UNITED STATES DEPARTMENT OF JUSTICE OFFICE OF THE ATTORNEY GENERAL

Matter of A-M-R-C-,

Interim Decision #3986

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United States Department for Justice Executive Office for Immigration Review Board of Immigration Appeals

BRIEF AMICI CURIAE OF TWENTY-NINE FORMER IMMIGRATION JUDGES AND MEMBERS OF THE BOARD OF IMMIGRATION APPEALS AS AMICI CURIAE IN SUPPORT OF RESPONDENT

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INTRODUCTION

In the absence of any justifying change in fact or law, the Attorney General ("AG") has reopened Mr. Chowdhury's case fourteen (14) years after he received a final decision on the merits of his claim for asylum following a full evidentiary hearing before the Immigration Judge ("IJ") and a complete and fair review by the Board of Immigration Appeals ("BIA" or "Board").

The AG's invocation of his self-referral authority is wholly improper here. As an initial matter, the AG lacks the authority to reopen and terminate asylum cases once asylum has been granted by an IJ or the Board. But even if the AG had such authority, doing so in this case constitutes ultra vires conduct in violation of Mr. Chowdhury's due process rights given the excessive and unreasonable delay in referral. The referral is additionally improper because, under the principles of res judicata, there should be a finality and certainty to judgments, particularly where there is no change in fact or law and so much time has passed. In addition, it appears that the AG is succumbing to political pressure from the Executive branch and is reopening the case to align with its foreign policy to aid Bangladesh. Such bias and political motivation is contrary to our immigration system, and indeed our entire legal system. Lastly, the unjustified and excessive delay in reviewing Mr. Chowdhury's case violates his due process rights and runs contrary to the humanitarian intent of the law.

The AG's decision to intervene unfairly and unlawfully in a long-settled asylum case infringes the sense of safety, security, and wellbeing of not only Mr. Chowdhury and his family, but also tens of thousands of other asylees who have made their homes in the U.S. in reliance on asylum and protection from persecution and in many cases, violence, in their countries of origin. The *Amici Curie* respectfully urge the AG to leave Mr. Chowdhury's asylum case undisturbed, thereby respecting his rights as well, as the rights of the tens of thousands of asylees who have been granted refuge here, and maintaining the fair and impartial adjudication process in place.

STATEMENT OF INTEREST OF AMICI CURIAE

Amici curiae ("Amici") are twenty-nine former immigration judges and members of the Board of Immigration Appeals ("BIA" or "Board").

Amici have dedicated their careers to the immigration court system and to upholding the immigration laws of the United States. Each is intimately familiar with the functioning of immigration courts and is invested in maintaining and improving the fairness and efficiency of the United States immigration adjudicatory process. Amici's extensive experience adjudicating immigration cases provides a unique perspective on the procedures and practicalities of immigration proceedings. They understand the relationships between the various agencies involved, as well as the role of the Department of Justice in immigration proceedings. They appreciate the broad and dire consequences in reopening "final" decisions, particularly where asylum claims and fear of persecution are involved. They have worked tireless hours to ensure certainty and fairness in immigration proceedings, and thus are particularly interested in this case, where both are in jeopardy.

ARGUMENT

- I. THE AG'S SELF-REFERRAL OF AN IMMIGRATION MATTER DECIDED OVER FOURTEEN YEARS AGO IS ULTRA VIRES AND VIOLATES SUBSTANTIVE DUE PROCESS
 - A. The BIA Cannot Refer a Case Not Within its Jurisdiction to the AG for His Review.

Title 8, Section 1003.1 of the Code of Federal Regulations authorizes the BIA to refer cases to the AG in the following three situations: (1) when directed by the AG; (2) when a majority of the Board or its Chairman believes that a case should be referred to the AG; and (3)

¹ A complete list of *Amici* signatories is included in the Appendix.

when the Secretary of DHS or specified DHS officials elect to refer a case to the AG. See 8 C.F.R. § 1003.1(h)(1).

A plain reading of this provision limits the referral authority to cases. It does *not* provide for referral to the AG, either at the direction of himself, the Board, or the DHS Secretary, for a matter that is not before the Board. *Id.*; *see also Chehazeh v. Att'y Gen.*, 666 F.3d 118, 130 (3rd Cir. 2012) (declining to accept the government's position that the BIA "has unfettered power to reopen" cases and noting that, if this were actually the case, "nothing would prevent [the Board] from reopening and remanding a case to a new immigration judge over and over again until [it is] satisfied with the outcome"). By the same reading, referral is similarly unavailable for a matter which was last decided and terminated before an IJ. *See* 8 C.F.R. § 1003.1(h)(1).

The AG is bound by these limitations and does not have the discretion to refer the final decision of an IJ. *Spencer Enters. v. United States*, 345 F.3d 683, 690 (9th Cir. 2003); *see also* https://www.justice.gov/eoir/board-of-immigration-appeals ("*BIA* decisions are binding on all DHS officers and immigration judges unless modified or overruled by the Attorney General or a federal court.") (emphasis added). Just as an IJ cannot refer a matter back to the Board after it is remanded to him, the AG cannot reopen and overturn a grant of asylum; only the Department of Homeland Security ("DHS") has this power. *See* 8 C.F.R. §§ 1003.1(h)(1), 1208.24(f); *Matter of A-B-*, 27 I&N Dec. 247 at 248 (2017) (noting that an "Immigration Judge or [DHS] officer may certify a case only after an initial decision has been made and before an appeal has been taken") (citing 8 C.F.R. § 1003.7).² The fact that regulations provide a method for reopening due to new, changed circumstances and vests that power with DHS to file the motion is further evidence that the AG does not have this authority.

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² While in *Matter of A-B-* former AG Sessions referred a decision that was still before the IJ at the time, that case is readily distinguishable because at the time, the IJ had *not* issued a final decision on the asylum application. *See Matter of A-B-*, 27 I&N Dec. at 249.

The AG's referral power is further limited in that he cannot refer a case that was decided under a previous AG. Indeed, the relevant regulation's referral provision provides that the authority to refer a case rests with the AG in office at the time of the decision, which is not the case here. *See* 8 C.F.R. § 1003.1(h)(1). Without such limitation, any subsequent cabinet member could certify and reverse immigration cases that are final, a level uncertainty that no adjudicatory structure could survive.

Even without these temporal limitations, however, the Board cannot refer a case unless it has reacquired jurisdiction over that case. And the Board no longer has jurisdiction over a case that it remanded to an IJ, who thereafter issued a final decision. It is similarly impossible for the Board to refer a decision to the AG without referring the underlying case in which it was issued. 8 C.F.R. § 1003.1(h)(1)(i) (mandating that the Board, following direction from the AG, "refer... all cases" to the AG "for review of its decision") (emphasis added). The AG has no discretion to interpret this language to circumvent the clear limitations on his use of the referral power. The Board cannot refer decisions to the AG without referring the underlying case, any more than the Board can refer a case it remanded to an IJ that is as a result no longer in its jurisdiction.

For these reasons, the AG cannot direct the Board to refer the *Matter of A-M-R-C*- to him.

B. Interpreting 8 C.F.R. § 1003.1(h)(1) to Provide Broad, Rather Than Limited, Referral Authority, Without Time Restriction, Is Ultra Vires and Violates Substantive Due Process.

By self-referring this case over fourteen years after the Board's decision, without any justifying change in law or facts, the AG is overreaching his authority. In exercising their power, cabinet-level officials' actions must abide by relevant provisions of the law, and actions that exceed the limits of those provisions are ultra vires. *See Dart v. United States*, 848 F.2d 217, 231

(D.C. Cir. 1988) (holding that the Secretary of Commerce's reversal of an ALJ's decision exceeded both his authority under the Export Administration Act and the parameters of the Act's finality provision). "Even where statutory language grants an agency unfettered discretion, its decision may nonetheless be reviewed if regulations or agency practice provide a meaningful standard by which this court may review its exercise of discretion." *Spencer Enters. v. United States*, 345 F.3d 683, 688 (9th Cir. 2003). Thus, "[e]ven if a statute gives the Attorney General discretion, . . . the courts retain jurisdiction to review whether a particular decision is ultra vires the statute in question." *Id.* at 689 (citing *Zadvydas v. Davisi*, 533 U.S. 678, 688 (2001)).

Further, interpreting the AG's review authority to be unlimited in time contravenes the due process right to "the opportunity to be heard at a meaningful time and in a meaningful manner." *Kouropova v. Gonzales*, 200 F.App'x. 692, 694 (9th Cir. 2006) (unpublished). Indeed, the right to due process is chief among the Constitutional guarantees afforded to noncitizens who have settled their families here in reliance on the fair adjudication of immigration process. *Martinez-de Bojorquez v. Ashcroft*, 365 F.3d 800, 803 (9th Cir.2004) ("Aliens facing removal are entitled to due process under the Fifth Amendment."). A years-long delay in reviewing a final decision deprives the party in jeopardy of this fundamental right. *See e.g.*, *Kouropova v. Gonzales*, 200 F.App'x. at 694 ("a nine-and-a-half-year delay is wholly inconsistent with principles of fundamental fairness."); *Martinez-de Bojorquez v. Ashcroft*, 365 F.3d at 804 (4.5 year delay in issuing BIA decision violated due process).

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³ As the Supreme Court has long recognized, noncitizens admitted to this country develop deep roots here and accordingly, enjoy "ascending" Constitutional rights as they increasingly "identify with our society." *Johnson v. Eisentrager*, 339 U.S. 763, 770 (1950) ("The alien, to whom the U.S. has been traditionally hospitable, has been accorded a generous and ascending scale of rights as he increases his identity with our society."); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("once an alien gains admission to our country and begins to develop the ties that go with permanent residence his constitutional status changes accordingly"); *Bridges v. Wixon*, 326 U.S. 135, 154 (1945) (holding that "meticulous care" must be exercised to protect "the essential standard of fairness" applicable to noncitizens "whose roots . . . have become . . . deeply fixed in this land").

Most critically, such a delay severely disadvantages asylees in presenting evidence that fades or disappears with the passage of time and thereby interferes with a fair and just consideration of the merits. *Id.* It is for this reason that the AG's use of his referral power must abide by the limitations set forth in 8 C.F.R. section 1003.1(h)(1) and must occur within a reasonable time after the decision in question was issued. *Cooley v. United States*, 324 F.3d 1297, 1305 (Fed. Cir. 2003) (questioning whether a reconsideration of an agency decision that occurred three years prior was reasonable and reiterating that an agency's reconsideration of its own decision "must arise within a reasonable period of time"); *Cabo Distrib. Co. v. Brady*, 821 F. Supp. 601, 613 (N.D. Cal. 1992) (agency did not have the authority to revoke its approval of a label three years later).

The AG's decision to defy the limitations of 8 C.F.R. section 1003.1(h)(1) in referring and reopening the *Matter of A-M-R-C-* fourteen (14) years after the Board's decision is beyond a reasonable amount of time, exceeds his authority under 8 C.F.R. section 1003(h)(1), and, thus is ultra vires. *See* 8 C.F.R. § 1003.1(h)(1). Where no material facts or laws have changed, it is beyond reason and legal authority to reopen a case fourteen (14) years after it was fairly tried and decided and where the consequences would be fatal to the respondent. To exercise the self-referral authority under 8 C.F.R. section 1003.1(h)(1), the AG must point to some reason justifying such excessive delay, particularly where a man's life literally hangs in the balance. The AG has not articulated any such justification, and, accordingly, his use of the self-referral power here is improper.

The AG's delay in referring this case would cause the respondent to suffer "prejudice from an[] inability to prove his defenses." *Costello v. United States*, 365 U.S. 265, 283 (1961). Mr. Chowdhury's case is an extreme example of such prejudice as the AG seeks to re-litigate a

thirteen (13) year-old decision regarding the fairness of trial that took place twenty-four (24) years ago regarding an incident that occurred forty-five (45) years ago. This lengthy delay necessarily impairs his ability to present all evidence in support of his defenses to removal. In that time, memories have weakened, witnesses able to testify to key facts have died or left the U.S., and documentary and physical evidence may have been lost, damaged, or destroyed.⁴ Regimes have changed, both here and in Bangladesh, making the credibility and availability of any remaining evidence questionable. All of these factors jeopardize the respondent's ability to fully and properly present his defenses, which, in turn, given the nature of his asylum case, jeopardize his life.

Mr. Chowdhury faces even more substantial hurdles in raising the merits of his other applications for relief, withholding of removal and protection under the Convention Against Torture, which the IJ previously declined to hear on mootness grounds. Undue delay inhibits Mr. Chowdhury and other asylees' access to the protections afforded by this country's asylum laws. This dangerous precedent and failure to provide due process threatens the application of fundamental fairness to the asylum process and constitutes a clear abuse of the AG's power to intervene.

C. The Principles of Res Judicata and Finality Dictate That The Underlying IJ Decision Should Remain Final.

Res judicata and finality are key to the integrity of our Article III courts, establishing a clear path to justice for both parties that includes a distinct origin and destination, rather than a hamster wheel of uncertainty. These principles equally apply to agency actions with a judicial

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⁴ The Department of Justice very recently raised the same argument in its September 23, 2020 Notice of Proposed Rulemaking, 85 Fed. Reg. 59692, 59693, https://www.federalregister.gov/documents/2020/09/23/2020-21027/procedures-for-asylum-and-withholding-of-removal, stating that a delay of more than *15 days* beyond the first Master Calendar hearing "increases the likelihood that important events, including personal recollections, may degrade or be lost over time."

component. Because of this, even if the AG's referral power extended to cases before an IJ, which it does not, further expanding the AG's self-referral power to permit the reopening of a matter for which a final decision was issued fourteen years ago would violate the principles of res judicata and finality.

An agency action is considered "final" when the following two conditions are present: "the action must mark the 'consummation' of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature"; and "the action must be one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow." *Indus. Customers of Nw. Utilities v. Bonneville Power Admin.*, 408 F.3d 638, 646 (9th Cir. 2005) (quoting *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997)). Indicia of finality include "whether the [action] amounts to a definitive statement of the agency's position, whether the [action] has a direct and immediate effect on the day-to-day operations of the party seeking review, and whether immediate compliance [with the terms] is expected." *Cal. Dep't of Water Res. v. F.E.R.C.*, 341 F.3d 906, 909 (9th Cir. 2003). Ultimately, "[t]he core question is whether the agency has completed its decisionmaking process, and whether the result of that process is one that will directly affect the parties." *Id.* (citing *Franklin v. Mass.*, 505 U.S. 788, 797 (1992)).

Relevant regulations provide that an order of removal becomes final upon the earlier of (1) the Board's affirmation of the decision, or (2) the expiration of the time period in which to seek the Board's review of the decision. *See* 8 U.S.C. § 1101(47)(B). Here, the Board issued a final decision in 2006 after its thorough review of the IJ's decision and the evidence, and affirmed the grant of asylum. DHS never pursued any appeal of the IJ's final decision on remand, and the time do so has passed. Thus, the Board's decision is and was final.

Where an agency action is final, the principle of res judicata applies. *Johnson v. Astrue*, 358 F.App'x 791, 792 (9th Cir. 2009). "When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose." *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 107 (1991) (citing *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 422 (1966)). Indeed, "[t]o hold otherwise would, as a general matter, impose unjustifiably upon those who have already shouldered their burdens, and drain the resources of an adjudicatory system with disputes resisting resolution." *Id.* at 107–108. This principal has been specifically applied to proceedings to deport or remove aliens from the United States. *Matter of Fedorenko*, 19 I&N Dec 57, 67 (BIA 1984) ("The doctrine of collateral estoppel may be applied to preclude reconsideration of an issue of law, as well as of fact, so long as the issue arises in both the prior and subsequent suits from virtually identical facts and there has been no change in the controlling law.").

Immigrants seeking relief through this country's immigration system rely on the final decisions of the Board and IJs considering and deciding their cases. The reopening the *Matter of A-M-R-C-* would detract from any sense of finality or due process that asylees realize from our immigration system and would no doubt open the door to the AG's ability refer for his own reconsideration cases that were decided as far back as 1940, when the Department of Justice assumed control over our country's immigration system. Abrogating the finality of decisions granting asylees the ability to remain in this country calls into question the finality of other equally crucial decisions in exclusion, deportation, removal, and rescission cases, inflicting an unprecedented and unacceptable level of uncertainty into our immigration system. 8 C.F.R. § 1001.1(p). If the Board denies asylum, the decision is considered final and is appealable to the

federal courts. 8 U.S.C. § 1252(a)(1). It is unconscionable to consider denials of asylum final, but grants of asylum not final. Such concepts are antithetical to our system of justice and our ideals of fairness and equality before the law.

All asylees to this country rely on the final decisions of the Board and IJs, and in turn either put down roots in the United States, seek admission to other nations, or return to their home countries. The reconsideration of a decision that has stood for more than a decade, unprompted, and where no new facts or law call into question the final decision in the matter, therefore threatens the integrity of our entire immigration system. See Confederated Tribes v. United States, 177 Ct. Cl. 184, 191 (1966) (noting that "time limits" exist to force parties to "decide whether or not they wish to avail themselves any longer of the jurisdiction of that particular court or administrative agency," thereby "prevent[ing] a judicial or quasi-judicial body from reaching out, after a case has left its jurisdiction, and pulling it back in by modifying or reconsidering its decision," which would be "especially dangerous if there has been reliance on the assumed finality of the decision."). Asylees' years or decades of reliance on what they believed was a final decision, and the burden of a retroactively adverse decision on their life, liberty, and property, further counsel against the AG's referral here. See Garcia-Martinez v. Sessions, 886 F.3d 1291, 1295–96 (9th Cir. 2018); Acosta-Olivarria v. Lynch, 799 F.3d 1271 (9th Cir. 2015).

II. THE AG SHOULD NOT AND CANNOT ALLOW THE ADMINISTRATION'S FOREIGN POLICY AGENDA TO INFLUENCE DETERMINATION OF AN INDIVIDUAL'S RIGHT TO ASYLUM

The U.S. prides itself in a fair and impartial judicial process. Mr. Chowdhury had a fair and impartial hearing and adjudication of his asylum claim. On March 31, 2004, the Immigration Judge heard and carefully weighed all the evidence and determined that Mr. Chowdhury should be granted asylum, based on an established fear of persecution due to his political beliefs. DHS

appealed, and the BIA reviewed the record and, on March 29, 2006, a three-member panel affirmed most aspects of the decision to grant him asylum, remanding only for consideration of two narrow issues relating to that relief. The BIA then denied DHS's motion to reconsider that decision on September 11, 2006. When asylum was again granted on remand, DHS did not appeal. Mr. Chowdhury's case was examined multiple times, in a complete, fair and impartial manner. There has been no change in the law or facts since the Board's decision in 2006. Thus, there is no legal reason to reopen the case. Rather, it appears that the AG is bowing to political pressure, and, in doing so, is impermissibly allowing unrelated political agendas to undermine and overrun an otherwise fair adjudication.

This case was decided over fourteen (14) years ago. Since then, the facts and relevant laws have not changed. However, the President and his agenda has. Recently, the relatively new government in Bangladesh has been requesting that the U.S. return Mr. Chowdhury to Bangladesh so that he can meet his fate there. Since he has been convicted and sentenced to death by the Bangladesh government (for his role in a political coup and his alleged killings of the prime minister and his family), his "fate" will certainly be death. It appears that the Executive branch has been pressuring the AG to reopen the case to accommodate the requests of the Bangladesh government.

Due to his role in the coup and his alleged role in the political killings, the Bangladesh government considers him a terrorist and murderer. Bangladesh has been requesting that the U.S. extradite him since 2000. *See* Op-Ed Article published in the New York Times on November 7, 2016 authored by the current Prime Minister's daughter, Sajeeb Wazed entitled "The U.S. Must Extradite My Grandfather's Killer." "Bangladesh made its initial request for his extradition in 2000 . . . Despite the efforts of the Bangladesh government, Mr. Chowdhury remains in hiding in

plain sight; the American government should stop sheltering him. . . . The United States should respond to Bangladesh's repeated pleas to conclude the matter, so that justice may be done." (Ex.1.)

As noted by the daughter of the Prime Minister in her Op-Ed article, past U.S. Administrations did not entertain the extradition requests. The current Administration, however, is in the midst of strengthening its ties with Bangladesh. As stated by the Department of State in its Bilateral Relations Fact Sheet dated July 27, 2020, "At our last annual partnership dialogue with Bangladesh in June, 2019, our two governments reaffirmed their enduring partnership, highlighting close cooperation on security, development, humanitarian assistance and disaster relief, and counterterrorism." During an Online Press Briefing on September 15, 2020, the Deputy Assistant Secretary of State Laura Stone stated, "[t]he United States and Bangladesh cooperate closely on security issues of mutual interest, ranging from counterterrorism to peacekeeping, and we're looking to deepen that partnership." Recently, during a telephone conversation on September 11, 2020, the Secretary of Defense Dr. Mark T. Esper and Bangladesh's Prime Minister Sheikh Hasina "expressed their commitment to continue building closer bilateral defense relations." *See* Readout of Secretary of Defense Dr. Mark T. Esper's Phone Call with Prime Minister Sheikh Hasina dated September 11, 2020. (Ex. 2.)

Further, the U.S. has strong economic ties to Bangladesh, with many U.S. investors having business relations there. As stated by the Department of State in the same Bilateral Relations Fact Sheet, "U.S. companies are the largest foreign investors in Bangladesh, with \$3.4 billion in investments as of 2018 . . . [with] the vast majority of these investments [being] in the oil and gas, banking and insurance, and power generation sectors." "The U.S. is also currently the largest source of foreign direct investment in Bangladesh." *See* Bilateral Fact Sheet; Online

Press Briefing with Deputy Assistant Secretary of State Laura Stone, SCA, and JoAnne Wagner, Deputy Chief of Mission, U.S. Embassy Dhaka, at 2. (Ex. 3.) "U.S. foreign direct investment more than doubled from 2007 to 2017," showing this Administration's focus on its relationship with Bangladesh. Press Briefing, at 2. (Ex. 4.). The U.S. government may feel an obligation to protect its investments and its peoples' investments by keeping relations with Bangladesh strong, but the fact that these actions occurred under the last two Administrations and they did not use the Respondent as a bargaining tool is further evidence of the absence of justification and political motive for this action

Recently, on September 15, 2020, the Deputy Assistant Secretary of State Laura Stone stated that the U.S.' foreign policy is to grow and strengthen its relationship with Bangladesh. "Bangladesh is a relationship with enormous potential and a country with enormous potential, and we really do hope to grow that. So the administration is looking to grow our relationship with Bangladesh as a key Indo-Pacific partner." *See* Online Press Briefing with Deputy Assistant Secretary of State Laura Stone, SCA, and JoAnne Wagner, Deputy Chief of Mission, U.S. Embassy Dhaka, at 2. (*Id.*; Ex. 4.)

Foreign policy considerations should not influence judicial outcomes, especially those based on asylum which is built on the recognition that the asylees' home country cannot protect them. This creates a dangerous precedent for the executive branch to use asylees who face persecution and potential death, like Mr. Chowdhury, as pawns in foreign policy. Doing so will lead the public to distrust the government and question its purpose and motives. The system of checks and balances that is the cornerstone of our democracy will be upset.

Such a precedent runs afoul of the clear objectives of the Refugee Act of 1980 to depoliticize U.S. refugee and asylum policy. *See, e.g.*, U.S. GOV'T ACCOUNTABILITY OFF.,

GGD-87-33BR: UNIF. APPLICATION OF STANDARDS UNCERTAIN at 8 (1987) ("One of Congress' primary objectives in adopting [the Convention refugee definition] was to eliminate discrimination on the basis of outmoded geographical and ideological considerations") (Ex. 5.); Elizabeth M. Yarnold, *The Refugee Act of 1980 and the Depoliticization of Refugee/Asylum Admissions*, 18 AM. POL. Q. 527, 528 (1990) ("[T]he Refugee Act of 1980 clearly mandates a depoliticization of U.S. refugee and asylum policy.") (Ex. 6.) Importantly, the Refugee Act of 1980 defines refugee without regard to foreign policy considerations:

any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

8 U.S.C.A. § 1101(42). As the Second Circuit has commented, "[b]y defining eligibility in politically neutral terms, congress made it clear that factors such as the government's geopolitical and foreign policy interests were not legitimate concerns of asylum." *Doherty v. U.S. Dept. of Just., I.N.S.*, 908 F.2d 1108, 1119 (2d Cir. 1990), *rev'd sub nom. on other grounds I.N.S. v. Doherty*, 502 U.S. 314 (1992).

Further, official U.S. asylum policy states that "[a] fundamental belief that the granting of asylum is inherently a humanitarian act distinct from the normal operation and administration of the immigration process." Congressional Research Service, Immigration U.S. Asylum Policy, U.S. Department of Justice, Immigration and Naturalization Service, "Aliens and Nationality; Asylum and Withholding of Deportation Procedures," final rule, 55 Fed. Reg. 30674 (July 27, 1990), https://fas.org/sgp/crs/homesec/R45539.pdf. (Ex. 7.)

Indeed, courts have recognized that in contrast to politically-driven extradition negotiations governed by treaties, Congress enacted asylum laws to protect individuals from

persecution. See Castaneda-Castillo v. Holder, 638 F.3d 354, 361 (1st Cir. 2011) "[A]sylum and extradition proceedings ... are rooted in distinct sources of law, governed by procedures specified in distinct statutory regimes, and responsive to different sets of policy concerns."). In part because of the role of judicial oversight and recognition of important separation of power considerations, asylum proceedings should be made on a case-by-case basis separate from and not as a means of determining U.S. foreign policy. See, e.g., M.A. v. U.S. I.N.S., 899 F.2d 304, 313 (4th Cir. 1990) (en banc), superseded by statute, 8 U.S.C. § 1229a(c)(6) (assessment of individual asylum cases should be considered "through a process of case by case adjudication," not as a means of enacting foreign policy).

Importantly, in settling a case brought by Salvadoran and Guatemalan citizens in the United States asserting improper bias, the federal government explicitly agreed that "foreign policy and border enforcement considerations are not relevant to the determination of whether an applicant for asylum has a well-founded fear of persecution" and that "the fact that an individual is from a country whose government the United States supports or with which it has favorable relations is not relevant to the determination of whether an applicant for asylum has a well-founded fear of persecution." *Am. Baptist Churches v. Thornburgh*, 760 F. Supp. 796, 799 (N.D. Cal. 1991).

Similarly, here, the U.S.' foreign policy agenda should play no part in deciding the fate of Mr. Chowdhury. There is a carefully laid asylum adjudication procedure in place to protect against such intersections. The AG should not be swayed by political pressure to heed Bangladesh's request to extradite Mr. Chowdhury, and he should not be allowed use his power to effectuate a political agenda. There has been a fair and impartial adjudication procedure, and the decision from that procedure should be the final word.

III. THE UNJUSTIFIED AND UNREASONABLE DELAY IN REOPENING THIS MATTER VIOLATES THE PRINCIPLE OF FUNDAMENTAL FAIRNESS AND UPENDS THE HUMANTIARIAN PURPOSE OF ASYLUM LAW

The excessive and unjustified delay in reopening Mr. Chowdhury's case directly conflicts with the humanitarian intent of asylum laws. Such a decision sets an alarming precedent jeopardizing the fundamental fairness of the asylum process and depriving all asylees of a basic sense of security in rebuilding their lives in this country.

In enacting the Refugee Act of 1980, Congress declared "that it is the historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands, including, where appropriate, humanitarian assistance for their care and maintenance in asylum areas, efforts to promote opportunities for resettlement or voluntary repatriation, aid for necessary transportation and processing, admission to this country of refugees of special humanitarian concern to the United States." 8 U.S.C. § 1521(a). Consistent with this policy, U.S. law provides a safe harbor for Mr. Chowdhury and other asylees in his position who would otherwise face persecution and almost certain death if removed to their countries of origin. To further protect asylees and their families from retribution, U.S. law also preserves the confidentiality of asylum matters. *See* 8 C.F.R. § 208.6 (information pertaining to asylum application shall not be disclosed without written consent of applicant, subject to limited exceptions).

In reliance on the safety and security afforded by U.S. law, over the past two decades, Mr. Chowdhury and his family constructed a new life here and refrained from seeking alternative life paths in other nations friendly to the world's refugees. If the AG were to reverse the long-standing final decision granting his asylum application, Mr. Chowdhury would have no recourse to appeal the criminal trial conducted in Bangladesh in his absence and thus, he would with all certainty face the death penalty.

More broadly, the AG's unreasonable and unjustified reconsideration of this fourteen (14) year-old decision creates an alarming precedent that final decisions may indefinitely remain in limbo subject to AG review. This highly problematic policy would cast a long and foreboding

shadow over the lives of asylees who, by definition, reasonably fear persecution and in some

cases, even death, upon return to their home countries. Depriving asylees of a basic sense of

security in their right to remain in the U.S. free of persecution undermines the basic principle of

fairness in adjudicating asylum applications and defies the humanitarian intent of asylum

protection.

CONCLUSION

For the foregoing reasons, the *Amici Curiae* respectfully request that the Attorney General vacate his referral order and refrain from further intervention in the final decision granting Mr. Chowdhury asylum.

Dated: September 29, 2020 Respectfully submitted,

Arent Fox LLP

By: /s/ Nancy A. Noonan

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COUNSEL FOR AMICI CURIAE

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Brief Amici Curiae complies with the instructions of

the Attorney General's referral order dated June 17, 2020 because the brief contains 5,448 words,

excluding the cover page, Table of Contents, Table of Authorities, signature block, Appendix,

Certificate of Compliance, and Proof of Service, per the Word Count feature of Microsoft Word,

which was used to generate this Brief.

Dated: September 29, 2020

/s/ Nancy A. Noonan

Nancy A. Noonan

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APPENDIX

AMICI CURIAE SIGNATORIES

Hon. Steven Abrams

Immigration Judge, New York (Varick Street) and Queens Wackenhut, 1997–2013

Hon. Terry A. Bain

Immigration Judge, New York, 1994–2019

Hon. Sarah M. Burr

Immigration Judge, New York, 1994–2012

Hon. Jeffrey S. Chase

Immigration Judge, New York, 1995–2007

Hon. George T. Chew

Immigration Judge, New York, 1995–2017

Hon. Joan V. Churchill

Immigration Judge, Washington, DC, Arlington, 1980-2005

Hon. Cecelia Einhorn

Immigration Judge, Los Angeles, 1990-2007

Hon. Cecelia Espenoza

Member, Board of Immigration Appeals, 2000–2003

Hon. Noel A. Ferris

Immigration Judge, New York, 1994-2013

Hon. Jennie L. Giambastiani

Immigration Judge, Chicago, 2002–2019

Hon. John F. Gossart, Jr.

Immigration Judge, Baltimore, 1982–2013

Hon. Paul Grussendorf

Immigration Judge, Philadelphia and San Francisco, 1997–2004

Hon. Miriam Hayward

Immigration Judge, San Francisco, 1997–2018

Hon. Charles M. Honeyman

Immigration Judge, Philadelphia and New York, 1995–2020

Hon. Rebecca Jamil

Immigration Judge, San Francisco, 2016–2018

Hon. William P. Joyce

Immigration Judge, Boston, 1996–2002

Hon. Carol King

Immigration Judge, San Francisco, 1995–2017

Hon. Elizabeth A. Lamb

Immigration Judge, New York, 1995–2018

Hon. Margaret McManus

Immigration Judge, New York, 1991–2018

Hon. Charles Pazar

Immigration Judge, Memphis, 1998–2017

Hon. Laura Ramírez

Immigration Judge, San Francisco, 1997–2018

Hon. John Richardson

Immigration Judge, Phoenix, 1990–2018

Hon. Lory D. Rosenberg

Member, Board of Immigration Appeals, 1995–2002

Hon. Susan G. Roy

Immigration Judge, Newark, 2008–2010

Hon. Helen Sichel

Immigration Judge, New York, 1997-2020

Hon. Paul W. Schmidt

Chair, Board of Immigration Appeals, 1995–2001 Member, Board of Immigration Appeals, 2001–2003 Immigration Judge, Arlington, 2003–2016

Hon. Ilyce S. Shugall

Immigration Judge, San Francisco, 2017–2019

Hon. Denise Slavin

Immigration Judge, Miami and Baltimore, 1995-2019

Hon. Andrea Hawkins Sloan

Immigration Judge, Portland, 2010–2016

EXHIBIT 1

ADVERTISEMEN^{*}

Opinion

OP-ED CONTRIBUTOR

The U.S. Must Extradite My Grandfather's Killer

By Sajeeb Wazed

Nov. 7, 2016



Sheikh Mujibur Rahman speaks at a news conference in Dhaka, Bangladesh, in 1972. Laurent/Associated Press

DHAKA, Bangladesh — On the morning of Aug. 15, 1975, the democratically elected government of Bangladesh was overthrown by a military coup. The soldiers who stormed the Dhaka residence of the president, Sheikh Mujibur Rahman, who was also my grandfather, shot and killed him, along with 18 other members of my family. They included my grandmother, three of my uncles (one of whom was only 10 years old) and my pregnant aunt.

My mother, Sheikh Hasina, the current prime minister of Bangladesh, was spared only because she was vacationing with her sister in Germany.

More than 40 years later, one of my family's assassins, Rashed Chowdhury, lives at liberty in the United States. He was fairly tried in open court in Dhaka and convicted in absentia on charges of murder and conspiracy to commit murder, even though his former military rank as a lieutenant colonel would have allowed for a court-martial, a far quicker and less transparent process.

Although a fugitive from justice in Bangladesh since 1996, Mr. Chowdhury has never been punished for his crimes. Bangladesh made its initial request for his extradition in 2000 and has waited for more than a decade and a half. It's past time for him to be sent home to face justice.

I was 4 years old when my grandfather was murdered, but his death was more than a personal loss for me and my family. Our entire nation mourned.

Sheikh Mujibur Rahman was the founding father and first president of Bangladesh. He was and still is affectionately known here as Bangabandhu, which means "friend of Bengal" in Bengali. He led what was then East Bengal to independence from Pakistan in 1971, the year I was born. During that bloody conflict, Pakistan and its collaborators slaughtered an estimated three million Bangladeshis in just 11 months, an act the world recognizes today as a genocide.

My grandfather was healing the deep wounds from this war. The Bangladesh he helped create was democratic and secular, in sharp contrast to the brutal, autocratic system run by Pakistan.

A period of political chaos and military rule followed my grandfather's assassination. The junta that illegally usurped power protected the killers. Maj. Gen. Ziaur Rahman, one of the main beneficiaries of the massacre and the founder of the Bangladesh Nationalist Party, went so far as to codify protections for them. Not only were the murderers immune from prosecution, they were also rewarded with important jobs in government and diplomacy. One even ran for president.

It was only when my mother became prime minister through democratic elections in 1996 that trials of our family's murderers were begun. There was popular pressure for fast convictions, but my mother knew that the trials must not only be fair, they must also *appear* to be fair. To maintain rule of law and to ensure transparency, she chose to hold the trials in

civilian courts with all constitutional protections.

In 1998, 15 former military officers were <u>convicted</u> of the assassinations. Appeals and further process followed, but finally, in 2009, Bangladesh's Supreme Court <u>delivered</u> a measure of justice the nation had long craved by upholding the convictions of five of the assassins. The saga did not end there.

In 1996, before the trials started, Mr. Chowdhury joined several other conspirators in fleeing Bangladesh. He applied for asylum in San Francisco, but his current immigration status is unclear. Since then, he has <u>reportedly</u> lived in Los Angeles and Chicago. Despite the efforts of the Bangladesh government, Mr. Chowdhury remains hiding in plain sight; the American government should stop sheltering him.

If Mr. Chowdhury is extradited to Bangladesh, he will face a death sentence. Like the United States, Bangladesh allows the death penalty for high crimes like treason, terrorism and federal murder.

Mr. Chowdhury is not the only assassin of my grandfather to seek shelter in America. Another, Lt. Col. Mohiuddin Ahmed, <u>was handed</u> over to Bangladesh authorities in 2007 after a United States court appropriately denied his request to stay permanently. He was deported and hanged, along with four others, in 2010.

To the best of our knowledge, Mr. Chowdhury has not been granted refugee status; therefore, he is not immune from extradition proceedings. There are no grounds for further delay in extraditing him. The United States should respond to Bangladesh's repeated pleas to conclude the matter, so that justice may be done.

ADVERTISEMENT

EXHIBIT 2



U.S. Embassy in Bangladesh

Readout of Secretary of Defense Dr. Mark T. Esper's Phone Call with Prime Minister Sheikh Hasina

U.S. Embassy Dhaka is transmitting this U.S. Department of Defense statement issued today, Friday, September 11, 2020.

Immediate Release

September 11, 2020 – Secretary of Defense Dr. Mark T. Esper spoke with Bangladesh Prime Minister and Minister of Defense Sheikh Hasina over the phone today on September 11, 2020. During the call, Secretary Esper commended the Prime Minister for Bangladesh's response to the COVID-19 pandemic and the recent goodwill missions to its neighbors. The two leaders discussed their shared commitment to a free and open Indo-Pacific that ensures the sovereignty of all nations, and specific bilateral defense priorities including maritime and regional security, global peacekeeping, and initiatives to modernize Bangladesh's military capabilities. Both leaders expressed their commitment to continue building closer bilateral defense relations in support of shared values and interests.

This is the official website of the U.S. Embassy in Bangladesh. External links to other Internet sites should not be construed as an endorsement of the views or privacy policies contained therein.



EXHIBIT 3

Travelers





BILATERAL RELATIONS FACT SHEET

BUREAU OF SOUTH AND CENTRAL ASIAN AFFAIRS

JULY 27, 2020

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More information about Bangladesh is available on the Bangladesh Page, U.S. Department of State publications, and other sources listed at the end of this fact sheet.

U.S.-BANGLADESH RELATIONS

The United States and Bangladesh cooperate closely on a range of issues, including economics, security, governance, and development. U.S.-Bangladesh ties go beyond the government-to-government level: our people-to-people and commercial relationships complement and expand upon the work of our officials. At our last annual partnership dialogue with Bangladesh in June 2019, our two governments reaffirmed their enduring partnership, highlighting close cooperation on security, development, humanitarian assistance and disaster relief, and counterterrorism. The two governments agreed to continue to work closely together to advance a shared vision of a free, open, inclusive, peaceful, and secure Indo-Pacific region.

U.S. Assistance to Bangladesh

The United States has invested billions of dollars to improve the lives of Bangladeshis and Bangladesh is the largest recipient of U.S. assistance in Asia aside from Afghanistan and Pakistan. U.S. assistance fosters engagement with the Government of Bangladesh – helping to grow more food, build more roads, and train more skilled teachers, health care providers, and soldiers. In addition, the United States is the largest donor to the Rohingya refugee crisis response, providing humanitarian support to over one million refugees from Burma along with host communities. During the 2020 COVID-19 crisis, the United States has provided over \$36 million in assistance to date.

Bilateral Economic Relations

Bangladesh has achieved decades of impressive economic growth, with expectations of 2019 breaking eight percent annual GDP growth. The United States is proud to be a partner in Bangladesh's development success. Its enviable growth and openness to U.S. private sector investment makes this market a standout opportunity for U.S. firms and those of our allies. Bangladesh exported \$5.5 billion worth of products, primarily apparel and textiles, to the United States in 2018, making the United States the single largest market for Bangladeshi goods in the world. In turn, U.S. exports to Bangladesh, which consisted largely of agricultural products (grains and cotton) and machinery, amounted to \$2.1 billion, up 43 percent from the previous year, but still resulting in a U.S. trade deficit of \$4 billion. The United States is also currently the largest source of foreign direct investment in Bangladesh. At the end of 2017, the United States accounted for 23 percent of the stock of foreign direct investment in Bangladesh. Chevron is the single largest foreign investor, producing some 55 percent of Bangladesh's domestic natural gas. U.S. companies are the largest foreign investors in Bangladesh, with \$3.4 billion in investments as of 2018, which accounts for 20 percent of total FDI stock in Bangladesh. The vast majority of these investments are in the oil and gas, banking and insurance, and power generation sectors.

Bangladesh's Membership in International Organizations

Bangladesh and the United States belong to a number of the same international organizations, including the United Nations, ASEAN Regional Forum, International Monetary Fund, World Bank, and World Trade Organization.

Bilateral Representation

The U.S. Ambassador to Bangladesh is Earl R. Miller; other principal embassy officials are listed in the **Department's Key Officers List**.

Bangladesh maintains an embassy in the United States at 3510 International Drive NW, Washington, DC 20008 (tel: 202-244-0183).

CIA World Factbook Bangladesh Page

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USAID Bangladesh Page

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SEPTEMBER 26, 2020

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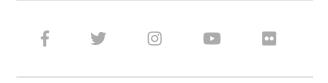
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EXHIBIT 4



U.S. Embassy in Bangladesh

Online Press Briefing with Deputy Assistant Secretary of State Laura Stone, SCA, and JoAnne Wagner, Deputy Chief of Mission, U.S. Embassy Dhaka

SPECIAL BRIEFING

LAURA STONE, DEPUTY ASSISTANT SECRETARY FOR INDIA, BANGLADESH, NEPAL, SRI LANKA, BHUTAN, AND MALDIVES
BUREAU OF SOUTH AND CENTRAL ASIAN AFFAIRS

SEPTEMBER 15, 2020

DOWNLOAD .M4A (MPEG)

Moderator: Good afternoon from the London Media Hub, and good evening to our participants in Dhaka. My name is Zed Tarar and I'm the deputy director of the media hub. And welcome, everyone, to this special online briefing with Deputy Assistant Secretary Laura Stone and Deputy Chief of Mission JoAnne Wagner. Note that this briefing is being recorded, and that the recording and a transcript will be sent to all attendees.

Simultaneous interpretation in Bangla is available.

With that, I'd now like to turn it over to Deputy Assistant Secretary Laura Stone.

DAS Stone: Wonderful. And thank you so much for joining us today. This is a really wonderful opportunity, and so I thank all of you for coming. And I thank our embassy and the London Media Hub for putting this together.

So I think this is a great opportunity to talk about the vision that the United States has for the Indo-Pacific region. This is a vision in which all nations are independent, strong, and prosperous. The vision prioritizes support for principles that lead to peace and prosperity, so sovereignty, secure communications networks, freedom of navigation and overflight, standards of trade and investment, free flow of data across international borders, respect for human rights and rule of law, and transparency of military activities.

And if I want to leave you with one key message today, it's that our efforts in the Indo-Pacific are rooted in developing sustainable, creative solutions that maximize the enormous potential of this region. And I think this is particularly true of Bangladesh. Bangladesh is a relationship with enormous potential and a country with enormous potential, and we really do hope to grow on that.

So the administration is looking to grow our relationship with Bangladesh as a key Indo-Pacific partner. The United States and Bangladesh have a long, shared history of cooperation, and we continue to support a tolerant, democratic Bangladesh that serves as a bridge for commerce and an anchor for stability and prosperity in the region. Bangladesh is strategically located at a crossroads between South and Southeast Asia, and plays an important role in our Indo-Pacific vision, and shares our goals of building a more prosperous, secure, and interconnected region. With a dynamic and, as you know, fast-growing economy in normal times, Bangladesh is a development success story. Future success will be fueled by deepening its democratic institutions and governing structures.

So I'd like to begin with some highlights of the ways that the Indo-Pacific strategy focuses on promoting prosperity for the nations in South Asia and beyond, and specifically in areas as supply chain diversification and energy cooperation.

So the Indo-Pacific strategy reinforces the market-based economic systems, private sector finance, and open investment environments that have driven the region's economic success. Sometimes it's hard to or people forget, but the United States is the largest source of foreign direct investment in the region. U.S. foreign direct investment more than doubled from 2007 to 2017, which is the last year we have numbers. It's now almost a billion – almost a trillion dollars, 940 billion. In 2019 we conducted over 1.9 trillion in twoway trade in goods and services with the region, and we supported more than 3 million jobs in the United States and 5.1 million jobs in the Indo-Pacific.

The U.S. private sector is our biggest strength in contributing to high-standard development, transparency, and rule of law. This contrasts with other states that they promote state-dominated, directed investment that often results in corruption and unevenly distributed economic growth.

Now, COVID has presented an unprecedented challenge to the United States, but our coordination on the COVID response has elevated our cooperation and deepened our partnership. It's reinforced our common interest in working together with like-minded partners in the Indo-Pacific to support COVID-19 response and facilitate economic recovery. And this is going to be a big focus as we go forward with Bangladesh. Since the COVID-19 outbreak, the United States has provided \$56 million in assistance to Bangladesh, including \$21 million in health and humanitarian assistance. This really does build on the nearly \$4 billion in U.S. health assistance over the past 20 years – or, excuse me, in total U.S. assistance over the last 20 years, including a billion dollars in health.

Energy cooperation is also a huge area that we are really looking to focus on. We are looking at areas of renewable energy integration, power sector development, procurement reform, and advanced technologies. In Bangladesh the United States is supporting projects that include power plants, LNG import terminals, and joint ventures to supply electricity for decades to thousands of homes. I know that DCM Wagner will speak a little more to that.

And I also want to commend Bangladesh's regional leadership through platforms like BIMSTEC. The outgoing secretary general has played a significant role in advancing the organization, and we are definitely ready to support BIMSTEC and Bangladesh in South Asia's regional integration and connectivity.

Now, I'd also like to turn to ways that our vision for the Indo-Pacific promotes regional security. The Indo-Pacific region has a number of common threats that require strengthening longstanding security alliances and partnerships and encouraging a more networked approach. These areas include maritime security, regional stability, freedom of navigation. It's definitely expanding humanitarian assistance and disaster response, peacekeeping operations, and countering transnational crime.

The United States and Bangladesh cooperate closely on security issues of mutual interest, ranging from counterterrorism to peacekeeping, and we're looking to deepen that partnership. I think, as you know, Bangladesh has been one of the top troop-contributing countries to UN peacekeeping. And so we are very grateful for Bangladesh's commitment to these missions around the world, and we look to support Bangladesh's participation. Both the United States and Bangladesh joined the "smart pledge" for operational-level unmanned aerial systems during the March 29th, 2019 UN peacekeeping ministerial in New York. That's just one area of cooperation.

Our regional security assistance is incredibly broad, and we do look to continue that. It's also very much of mutual interest, with full respect for Bangladesh's sovereignty and independence of action. We're looking to partner with Bangladesh in developing capabilities to advance shared maritime security, humanitarian assistance, and disaster response, counterterrorism, and peacekeeping.

The Bay of Bengal Initiative is a central feature of the Indo-Pacific strategy. Since 2018 we've provided more than \$147 million in foreign military financing alone to enhance capability in Bangladesh, the Maldives, Nepal, and Sri Lanka to share air and maritime domain awareness and information with partners in the region to improve detection and response to disasters and emerging threats like counter-narcotics smuggling.

Now, the Indo-Pacific strategy also has an important element of promoting good governance. We know transparency is an absolute essential basis for sustainable governance solutions and its ability to be responsive to citizens. So the – State and USAID committed over \$263 million towards governance in our Indo-Pacific strategy last fiscal year. The Indo-Pacific transparency initiative is an effort involving over 200 programs by range of U.S. government agencies focused on anti-corruption, fiscal transparency, democracy assistance, youth and emerging leader development, media and internet freedom, and protecting fundamental freedoms and human rights. As competitors seek to undermine openness, innovation and free speech, and access to information, our goal is to provide our partners with tools to resist economic and political exploitation.

And finally, and most importantly, I'd like to turn to another element of the Indo-Pacific strategy, which is in many ways the most important one, our people-to-people ties. I'm incredibly proud of the investment in developing future leaders around the world. I know that Embassy Dhaka tells me that some of the journalists participating today are alumni of some of our programs. We have spectacular cultural outreach centers, some – and we can discuss a little more about this – located in Dhaka. And during the COVID-19 crisis, we're thrilled to see that our Dhaka programs have expanded the use of virtual programs, and we've adjusted our programming to help Bangladeshis prepare for a post-COVID world.

I think our EMK center has organized youth employment campaigns called the Future of Work Post-COVID-19 to build a sustainable, post-pandemic future for our youth. And we know that the Bangladeshis are the future of your country, the Bangladeshi people, but also the future of ours. We have an enormous and welcome group of Bangladeshis that contribute to U.S. society, and we are looking forward to continue our engagement with the people of Bangladesh.

So to summarize before I turn it over to DCM Wagner, our Indo-Pacific vision is rooted in the fact that the United States is an Indo-Pacific country. We will continue to prioritize efforts that lead to peace and prosperity. These include sovereignty, freedom of navigation and overflight, standards of trade and investment, respect for individual rights and rule of law, transparency of military activities.

So I leave it to DCM Wagner to provide further information on the outstanding work that our embassy in Dhaka is doing in these important areas, and I look forward to taking your questions. Thank you.

Ms. Wagner: I think I'm good now. Right? So thank you so much, Laura. That was a terrific overview. And to everyone here, as-salamu alaykum and shuvo shondha. [In Bangla.] Many, many thanks to everyone for joining us tonight.

I'd like to take just a very quick minute on behalf of Ambassador Miller, all of us at Embassy Dhaka, and our D.C. team as well, to note that our hearts go out to all those who are suffering because of the coronavirus. We will continue to partner with the government and the people of Bangladesh to fight this pandemic, while tangibly demonstrating our gratitude to those heroes on the front lines who are working to keep us safe and healthy.

So as to the Indo-Pacific, as was already mentioned, Bangladesh has an essential role to play by expanding our economic ties with free markets throughout the region, acting as a stabilizing force in terms of security, defending human rights, promoting good governance. The United States and Bangladesh partner together to advance the goals and the ideals of the Indo-Pacific strategy. And I'd like to just touch on a few specifics of that work here in Bangladesh.

First, in terms of promoting economic prosperity, the Asian Development Bank estimates that the Indo-Pacific region is going to need 26 trillion, with a "t", trillion dollars in investment by 2030 in order to properly and appropriately develop its infrastructure. And clearly, no one country, no one government, can provide such funding. So the private sector has to play a very, very key role in that.

So through the IPS, we are focused on helping the U.S. private sector do what it does best, and that is sparking innovation, sparking growth, and sparking long-lasting prosperity. And here in Bangladesh we've launched a number of initiatives to accelerate private investment here. We're focusing particularly on energy, on infrastructure, and on the digital economy as particularly crucial sectors. And we're using grants and technical assistance and studies on diversifying Bangladesh's export sector. We're using collaboration with the private sector, and we're working side by side with our Bangladeshi counterparts on these programs, which will help improve market access and open the investment environment.

So I'll give you an example of that that DAS Stone talked about. We've got the Asia EDGE program, and that's something that the U.S. Government is using to help improve energy security and to bring reliable, affordable energy to Bangladeshis throughout the country. And we're doing this while reinforcing marketbased mechanisms. So that's very important. We've supported some signature projects like Bangladesh's very first liquefied natural gas import terminal, and that was commissioned by Accelerate Energy in Maheshkhali. And similarly, we've got some programs with power plants using GE Power technology. And these kinds of programs, this kind of technology, these kinds of joint ventures, we think will help ease Bangladesh's transition from coal to gas-powered energy and will help supply electricity for decades to hundreds of thousands of Bangladeshi homes. And that changes lives.

We're growing our commercial ties despite the pandemic. I mean, who would have thought a year ago that the U.S. clothing giant Hanes would buy, and the Bangladeshi company BEXIMCO would deliver, six and a half million pieces of personal protective equipment and turn this around in less than two months. And now Bangladesh is part of a very small group of world-class, large-scale PPE manufacturing nations, and Bangladesh is quickly becoming a major global player in that sector.

Let me turn now to promoting security. Whether we are working together to guarantee freely navigable trade routes, or developing greater capacity to respond to natural disasters, or combatting trafficking in persons or transnational crime, a secure Indo-Pacific supports a prosperous Indo-Pacific.

So as part of our IPS partnership, for example, the U.S. Coast Guard transferred some vessels, or a vessel, under the U.S. Excess Defense Article Program, and this has helped Bangladesh not only exercise sovereignty over its coastline and over its exclusive economic zone, but it also helped not only counter crime, but it allowed Bangladesh to assist its neighbors in need. In April, one of the Bangladesh navy frigates, which was formerly a U.S. Coast [inaudible]. So I think it's important to emphasize that public health disasters are also security challenges, and DAS Stone mentioned just how much the United States is putting into helping Bangladesh respond to the COVID crisis.

I want to highlight just one small program in addition to the very, very large things that we're doing in helping promote the response to COVID, training literally thousands of healthcare professionals to provide results. We also have a program here in Dhaka to provide food, nourishment to the urban poor in Dhaka, who are most affected by the pandemic. And I think that's a very important illustration of the overall comprehensive view that the United States is taking to partner with Bangladesh on health.

With respect to good governance, again, a free, open, prosperous Indo-Pacific also requires promoting respect for the rule of law, for transparency, for good governance [inaudible] —

Moderator: Apologies for our listeners. We may have some issues connecting with Dhaka. We'll give them just one second.

Ms. Wagner: — protect intellectual property rights. And when companies, wherever they are, see weak institutions or corruption or poor human rights conditions, this deters investments and companies look elsewhere when they're faced with such risks. So we're partnering and working very closely with the Government of Bangladesh and various aspects of the Government of Bangladesh to promote worker safety, for example, and we're also working with the judiciary, legal aid organizations, vulnerable groups, to improve access to and awareness of and the delivery of legal services in Bangladesh. And again, these programs not only affect individual lives, but they increase confidence in public institutions and they also help to counter violent extremism. And those are very, very important contributions.

Turning to investing in Bangladeshis for the future of the country, since 1971, as DAS Stone mentioned, the United States has invested more than \$7 billion in development assistance in Bangladesh, and that's important. Private sector investment is also vital to building pipelines or bridges or production facilities, but this is not enough to ensure sustained prosperity. To invest in the future, you have to invest in people. And to take a little bit of a different tack on this, I'm very proud of what American companies are doing to contribute to the people of Bangladesh. I'll give you a couple of examples.

Chevron, for example, not only provides about not quite half of the natural gas in Bangladesh, and this is something that really fuels Bangladesh's very, very impressive economic growth, but it employs thousands of Bangladeshis – 95 percent of the workers for Chevron in Bangladesh are in fact Bangladeshis. But Chevron also offers hundreds of scholarships and teacher training and educational supplies through its quality education support initiative.

Coca-Cola, who by the way recently announced a \$200 million, five-year program, investment program in Bangladesh, Coca-Cola supports women entrepreneurs through its women business centers.

So people-to-people ties, whether it's through the private sector or whether it's through the U.S. Government, I think this will always be at the heart of U.S.-Bangladesh relations. And to give you a couple of examples of how the U.S. Government invests in this, every year we sponsor about 110 Bangladeshi students and professionals to participate in exchange programs with the U.S. And in fact, the founding father of Bangladesh, Bangabandhu Sheikh Mujibur Rahman, was one of the very first Bangladeshis to participate in a U.S. Government exchange program, and we're very proud of that. And we also have programs where about 1,200 Bangladeshi youth from across the country have graduated from our English Access Microscholarship Program. That's a program that takes place right here in Bangladesh, and it's a two-year program that focuses on English language, leadership development, and community service programs for disadvantaged students.

So to conclude, for five years – excuse me, five decades, much more than five years – our nations and our people have developed and deepened close, close ties between our two countries. And as an example, just last week the honorable prime minister and the U.S. Secretary of Defense spoke about their shared commitment to a free, prosperous, open Indo-Pacific. This month, at the end of this month, the U.S. and Bangladesh will hold our very first economic growth dialogue. The third annual Indo-Pacific Business Forum is going to take place virtually in October, at the very end of October, and this will provide a great opportunity for government and business leaders from the U.S. and Bangladesh and the Indo-Pacific region to talk about energy and infrastructure, the digital economy, market connectivity, health, and how we're going to work together to recover post-COVID.

So as we work together to promote openness and prosperity and peace in the Indo-Pacific region, I am absolutely confident that the United States and Bangladesh will only grow closer, only deepen our partnership, and I'm looking forward to continuing to work together to turn those goals into reality. [In Bangla.] Thank you.

Moderator: Thank you to both of our speakers. We will now open it up for questions. I will begin with a pre-submitted question. This comes from Tanzim Anwar of BSS, who asks, "As security is one of the focuses of the Indo-Pacific strategy, does the United States think a prolonged Rohingya crisis is a security threat to the entire region, and if so, how can the IPS help resolve ethnic crises in the Indo-Pacific?"

Ms. Wagner: Laura, would you like me to take that one?

DAS Stone: Sure, you can start with the Rohingya and then I can talk about the IPS and the humanitarian elements.

Ms. Wagner: Great. Well, the Rohingya crisis remains a really important priority for the United States and it's something that our embassy works on constantly. And this is, frankly, even more of a focus since COVID-19 has hit. I do want to note the incredible generosity of the Bangladesh Government and people for opening their hearts to people who have been fleeing such tremendous horrors. The United States – well, I'll let you talk, Laura, a little bit about some of the contributions that the United States is taking – but we're absolutely committed to finding solutions to help the Rohingya return to Myanmar, return to Burma, and we are pressing – continuing to press the government there to create the conditions so that it's possible for the Rohingya to have a safe, voluntary, dignified, sustainable return to that country. We're working with international partners, international community, to press the government through things like sanctions and other measures through international organizations in New York, in The Hague, and in Geneva to go for a meaningful ceasefire and, again, to create those conditions that make it possible for the Rohingya to turn – return home.

But the work isn't done. The Bangladeshi – sorry, the Rohingya people deserve an opportunity to return safely to their home, and that's what we're working very closely with the international community and the government here to help make sure that happens.

Over to you, Laura.

DAS Stone: Thank you. And in terms of the overall U.S. policy on humanitarian issues, yes, the Indo-Pacific strategy is a comprehensive policy on behalf of the United States. So the policy does incorporate humanitarian assistance, does incorporate refugee principles. We are very aware of the burden that Bangladesh has assumed in hosting the Rohingya, and we do try to be a good partner, both as a direct donor to support the Rohingya, but also as a leader among donor nations to try to encourage the contributions to the Rohingya crisis. So those are all elements of the Indo-Pacific strategy. And we also recognize that it is not exclusively a Bangladesh problem. There are refugees in many places; there are Rohingya camps in other countries. And so we do work to make sure that both the burden and the eventual solution is spread among a variety of countries, with the understanding that the ultimate burden really does have to be on Burma.

Ms. Wagner: Laura, if I could just add a tiny bit to that. The United States remains the largest single humanitarian donor. We've contributed about \$800 million so far to support these refugee efforts, and we're continuing to look at increasing those contributions in 2020, and this is – this encompasses specific funding for the refugees, but it also includes support for host communities as well, and also includes addressing COVID-19 in the camps and in the Cox's Bazar District as well. Thanks.

Moderator: Thank you very much. Our next question comes from Humayun Kabir. Humayun, if you could please state your media outlet.

Question: All right. My name is Humayun Kabir Bhuiyan. I work for *Dhaka Tribune*. It's an English daily that is published from the capital. I have actually – my question has two parts to Ms. Stone in the USA. Number one is that, how do you feel that with the Rohingya crisis which is affecting the whole region? And, I am afraid, with the lingering of the crisis, the situation will get worse, and our government cannot rule out radicalization. How a peaceful, successful Indo-Pacific strategy is possible with this type of problem in place? Number one.

Number two is that, why is Bangladesh so important in your strategy? Is it – is it to contain China as part of U.S. – as a geopolitical interest, or some other thing? Thank you very much.

DAS Stone: All right. Well, great. So on the Rohingya question about the impact on the relationship, the United States is acutely aware of the need for a long-term, durable, sustainable solution to the Rohingya crisis. We do understand very clearly and we have worked with many people in Bangladesh to better understand the need for both short-term relief but also a long-term solution. So I agree with you completely that this is not – the current situation is not one that can be allowed to perpetuate indefinitely. And so we are in communication with the governments involved to push forward a long-term, sustainable solution that does maintain the basic principles of the humanitarian relief, but also the need for a voluntary and safe return of the Rohingya to their place of origin.

With regards to why Bangladesh is so important, so Bangladesh in part is important because of its enormous potential. It is important because of the incredible population that you have that does seek to develop in a very concrete way. The Indo-Pacific strategy is not a containment strategy, it is a U.S. policy towards the region. It is – you can't join the Indo-Pacific strategy; it's just a U.S. policy. But it's an extremely important policy, and it's important because of the way it's been articulated. The – it is articulated in a way that it's not – it's not an East Asia strategy; it's a strategy that really does seek to knit the entire region together. It doesn't contain any one country. It is not aimed at any one country. And in fact, the – it's baked into the name: it's free and it's open. Any country that wants to abide by the principles

of freedom and openness can have the Indo-Pacific strategy applied to it by the United States. And the Indo-Pacific strategy is mostly about ties, it's about relationships, it's about building up in a wide variety of areas the relationships between the region and also with the United States.

So it's a very positive strategy. It is not negative. It is not a reflection of any kind of aim to respond to another country's policies or strategies. And in that sense, Bangladesh has enormous potential and has an enormous opportunity here to really welcome the kinds of benefits the United States and its companies and its partnership brings.

JoAnne, do you want to add anything?

Ms. Wagner: No, I think you've really covered it. There's a strategic location, there's a large population, there's this incredible manufacturing base, there's strong financials. This is a real draw for American companies and businesses that want to partner with Bangladesh. And we've already seen how nimble Bangladesh can be in terms of responding to the COVID crisis. So those opportunities that are there there's a recognition that Bangladesh has incredible human capital to share as well - I think just show how many opportunities there are and why it is important for the U.S. to work with Bangladesh through the Indo-Pacific strategy to, as Laura mentioned, knit together the countries here for the prosperity of all. Thanks.

Moderator: Our next pre-submitted question comes from the Daily Ittefag. There is – apologies. "There is a popular perception that the Indo-Pacific strategy was created to counter China's One Belt, One Road initiative. Would you please clarify?"

DAS Stone: Yeah, that's easy. It's not. [Laughter.] The Indo-Pacific strategy is a policy for the United States. Because of the U.S. location, we've also - we've had a tendency to look to the Pacific Ocean and the Pacific Rim as a sort of natural trading partner and natural people-to-people partnerships and things like that. And I think there's been a recognition that that was not – that didn't encompass well enough the extent of the region.

And so we looked at - started looking at the Indian Ocean and it was a recognition of both our ties to the Indian Ocean region, so Indo-Pacific, the – but also an awareness that the United States needs to devote more time, energy, and resources to the region and to building up those partnerships because of their importance to us economically, in terms of security, in terms of counterterrorism, counternarcotics, people-to-people ties, the enormous number of Bangladeshi Americans and Bangladeshi citizens in the United States, the need for better transportation ties, but also an awareness that the way the United States works, we are not necessarily always engaged bilaterally with - on every issue. We need those ties to go across countries, and many, many of our challenges and our opportunities in terms of economics involve cross-border exchanges.

So for us it was very important to also put together a regional strategy that looked at the area regionally. You can even look at something like an iPhone and the number of different places that contribute to the final value of the phone. It's essential to U.S. private business and investment that we take a more comprehensive look at the region. And so that's what it is. It is not aimed at Belt and Road. It is not – we have an awareness that we need to spread better information about the fact that the United States is the largest foreign direct investor in places like South Asia. I think that that was fairly – we just did it naturally. We weren't trumpeting our horn, but there is a little bit of a need to publicize that so people are aware that those are the kinds of things that are also happening.

So that's also part of the Indo-Pacific strategy, is facilitating those kinds of communications and also investments.

Moderator: Excellent. Our next question is a live question. It is from Abu Anas. Mr. Anas, if you could please state your media outlet.

Question: Hi. Can you hear me, please?

Moderator: You're coming in a little faint, so if you'll speak up we can – we can hear you clearer that way.

Question: Okay. Okay, I have written the question. So, how important is smaller countries like Bangladesh is in the U.S. foreign policy? As people perceive your country – I mean that Washington always favors the countries which have geopolitical relevance. Is it true? If not, please explain.

DAS Stone: I couldn't hear the very end of the question.

Question: Oh. People perceive that you always favor the countries which have geopolitical relevance or are an actor, geopolitical actors, and the all - countries like Bangladesh are always marginalized in your foreign policy. Is it true? How far do you agree or disagree?

DAS Stone: Right. So I think that that's a really interesting question, and it's certainly not our intention to marginalize smaller countries. And in fact, Bangladesh is not a smaller country. Bangladesh is actually quite a huge country. But the intention, I think, is that we very much hope that we can build on our relationship with Bangladesh, that this is a relationship that has enormous areas that are - we can grow

into. I look at a country like Vietnam that has really taken advantage of the opportunities created by the desire for manufacturing to diversify, for supply chains to diversify, for partnerships to diversify. And those are all areas that Bangladesh is absolutely ripe to grow into.

In terms of the nature of the United States, I think it just gets more attention when we're dealing with these – the true super, super countries in the world. There aren't that many of them and they just get a lot of news. And so this is part of our desire here to make sure that people do understand that we devote a tremendous amount of resources to Bangladesh and we want to make sure that we - that that is understood.

The United States focuses quite a lot on Bangladesh and we just need to make sure that everybody is hearing that and understanding it. And we intend to – as the DCM already suggested, we intend to launch an economic growth dialogue hopefully aimed at some kind of economic partnership that makes it clear that – to private investors as well as to business people and the people of both of our countries, the incredible importance that we do devote to – or that we – the incredible importance that we do see in Bangladesh-U.S. relations.

Ms. Wagner: If I can add to that, as DAS Stone already mentioned, Bangladesh is not a small country. In fact, Bangladesh is the eighth largest country in the world. And I think that in the United States and elsewhere, people are waking up to that fact because if you plopped a country of 165 million people, for example, in the middle of Europe, that would cause quite a stir. And I think it's something that folks are recognizing. Businesses are recognizing it.

And to add to the things that I mentioned earlier about Chevron and Coca-Cola, Oracle opened its first office here in Bangladesh in March. Not only did Accelerate Energy build the first LNG import facility here, there is a firm, U.S. – sorry, DSC Dredge. It is building state-of-the-art dredging equipment right here in Bangladesh, providing jobs for Bangladeshis and also transferring technology. And together they're supporting the government's inland water transport and river dredging work, and creating a genuine partnership. And other firms and other companies are seeing this beneficial partnership between U.S. and Bangladeshi companies. We're also working through USAID to help promote public-private partnerships in areas that are ripe for Bangladesh to diversify its exports.

So, for example, USAID has done a couple of studies and identified areas like IT, engineering and light manufacturing, tourism, agribusiness, pharmaceutical industry, as areas that are really ripe for U.S. companies to come in and partner with Bangladeshi firms to the benefit of both countries. And it may very well be that some of those projects – cold chain projects, et cetera – will involve public-private partnerships.

So the U.S. is certainly waking up and recognizing that Bangladesh is a very important country. Thank you.

Moderator: All right. Our final question was submitted in advance, and it comes from Morshed Hassib of Channel 24, who asks, "While India is your strong partner in the strategy, do you believe Bangladesh will be able to work within the Indo-Pacific strategy freely, given that recent Chinese investment in Bangladesh is much greater than the investment from the United States?"

DAS Stone: So I'll – I can start there. The – first of all, the investment from the United States doesn't – you have to be very careful about the data. The Indian relationship is obviously important, but it – there's no intention to have that overwhelm the relationship with, for example, Bangladesh. The United States is not seeking to create an India that is a – is not seeking to create a relationship with India that would in any way exclude or be problematic for other countries. But we are seeking to support India as it deals with some specific regional challenges, and those are the kinds of things that I think just a good partner does.

In terms of specifically the investment of China versus the United States in any country, so because of the way China does investment, that it's state-directed, it's very high-profile, it is not necessarily always contributing to an even distribution of growth, but it - they build high-profile things that they can sort of stick their brand on. U.S. investment is actually larger, but it is not driven by the United States. So, for example, it's always very hard to tell U.S. investment because often it goes through third parties, third countries, and it will often be driven by U.S. consumers' purchasing, and things like that, but maybe it's a South Korean company or a European company that's actually doing the manufacturing, or the - a Bangladeshi company that is doing the manufacturing. And so you have to understand that the – even though the United States is by far the largest driver of investment and often the largest source – ultimate source of investment, it's something that doesn't show up exactly in the data.

So I don't think that there's any conflict there at all. In fact, the United States is a much, much, much stronger driver of investment around the world and in Bangladesh. And so just because something is highprofile and has a bridge or something with a big "China" stamped on it does not necessarily mean that that's really what's driving your future and what is going to be driving U.S.-Bangladesh economic relations going forward.

We're very, very positive about this. This is something that the United States hopes to continue to partner commercially and economically with Bangladesh going forward. We seek to be as communicative as possible about the kinds of investment climate that is most conducive to creating this sort of natural flow of investment and trade. And that's our - that's our vision. That is what we're seeking to achieve. We're seeking to achieve natural, non-coercive economic and security relationships that fully respect the sovereignty and freedom of action of the countries that we partner with.

Ms. Wagner: And if I can add to that, again, the Indo-Pacific strategy, the Indo refers to the Indian Ocean, not to India. And I think that while India certainly has a role to play, it's very, very clear that Bangladesh is a regional and global leader in its own right with its own distinct foreign policy, its own global interests, and our relationship with Bangladesh is based on that as well as the regional overview that we've talked about through the Indo-Pacific strategy.

So we are very, very excited about working with Bangladesh under the auspices of the IPS, but also in terms of our bilateral relationship to find ways, for example, through our energy projects, that Bangladeshi citizens, people living here, have better access to electricity, that Bangladeshis, through our health programs, lead healthier lives, that we together work on a COVID response that answers needs in Bangladesh. And unlike - or, sorry, like many of my colleagues here, I actually lobbied to come to Bangladesh because I think the opportunities are incredible. And it's a very, very exciting time to be here, to work together towards that free and open Indo-Pacific that we believe can only add to prosperity to all the countries involved, including Bangladesh. So thank you.

Moderator: Thank you to our speakers and thank you to our attendees for this special briefing. I'm sorry, we've run out of time at this point. I understand that we didn't get to many of your questions. But once again, thank you for your time. Thank you again to Deputy Assistant Secretary Laura Stone and to Deputy Chief of Mission JoAnne Wagner. Good evening in Dhaka, and good afternoon here.

Ms. Wagner: Dhan'yabada. Thank you very much.

DAS Stone: Thank you so much.

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EXHIBIT 5

GAO

Briefing Report to the Honorable Arlen Specter United States Senate

January 1987

ASYLUM

Uniform Application of Standards Uncertain--Few Denied Applicants Deported





RESTRICTED — Not to be released outside the General Accounting Office except on the basis of specific approval by the Office of Congressional Relations,

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APPENDIX I APPENDIX I

One of Congress' primary objectives in adopting this definition of a refugee was to eliminate discrimination on the basis of outmoded geographical and ideological considerations. Before the act, U.S. asylum policy was limited to refugees from communist countries and the Middle East. The House Judiciary Committee held that the previous definition of a refugee was clearly unresponsive to the existing diversity of refugee populations and did not adequately reflect traditional U.S. humanitarian concern for refugees throughout the world.

During deliberations on the act, Congress considered expanding the U.N. definition of a refugee to include displaced persons fleeing military or civil strife, or persons uprooted because of arbitrary detention. The United Nations' Handbook on Procedures and Criteria for Determining Refugee Status' states that persons compelled to leave their country of origin as a result of international or national armed conflicts are not normally considered refugees under the U.N. Convention and Protocol on the Status of Refugees. The Senate bill, however, contained a definition that included persons who have been displaced by military or civil disturbances or uprooted by arbitrary detention and are unable to return to their usual place of abode. The House bill contained only the U.N. refugee definition. The conference committee adopted the House definition of a refugee, not the Senate's.

THE ASYLUM PROCESS

An alien may apply for asylum in any of the following ways:

- -- An alien may apply to the INS district director having jurisdiction over the alien's place of residence if exclusion or deportation proceedings have not been instituted.²
- -- An alien may apply for asylum to an immigration judge in EOIR during deportation or exclusion proceedings.

Handbook on Procedures and Criteria for Determining Refugee Status (Geneva, Sept. 1979).

Deportation proceedings are conducted for aliens apprehended after entry into the United States. Exclusion proceedings are held for aliens apprehended while attempting to enter the United States.

EXHIBIT 6

THE REFUGEE ACT OF 1980 AND THE DEPOLITICIZATION OF REFUGEE/ASYLUM ADMISSIONS An Example of Failed Policy Implementation

BARBARA M. YARNOLD Saginaw Valley State University

One of the objectives of the Refugee Act of 1980 was to eliminate a bias that existed in U.S. refugee admissions in favor of aliens from hostile countries of origin (countries with communist, socialist, and leftist forms of government). This analysis finds that the hostile country bias in refugee admissions was perpetuated (and even, in the case of the State Department, intensified) through policy implementation by agencies within the immigration bureaucracy since passage of the Refugee Act of 1980. Specifically, the INS and the State Department, in their post-1980 decision making on asylum and refugee applications, continue to favor aliens from hostile countries.

U.S. refugee and asylum policy is generally viewed as *humanitarian*. The current definition of a refugee under U.S. law supports this view:

... any person who is outside any country of his nationality ... who is unable or unwilling to avail himself of the protection of, [sic] that country, because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership of a particular social group, or political opinion. . . . (Refugee Act of 1980, section 208[a])

There are three remedies in U.S. law for those subject to persecution in their countries of origin. Aliens residing outside of the U.S. may file a claim for refugee status with consular offices worldwide (under the jurisdiction of the U.S. State Department). Aliens within the U.S. who are refugees may raise this status affirmatively, as asylum applications, or defensively, during the course of deportation and exclusion hearings. Asylum applications may be filed with either the Immigration and Naturalization Service (INS) or with immigration judges

(within the Executive Office for Immigration Review—EOIR) during exclusion and deportation hearings. Regardless of when filed, the standard for asylum claims is the same: an alien must demonstrate that he or she has a "well-founded fear" of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

Aliens may also file requests for "withholding of deportation" during exclusion and deportation hearings on the grounds that there is a "clear probability" they will be persecuted if deported. The clear probability standard for withholding is more stringent than the well-founded fear that applies to asylum claims (INS v. Cardoza Fonseca 1987).

After asylum and withholding claims are filed, both the INS and immigration judges forward the record to the State Department's Bureau of Human Rights and Humanitarian Affairs (BHRHA) for an advisory opinion, which, though not binding, greatly influences their determinations (Preston 1986; Loescher and Scanlan 1986).

In spite of the humanitarian appearance of U.S. refugee policy, in the aftermath of World War II heightening East/West tensions and a "red scare" in the U.S. contributed to a politicization of this policy area (Loescher and Scanlan 1986); refugee claims during this period were subordinated to U.S. political considerations. Refugees came to be statutorily defined as aliens from communist countries and countries in the Middle East. As a result of this shift from humanitarian to political considerations, refugees from hostile countries (defined as countries with communist, socialist, and leftist governments) were favored in refugee admissions over those from nonhostile countries. This bias in favor of hostile-state aliens persisted for the next three decades.

Partly in response to the biased nature of refugee admissions, President Carter signed into law the Refugee Act of 1980. The Act both allowed refugees in the U.S. to apply for asylum and redefined the term refugee to eliminate the bias in favor of aliens from communist countries and the Middle East.

In spite of the fact that the Refugee Act of 1980 clearly mandates a depoliticization of U.S. refugee and asylum policy, many suggest that

in the post-1980 period, this policy continues to be biased in favor of hostile-state aliens (Loescher and Scanlan 1986; Helton 1984; Parker 1985; Van Der Hout 1985; Preston 1986). However, they fail to provide sufficient support for their claims that a hostile-state bias existed in the pre-1980 period and continues to pervade this policy area in the post-1980 period. Further, they fail to explore other factors that may influence decision making by the INS (asylum applications) and State Department (refugee claims). This article examines determinations by the INS and State Department on asylum and refugee claims in the pre- and post-1980 periods, and the extent to which these determinations are related to whether aliens are from hostile countries of origin and whether aliens are from Europe.

HYPOTHESIS

A first prediction is that the State Department, in the pre-1980 period, favored refugees from hostile countries. Since asylum was not officially recognized until 1980, it is not possible to examine the extent to which the INS was similarly influenced by this variable in the pre-1980 period. The analysis next explores decision making on refugee (State Department) and asylum claims (INS) in the post-1980 period, to examine whether these agencies perpetuate the hostile-country bias after passage of the Refugee Act of 1980.

A competing hypothesis is that refugee and asylum admissions, both before and after passage of the Refugee Act of 1980, are biased in favor of aliens from European countries of origin. Many critics assert that overall immigration has been biased from its inception, in the U.S.'s preference for aliens from European countries, ban on Asian immigration, and emphasis on family ties rather than labor force requirements when most U.S. residents were themselves from Europe (Loescher and Scanlan 1986). Because refugee and asylum admissions are a part of total immigration to the U.S., it might be suggested that aliens from Europe have had, and will continue to have, higher acceptance rates on their refugee and asylum claims than aliens from non-European countries of origin.

DATA AND METHODS

Data used for the analysis of pre-1980 State Department determinations on refugee claims was obtained from the U.S. Department of Justice, Immigration and Naturalization Service (INS). Data provided show, for the period of July 1974 to September 1979, the number of refugees that were admitted from various countries of origin each fiscal year, pursuant to Section 203(a)(7) of the Immigration and Nationality Act of 1965.

For the post-1980 period, INS Statistical Yearbooks were consulted (U.S. Department of Justice 1982-1986). However, in addition to examining the number of refugees from each country of origin that were admitted by the State Department (1982-1985) during the post-Refugee Act of 1980 period, it is also possible to examine the number of asylum applications approved for each country of origin by the INS (1983-1985).

Thus, three separate equations are set forth: the first is for pre-1980 refugee determinations by the State Department, where the dependent variable is an annualized measure of the refugees admitted from each country of origin as a percentage of total refugee admissions during the fiscal year. The analysis examines refugee admissions from July 1974 to September 1979; there are 234 cases.

The second equation is for post-1980 refugee determinations by the State Department. The dependent variable is again an annualized measure of the refugees admitted from each country of origin as a percentage of total refugee admissions during each fiscal year. The period examined is 1982-1985;² the data number 185 separate cases.

The third equation is for INS determinations on asylum applications during the period 1983-1985; the dependent variable is an annualized measure of the asylum applications approved for each country of origin as a percentage of total asylum applications approved during the fiscal year. The analysis includes asylum admissions during the period 1983-1985;³ 142 cases are included.⁴

The analysis examines the extent to which INS and State Department determinations, pre- and post-1980, may be explained by two independent variables: whether the applicants' countries of origin are hostile to the U.S. and whether the applicants are from Europe.

19/4-19/9 (Pre-Refugee Act of 1980)								
Variable	В	SE B	Beta	t	Sig t			
Constant	62.8	78.1	.00	.80	.42			
Hostile state	527.2	117.5	.30	4.48	.00			
European state	22.3	119.6	.01	.19	.85			

TABLE 1
Regression Estimates for State Department Refugee Determinations:
1974-1979 (Pre-Refugee Act of 1980)

NOTE: Dependent variable: Refugees admitted from each country of origin as a percentage of total refugee admissions during each fiscal year. Multiple R = .29; $R^2 = .09$; adjusted $R^2 = .08$; F = 11.29; df = 2; p = .00; n = 234.

Background Notes, published by the U.S. State Department's Bureau of Public Affairs (U.S. Bureau of Public Affairs 1987), were consulted to determine whether countries of origin included in the analysis are hostile to the U.S. When these notes suggest that countries have communist, socialist, or leftist forms of government, they are labeled hostile to the U.S. If a hostile relationship exists, the country in question receives a 1; if no hostile relationship exists, the country receives a 0. Also from this source, it was possible to determine whether the countries of origin are located in Europe; if they are located in Europe they receive a 1, otherwise they receive a 0.

Regression analysis was performed for all three equations: pre-1980 refugee decisions, post-1980 refugee determinations, and post-1980 decisions on asylum applications; the results are contained in Tables 1-3.

FINDINGS: REFUGEE AND ASYLUM DETERMINATIONS PRE- AND POST-REFUGEE ACT OF 1980

Table 1 (pre-1980 refugee determinations) indicates that only one variable is significantly related to refugee admissions during the period 1974-1979: whether the country of origin of applicants is hostile to the U.S. (p = .00). Hostile-state applicants were 527.2% more likely to obtain refugee status than were applicants from non-hostile states during this period.

1982-1985 (Post-Refugee Act of 1980)								
Variable	В	SE B	Beta	t	Sig t			
Constant	70.8	442.3	.00	.16	.87			
Hostile state	3491.4	710.1	.38	4.92	.00			
European state	-1660.3	927.0	14	-1.79	.08			

TABLE 2
Regression Estimates for State Department Refugee Determinations: 1982-1985 (Post-Refugee Act of 1980)

NOTE: Dependent variable: Refugees admitted from each country of origin as a percentage of total refugee admissions during each fiscal year. Multiple R = .34; $R^2 = .12$; adjusted $R^2 = .11$; F = 12.2; df = 2; p = .00; n = 185.

Table 2, for post-Refugee Act of 1980 determinations by the State Department on refugee applications, reveals a strikingly similar pattern. The only statistically significant variable is hostile state (p = .00). During this period, hostile-state applicants were 3491.4% more likely to obtain refugee status than were applicants from nonhostile states, which is actually higher than the percentage reported for the pre-1980 period. Hence, the State Department has not implemented the Refugee Act of 1980 with respect to its goal of eliminating the pro-hostile-country bias in refugee admissions. If anything, the hostile-country bias in State Department refugee determinations seems to have intensified during the post-1980 period.

The INS seems to have followed the lead of the State Department in its post-Refugee Act of 1980 determinations on applications for asylum. The only significant independent variable in the third equation for INS decisions (Table 3) is also hostile country of origin (p = .01). Asylum applicants from hostile states were 4.44% more likely to obtain asylum than were nonhostile-state applicants.⁵

DISCUSSION

Administrative agencies responsible for implementing the Refugee Act of 1980, which eliminated a long-term bias in U.S. refugee admissions in favor of refugees from hostile countries (countries with communist, socialist, and leftist forms of government), failed to

Variable	В	SE B	Beta	t	Sig t		
Constant	.38	1.05	.00	.36	.72		
Hostile state	4.44	1.74	.24	2.55	.01		
European state	94	2.09	04	45	.65		

TABLE 3
Regression Estimates for INS Asylum Determinations: 1983-1985 (Post-Refugee Act of 1980)

NOTE: Dependent variable: Number of asylum applications approved for each country of origin as a percentage of total approvals during each fiscal year. Multiple R = .22; $R^2 = .05$; adjusted $R^2 = .04$; F = 3.56; df = 2; p = .03; n = 142.

enforce this provision. In fact, a comparison of pre-1980 (1974-1979) and post-1980 (1982-1985) determinations by the State Department on refugee claims suggests that the hostile-country bias increased rather than decreased after passage of the Act. The INS followed the lead of the State Department in the post-Refugee Act of 1980 period (1983-1985) in its decided preference for asylum applicants from hostile countries.

This suggests that at lower administrative levels, involving decisionmaking by the INS and State Department, asylum and refugee claims, as in the past, are subordinated to political considerations.

In favoring hostile-state aliens, the State Department and the INS clearly failed to enforce those provisions of the Refugee Act of 1980 that call for elimination of a long-standing bias in favor of hostile-state aliens. This failure in policy implementation may be attributed to the divergence between the goals of the State Department and INS (in favoring hostile-state aliens) and policy goals set forth in the Act (Bardach 1984; Yarnold 1990).

Several dangers arise as a result of the injection of a hostile-country bias into refugee and asylum admissions. First, when the INS and the State Department subvert congressional policy goals, they endanger democratic processes. Second, those who are political refugees may find no shelter in the United States. This leads directly to a third danger: a loss of international goodwill when the world community discovers that U.S. refugee and asylum policy is driven by political considerations, not humanitarian ones. Finally, INS and State Depart-

ment practices may interfere with the president's ability to pursue important foreign policy objectives.

On this last point, one wonders what relevance the pro-hostile-country bias of the immigration bureaucracy has in an era in which East/West tensions appear to be on the decline. Is it possible that a continuation of the hostile-state bias by the INS and the State Department may obstruct the easing of tensions among the superpowers?

It is an appropriate time for the INS and the State Department to bring their decisions into conformity with the Refugee Act of 1980 and to abandon their bias in favor of hostile-country aliens. One way to accomplish this would be to eliminate the role of the State Department in this policy area. First, jurisdiction over refugee claims should be transferred to a new agency not located within the State Department. Second, the INS and immigration judges should no longer defer their asylum and withholding determinations to advisory opinions issued by the State Department. Further, background notes on individual countries should not be consulted by these decision makers, or should be consulted only in conjunction with other sources, such as country reports issued by Amnesty International and other public-interest watchdog organizations.

Of course, this suggestion will increase the workload of the (chronically understaffed and underfunded) agencies involved, since they will no longer rely exclusively on State Department evaluations. However, this increased workload is justified when one considers the magnitude of the risk faced by political refugees.

NOTES

- 1. It was necessary to use fiscal years employed by the INS: October 1978 to September 1979; October 1977 to September 1978; October 1976 to September 1977; July 1975 to September 1976; July 1975 to June 1976; and July 1974 to June 1975. This created some difficulty since the INS changed its fiscal year from July-June to October-September in 1976. Hence there is some repetition in the statistics reported for that year. This should not significantly affect the analysis.
 - 2. This includes fiscal years beginning in October and ending in September.
 - 3. Once again, the fiscal years examined run from October to September.
- 4. In previous analysis (Yarnold 1990), the post-1980 statistics for State Department refugee admissions and INS asylum admissions employed proportional measures that took account of

the people available for refugee and asylum status. The dependent variable employed there is, for each country of origin in each year, the number of approvals on refugee/asylum applications over the number of applicants. The results obtained from this previous analysis are compatible with the results obtained here; namely, the hostile-state dummy variable was significant.

5. The R^2 for the three equations is relatively low: for pre-1980 refugee admissions it is .09; for post-1980 refugee admissions it is .12; and for post-1980 asylum admissions it is .05. Nevertheless, an extensive review of the literature (lasting over one year) yielded three major factors that have been employed to explain refugee admissions: (1) whether the applicant's country of origin is communist, socialist, or leftist (a hostile country); (2) whether the applicant's country of origin is European; and (3) economic conditions in the United States, including the unemployment rate. Prior analysis (Yarnold 1990) suggested that this last variable, the unemployment rate, was not significantly related to refugee admissions, so this economic variable was not included in the present analysis. Further, the data employed in this analysis is aggregate and it is not possible to examine individual case characteristics.

In spite of the low explained variance in each of the equations, the analysis does reveal that a hostile-state bias exists in refugee and asylum determinations both before and after passage of the Refugee Act of 1980.

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EXHIBIT 7



Immigration: U.S. Asylum Policy

February 19, 2019

Congressional Research Service

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R45539

- crime outside the United States;" or there existed "reasonable grounds" for considering the alien a danger to national security.
- An initial grant of asylum was for one year and could be extended in one-year increments.
- Asylum status could be terminated for various reasons, including changed conditions in the asylee's home country.

1990 Final Rule

There was much discussion and debate about asylum in the 1980s, as related legislation and regulations were proposed, court cases were litigated, and the number of applications increased. In addition, in a 1983 internal DOJ reorganization, EOIR was established as a separate DOJ agency to administer the U.S. immigration court system. It combined the Board of Immigration Appeals (BIA)⁴⁴ with the INS immigration judge function. With the creation of EOIR, the immigration courts became independent of INS.

It was not until July 1990 that INS published a final rule to revise the 1980 interim regulations on asylum procedures. ⁴⁵ According to the supplementary information to the 1990 rule, the asylum policy established by the rule reflected two core principles: "A fundamental belief that the granting of asylum is inherently a humanitarian act distinct from the normal operation and administration of the immigration process; and a recognition of the essential need for an orderly and fair system for the adjudication of asylum claims."

The 1990 final rule created the position of asylum officer within INS to adjudicate asylum applications. As described in the supplementary information to a predecessor 1988 proposed rule, asylum officers were intended to be "a specially trained corps" that would develop expertise over time, with the expected result of greater uniformity in asylum adjudications.⁴⁷ Under the 1990 rule, asylum applications filed with the district director were to be forwarded to the asylum officer with jurisdiction in the district.

Under the 1990 rule, comments on asylum applications by DOS—a standard part of the adjudication process under the 1980 interim regulations—became optional.⁴⁸ (In an earlier, related development, DOS announced that as of November 1987 it would no longer be able to provide an advisory opinion on every asylum application due to budget constraints and would focus on those cases where it thought it could provide input not available from other sources.⁴⁹)

The 1990 rule distinguished between asylum claims based on actual past persecution and on a well-founded fear of future persecution. To establish a well-founded fear of future persecution, the rule

⁴⁴ The BIA, "the highest administrative body for interpreting and applying immigration laws," has jurisdiction to hear appeals of certain decisions made by immigration judges and DHS. "Most BIA decisions are subject to judicial review in the federal courts." See U.S. Department of Justice, Executive Office for Immigration Review, https://www.justice.gov/eoir/board-of-immigration-appeals.

⁴⁵ U.S. Department of Justice, Immigration and Naturalization Service, "Aliens and Nationality; Asylum and Withholding of Deportation Procedures," final rule, 55 *Federal Register* 30674, July 27, 1990 (hereinafter cited as 1990 final rule).
⁴⁶ Ibid. p. 30675.

⁴⁷ U.S. Department of Justice, Immigration and Naturalization Service, "Aliens and Nationality; Asylum and Withholding of Deportation Procedures," revised proposed rule, 53 *Federal Register* 11300, 11301, April 6, 1988.

⁴⁸ A February 1984 *Washington Post* article described INS as being "determined to recapture control of the asylum process" from the State Department. The article cited the 1980 regulatory provisions on DOS review of asylum cases as one source of State Department control. Caryle Murphy, "Eager INS Official Seeks to Cut Backlog of Asylum Requests," *Washington Post*, February 27, 1984, p. A9.

⁴⁹ This change was reported in U.S. Department of Justice, Immigration and Naturalization Service, "Asylum Adjudications Procedure Change," 53 *Federal Register* 2893, February 2, 1988. Under current regulations (8 C.F.R. §208.11), USCIS may request, at its discretion, and DOS may provide, at its discretion, comments about asylum cases.

AMENDED PROOF OF SERVICE

I, Kim Denison, hereby certify that I caused to be served a copy of the foregoing electronically to AGCertification@usdoj.gov, and by mail in triplicate to:

U.S. Department of Justice Office of the Attorney General, Room 5114 950 Pennsylvania Avenue, NW Washington, DC 20530

by U.S. Postal Service on September 29, 2020.

I, further, certify that I caused to be served a copy of the foregoing by U.S. Postal Service on September 29, 2020 to:

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