



NEW YORK  
CITY BAR

CAREY R. DUNNE

PRESIDENT

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June 19, 2013

Hon. John Boehner  
Speaker of the House of Representatives  
1011 Longworth HOB  
Washington, DC 20515

Hon. Nancy Pelosi  
Democratic Leader of the House of  
Representatives  
235 Cannon H.O.B.  
Washington, DC 20515

Dear Speaker Boehner and Democratic Leader Pelosi:

I write on behalf of the Association of the Bar of the City of New York (the Association). Upon the Association's review of the proposed Immigration and Modernization Act, SB 744, we find that Congress has not yet addressed one troubling "Catch-22" within our current immigration regime that adversely affects victims of some of the world's worst atrocities: child soldiers who are precluded, by the very persecution they suffered, from gaining lawful status in the United States. The Association seeks to bring light to this timely issue here.

The Association is an independent non-governmental organization of more than 24,000 members in over 50 countries. It has a long history of dedication to human rights, most notably through its Committee on International Human Rights, which investigates and reports on human rights conditions around the world and its Immigration and Nationality Law Committee, which addresses diverse issues pertaining to immigration law and policy and claims for international human rights protection. The Committee on African Affairs monitors and responds to legal and policy developments in Africa and through its Subcommittee on Child Soldiers addresses legal issues that impact upon children who are recruited for military purposes. Each of these committees has considered and recommends the position adopted herein.

The United States, as well as numerous other nations, has taken the position that the use of child soldiers is a severe violation of international law. It has been held to be a violation of customary international law, as well as a direct violation of numerous international treaties, such as the United Nations Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, the International Labor Organization Convention on the Worst Forms of Child Labor, and Protocol II of the Geneva Convention. Those who have recruited and employed children as soldiers have faced charges at the International Criminal Court, ICTY, ICTR, and the Special Court for Sierra Leone, most notably in the ICC case against Thomas Lubanga Dyilo which resulted in a criminal conviction for the conscription of child soldiers. *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-2842 (ICC 2012).

Further, United States domestic law levies severe penalties against those discovered within our borders to have employed the use of child soldiers. 18 USC § 2442. Notably, the Immigration and Naturalization Act (INA) § 212(a)(3)(G) institutes a permanent bar from admission to the United States for the recruitment of child soldiers, as well as rendering the alien deportable under INA § 237(a)(1)(A). Thus, recruiters of child soldiers are subject to the most severe penalty of the United States immigration regime.

Notwithstanding this strong condemnation of those who recruit and employ child soldiers around the world, there are, somewhat ironically, in the INA two provisions that, unforeseen by the original drafters, are now being used to bar former child soldiers themselves from gaining any status in the United States. The unexpected consequence of these provisions affects a large number of alien applicants who would otherwise be permitted to apply for admission or lawful status. Child soldiers and their families come to the United States as refugees, but rather than gaining refugee status, discover that they are subject to permanent inadmissibility.

The two provisions are INA § 208(b)(2)(A)(i) “the Persecutor Bar”, and INA § 212(a)(3)(B) “the Terrorist Bar.” Each of these is vital to protecting our nation's national security, but has come to apply inadvertently to this particular group of victims. The attachment to this letter sets forth the problematic language of those statutes, as well as a simple fix in each case that would avoid the unintended consequence at issue.

With immigration reform on the table, now is the time to amend the statutory subsections in order to allow former child soldiers, as victims of atrocities themselves, to apply for asylum or other lawful status in the United States. Note that the proposed amendments would only permit *application* for status in the United States, and that the high burden to prevail on their case would still rest with the alien applicant.

In drafting the proposed amendments, we have taken into account the importance of these statutes that serve to protect U.S. citizens and residents and prevent potentially dangerous aliens from gaining entry to and lawful status in the United States. Accordingly, our proposed amendments craft a narrow exception that would permit application for entry only for those former child soldiers, who were themselves victims of atrocities, while upholding the original intent of the drafters to prevent entry to other undesirable aliens.

We urge you to consider fully our proposals below, and advocate for their incorporation into the current proposed Immigration and Modernization Act.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Carey R. Dunne", with a horizontal line extending to the right.

Carey R. Dunne

cc: Hon. Bob Goodlatte  
Chair, House Judiciary Committee  
2309 Rayburn HOB  
Washington, DC 20515

Hon. John Conyers, Jr.  
Ranking Member, House Judiciary Committee  
2426 Rayburn HOB  
Washington, DC 20515

## PROPOSED AMENDMENT: THE PERSECUTOR BAR

INA § 208(b) - Conditions for granting asylum currently reads:

(2) Exceptions, (A) In General - Paragraph (1) shall not apply to an alien if the Attorney General determines that (i) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of their race, religion, membership in a particular social group, or litigation opinion...

We propose that Congress could amend the INA to include a statutory exception or carve out of the inadmissibility statute to read:

INA § 208(b)(3)(C)(iii) - Conduct under INA 208(b)(2)(A)(i) shall exclude those acts coerced by force, or threat of force, performed while the applicant was under 18 years of age.

## PROPOSED AMENDMENT: THE TERRORIST BAR

INA § 212(a)(3)(B) Terrorist activities currently reads:

(i) IN GENERAL.-Any alien who- (I) has engaged in a terrorist activity ... is inadmissible ...

(iii) TERRORIST ACTIVITY DEFINED. - As used in this Act, the term “terrorist activity” means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:

(I) The hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).

(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.

(III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18, United States Code) or upon the liberty of such a person.

(IV) An assassination.

(V) The use of any-

(aa) biological agent, chemical agent, or nuclear weapon or device, or

(bb) explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

(VI) A threat, attempt, or conspiracy to do any of the foregoing.

We propose that Congress amend the INA to include a statutory exception or carve out of the inadmissibility statute to read:

INA § 212(a)(3)(B)(iii)(VII) - Activities under INA § 212(a)(3)(B)(iii) shall exclude those acts coerced by force, or threat of force, performed while the applicant was under 18 years of age.

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a bold, serif font, centered between two horizontal blue bars.

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June 19, 2013

Hon. Harry Reid  
Majority Leader of the Senate  
522 Hart Senate Office Building  
Washington, DC 20510

Hon. Mitch McConnell  
Minority Leader of the Senate  
317 Russell Senate Office Building  
Washington, DC 20515

Dear Senator Reid and Senator McConnell:

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cc: Hon. Patrick J. Leahy  
Chair, Senate Judiciary Committee  
437 Russell Senate Building  
Washington, DC 20515

Hon. Chuck Grassley  
Ranking Member, Senate Judiciary Committee  
135 Hart Senate Office Building  
Washington, DC 20510

Hon. Michael Bennet  
458 Russell Senate Building  
Washington, DC 20510

Hon. Richard Durbin  
711 Hart Senate Office Building  
Washington, C 20510

Hon. Jeff Flake  
368 Russell Senate Building  
Washington, D.C. 20510

Hon. Lindsey Graham  
290 Russell Senate Building  
Washington, DC 20510

Hon. John McCain  
241 Russell Senate Building  
Washington, DC 20510

Hon. Robert Menendez  
528 Hart Senate Office Building  
Washington, DC 20510

Hon. Marco Rubio  
284 Russell Senate Building  
Washington, DC 20510

Hon. Charles Schumer  
322 Hart Senate Office Building  
Washington, DC 20510

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