

Statement of
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Before the

United States House of Representatives
Committee on the Judiciary
Subcommittee on Immigration and Claims

H.R. 2431

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Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to appear before you today to present the views of the Immigration and Naturalization Service (INS) concerning the immigration measures in H.R. 2431, The Freedom from Religious Persecution Act of 1997. The INS' views on the bill were reflected in Secretary Albright's October 7th letter to the House International Relations Committee. That letter noted a number of serious defects in the bill, which if unchanged would result in the President's senior advisors recommending that the President veto the bill.

Today, I would like to outline our principal objections to Sections 3 and 9 of the bill and explain why those provisions are unnecessary to achieving the goals of the bill's supporters -- ensuring that the US government appropriately focuses on the tragedy of religious persecution and ensures that its system for identifying and offering protection to the victims of religious persecution is fair and effective. I will also discuss some of the steps the INS has taken to focus its asylum officer corps on the issue.

As a fundamental principle, the INS is committed to ensuring that it carefully and fairly analyzes and adjudicates the asylum requests of persons who have suffered or fear persecution on account of religion. We do not believe the bill in its current form would improve the current process for identifying and protecting those persons. The proposed changes to the asylum and refugee procedures would create troubling disparities between certain victims of religious persecution and others who are refugees under

the definition. The changes also threaten to unravel many recent reforms to our domestic asylum system. Finally, we oppose the immigration measures because we have found that the current system is fair and effective. In the open dialogue that the INS strives to maintain with members of the private bar and non-governmental representatives, no one has indicated to us the need for additional and different procedures for this category of asylum and refugee claimants.

Please allow me to discuss in greater detail the immigration provisions of the bill. We believe that the following provisions are unnecessary and unduly burdensome: (1) the credible fear standard in expedited removal; (2) the expanded procedures for denying or referring a claim based on Category 1 or Category 2 religious persecution; and (3) the additional training and reporting requirements imposed on the Department of Justice. In addition, the bill appears to establish a

rigid definition of religious persecution that is inconsistent with the flexible case-by-case interpretation of persecution used in determining asylum and refugee eligibility.

Section 3 of the bill establishes a definition for "religious persecution" and provides examples including "abduction, enslavement, killing, imprisonment, forced mass resettlement, rape, or crucifixion or other forms of torture." This rigid definition is inconsistent with the flexible one that is used in the adjudication of individual refugee and asylum cases. In these contexts, whether certain events constitute persecution is resolved on a case-by-case basis. We are concerned that the new definition of religious persecution included in this legislation will create confusion about how to analyze the issue of persecution in the minds of refugee and asylum adjudicators and applicants.

Section 9 (a) of the bill would modify the expedited removal process created by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (section 235 (b) of the INA). Section 9 (a) would require that any alien who can credibly claim membership in a persecuted religious group which the Director of the Office of Religious Persecution Monitoring has found to be subject to Category 1 or Category 2 persecution, shall be considered to have a credible fear of persecution. We believe there is no need to create a blanket presumption of credible fear eligibility for specified groups of people who are placed in expedited removal proceedings. Under existing law, the INS inspectors read a statement to all persons subject to expedited removal explaining the process and ask three specific questions in each inspection to learn whether the person subject to expedited removal has a fear or concern of return to his home country. The INS inspectors who determine admissibility refer to an asylum officer all persons who indicate any fear or concern about returning to their home country or who indicate an intention to apply for asylum. An asylum officer interviews applicants to evaluate the credibility of the applicant and eligibility under the standard. Asylum officers are instructed that the credible fear standard is a low-threshold screening tool. Since its implementation on April 1, 1997, the great majority of the relatively small number of persons who assert a fear of return have met the credible fear standard and have been permitted to present their asylum claims before an immigration judge. In our view, therefore, any person who appears credible and could establish membership in a religious group in a Category 1 or Category 2 country would certainly be found to have met the credible fear standard without the enactment of this section. Accordingly, we believe that the provision is unnecessary.

Section 9 (b) of the bill would require the Attorney General to establish a training program for immigration officers. The INS already provides significant training to its asylum officers on all issues relating to the adjudication of asylum claims. Specialized training of the asylum corps has been a linchpin of the asylum program since its inception in 1991. The asylum program has developed a new curriculum for the asylum officer corps under the auspices of the INS training program. The training program is extensive and

covers a wide-range of topics, including: international human rights and international refugee law; US asylum law, regulations, and policies; conditions in countries of origin; interviewing techniques; and cross-cultural interviewing and sensitivity. The legal training covers all aspects of the refugee definition, including religious persecution. In addition, all eight asylum offices have conducted separate training sessions on the topic of religious persecution during the past year. Beginning in Fiscal Year 1998, Asylum Officers will receive additional training on interviewing victims of torture. This training is beneficial in assisting officers to recognize victims of torture and to elicit asylum claims from these individuals. We believe the INS has appropriately focused on the need for training on this issue and there is no need to include statutory language to require it.

Section 9 (c) of the bill would create "special rules" for Category 1 or 2 claims which the INS denies or refers to an immigration judge or which an immigration judge denies. These procedures to some degree imitate the

pre-reform system the Justice Department improved and streamlined in 1994. The INS consciously abandoned the procedure for giving asylum applicants a letter detailing in great specificity the deficiencies in the application. The INS, after consulting with many interested parties within and outside of the government, reasoned that it should focus its efforts on expeditiously granting cases of clearly eligible applicants and referring the remaining cases for a de novo adjudication by an immigration judge. The streamlining measures the INS adopted in January 1995 have been widely praised. Asylum reform has been effective because the agency considered how to adjudicate fairly and expeditiously the large number of claims it receives and how to reduce the number of frivolous applications. The INS eliminated the immediate promise of employment authorization to persons who apply for asylum; authorizing it only for those who are granted asylum or whose claims remain undecided after 180 days.

The special rules mandated by the bill would greatly slow down the adjudication of the asylum officer cases it covers. In most cases that would result in employment authorization being required by the passage of time which could lead to an increase in false claims. Timeliness in adjudication and eliminating the incentive to file a false claim to gain work authorization were major problems successfully addressed in 1995 asylum reform. Since the special rules would significantly burden the INS asylum officers and could increase the potential for false claims, the INS strongly opposes the provision.

In addition, this portion of the bill would require that, in cases denied by an immigration judge, the INS would provide materials and explanations to the alien to support the immigration judge's decision. INS specifically opposes the burden that would be imposed on the agency in this provision since the provision fails to recognize the distinction between cases adjudicated by INS and those adjudicated by an immigration judge. Any supporting materials and explanations should come from the responsible adjudicator.

Sections 9 (e), (g), and (h) of the bill would affect the refugee resettlement priorities and the annual consultation process relative to refugee admissions. The Department of Justice shares the view of the Department of State that these provisions are unnecessary.

Because the bill as introduced would undermine the success we have had in our affirmative asylum process; create blanket eligibility presumptions for certain asylum claimants; and create confusion regarding the definition of religious persecution, the Justice Department is opposed to enactment of this

measure.

Thank you for the opportunity to address the immigration measures contained in the Wolf-Specter bill. I would be pleased to answer any questions.