



January 19, 2016

Re: **ACLU Opposes the “American Security Against Foreign Enemies Act of 2015” (H.R. 4038)**

Dear Senator:

On behalf of the American Civil Liberties Union (ACLU), we strongly urge you to oppose H.R. 4038, the “American Security Against Foreign Enemies Act of 2015,” or “American SAFE Act of 2015.”

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I. **H.R. 4038 creates bureaucratic obstacles to end U.S. acceptance of refugees from Syria and Iraq without any demonstrated public-safety benefit.**

H.R. 4038 creates a bureaucratic-review process that would effectively shut down resettlement of refugees from Syria and Iraq. The bill mandates new certifications and undefined background investigations for all refugees who are nationals or residents of Iraq or Syria, and many who are not. Under the American SAFE Act, all refugees deemed to originate from Iraq or Syria - including anyone who has been in either country at any time in the last four and a half years - could only be admitted to the U.S. after the Director of the Federal Bureau of Investigation certifies that the refugee has cleared an additional background investigation, on top of what the Attorney General testified is “significant and robust” security screening.¹ In addition, the bill would mire the refugee process in additional bureaucratic red tape by requiring that the Secretary of Homeland Security, Director of the Federal Bureau of Investigation, and the Director of National Intelligence unanimously certify that a potential refugee – who has already gone through an extensive security screening² – is not a threat to the U.S. There has been no need expressed by federal intelligence or law-enforcement agencies for such an unprecedented clearance process, which could take years to operationalize and would add no public-safety benefit for the U.S. population. In short, H.R. 4038 would bring the U.S. resettlement process of Syrian and Iraqi refugees to a grinding halt.

II. **H.R. 4038 would result in unjustified discrimination against refugees from Syria and Iraq based on their nationality and national origin.**

It is wrong and un-American to condemn groups without reason solely based on their nationality, national origin, or other protected grounds. The proposed certification and background investigation requirements in H.R. 4038 would only

¹ Testimony of Attorney General Loretta Lynch in front of the House Judiciary Committee for a Hearing on “Oversight of the United States Department of Justice” (Nov. 17, 2015), <http://judiciary.house.gov/index.cfm/hearings?ID=8D48CC3B-CA17-49C1-AB86-E4F33544EF69>.

² See, e.g., Haeyoun Park and Larry Buchanan, *Why It Takes Two Years for Syrian Refugees to Enter the U.S.*, N.Y. TIMES (Nov. 20, 2015), <http://www.nytimes.com/interactive/2015/11/20/us/why-it-takes-two-years-for-syrian-refugees-to-apply-to-enter-the-united-states.html>.

apply to refugees deemed to be from Iraq or Syria, and not other countries. The bill sponsors have provided no sufficient reason for additional certification and investigation requirements to justify the differential treatment of refugees from Syria and Iraq, or even defined how that differential treatment would improve current practice. H.R. 4038, therefore, amounts to impermissible discrimination on the basis of nationality and national origin without a rational basis.

III. H.R. 4038 would principally impact Muslim refugee applicants without demonstrating a benefit to public safety, raising concerns about discrimination based on religion.

The extra certification and investigation requirements in H.R. 4038 would greatly burden Muslim refugees seeking protection in the U.S without a rational basis. According to the Refugee Processing Center,³ 97 percent of Syrian refugees admitted to the U.S., since the Syrian civil war began in 2011 are Muslim, while over 60 percent of Iraqi refugees admitted after the Iraq war began in 2003 are Muslim.⁴ Muslim refugees would most frequently suffer the consequences of this discriminatory bill, as they would be denied entry to the U.S. and forced to languish in refugee camps for years on end.

IV. H.R. 4038 would be inconsistent with U.S. treaty obligations to protect refugees and uphold human rights without discrimination.

The United States is a State Party to the 1967 Protocol relating to the Status of Refugees, and is thereby bound to the 1951 Convention and its obligations relating to the Status of Refugees. In 1980, Congress enacted the Refugee Act with clear intent to bring the United States into conformity with its international refugee obligations, including the application of the Convention “to refugees without discrimination as to race, religion or country of origin.”⁵ While governments have the role of designing their own resettlement programs, these programs must conform to international obligations. U.S. resettlement programs must thus be non-discriminatory and select refugees for resettlement only on the basis of their needs, regardless of nationality, ethnicity, religion, or other related characteristics. Furthermore, the U.N. High Commissioner for Refugees has acknowledged States’ legitimate concerns to maintain public security and combat terrorism, but has warned against “the erosion of long-standing refugee protection principles.”⁶

³ The Refugee Processing Center (RPC) is a company “operated by the U.S. Department of State (DOS) Bureau of Population, Refugees, and Migration (PRM)” that runs the Worldwide Refugee Admissions Processing System (WRAPS), which “is used to process and track the movement of refugees from various countries around the world to the U.S. for resettlement under the U.S. Refugee Admissions Program (USRAP).” (REFUGEE PROCESSING CENTER, <https://www.wrapsnet.org/> (last visited Nov. 18, 2015)).

⁴ Calculations by the ACLU, based on data from the DOS-operated RPC’s WRAPS, using “Syria” and “Iraq” as the Nationality, the sum of “Moslem,” “Moslem Ismaici,” “Moslem Shiite,” and “Moslem Suni” as the Religion, and the time period of FY2011 to Jan. 12, 2016 for Syrian refugees and FY2003 to Jan. 12, 2016 for Iraqi refugees. Of the 2,602 Syrian refugees admitted to the U.S., 2,514 identified as Moslem, Moslem Shiite, or Moslem Suni, or 96.6%. Of the 128,881 Iraqi refugees admitted, 79,854 total Iraqi refugees identified as Moslem, Moslem Shiite, or Moslem Suni, or 62%. *See* Arrival Reports for Syrian and Iraqi refugees from FY2003 to Jan. 12, 2016, RPC, <http://www.wrapsnet.org/Reports/InteractiveReporting> (follow “MX - Arrivals by Nationality and Religion” hyperlink; then search “Fiscal Year” for Year Type, “Iraq” and “Syria” for Nationality, “Oct. 1, 2002” for the First date of the reporting period, “Jan. 12, 2016” for the Last date of the reporting period, and select “Select All” for the Religion(s) and “By Nationality” for Sort Order).

⁵ Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137 (entered into force Apr. 22, 1954); Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (entered into force Oct. 4, 1967).

⁶ U.N. High Commissioner for Refugees, Frequently Asked Questions about Resettlement (Apr. 2012), <http://www.unhcr.org/4ac0873d6.pdf>.

Moreover, H.R. 4038 would be inconsistent with U.S. human rights obligations, especially under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) which requires States Parties to “guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law.”⁷ Therefore, government policies that apply unequal legal standards to non-citizens based on their national origin violate ICERD.⁸

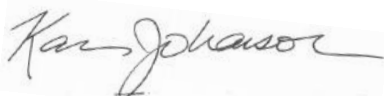
V. **H.R. 4038 is an attack on vulnerable refugees from Syria and Iraq, both those seeking protection and those already residing in the U.S.**

Not only is H.R. 4038 an attack against refugees from Syria and Iraq, but it would also harm those refugees’ family members who are already in the U.S. and eagerly waiting to be reunified with their loved ones. This bill would subject those families to an interminable wait and would prolong unnecessary suffering for both the refugees seeking protection and those family members waiting in the U.S. Moreover, the bill’s very name, the “American Security Against Foreign Enemies Act,” would heighten stigmatization of Syrian and Iraqi refugees – and, more broadly, scapegoat all refugees - fanning the flames of discriminatory exclusion here and abroad.

VI. **Conclusion**

The ACLU urges you to oppose H.R. 4038. For more information, please contact ACLU Legislative Counsel Joanne Lin (202-675-2317; jlin@aclu.org), or Policy Counsel Chris Rickerd (202-675-2339; crickerd@aclu.org).

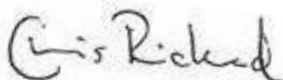
Sincerely,



Karin Johanson
Director
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Joanne Lin
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⁷ International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”), Mar. 7, 1966, 660 U.N.T.S. 195.

⁸ Article 1.3 of the ICERD states that, concerning nationality, citizenship or naturalization, the legal provisions of States parties must “not discriminate against any particular nationality” (Comm. on the Elimination of Racial Discrimination, General Recommendation 30: Discrimination against non-citizens (2004), U.N. Doc. CERD/C/64/Misc.11/rev.3).