for states attempting to block refugees for the "health and safety of the community."<sup>62</sup>

Requiring state-based medical screenings to track refugees is unnecessarily duplicative, given that the federal government already institutes rigorous medical screening requirements for U.S.-bound refugees.

## *Conclusion*

Interrupting resettlement on any scale runs counter to our traditions as a welcoming nation built by immigrants. The ultimate outcome of a state's refusal to resettle Syrian refugees is the eventual resettlement of refugees in a neighboring state. Rather than try to force the hand of the federal government to resettle refugees in Oklahoma instead of Texas, the ideal outcome is to improve the efficacy of background checks and resettlement efforts.

The federal government has a constitutional responsibility to ensure that refugees vetted for entrance into the United States have a safe place to call home. When states voice objections to refugee resettlement, the federal government should pay attention. It's possible to acknowledge that there are advantages to resettling refugees in places where they are more likely to be welcomed and supported while refusing to credit the legal posturing of abject state governments.

---

<sup>61</sup> Joel Ebert. "AG Passes on lawsuit, but state presses on." *The Tennessean*. July 6, 2016. Available at: <http://www.tennessean.com/story/news/politics/2016/07/06/ag-passes-refugee-lawsuit-but-state-presses/86773822/>.

<sup>62</sup> Case 2:16-cv-00029-JEO Document 1 Filed 01/07/16. Available at: <http://governor.alabama.gov/assets/2016/01/1-Complaint-Ala-v.-USA-Refugee-Act-1.7.16.pdf>.