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## Helping the Helpless: The Foreign Policy Strategies Underlying Humanitarian Rhetoric in American Refugee Law and Policy

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# Helping the Helpless: The Foreign Policy Strategies Underlying Humanitarian Rhetoric in American Refugee Law and Policy

By Ashleigh Reif Kasper

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## I. INTRODUCTION

*Give me your tired, your poor,  
Your huddled masses yearning to breathe free,  
The wretched refuse of your teeming shore.  
Send these, the homeless, the tempest-lost to me,  
I lift my lamp beside the golden door!*<sup>1</sup>

Every year, millions of people leave their homes, their friends, and even their families, fleeing from persecution.<sup>2</sup> Often they leave without preparation, and without important documents and valuables.<sup>3</sup> They come to the United States, seeking freedom and safety. Yet, what awaits them is a mountain of politics and bureaucracy. First, they must plead their cases before the immigration officers.<sup>4</sup> Even if they satisfy the requirements for refugee status, America has a hidden objective behind its humanitarian rhetoric: to accept more refugees from countries which are not allies, and to support allies by downplaying their human rights abuses, even if that means denying safe haven to those fleeing from their lands. This hidden objective leads to the ultimate question: is America really helping the helpless?

Part II of this article gives a history of American refugee legislation, from the 18th century through the Cold War, ending with the Refugee Act of 1980, which is the current source of refugee law. Part III explains the process that refugees and asylum-seekers must go through in order to enter the United States. It explores what an individual must establish to prove a well-founded fear of persecution.

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<sup>1</sup> Emma Lazarus, *The New Colossus*, reprinted in EMMA LAZARUS: SELECTED POEMS 58 (John Hollander ed., 2005).

<sup>2</sup> UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, GLOBAL TRENDS 2010 2 (2011), available at <http://www.unhcr.org/4dfa11499.html> [hereinafter 2010 GLOBAL TRENDS].

<sup>3</sup> UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, HANDBOOK ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS UNDER THE 1951 CONVENTION AND THE 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES ¶ 196 (1992), available at <http://www.unhcr.org/3d58e13b4.html> [hereinafter UNHCR HANDBOOK].

<sup>4</sup> U.S. DEP'T OF STATE, PROPOSED REFUGEE ADMISSIONS FOR FISCAL YEAR 2011: REPORT TO THE CONGRESS, 17 (2011), available at <http://www.state.gov/documents/organization/181380.pdf> [hereinafter REFUGEE REPORT].

Part IV examines American refugee policy towards five different countries<sup>5</sup> to determine whether American foreign policy affects refugee admissions. It compares the State Department's Country Reports with the corresponding reports from Amnesty International, Human Rights Watch, and Freedom House to determine if there is any bias in the Country Reports.<sup>6</sup> It is concluded in Part V that, while the United States has moved towards a more humanitarian-based approach to refugee admissions, it is still motivated to some extent by foreign policy. It is recommended that the United States continue to place humanitarian need before foreign policy in setting the quotas for refugee admissions, and work towards making the Country Reports less biased in favor of countries that are seen as allies.<sup>7</sup>

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<sup>5</sup> China, Cuba, Iran, Nigeria, and Turkey.

<sup>6</sup> The Country Reports are a source of information used by immigration officials when they evaluate the basis for any refugee claim. See STEPHEN H. LEGOMSKY, IMMIGRATION AND REFUGEE LAW AND POLICY 989 (2002); see also *You Xing Cheng v. Holder*, 368 Fed. App'x. 154 (2d Cir. 2010). If these reports are biased by foreign policy, they may affect how officials view the human rights situation in a given country. LEGOMSKY, *supra* note 6, at 989. They also contain much of the information that the State Department and the President rely on when setting the quotas, which limit the number of refugees who can come to the United States from each region of the world. *Id.* The Country Reports contain links to the State Department's reports on human trafficking and religious freedom in each country. See *2010 Country Reports on Human Rights Practices*, U.S. DEP'T OF STATE (Apr. 8, 2011), <http://www.state.gov/g/drl/rls/hrrpt/2010/index.htm> [hereinafter *Country Reports Generally*]. Those reports are also considered in this article.

<sup>7</sup> There are a number of excellent articles and sources on the impact of the War on Terror on refugee admissions from Afghanistan and Iraq. As such, this article focuses on other countries, which receive less attention. For examples of these sources, see Daniel L. Swanwick, *Foreign Policy and Humanitarianism in U.S. Asylum Adjudication: Revisiting the Debate in the Wake of the War on Terror*, 21 GEO. IMMIGR. L.J. 129 (2006); Meital Waibsnider, *How National Self-Interest and Foreign Policy Continue To Influence the U.S. Refugee Admissions Program*, 75 FORDHAM L. REV. 391 (2006); and *Iraqi Refugees, Asylum Seekers, and Displaced Persons*, HUMAN RIGHTS WATCH (Feb. 13, 2003), <http://www.hrw.org/legacy/backgrounder/mena/iraq021203/iraq-bck021203.pdf>.

## II. HISTORY OF REFUGEE LEGISLATION

### A. Pre-1948 Immigration Policy

Prior to the late 18th century, there were relatively few restrictions on immigration.<sup>8</sup> Federal restriction on immigration began with three acts: the Immigration Act of 1875, the Chinese Exclusion Act of 1882, and the Immigration Act of 1917.<sup>9</sup> These three acts were designed to limit the number of Chinese persons who could enter the United States, and imposed restrictions on admission, such as literacy tests and temporary quota systems.<sup>10</sup> In 1924, Congress passed the National Origins Act, which made the quota system permanent.<sup>11</sup> The quotas allowed for the entry of a set number of immigrants.<sup>12</sup> The percentage of immigrants who could come to the United States from any given country was correlated to the percentage of Americans of the same nationality.<sup>13</sup> The purpose of the quota system was to keep the existing percentages of each race or nationality in the United States relatively stable.<sup>14</sup> The quota system would continue to play a role in refugee admissions late into the 20th Century.<sup>15</sup>

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<sup>8</sup> Kathryn M. Bockley, *A Historical Overview of Refugee Legislation: The Deception of Foreign Policy in the Land of Promise*, 21 N.C. J. INT'L L. & COM. REG. 253, 256 (1995). During that time, immigrants were mainly excluded if they were criminals, had physical or mental defects, or were paupers. EDWARD P. HUTCHINSON, *LEGISLATIVE HISTORY OF AMERICAN IMMIGRATION POLICY 1798-1965*, 441-42 (1981).

<sup>9</sup> Bockley, *supra* note 8, at 258. The Immigration Act of 1875 was intended to limit the number of Chinese immigrants coming to the United States. *Id.* Asians who did not immigrate with their consent or who had been convicted of felonies in their home countries were prohibited from entering the United States. *Id.* The Chinese Exclusion Act prevented Chinese immigrants from entering the United States for ten years. *Id.* The Immigration Act of 1917 added a literacy requirement for all immigrants to prevent uneducated immigrants from entering the United States. *Id.* It also made it illegal for any Asian nationals to immigrate to the United States. *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 259.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Bockley, *supra* note 8, at 259.

<sup>15</sup> *Id.*

*B. The Displaced Persons Act of 1948 and the Refugee Relief Act of 1953*

The Displaced Persons Act (DPA) was the first piece of legislation directed exclusively at refugee admissions.<sup>16</sup> As with previous legislation, the DPA used the quota system to determine how many refugees from each country could enter the United States.<sup>17</sup> The DPA also set up a series of preferences to give priority admissions to certain classes of refugees.<sup>18</sup> For instance, those first eligible for admission were refugees with agricultural experience.<sup>19</sup> A common theme throughout American immigration policy has been a fear that immigrants would either take jobs away from Americans<sup>20</sup> or be unable to support themselves and require government assistance.<sup>21</sup> In the post-war years, there was a shortage of agricultural workers, so the government gave priority to refugees who could fill those jobs.<sup>22</sup> There were a number of other preferences, which were based on the refugee's skills and relationships with persons already within the United States, rather than the merit of the refugee's claim.<sup>23</sup>

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<sup>16</sup> *Id.* at 262.

<sup>17</sup> HUTCHINSON, *supra* note 8, at 280-81.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> See Waibsnider, *supra* note 7, at 395.

<sup>21</sup> See Bockley, *supra* note 8, at 262-64. See also LEGOMSKY, *supra* note 6, at 855. This was particularly true during the Depression. *Id.* With so many Americans out of work, the public was less inclined to allow large numbers of immigrants to enter the United States and compete with them for jobs. *Id.* Legomsky also argues that some Americans were concerned that immigrants would bring "subversive elements" and "radical views" which would "poison" the United States. *Id.* With the recent recession, one might expect to see the same trend in modern refugee admissions numbers. However, it does not appear that refugee numbers have gone down since the recession. Daniel C. Martin, *Refugees and Asylees: 2010, Annual Flow Report 2011*, DEP'T OF HOMELAND SEC. 1, available at [http://www.dhs.gov/xlibrary/assets/statistics/publications/ois\\_rfa\\_fr\\_2010.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_rfa_fr_2010.pdf). Indeed, refugee admissions have been steadily rising since 2006. *Id.*

<sup>22</sup> Bockley, *supra* note 8, at 263.

<sup>23</sup> See HUTCHINSON, *supra* note 8, at 280-81. After agricultural workers, priority was given to persons with household, construction, clothing, or garment skills, or those with skills that were needed in the state or locality where they would be living. *Id.* at 281. Finally, priority was given to persons who were blood-relatives of citizens or immigrants already residing in the United States. *Id.* Within

A main shortcoming of the DPA was its requirement that anyone applying for a visa be able to prove that he or she had entered Allied zones before December 22, 1945.<sup>24</sup> This effectively prevented the majority of Jewish refugees from being eligible for refugee status.<sup>25</sup> The DPA also provided that at least forty percent of the total number of refugees had to come from countries that had been “de facto annexed by a foreign power.”<sup>26</sup> This further served the foreign policy objective of showing that refugees from communist countries were the most in need of assistance.<sup>27</sup>

The DPA was amended in subsequent years and later replaced by the Refugee Relief Act of 1953.<sup>28</sup> The Refugee Relief Act was intended as a temporary, emergency piece of legislation to allow for the entry of refugees beyond quota limits in times of crisis.<sup>29</sup> The Act was amended in 1957 so that only those persons who left a “Communist, Communist-dominated, or Communist occupied area” could obtain refugee status.<sup>30</sup> The explicit foreign policy objectives underlying American refugee policies would continue until the 1980 Refugee Act.

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these categories, priority was first given to persons who fought against America’s enemies and then to persons who, as of January 1, 1948, were located in displaced person centers. *Id.*

<sup>24</sup> See Bockley, *supra* note 8, at 263. In addition, the existing quota system remained in place, and the DPA did not create a special exception for refugees. *Id.* Bockley argues that the DPA was intended to limit the number of Jewish refugees who could enter the United States. *Id.* Bockley quotes President Truman, who stated that “[i]n its present form the bill is flagrantly discriminatory.” *Id.* at 264.

<sup>25</sup> *Id.*

<sup>26</sup> See HUTCHINSON, *supra* note 8, at 280. Since Germany had not technically been annexed by a foreign power, this also restricted the number of Jewish refugees who could be admitted. See Bockley, *supra* note 8, at 263.

<sup>27</sup> See Waibsnider, *supra* note 7, at 396.

<sup>28</sup> See Bockley, *supra* note 8, at 266.

<sup>29</sup> *Id.*

<sup>30</sup> See Bockley, *supra* note 8, at 266 (quoting Act of September 11, 1957, Pub. L. No. 85-316, 71 Stat. 639 (1957)).

*C. The 1951 Convention on the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees*

Concerned with the post-World War II refugee crisis, the United Nations created the United Nations High Commissioner for Refugees (UNHCR) to deal exclusively with refugee issues.<sup>31</sup> In 1951, the Convention on the Status of Refugees was held by the newly created UNHCR.<sup>32</sup> The Convention was a response to the high numbers of refugees who had fled various countries during World War II.<sup>33</sup> In 1967, the Protocol Relating to the Status of Refugees was created, which codified many of the policies and rules created by the Convention.<sup>34</sup> Although the United States was not a signatory to the Convention, it later signed the Protocol, thereby adopting virtually the same provisions as the Convention.<sup>35</sup>

The Convention also bound signatories to the principle of nonrefoulement.<sup>36</sup> Signatories were prohibited from returning any refugee to “territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”<sup>37</sup> When the United States joined the Protocol, it became bound by the Convention’s nonrefoulement requirements.<sup>38</sup> Nonrefoulement did not prevent the United States from deporting a refugee; it simply prevented the United States from returning the refugee to a country where the refugee faced persecution.<sup>39</sup> Thus, the principle of nonrefoulement still gave the receiving country significant authority to determine

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<sup>31</sup> *Id.* at 278. See also ARNOLD H. LEIBOWITZ, IMMIGRATION LAW AND REFUGEE POLICY, §§ 4-5, at 4-8 (1983) (quoting the statute of the UNHCR, “the work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees”).

<sup>32</sup> See Bockley, *supra* note 8, at 260.

<sup>33</sup> *Id.* See also UNHCR HANDBOOK, *supra* note 3, at ¶ 5 (explaining that, after World War II, there was a need for an international instrument defining who was a refugee and setting out methods for dealing with refugees).

<sup>34</sup> LEGOMSKY, *supra* note 6, at 873.

<sup>35</sup> See Waibsnaider, *supra* note 7, at 399.

<sup>36</sup> See Bockley, *supra* note 8, at 278.

<sup>37</sup> See LEGOMSKY, *supra* note 6, at 873.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 872.



whether a refugee would be allowed to remain in that country permanently.<sup>40</sup>

The Convention itself limited refugee status to persons displaced by World War II; however, the 1967 Protocol extended the definition to include any persons suffering from persecution.<sup>41</sup> The Convention forbade signatories from discriminating against refugees based on race, religion, or country of origin;<sup>42</sup> however, both the Convention and the Protocol allowed for exclusion of refugees who had committed “a crime against peace, a war crime, or a crime against humanity,” as well as “serious non-political crimes.”<sup>43</sup> The language of the Convention and the Protocol, including the exclusion for refugees with criminal histories, was largely incorporated into the 1980 Refugee Act.<sup>44</sup> Indeed, the Protocol’s amended definition of “refugee” is the same definition that was adopted in the 1980 Refugee Act.<sup>45</sup>

#### *D. The President’s Parole Power and the Immigration and Nationality Amendments of 1965*

The President’s parole power was first used in 1952 by President Eisenhower.<sup>46</sup> It was intended to apply only in emergencies where, “for emergent reasons or for reasons deemed stricting in the public interest,” an individual’s entry into the United States was necessary and where it would have been impractical for the President to get congressional authorization for admittance.<sup>47</sup>

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<sup>40</sup> *Id.*

<sup>41</sup> See Bockley, *supra* note 8, at 260. By 1967, it had become increasingly apparent that the restrictions set forth in the 1951 Convention were preventing refugees displaced by new emergencies from gaining asylum in member countries. See Leibowitz, *supra* note 31, at § 4-3. For instance, one crisis that prompted the 1967 Protocol was Algeria’s war for independence. *Id.*

<sup>42</sup> United Nations Convention Relating to the Status of Refugees art. 3, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150 [hereinafter the Convention]. See Waibsnider, *supra* note 7, at 399.

<sup>43</sup> Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 [hereinafter the Protocol]. See Waibsnider, *supra* note 7, at 399.

<sup>44</sup> Waibsnider, *supra* note 7, at 399.

<sup>45</sup> *Id.*

<sup>46</sup> See Bockley, *supra* note 8, at 267.

<sup>47</sup> *Id.*

Unlike non-parole refugees, who could remain in the United States permanently, paroled refugees would only be allowed to stay in the United States temporarily, and would be returned to their country once their need to be in the United States ended.<sup>48</sup> Although originally intended to only apply to individuals, President Eisenhower immediately used the power to admit thousands of Hungarian refugees, without requiring them to go through the normal admission procedures, or to be bound by the statutory requirements and quotas.<sup>49</sup>

The Immigration and Nationality Act did away with the old quota system, and gave priority to immigrants with family in the United States, or those with certain needed skills.<sup>50</sup> Unlike previous acts, the Immigration and Nationality Act recognized that the refugee problem was permanent, rather than a temporary result of World War II, and created a permanent system for the admission of refugees.<sup>51</sup> However, the Act continued to provide a preference for refugees fleeing from communist countries.<sup>52</sup> In addition, only six percent of the total number of immigrants could be refugees, which severely limited the number of refugees who could enter the United States.<sup>53</sup> As a result, presidents frequently invoked the parole power to

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.* In 1956, the Soviet army invaded Hungary. *Id.* at 266. President Eisenhower used the parole power to admit thousands of Hungarian “refugees.” *Id.* Eisenhower hoped to undermine the Soviet Union by treating the Hungarian refugees as “freedom fighters” fleeing from the “oppressive” communists. *Id.* However, the majority of the Hungarians did not actually fit the statutory definition of “refugee.” *Id.* at 268. Most of them could not establish a “fear of persecution” upon return to Hungary. *Id.* In addition, it was uncertain whether the Soviets would retain control of Hungary, which meant that the Hungarians were not coming from a “Communist, Communist-dominated, or Communist occupied area,” a requirement under the 1953 Refugee Relief Act. *Id.* at 266-68.

<sup>50</sup> See Bockley, *supra* note 8, at 270. The Act provided a higher priority for “members of the professions, or who because of their exceptional ability in the sciences or the arts will substantially benefit . . . the United States.” Immigration and Nationality Act of 1965, Pub. L. No. 89-236, § 203(3), 79 Stat. 911, 913 (1965). A lower priority was granted to immigrants with skills in fields with a shortage of employees. *Id.* at § 203(6).

<sup>51</sup> Bockley, *supra* note 8, at 270.

<sup>52</sup> *Id.* The Act specifically created a “seventh preference” for those fleeing either a “Communist-dominated” country or one “within the general area of the Middle East.” LEGOMSKY, *supra* note 6, at 860.

<sup>53</sup> See Bockley, *supra* note 8, at 270.

respond to refugee crises.<sup>54</sup> As with the Hungarian refugees, the parole power was often used to admit mass numbers of refugees, rather than a few individuals during emergencies.<sup>55</sup> In addition, the parole power was often used to further American foreign policy goals.<sup>56</sup> This is evidenced by the fact that, between World War II and 1980, between 1.4 and 1.5 million refugees were admitted to the United States, however, less than two thousand came from non-communist countries.<sup>57</sup>

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<sup>54</sup> *Id.* at 271.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* An example of this is the different treatment of Cuban, Haitian, and Vietnamese refugees in the 1960s, 1970s, and 1980s. When Fidel Castro took control of Cuba, hundreds of thousands of Cubans fled to the United States. *Id.* at 269. Most of them were admitted through the President's parole power. *Id.* Normal procedures for admissions, such as criminal record checks, were disregarded for Cuban refugees, and the government set up financial assistance programs specifically for these refugees. *Id.* Similarly, when Francois Duvalier took control of Haiti, there was a mass flight of refugees to the United States. *Id.* at 272. Unlike the case in Cuba, the United States was friendly towards Duvalier, so it was significantly harder for Haitian refugees to enter the United States. *Id.* Immigration courts assumed that most Haitians came to America for economic reasons, which made it difficult for the refugees to satisfy the "fear of persecution" standard (flight because of economics was not considered sufficiently grave to qualify for refugee status). *Id.* In addition, the Immigration and Naturalization Service (INS) instituted an accelerated system that applied only to Haitian refugees, which meant that they had less time to prepare and present their cases before a judge, and therefore, less of a chance of satisfying the "fear of persecution" standard. *Id.* at 272. In contrast, after the Vietnam War, the United States made it significantly easier for Vietnamese persons to gain refugee status. *Id.* at 276. Many Americans felt guilty for abandoning their Vietnamese allies, which may have contributed to the easing of the requirements for Vietnamese refugees. *Id.* With Cuba and Vietnam, the President had clear foreign policy justifications for using his parole power to admit mass numbers of refugees (enmity towards Castro and guilt over Vietnam). However, the Haitian experience shows the difficulties faced by refugees fleeing non-communist or friendly countries. For a further discussion of this, see Leibowitz, *supra* note 31, at § 4-6; LEGOMSKY, *supra* note 6, at 860.

<sup>57</sup> See Bockley, *supra* note 8, at 271.

*E. The 1980 Refugee Act*

The 1980 Refugee Act (Refugee Act) remains the most current refugee legislation.<sup>58</sup> The definition of “refugee” used today comes from the 1980 Refugee Act. The Act defines a refugee as the following:

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 well-founded fear of persecution on account of race, religion, nationality, or membership in a particular social group, or political opinion.*<sup>59</sup>

The Act retains the President’s parole power, allowing the President to grant refugee status to individuals who meet the definition of refugee above, but only “in such special circumstances as the President after appropriate consultation . . . may specify . . . .”<sup>60</sup> Finally, as with the 1967 Protocol, the Act states, “[t]he term ‘refugee’ does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.”<sup>61</sup> Importantly, neither the Protocol nor the Refugee Act protects people fleeing for economic reasons.<sup>62</sup> This distinction has led to a number of opinions where courts attempted to determine whether the primary motivation of the applicant in seeking

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<sup>58</sup> LEGOMSKY, *supra* note 6, at 864. In 1990, Congress made it easier for Soviet Jews, Soviet Evangelical Christians, and most Indochinese to get refugee status through the Lautenberg amendment to a foreign assistance appropriation bill. *Id.* This amendment is also in force today. See REFUGEE REPORT, *supra* note 4, at 35.

<sup>59</sup> 8 U.S.C. § 1101(a)(42)(A) (2006) (alternatively codified at INA § 101(a)(42)) (emphasis added).

<sup>60</sup> 8 U.S.C. § 1101(a)(42)(B) (2006).

<sup>61</sup> *Id.*

<sup>62</sup> LEIBOWITZ, *supra* note 31, at § 4-6.

asylum was economic.<sup>63</sup>

Under the Refugee Act, the President, in consultation with Congress, determines how many refugees will be admitted each year.<sup>64</sup> The President allots a certain number of spaces to refugees, separated by world region.<sup>65</sup> Thus, the Executive Branch has great control over the admissions of refugees, which means that foreign policy considerations can play a role in the number of refugees who may enter the United States from any given region.<sup>66</sup> Indeed, during the 1980s, an average of twenty-five percent of refugees were admitted overall, however fifty to eighty percent of refugees fleeing from communist countries were admitted.<sup>67</sup>

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<sup>63</sup> See LEGOMSKY, *supra* note 6, at 850 (stating that defenders of United States refugee policy argue that refugees fleeing from our allies tend to be “economic migrants” rather than true refugees). For a thorough analysis of cases attempting to determine whether the applicant’s primary motivation was economic, see DEBORAH E. ANKER, *LAW OF ASYLUM IN THE UNITED STATES*, 233-35 (2011).

<sup>64</sup> See Waibsnaider, *supra* note 7, at 400.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* After the Cold War ended, the United States did not admit more refugees from non-communist countries, but rather admitted fewer refugees altogether. LEGOMSKY, *supra* note 6, at 866. Furthermore, those refugees admitted generally still came from communist countries. *Id.* In 1993, 83% of the total number of refugees admitted came from East Asia, while only 12% of refugees came from Near East/South Asia and Africa. *Id.* These numbers are significant when one considers that the total number of refugees worldwide from East Asia was only 8%, whereas refugees from Near East/South Asia and Africa made up 79% of the world’s refugees. *Id.*

<sup>67</sup> See Waibsnaider, *supra* note 7, at 401. See also LEGOMSKY, *supra* note 6, at 850 (explaining that “the overwhelming majority of those people whose refugee status the United States has recognized have been people fleeing Communist regimes. Those who have fled countries friendly to the United States . . . have had strikingly little success . . . .”); Michael A. Rosenhouse, *Annotation, Sufficiency of Evidence to Establish Alien’s Well-Founded Fear of Persecution Entitling Alien to Status of Refugee under § 101(a)(42)(A) of the Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1101(a)(42)(A)) – Alleged Persecution in European and Asian Nations*, 182 A.L.R. Fed. 147, §2(a) (2002) (stating that communist politics continue to be an important factor, particularly for refugees from China).

### III. SEEKING HELP, GETTING IN

#### A. *The Numbers*

As noted above, each year the President, with consultation from Congress, sets a number of refugees who may be admitted, as classified by area of origin.<sup>68</sup> The numbers for fiscal year 2011 are as follows: 12,000 from Africa, 18,000 from East Asia, 2,000 from Europe and Central Asia, 5,500 from Latin America and the Caribbean, 35,500 from Near East/South Asia, and an additional 3,000 from any nation.<sup>69</sup> People located in Cuba, Eurasia, the Baltics, and Iraq may automatically be considered for refugee status.<sup>70</sup> Finally, in exceptional circumstances, the United States embassy in any location may identify individuals to be automatically considered for refugee status.<sup>71</sup> Thus, a total number of 76,000 refugees are allowed to enter the United States in 2012.<sup>72</sup>

In 2009, a total number of 74,654 refugees were admitted.<sup>73</sup> What is significant, however, is that the majority of these refugees came from Iraq or Burma (approximately 46% of the total refugees admitted).<sup>74</sup> Apart from Bhutan (13,452 refugees), the refugees from other countries generally ranged from only a couple of individuals to 6,000 at the most.<sup>75</sup> Iran was fourth on the list, with a total of 5,381 refugees; Cuba was fifth, with 4,800 refugees, and the former Soviet Union was seventh, with 1,995 refugees.<sup>76</sup> However, many of the countries with the worst human rights records were not even in the top twenty. Only three refugees from Nigeria were admitted.<sup>77</sup>

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<sup>68</sup> Waibsnider, *supra* note 7, at 400.

<sup>69</sup> 76 Fed. Reg. 62,597 (Oct. 11, 2011).

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* This number is significant when one considers that in 1991 the total number of refugees to be admitted was 131,000, nearly twice the current number. LEGOMSKY, *supra* note 6, at 865. The number is even more significant when one considers that in 1980, the year that the Refugee Act came into effect, the number of refugees to be admitted was 231,700. *Id.* at 864.

<sup>73</sup> REFUGEE REPORT, *supra* note 4, at 59.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

Fifty-four refugees from China were admitted, and no refugees were admitted from Turkey.<sup>78</sup>

To put this in context, every year the UNHCR publishes a report of “global trends.”<sup>79</sup> At the end of the report is a table setting forth the numbers of refugees, asylum-seekers, internally displaced persons, and other similar classes of individuals by country.<sup>80</sup> In 2009, the UNHCR reported a total number of refugees or persons in refugee-like situations for the countries listed as follows: 180,579 in China (including Hong Kong and Macau), 7,549 in Cuba, 72,774 in Iran, 15,609 in Nigeria, and 146,387 in Turkey.<sup>81</sup> Comparing those numbers with the numbers of refugees admitted into the United States during 2009 makes the discrepancy quite clear.<sup>82</sup>

The reason for this may, in part, be logistical. Refugees tend to flee to neighboring countries, simply because of geographic proximity to their nation of origin. Once refugees have resettled in a third country, they must be able to prove that they have not “firmly resettled” there.<sup>83</sup> An alien is considered “firmly resettled” if he or she entered a third country and received an offer of permanent resettlement, unless entering that country was necessary, and he or she remained in the third country only long enough to move elsewhere and did not establish significant ties with that country.<sup>84</sup> He or she may also prove that there was no firm resettlement by showing that the conditions of the third country were so restricted that he or she could not have resettled there.<sup>85</sup> For this determination, the officer or judge will consider the conditions in which other residents of the country live, the housing (temporary or permanent) for the refugee, the available employment, and the refugee’s ability to

<sup>78</sup> REFUGEE REPORT, *supra* note 4, at 59.

<sup>79</sup> UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, 2009 GLOBAL TRENDS: REFUGEES, ASYLUM-SEEKERS, RETURNEES, INTERNALLY DISPLACED AND STATELESS PERSONS(2010), *available at* <http://www.unhcr.org/4c11f0be9.html> [hereinafter 2009 Global Trends].

<sup>80</sup> *Id.* at 27.

<sup>81</sup> *Id.* at 27-29.

<sup>82</sup> China: 180,579 refugees, 54 admitted. Cuba: 7,549 refugees, 4,800 admitted. Iran: 72,774 refugees, 5,381 admitted. Nigeria: 15,609 refugees, 3 admitted. Turkey: 146,387 refugees, 0 admitted. *See* REFUGEE REPORT, *supra* note 4, at 58-59; 2009 Global Trends, *supra* note 79, at 27-29.

<sup>83</sup> LEGOMSKY, *supra* note 6, at 994.

<sup>84</sup> 8 C.F.R. § 208.15 (2012).

<sup>85</sup> *Id.*

hold property and enjoy other rights and privileges available to residents of the country.<sup>86</sup> The UNHCR works with countries to set up systems for refugee resettlement, so the above numbers may be explained by the fact that many refugees are firmly resettled in neighboring countries.<sup>87</sup>

However, that cannot fully explain the noted discrepancy. The State Department's Refugee Report explains that the State Department works in coordination with the UNHCR and other non-governmental organizations (NGOs) in each country of origin to identify refugees and help them through the admissions process.<sup>88</sup> The State Department uses the same process to identify refugees in third countries, before they have "firmly resettled."<sup>89</sup> There may, however, be another explanation for these numbers.

As is discussed in greater depth in Part IV, INS officials rely heavily on the State Department's Country Reports for an objective background to the human rights practices of each country.<sup>90</sup> They use these reports to corroborate the accounts of refugees, and to determine whether an individual should be granted refugee status.<sup>91</sup> In addition, the Country Reports mirror the reasons given in the Refugee Report for the allotment of spaces to each country.<sup>92</sup> There is evidence that these reports are not entirely unbiased, or even entirely accurate.<sup>93</sup> Therefore, foreign policy concerns, as reflected

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<sup>86</sup> *Id.*

<sup>87</sup> REFUGEE REPORT, *supra* note 4, at ii.

<sup>88</sup> *Id.* at 18.

<sup>89</sup> *See id.*

<sup>90</sup> LEGOMSKY, *supra* note 6, at 989. *See infra* Part IV.

<sup>91</sup> *Id.*

<sup>92</sup> *See Country Reports, supra* note 6; REFUGEE REPORT, *supra* note 4.

<sup>93</sup> LEGOMSKY, *supra* note 6, at 989-90. Legomsky quotes a report by Human Rights Watch and the Lawyers' Committee for Human Rights, which criticizes the 1987 Country Reports for being tainted by foreign policy:

[In] countries where the Administration strongly identifies with the government or perceives important U.S. interests to be served by harmonious relations – the State Department fails adequately to portray human rights violations. Reports on those countries suffer from understatement and the glossing over of real abuses. Similarly, in some countries that the Administration perceives as ideological adversaries . . . the State Department tends to distort its reporting by discounting positive human rights developments



in the reports prepared by the State Department, may be partially responsible for the granting of refugee status to some individuals over others.

### *B. The Process*

There are several ways to enter the United States as a refugee or asylum-seeker. As an initial matter, it is important to understand what is meant by the terms “refugee” and “asylum-seeker.” Generally, individuals who have already entered the United States are called “asylees,” while those who have not yet come to the United States are “refugees.”<sup>94</sup> It is important to note, however, that the statutory definition of “refugee” does not require that a person be outside of the United States, so both “refugees” and “asylees” may seek “refugee status.”<sup>95</sup>

The Department of State Bureau of Population, Refugees, and Migration (PRM) works with the State Department, the Department of Homeland Security (DHS), and other agencies to identify refugees for possible resettlement in the United States.<sup>96</sup> Additionally, the United States works with the UNHCR and other NGOs to identify refugees and help them through the entrance process while in their country of origin or a neighboring country.<sup>97</sup> To be considered a refugee, an individual must have been referred to the United States

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and by emphasizing unverified or speculative allegations of abuses.

*Id.* A Human Rights Quarterly article, analyzing the Country Reports from 1976 to 1995, found that “some serious causes for concern remain, though, since the results . . . suggest that just as the biases relating to strategic and political interests faded, a new bias relating to US trading partners may have emerged.” Steven C. Poe, Sabine C. Carey & Tanya C. Vazquez, *How Are These Pictures Different? A Quantitative Comparison of the US State Department and Amnesty International Human Rights Reports, 1976-1995*, 21 HUM. RTS. Q. 677 (2001), available at <http://www.stevendroper.com/Poe.pdf> [hereinafter Poe]. Taken together, these statements suggest that the State Department reports have become less biased and inaccurate over the years; however there is still work to be done to eradicate these flaws.

<sup>94</sup> LEGOMSKY, *supra* note 6, at 851.

<sup>95</sup> *Id.*

<sup>96</sup> REFUGEE REPORT, *supra* note 4, at 7

<sup>97</sup> *Id.* at 18.

Refugee Admissions Program (USRAP).<sup>98</sup> After being referred, the refugee has a “non-adversarial face-to-face interview” with a United States Citizenship and Immigration Services (USCIS) official.<sup>99</sup> The purpose of the interview is for the USCIS official to hear the refugee’s account of what has happened, and to determine whether the refugee is credible.<sup>100</sup> The USCIS official may also rely on the State Department Country Reports and other sources for background information to understand the human rights situation in the refugee’s country of origin.<sup>101</sup> Refugees must also undergo a background check.<sup>102</sup> If the refugee successfully moves through these steps, he or she is given materials and guidance to help him or her become acclimated to life in America, and is transported to the United States.<sup>103</sup> The refugee must reimburse the United States government for transportation costs and any other loans provided during this process.<sup>104</sup> The refugee must apply for Legal Permanent Resident status one year after his or her arrival, and is eligible to apply for citizenship after five years.<sup>105</sup>

The steps for asylum-seekers are slightly different, since, by definition, they are already in America.<sup>106</sup> Persons already in the

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<sup>98</sup> *Refugees*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (August 4, 2011), <http://www.USCIS.gov/> (follow “Humanitarian” hyperlink; then follow “Refugees & Asylum” hyperlink; then follow “Refugees” hyperlink) [hereinafter Refugee Admissions Requirements]. USRAP is run by PRM. REFUGEE REPORT, *supra* note 4, at 7. Generally referrals come from one of the many departments in coordination with the PRM, the UNHCR, or an NGO. *Id.*

<sup>99</sup> REFUGEE REPORT, *supra* note 4, at 17.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* See also UNHCR HANDBOOK, *supra* note 3, at ¶¶ 195-204.

<sup>102</sup> REFUGEE REPORT, *supra* note 4, at 17-18. This is necessary to ensure that the refugee does not fall into any of the exclusion categories in INA § 101 (a)(42) for criminal history, including “a person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.” *Id.*

<sup>103</sup> REFUGEE REPORT, *supra* note 4, at 19-20.

<sup>104</sup> *Id.* at 19. These loans are due six months after arrival. *Id.*

<sup>105</sup> *Id.* at 20. The requirement that refugees apply for Legal Permanent Resident status after one year has been the subject of much criticism. See HUMAN RIGHTS WATCH, JAILING REFUGEES: ARBITRARY DETENTION OF REFUGEES IN THE U.S. WHO FAIL TO ADJUST TO PERMANENT RESIDENT STATUS (2009), available at <http://www.hrw.org/sites/default/files/reports/refugees1209webwcover.pdf>.

<sup>106</sup> LEGOMSKY, *supra* note 6, at 851.

United States must file a form after arriving to have their status determined.<sup>107</sup> After filing the appropriate paperwork, they must go through the same background check and interview process that refugees go through.<sup>108</sup> If the USCIS official feels a need for further review, the case will be referred to an immigration judge.<sup>109</sup> Decisions by immigration judges may be appealed to the Board of Immigration Appeals (BIA), and then up through the federal circuit courts to the United States Supreme Court.<sup>110</sup> If, however, the USCIS official denies asylum without referring the applicant to an immigration judge, the applicant may not appeal that decision.<sup>111</sup>

In the appeals context, the refugee or asylum-seeker must provide enough evidence that a reasonable trier of fact “would have to conclude” that the fear of persecution existed.<sup>112</sup> Although the refugee or asylum-seeker need not provide direct evidence of persecution, he or she must at least produce some evidence of the persecutor’s motive as related to the applicant’s “race, religion, nationality, membership in a particular social group, or political opinion.”<sup>113</sup> Finally, an applicant must show a “clear probability” of

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<sup>107</sup> *Obtaining Asylum in the United States*, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES (Mar. 10, 2011), <http://www.USCIS.gov/> (follow “Humanitarian” hyperlink; then follow “Refugees & Asylum” hyperlink; then follow “Asylum” hyperlink) [hereinafter *Obtaining Asylum*].

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> Rosenhouse, *supra* note 67, at §2(b). Unfortunately, the original rulings are rarely overturned. Laura Isabel Bauer, *They Beg For Our Protection And We Refuse: U.S. Asylum Law’s Failure To Protect Many Of Today’s Refugees*, 79 NOTRE DAME L. REV. 1081, 1093 (2004). Bauer reports that “only one in five decisions by an asylum officer are reversed in court.” *Id.* Since there are generally no reports on these hearings, it is difficult to determine why a particular applicant was turned down for admission. *Id.* Bauer quotes an asylum officer who stated, “[y]our chances of getting a grant depend on who you get [who judges your claim] as much as what your claim is.” *Id.* at 1094.

<sup>111</sup> *Obtaining Asylum*, *supra* note 107.

<sup>112</sup> *U.S. Dep’t of Immigration & Naturalization Serv. v. Elias-Zacarias*, 502 U.S. 478, 481 (1992). It is important to note how high this standard is. Later in the opinion, the court explains that “if he seeks to obtain judicial reversal of the BIA’s determination, he must show that the evidence he presented was so compelling that no reasonable factfinder could fail to find the requisite fear of persecution.” *Id.* at 483-84. The strictness of this standard is part of why few BIA decisions are overturned.

<sup>113</sup> *Id.* at 483-84. Because refugees tend to leave their country of origin in a hurry, they may not have traditional forms of evidence available to them.

persecution to prevent withholding and deportation.<sup>114</sup>

### C. Priorities

The State Department assigns “priority” status to certain groups of individuals at the same time that it determines how many refugees will be admitted for the coming year.<sup>115</sup> Individuals who fit within one of the three priorities are considered “of special humanitarian concern,” and are immediately referred to the USRAP.<sup>116</sup> These individuals must still go through the same interview and background check process that other refugees go through.<sup>117</sup>

Priority 1, as described above, is for individual referrals.<sup>118</sup> However, North Korean or Palestinian refugees require DHS or USCIS concurrence before they can access the USRAP.<sup>119</sup> Priority 2 is for specific groups of refugees identified by the State Department in consultation with the UNHCR, DHS/USCIS, and certain NGOs.<sup>120</sup> These groups are defined by sets of characteristics or circumstances

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UNHCR HANDBOOK, *supra* note 3, ¶ 196, *see also* Anker, *supra* note 63, at 86-87. The UNHCR recommends that, in some circumstances, the person reviewing the refugee’s case may conduct independent research to corroborate the refugee’s account. *Id.* In addition, the credibility of the refugee and his or her account may be the most important evidence for determining whether he or she actually has the requisite fear of persecution. *Id.* Standards for admissibility of evidence are lowered in these proceedings; for instance, the Federal Rules of Evidence do not apply, and virtually every type of evidence is admissible. Anker, *supra* note 63, at 87, 89. Finally, judges and DHS district counsel have a duty to assist the applicant in developing the record. *Id.* at 91. Although refugees are not, as a matter of law, entitled to counsel, there are numerous organizations which attempt to provide legal assistance to refugees throughout these proceedings. *See Obtaining Asylum*, *supra* note 107.

<sup>114</sup> U.S. Dep’t of Immigration & Naturalization Serv. v. Stevic, 467 U.S. 407, 429 (1984).

<sup>115</sup> *See* REFUGEE REPORT, *supra* note 4, at 7.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 8.

<sup>118</sup> *Id.* Unlike Priority 2 and Priority 3 refugees, Priority 1 refugees can come from any nation in the world, subject only to the annual quotas set by the State Department and the President. *See id.* at 9.

<sup>119</sup> *Id.* at 8 n. 1.

<sup>120</sup> REFUGEE REPORT, *supra* note 4, at 9.

that all refugees in the group share.<sup>121</sup> This is designed to speed up the process in areas where the number of refugees is so high, making it difficult or impractical to identify refugees on an individual basis.<sup>122</sup>

There are two types of Priority 2 group referrals.<sup>123</sup> In the “open-access model,” PRM consults with DHS/USCIS to set criteria for a group.<sup>124</sup> Once the criteria are set, any refugees who fall into that group may apply with the program at specific processing locations.<sup>125</sup> In contrast, “predefined group access” is generally based on a UNHCR recommendation.<sup>126</sup> An outside organization, generally the UNHCR, provides DHS/USCIS with information about the group and eligibility criteria, which are then used to determine what groups of people may apply for the program.<sup>127</sup>

Priority 3 is for members of certain nationalities who already have family members living in the United States.<sup>128</sup> Family members in the United States must have applied for and been granted asylum or refugee status.<sup>129</sup> Generally, to be eligible, family members must be spouses, unmarried/minor children, and, possibly, parents.<sup>130</sup> However, due to recent fraud, the Priority 3 system has been suspended, pending proper safeguards to ensure that applicants fit the

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<sup>121</sup> *Id.* at 10.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* The State Department refers to these groups as the “open-access model” and “predefined group access.” *Id.*

<sup>124</sup> *Id.* The departments may, where appropriate, consult with outside agencies, including the UNHCR and other NGOs. *Id.*

<sup>125</sup> REFUGEE REPORT, *supra* note 4, at 10. This type of Priority 2 enrollment has been used in Cuba, Vietnam, and, most recently, in Iraq. *Id.* It has also been used for Iranian religious minorities. *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* For 2011, the following countries and ethnicities were approved for Priority 2: the Former Soviet Union (under the Lautenberg Amendment, *see supra* Part II(E)), Cuba, Iraqis associated with the United States (including United States employees, United States government-funded contractors or grantees, United States media, NGOs, and certain family members), ethnic minorities from Burma in Thailand and Malaysia, Bhutanese in Nepal, Iranian religious minorities, Eritreans in Shimelba, and Darfur in Chad. *Id.* at 12-13.

<sup>128</sup> *Id.* at 13.

<sup>129</sup> *Id.*

<sup>130</sup> REFUGEE REPORT, *supra* note 4, at 13. Parents are generally included when they previously resided with the immediate family. *Id.*

family requirements before being admitted.<sup>131</sup>

#### *D. Definitions of Terms*

As is common with any legal statute, the 1980 Refugee Act contains many terms that appear straightforward on their face, but which have led to much discussion by courts and scholars over their legal meaning. Understanding these terms is important for one to comprehend what an individual must prove to be granted refugee status.

In 1979, the UNHCR issued a handbook to guide governments in matters relating to refugees, specifically definitions of terms in the 1951 Convention and 1967 Protocol and procedures to be followed for granting entry to refugees.<sup>132</sup> While the Handbook is not binding on any country and is to be used for guidance purposes only, United States courts have found it a very persuasive source, and have at times cited to it in their opinions.<sup>133</sup>

The applicant must prove that “fear” was the primary motivation of his or her flight.<sup>134</sup> The UNHCR Handbook describes the “well-founded fear” requirement as having both subjective and objective components.<sup>135</sup> Obviously, the applicant must subjectively have been afraid for his or her safety.<sup>136</sup> However, the official reviewing the case must also determine that this fear is reasonable, and that conditions in the country of origin corroborate the

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<sup>131</sup> *Id.* at 14. Officials discovered high rates of people entering the United States through this priority who were not actually related to the people they claimed were their family members. *Id.* The Refugee Report suggests that DNA testing may be used in the future to prevent such fraud. *Id.* Priority 3 was approved, pending its resumption, for the following countries in 2011: Afghanistan, Bhutan, Burma, Burundi, Central African Republic, Chad, Columbia, Cuba, North Korea, Democratic Republic of Congo, Eritrea, Ethiopia, Iran, Iraq, Republic of Congo, Somalia, Sri Lanka, Sudan, Uzbekistan, and Zimbabwe. *Id.* at 15.

<sup>132</sup> UNHCR HANDBOOK, *supra* note 3, at ¶ IV.

<sup>133</sup> Rosenhouse, *supra* note 67, at § 2(b). For an example of the Handbook being cited by a court, *see generally* Matter of Acosta, 19 I. & N. Dec. 211 (BIA 1985).

<sup>134</sup> UNHCR HANDBOOK, *supra* note 3, at ¶ 39. *See also* Matter of Acosta, 19 I. & N. Dec. 211 (BIA 1985).

<sup>135</sup> UNHCR HANDBOOK, *supra* note 3, at ¶ 38. *See also* INS v. Cardoza-Fonseca, 480 U.S. 421, 431 (1987).

<sup>136</sup> UNHCR Handbook, *supra* note 3, at ¶ 37.

applicant's experience.<sup>137</sup> There are three elements that, if proved, will satisfy the well-founded fear requirement: (A) that the fear of persecution is based on the applicant's "race, religion, nationality, membership in a particular social group, or political opinion;" (B) that there is a reasonable possibility that the applicant will face such persecution if he or she were to return to his or her country of origin; and (C) that he or she is unwilling to return to his or her country of origin because of that fear.<sup>138</sup> What exactly qualifies as "persecution" is open to the interpretation of the reviewing officials.<sup>139</sup>

Race, nationality, and religion are relatively simple to define.<sup>140</sup> The UNHCR defines "race" widely to encompass ethnic groups that might be considered "'races' in common usage."<sup>141</sup> "Nationality" includes citizenship, race, and "membership of an ethnic or linguistic group."<sup>142</sup> "Membership of a particular social group" includes people with "similar backgrounds, habits, or social status."<sup>143</sup>

The majority of refugees come to the United States because of

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<sup>137</sup> *Id.* at ¶ 42.

<sup>138</sup> 8 C.F.R. § 208.13(b)(2)(i)(A) (2011). The applicant must be able to prove, either through documentation or compelling narrative, that the threat of persecution "is a reasonable possibility." *Meza-Manay v. INS*, 139 F.3d 759, 763 (9th Cir. 1998).

<sup>139</sup> UNHCR HANDBOOK, *supra* note 3, at ¶¶ 51-52. The UNHCR suggests that this will depend on the subjective experience of the applicant, as some actions which might not be considered persecution to one person could be persecution to another. *Id.* For examples of persecution, see *Matter of Kasinga*, 21 I. & N. Dec. 357, 357 (BIA en banc 1996) (female genital mutilation), *Sharif v. U.S. Dep't of Immigration & Naturalization Serv.*, 87 F.3d 932, 935 (7th Cir. 1996) ("death, imprisonment, or the infliction of substantial harm or suffering"), and *Rosenhouse*, *supra* note 67. In addition, where prison conditions are particularly inhumane and severe, the threat of prosecution for "race, religion, nationality, membership in a particular social group, or political opinion" can qualify as persecution. *Matter of Izatula*, 20 I. & N. Dec. 149, 150 (BIA 1990) (citing 8 U.S.C. § 1101(a)(42)(A) (1982)).

<sup>140</sup> UNHCR HANDBOOK, *supra* note 3, at ¶¶ 68-76.

<sup>141</sup> *Id.* at ¶ 68.

<sup>142</sup> *Id.* at ¶ 74.

<sup>143</sup> *Id.* at ¶ 77.

persecution based on political opinion.<sup>144</sup> To establish persecution because of political opinion, the applicant must prove that the persecution occurred because of *his or her* political opinion, rather than the political opinion of the persecutor.<sup>145</sup> The Ninth Circuit has held that political neutrality can be a political opinion.<sup>146</sup> There are currently no cases opposing this position.<sup>147</sup> The UNHCR notes that an applicant must show that the political opinions he or she holds are not tolerated by the government, and have come to the attention of the government in such a way that the applicant faces a credible fear of persecution.<sup>148</sup> Prosecution for political opinions may amount to persecution if the potential punishment is excessive or inhumane.<sup>149</sup>

Part II explored the historical background of United States refugee law and policy. Part III gave the reader an overview of the refugee admissions process, ranging from the quotas for expected refugee admissions to the elements any refugee or asylum-seeker must prove before being granted refugee status. Part IV will consider the State Department Country Reports for five countries and compare those with reports on those countries by various NGOs in order to determine whether there is a foreign policy bias in the refugee admissions system.

#### IV. CASE STUDIES

##### A. *Method*

For this portion of this article, the Country Reports the State Department produces for five countries: China, Cuba, Iran, Nigeria,

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<sup>144</sup> LEGOMSKY, *supra* note 6, at 894-95 (noting that claims of persecution based on race, religion, and nationality are relatively low, although claims of persecution because of religion are increasing).

<sup>145</sup> U.S. Dep't of Immigration & Naturalization Serv. v. Elias-Zacarias, 502 U.S. 478, 482 (1992). Elias-Zacarias refused to join guerrilla forces in Guatemala. *Id.* at 480. He had refused to join the guerrillas because he was afraid that the government would retaliate against him if he joined them. *Id.* The Supreme Court held that refusal to join the guerrilla movement did not constitute a political opinion, and refused to grant him asylum. *Id.* at 482.

<sup>146</sup> Bolanos-Jernandez v. INS, 767 F.2d 1277, 1286-87 (9th Cir. 1984).

<sup>147</sup> LEGOMSKY, *supra* note 6, at 906-07.

<sup>148</sup> UNHCR HANDBOOK, *supra* note 3, at ¶ 80.

<sup>149</sup> *Id.* at ¶ 85.



and Turkey, will be reviewed. These countries were chosen for their diverse foreign policy relationships with the United States,<sup>150</sup> and as representative of multiple world regions.<sup>151</sup> The article then compares the State Department Country Reports with the corresponding reports published by Amnesty International, Human Rights Watch, and Freedom House. All the reports are considered in light of American foreign relations with each country. It is concluded that there is indeed a correlation between refugee admissions and foreign policy objectives.

Amnesty International publishes an annual report covering human rights conditions in every country.<sup>152</sup> The report is based on the observations and experiences of researchers and activists located

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<sup>150</sup> Iran is the only country of these that the United States does not have diplomatic relations with (a sign that it is an “enemy”). *See generally Background Note: Iran*, U.S. DEP’T OF STATE (February 1, 2012), <http://www.state.gov/r/pa/ei/bgn/5314.htm> [hereinafter *Iran Background Note*]. China has a very complicated relationship with the United States but is generally considered an ally. *See generally Background Note: China*, U.S. DEP’T OF STATE (September 6, 2011), <http://www.state.gov/r/pa/ei/bgn/18902.htm> [hereinafter *China Background Report*]. Cuba is classified as an enemy, based on the adversarial relationship between the United States and Cuba, as well as the sanctions and travel restrictions the United States continues to uphold against it. *See generally Background Note: Cuba*, U.S. DEP’T OF STATE (November 7, 2011), <http://www.state.gov/r/pa/ei/bgn/2886.htm#relations> [hereinafter *Cuba Country Report*]. Nigeria and Turkey are considered friends of the United States for this article’s purposes. *See generally Background Note: Nigeria*, U.S. DEP’T OF STATE (October 20, 2011), <http://www.state.gov/r/pa/ei/bgn/2836.htm> [hereinafter *Nigeria Background Note*], and *Background Note: Turkey*, U.S. DEP’T OF STATE (Mar. 20, 2012), <http://www.state.gov/r/pa/ei/bgn/3432.htm> [hereinafter *Turkey Background Note*] (praising the closeness of America’s relationship with Turkey). For a list of allies and enemies in the War on Terror, *see* Swanwick, *supra* note 7, at 21 (listing China and Turkey as allies in the War on Terror, and Cuba and Iran as enemies. Swanwick does not mention Nigeria).

<sup>151</sup> Most reports on human rights practices are divided into regions, and are then further divided by country. *See Country Reports Generally*, *supra* note 6. The countries chosen for this article come from various regions – Africa (Nigeria), East Asia and the Pacific (China), Europe and Eurasia (Turkey and Iran), and South America (Cuba). *See id.*

<sup>152</sup> *See generally* AMNESTY INTERNATIONAL, AMNESTY INTERNATIONAL REPORT 2011: THE STATE OF THE WORLD’S HUMAN RIGHTS (2011), available at <http://www.amnesty.org/en/annual-report/2011> (follow “purchase” or “download” hyperlink to either purchase a copy or download the PDF version) [hereinafter AI REPORT].

in various countries.<sup>153</sup> Amnesty International researches human rights conditions throughout the world, and the results of this research are included in its publications.<sup>154</sup> As a founding signatory to the International Non-Governmental Organizations' (INGO) Accountability Charter, Amnesty International is bound by a commitment to public accountability and transparency.<sup>155</sup> The 2011 Amnesty International report covers human rights conditions around the world from January 2010 to December 2010.<sup>156</sup>

Human Rights Watch (HRW) compiles a review of human rights practices in multiple countries every year.<sup>157</sup> HRW has many researchers and activists in countries throughout the world.<sup>158</sup> HRW's World Report is a compilation of the state of human rights in ninety countries, as observed by their personnel in each country.<sup>159</sup> The report is divided by country, and within each country it also addresses the responses of the United States, the United Nations, and other Western nations to the human rights situation in that country.<sup>160</sup> The 2011 report focuses on events in 2010 up to November of 2010.<sup>161</sup>

Freedom House is an independent organization, which produces a report every year ranking countries based on their respect for political rights and civil liberties.<sup>162</sup> It works with other activists and organizations in various countries and analyzes the human rights conditions in each of those countries.<sup>163</sup> The organization surveys

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<sup>153</sup> See generally *Amnesty International's Statute*, AMNESTY INT'L, <http://amnesty.org/en/who-we-are/accountability/statute> (Last visited Apr. 8, 2012) [hereinafter *AI Statute*].

<sup>154</sup> See *id.*

<sup>155</sup> See *INGO Charter*, AMNESTY INT'L, <http://amnesty.org/en/who-we-are/accountability/ingo-charter> (last visited Apr. 8, 2012).

<sup>156</sup> *AI Report*, *supra* note 152, at iii.

<sup>157</sup> HUMAN RIGHTS WATCH, *WORLD REPORT: 2011*, 20 (2011), available at <http://www.hrw.org/sites/default/files/reports/wr2011.pdf> [hereinafter *HRW REPORT*].

<sup>158</sup> *Id.* at 21.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.* at 20.

<sup>162</sup> See generally *About Us*, FREEDOM HOUSE, <http://www.freedomhouse.org/about-us> (last visited Apr. 19, 2012).

<sup>163</sup> See *id.*

every country to track the improvement or decline of these rights in each country.<sup>164</sup> It bases its definition of freedom primarily on the Universal Declaration of Human Rights.<sup>165</sup> It divides countries into three categories: Free, Partly Free, and Not Free.<sup>166</sup> Countries that are Free have the greatest respect for civil liberties and the greatest transparency.<sup>167</sup> Countries that are Partly Free have limited political rights and respect for civil liberties, and are often plagued by some corruption and violence between factions.<sup>168</sup> Finally, countries that are Not Free are those where basic political rights and civil liberties are denied or routinely violated.<sup>169</sup>

The State Department, pursuant to the Foreign Assistance Act of 1961, publishes a report on each country that either receives assistance from the United States or that is a member of the United

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<sup>164</sup> Arch Puddington, *Freedom in the World 2011: The Authoritarian Challenge to Democracy, Selected Data From Freedom House's Annual Survey of Political Rights and Civil Liberties*, FREEDOM HOUSE 30 (January 3, 2011), <http://www.freedomhouse.org/report/freedom-world-2011/essay-freedom-world-2011-authoritarian-challenge-democracy> [hereinafter *Freedom House Report*]. The survey used for this article reflects human rights from January 1, 2010 through December 31, 2010. *Id.* at 16.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.* at 3.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Freedom House Report*, *supra* note 164, at 3. Freedom House considers a number of factors to determine the extent of political rights and civil liberties in each country. *Id.* at 30. It then ranks each country on a scale from 1 to 7 for Political Rights and Civil Liberties. *Id.* Each country receives a separate score for Political Rights and Civil Liberties. *Id.* Scores from 1 to 2.5 are considered Free, 3 to 5 are Partly Free, and 5.5 to 7 are Not Free. *Id.* The factors Freedom House considers are generally present in any country with human rights abuses, as will be seen in the remainder of this article. Factors for Political Rights include free and fair elections, freedom to participate in different political parties, political rights for minorities, and government corruption, transparency, and openness. *Id.* at 31. Factors for Civil Liberties include freedom of expression and religious belief, freedom of association, protection by the justice system (including prevention of arbitrary arrests, presence or absence of torture, etc.), whether different groups are given equal treatment, and the freedom to move, gain an education, and own property. *Id.* at 32. In addition, Freedom House is a source utilized by the State Department in making its Country Reports. *See generally* Country Reports Generally, *supra* note 6.

Nations.<sup>170</sup> The 2011 Country Reports exceed that requirement and include reports for all countries mandated by the statute and many not mandated by it.<sup>171</sup> The State Department compiles information from various United States departments, as well as other governments and organizations.<sup>172</sup> The Country Reports provide separate links to the annual Trafficking in Persons Report<sup>173</sup> and the International Religious Freedom Report,<sup>174</sup> both of which were consulted for this article. Finally, the Background Notes for each country were used to gain an understanding of America's foreign policy relations with them.<sup>175</sup> The Country Reports are intended to be an objective, unbiased overview of the state of human rights in each country,<sup>176</sup> and to a large extent they are. Some foreign policy motivation slips through, however, as will be explored below.<sup>177</sup>

### B. China

China has a very complicated relationship with the United States.<sup>178</sup> China is considered an ally of the United States,

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<sup>170</sup> 2010 Human Rights Report: Introduction, U.S. DEP'T OF STATE (April 8, 2011), <http://www.state.gov/g/drl/rls/hrrpt/2010/frontmatter/154329.htm> [hereinafter *Country Reports Introduction*]. The Foreign Assistance Act of 1961 section 116(d)(A) and (B) states that every year the Secretary of State must make a report regarding the status of human rights in any country either receiving assistance from the United States or any country that is a member of the United Nations, including those not covered by (A). *Id.* Section 502B(b) of that act and section 504 of the Trade Act of 1974 mirror this requirement.

<sup>171</sup> *Country Reports Introduction*, *supra* note 170.

<sup>172</sup> *Id.* Indeed, each of the Country Reports used in this article cited to information from Amnesty International, Human Rights Watch, and Freedom House. *Id.*

<sup>173</sup> *Office to Monitor and Combat Trafficking in Persons*, U.S. DEP'T OF STATE, [www.state.gov/g/tip/](http://www.state.gov/g/tip/) (last visited Apr. 19, 2012).

<sup>174</sup> Bureau of Democracy, *Human Rights, and Labor: July-Dec., 2010 Int'l Religious Freedom Report*, U.S. DEP'T OF STATE (Sept. 13, 2011), [http://www.state.gov/g/drl/rls/irf/2010\\_5/index.htm](http://www.state.gov/g/drl/rls/irf/2010_5/index.htm).

<sup>175</sup> Bureau of Public Affairs, *Background Notes*, U.S. DEP'T OF STATE, <http://www.state.gov/r/pa/ei/bgn/index.htm> (last visited Jan. 20, 2012).

<sup>176</sup> *Id.*

<sup>177</sup> Indeed, in the Refugee Report, *supra* note 4, it is repeatedly noted that the United States considers both humanitarian need and foreign policy goals when making admissions decisions.

<sup>178</sup> Background Note: China, *supra* note 150.

particularly in the War on Terror,<sup>179</sup> although relations between the two countries have been strained at times.<sup>180</sup> The Background Note on China is by no means the glowing tale of two friendly countries found in the Background Note on Turkey.<sup>181</sup> China's Background Note suggests that relations with China are steadily improving, despite some setbacks in the years following the Tiananmen Square massacre.<sup>182</sup> Foreign relations with China are similar to a pendulum, swinging back and forth from good to bad.<sup>183</sup>

China has been a "Country of Particular Concern" since 1999.<sup>184</sup> China is labeled a "Tier 2 Watch List" country in the

<sup>179</sup> See *id.*; Swanwick, *supra* note 7, at 142.

<sup>180</sup> See Background Note: China, *supra* note 150.

<sup>181</sup> Cf. *id.*, with Background Note: Turkey, *supra* note 150.

<sup>182</sup> Background Note: China, *supra* note 150. The note states "[w]hile the United States looks forward to building a positive, cooperative, and comprehensive relationship with China . . . areas of potential disagreement remain." The Note also states "[i]n the words of Secretary Hillary Clinton, the U.S. wants to 'develop a positive, cooperative, and comprehensive relationship with China.'" These quotes stand for the proposition that, although relations with China are improving, China is still not completely considered an ally, and there is much work to be done before the two countries can truly be considered "friends."

<sup>183</sup> For a recent example of this, consider China's manipulation of currency in 2011 and 2012, which led to allegations that the United States might enter into a "trade war" with China. See Ray Kwong, *U.S. Risks Trade War With China*, FORBES (Oct. 5, 2011, 9:07 PM), <http://www.forbes.com/sites/raykwong/2011/10/05/u-s-risks-trade-war-with-china> (analyzing the Senate Bill that sought to bring the yuan more in line with the dollar and providing links to similar articles). The possible trade war has been a source of controversy in the 2012 Republican Primaries and General Election. See Dean Kleckner, *Obama Risks Trade War With China*, THE WASHINGTON TIMES (Jan. 31, 2012), <http://www.washingtontimes.com/news/2012/jan/31/obama-risks-trade-war-with-china/> (reporting on President Obama's State of the Union address and recent speeches and comparing them with speeches by presidential hopeful Mitt Romney); see also Felicia Sonmez, *2012 ABC/Yahoo!/WMUR New Hampshire GOP Primary Debate (Transcript)*, THE WASHINGTON POST (Jan. 7, 2012, 11:38 PM), [http://www.washingtonpost.com/blogs/election-2012/post/2012-abc-yahoo-wmur-new-hampshire-gop-primary-debate-transcript/2012/01/07/gIQAk2AAiP\\_blog.html](http://www.washingtonpost.com/blogs/election-2012/post/2012-abc-yahoo-wmur-new-hampshire-gop-primary-debate-transcript/2012/01/07/gIQAk2AAiP_blog.html) (transcript of one of the presidential debates where each of the candidates speaks of China-U.S. foreign policy and economic competition with China.).

<sup>184</sup> Bureau of Democracy, Human Rights, and Labor, *July-December 2010 International Religious Freedom Report: China*, U.S. DEP'T OF STATE 14 (September 13, 2011), available at <http://www.state.gov/documents/organization/171651.pdf> [hereinafter *China*].

Trafficking in Persons Report.<sup>185</sup> It is classified as “Not Free” by Freedom House, with a score of 7 in Political Rights and 6 in Civil Liberties.<sup>186</sup> In 2009, UNHCR reported that China had 180,579 persons who were either refugees or in refugee-like situations.<sup>187</sup> The United States accepted 54 of those persons as refugees.<sup>188</sup>

Most of China’s human rights violations appear to stem from the Chinese Communist Party’s attempts to silence any voices

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*Religious Freedom Report*]. Countries may be labeled “Countries of Particular Concern” under the International Religious Freedom Act if they engage in “particularly severe violations of religious freedom.” *Id.*

<sup>185</sup> *Trafficking in Persons Report 2011: A-C*, U.S. DEP’T OF STATE 121, available at <http://www.state.gov/documents/organization/164453.pdf> [hereinafter *Trafficking Report A-C*]. Each country is assigned to Tier 1, 2, 2 Watch List, or 3, depending on their compliance with the Trafficking Victims Protection Act minimum standards. *Office to Monitor and Combat Trafficking in Persons, Tier Placements*, U.S. DEP’T OF STATE (2011), <http://www.state.gov/g/tip/rls/tiprpt/2011/164228.htm>. Essentially, countries must be dedicated to vigorous investigation and prosecution of those who are involved in trafficking, protection of victims, prevention of further trafficking, and cooperation with other governments. *Trafficking Victims Protection Act: Minimum Standards for the Elimination of Trafficking in Persons*, U.S. DEP’T OF STATE (2011), <http://www.state.gov/g/tip/rls/tiprpt/2011/164236.htm>. In addition, governments ought to monitor immigration to effectively determine which immigrants are also victims of trafficking, and should work to avoid sending trafficking victims back to their countries of origin. *Id.* Another factor that is considered is the length of the possible sentence for trafficking as compared to other crimes of similar gravity (such as rape). *Id.* Finally, the government’s efforts to improve in all these standards are taken into consideration. *Id.* Tier 1 countries are those where the government fully complies with the minimum standards of the Trafficking Victims Protection Act. *Office to Monitor and Combat Trafficking in Persons, Tier Placements*, U.S. DEP’T OF STATE (2011), <http://www.state.gov/g/tip/rls/tiprpt/2011/164228.htm>. Countries making significant efforts to comply with the standards are placed on Tier 2. *Id.* Countries on the Tier 2 Watch List are countries making significant efforts to comply with the standards that have a significant or significantly increasing number of victims, and that fail to provide evidence of increasing efforts against trafficking, or have committed to taking steps in the next year. *Id.* Tier 3 countries do not comply with the minimum standards and their governments are not making an effort to come into compliance with the standards. *Id.*

<sup>186</sup> *Freedom House Report*, *supra* note 164, at 12. See *supra* note 169 for an explanation of the Freedom House rankings.

<sup>187</sup> UNHCR Global Report 2009, *supra* note 79.

<sup>188</sup> Refugee Report, *supra* note 4, at 59.

against the government.<sup>189</sup> Methods used included detention and harassment of journalists and human rights defenders, restrictions on the ability to practice certain religions, arbitrary detentions, and, in some cases, torture.<sup>190</sup> Journalists who reported on sensitive topics were particularly at risk for being detained and held on ambiguous charges.<sup>191</sup> Arbitrary detentions, often for extended periods of time, were quite common.<sup>192</sup> Furthermore, China uses the death penalty and has executed the largest number of prisoners worldwide, occasionally after unfair trials.<sup>193</sup> Evidently, these abuses increased around sensitive anniversaries, such as the anniversary of the Tiananmen Square killings.<sup>194</sup> Human rights abuses in Tibet and Xinjiang were generally more serious and far-reaching.<sup>195</sup>

China's One-Child Policy has also continued to be a source of problems.<sup>196</sup> The State Department reported that Guangdong Province performed 8,916 sterilizations in April 2010 alone.<sup>197</sup> In addition, the All-China Women's Federation reported that one third of women experienced some form of domestic violence in 2008.<sup>198</sup> HRW reported that the standards for proving domestic violence were "impossibly high," making it difficult for women to get legal help.<sup>199</sup>

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<sup>189</sup> 2010 Country Reports on Human Rights Practices: China, U.S. DEP'T OF STATE 1 (April 8, 2011), available at <http://www.state.gov/documents/organization/160451.pdf> [hereinafter *China Country Report*].

<sup>190</sup> *Id.* Indeed, the China Country Report states that the UN Committee Against Torture expressed "deep concern" over torture and mistreatment of prisoners in order to obtain confessions. *Id.* at 6.

<sup>191</sup> HRW Report, *supra* note 157, at 304. This received greater attention during 2011, when the Chinese government sought to censor news about Liu Xiaobo's receipt of the 2010 Nobel Peace Prize. *Id.* at 303.

<sup>192</sup> *China Country Report*, *supra* note 189, at 10.

<sup>193</sup> HRW Report, *supra* note 157, at 305; AI Report, *supra* note 152, at 106; *China Country Report*, *supra* note 189, at 1.

<sup>194</sup> *China Country Report*, *supra* note 189, at 1.

<sup>195</sup> HRW Report, *supra* note 157, at 311.

<sup>196</sup> *China Country Report*, *supra* note 189, at 23. Parents of more than one child were often pressured into being sterilized. *Id.* There were also instances of forced use of birth control or abortions. *Id.* Although it is illegal to terminate a pregnancy based on the sex of the child, the entrenched favoritism for male children means that many parents violated this law. *Id.*

<sup>197</sup> *Id.* at 55.

<sup>198</sup> *China Country Report*, *supra* note 189, at 51.

<sup>199</sup> HRW Report, *supra* note 157, at 308.

In addition, although “public shaming” of women who were suspected of being sex workers was made illegal, it was unclear to what extent this ban would be followed.<sup>200</sup>

Religious freedom in China is severely restricted.<sup>201</sup> China sanctions five religious groups, which may hold worship services.<sup>202</sup> Amnesty International reported that followers of other religious groups faced imprisonment, harassment, and persecution.<sup>203</sup> People who practiced Tibetan Buddhism or Falun Gong faced increased persecution, including torture.<sup>204</sup> In addition, freedom of movement for Tibetans is severely restricted.<sup>205</sup>

China is on the Tier 2 Watch List for trafficking in persons.<sup>206</sup> China appears to be making progress by drafting new legislation to deal with trafficking and increasing efforts to educate the public and the police about trafficking.<sup>207</sup> China has also increased training for police in identifying trafficking victims.<sup>208</sup> Furthermore, the country has improved its system of hotlines and trafficking shelters.<sup>209</sup> Notably, China aired seventeen two-hour broadcasts on its highest rated television channel to educate the public about trafficking and implemented announcements on trains and buses to raise awareness.<sup>210</sup> It has also increased cooperation with foreign governments and INTERPOL to prevent trafficking and to identify victims.<sup>211</sup> However, the State Department’s main concern seems to be that China includes the kidnapping of children and selling them

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<sup>200</sup> *Id.*

<sup>201</sup> *China Religious Freedom Report*, *supra* note 184, at 2.

<sup>202</sup> *Id.* These religions are Buddhist, Taoist, Muslim, Catholic, and Protestant. *Id.*

<sup>203</sup> AI Report, *supra* note 152, at 105. AI also reported that over forty Catholic Bishops were either detained, placed under house arrest, or voluntarily went into hiding for creating unregistered “house churches.” *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *China Country Report*, *supra* note 189, at 93.

<sup>206</sup> *Trafficking Report A-C*, *supra* note 185, at 121.

<sup>207</sup> *Id.* at 123-25.

<sup>208</sup> *Id.* at 122.

<sup>209</sup> *Id.* at 122.

<sup>210</sup> *Id.* at 125. This is particularly notable because China is the only country considered in this article to have instituted such a far reaching education program.

<sup>211</sup> *Trafficking Report A-C*, *supra* note 185, at 121-22.



for adoption under its definition of trafficking.<sup>212</sup> Additionally, the State Department is also concerned that China does not treat males being sold into forced labor as seriously as it does the sexual trafficking of women.<sup>213</sup>

Overall, the State Department's one hundred forty-five page report on China is thorough and does not ignore important details or events.<sup>214</sup> The Trafficking Report, however, paints a different picture. The Trafficking Report provides an example of a trend throughout other reports where the State Department appears to be making conflicting arguments.<sup>215</sup> Almost every paragraph begins with a sentence about how China's trafficking protection system is inadequate, yet the remainder of the paragraph describes vast improvements.<sup>216</sup> This leads to the question: Why is China on the Tier 2 Watch List, when countries taking fewer steps to address trafficking are only Tier 2?<sup>217</sup> These types of inconsistencies suggest a biased level of reporting, as though the State Department is torn between making China look worse than it is while attempting to provide accurate information.<sup>218</sup>

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<sup>212</sup> *Id.* at 122-25. This is seen by the fact that the State Department mentions this numerous times when discussing the flaws in China's system. *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> See generally *China Country Report*, *supra* note 189.

<sup>215</sup> See generally *Trafficking Report A-C*, *supra* note 185, at 121-25.

<sup>216</sup> *Id.* The report begins by stating that the Chinese government is not taking significant measures to identify and address trafficking but continues to describe the advances discussed above, such as the public announcements on trains and buses and increased training for employees likely to encounter trafficking victims. *Id.*

<sup>217</sup> See *infra* IV.F, Turkey.

<sup>218</sup> China is a bit of an anomaly because its relationship with the United States is so conflicted. Human Rights Watch noted that the United States tends to avoid discussing human rights with China because it wishes to improve the relationship between the two countries. HRW *supra* note 157, at 13. Indeed, the report states "Secretary of State Hillary Clinton announced that human rights 'can't interfere' with other US interests in China." *Id.* This may explain why the refugee admissions numbers from China are so low when compared to the abuses mentioned in the reports; the United States is hesitant to press China on the issue of human rights because it does not want to upset the delicate relationship between the two countries.

*C. Cuba*

Cuba is considered an enemy of the United States in the War on Terror.<sup>219</sup> Furthermore, travel between the United States and Cuba is restricted.<sup>220</sup> The United States also encourages other countries to pressure Cuba to make reforms.<sup>221</sup> In the past year, the United States has continued its controversial embargo on Cuba, despite a United Nations Resolution against the embargo.<sup>222</sup> Cuba is not considered a “Country of Particular Concern” under the International Religious Freedom Act;<sup>223</sup> however it is a Tier 3 country according to the Trafficking in Persons Report.<sup>224</sup> Cuba is considered “Not Free” by Freedom House, with a score of 7 for Political Rights and 6 for Civil Liberties.<sup>225</sup> The UNHCR reported that, in 2009, there were 7,549 refugees or persons in refugee-like situations in Cuba.<sup>226</sup> The United States admitted 4,800 refugees from Cuba that year.<sup>227</sup>

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<sup>219</sup> Swanwick, *supra* note 7, at 142.

<sup>220</sup> Background Note: Cuba, *supra* note 150.

<sup>221</sup> *Id.*

<sup>222</sup> *Id.* There is substantial evidence that the embargo does not help to improve human rights in Cuba and actually disproportionately harms the people it is intended to help. HRW Report, *supra* note 157, at 237. Nevertheless, the United States continues to place an embargo on Cuba, despite the fact that 187 out of 192 countries in the United Nations General Assembly voted for a resolution condemning the embargo. *Id.* This was the 19th consecutive year that the UN General Assembly voted on a resolution for the United States to end its embargo. AI Report, *supra* note 152, at 120. The United States and Israel were the only two countries to vote against the resolution. *Id.* The embargo is controversial because there is substantial evidence that it disproportionately harms poor Cuban citizens and has little effect on the Cuban government. HRW Report, *supra* note 157, at 237.

<sup>223</sup> Bureau of Democracy, Human Rights, and Labor, *July-December 2010 International Religious Freedom Report: Cuba*, U.S. DEP’T OF STATE (September 13, 2011), available at <http://www.state.gov/documents/organization/171775.pdf> [hereinafter *Cuba Religious Freedom Report*].

<sup>224</sup> *Trafficking Report A-C*, *supra* note 185, at 137.

<sup>225</sup> *Freedom House Report*, *supra* note 164, at 12. For an explanation of the meaning of these ranks, see *supra* text accompanying note 169.

<sup>226</sup> UNHCR Global Trends 2009, *supra* note 79.

<sup>227</sup> Refugee Report, *supra* note 4, at 59. Cuban refugees made up 6.43% of total refugee admissions in 2009. *Id.* Cuba was fifth on the list of countries of origin for refugees entering the United States. *Id.*

Cuba continues to restrict political freedom by arresting those who speak out against the government.<sup>228</sup> Prison conditions are inhumane, and many prisoners have become malnourished and ill.<sup>229</sup> Prisoners are often beaten, denied visits, and placed in solitary confinement.<sup>230</sup> Many prisoners are convicted of “dangerousness,” a crime which essentially allows police officers to arrest a person who has not committed a crime on the belief that he or she may do so in the future.<sup>231</sup> However, although Cuba still has the death penalty, there are currently no prisoners awaiting death, and three prisoners sentenced to death had their sentences reduced in December 2010.<sup>232</sup> In addition, Cuba has recently released forty three prisoners, pursuant to an agreement with the Catholic Church.<sup>233</sup>

Dissidents and journalists are often harassed or threatened by the Cuban police.<sup>234</sup> A common practice is to arrest them and hold them for several days without charging them and then release them.<sup>235</sup> Additionally, freedom of movement is restricted both to places within Cuba and to outside countries.<sup>236</sup> The most common human rights violations appear to be arbitrary arrests and restrictions on freedom of speech and movement.<sup>237</sup>

The State Department’s report on religious freedom in Cuba

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<sup>228</sup> HRW Report, *supra* note 157, at 233.

<sup>229</sup> *Id.* at 236. Prisoners were often denied medical assistance, which made for life-threatening conditions in some cases. *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> *Id.* at 234.

<sup>232</sup> AI Report, *supra* note 152, at 119-20.

<sup>233</sup> *Id.* at 119.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> 2010 Country Reports on Human Rights Practices: Cuba, U.S. DEP’T OF STATE 19 (April 8, 2011), available at <http://www.state.gov/documents/organization/160160.pdf> [hereinafter *Cuba Country Report*]. Some reported that they were not allowed to leave the country with their children; that the Cuban government held their children “hostage” until they returned. HRW Report, *supra* note 157, at 236.

<sup>237</sup> See generally HRW Report, *supra* note 157, AI Report, *supra* note 152, *Cuba Country Report*, *supra* note 222. These abuses seem slight in comparison to countries like Iran, where torture is routinely used and arbitrary arrests last far longer than a few days. See generally 2010 Country Reports on Human Rights Practices: Iran, U.S. DEP’T OF STATE (April 8, 2011), available at <http://www.state.gov/documents/organization/160461.pdf> [hereinafter *Iran Country Report*].

is an example of the bias this article is concerned with. The report begins by stating that “the government places restrictions on freedom of religion,” but goes on to report in the next paragraph on how religious freedom is actually improving in Cuba.<sup>238</sup> For example, one paragraph begins “there were no reports of societal abuses or discrimination based on religious affiliation, belief, or practice. The U.S. government urged international pressure on the government to promote religious freedom.”<sup>239</sup> The remainder of the report discusses restrictions on religious freedom, followed by examples of how these restrictions are now less prevalent or even non-existent.<sup>240</sup>

Cuba is a Tier 3 country for human trafficking.<sup>241</sup> There is little information available on trafficking in Cuba because the government has not publicized information about measures to address trafficking.<sup>242</sup> Cuba is not a party to the 2000 United Nations Trafficking in Persons Protocol.<sup>243</sup> Furthermore, although there are two shelters for children who are victims of physical or sexual abuse, there is no known information about specific shelters for trafficking victims.<sup>244</sup> This lack of information about trafficking practices in Cuba makes it difficult to test the accuracy of the State Department’s report.

The report on Cuba is rather telling. First, the State Department discusses how the United States attempts to pressure the Cuban government to have greater respect for human rights; however the report does not mention the controversial embargo.<sup>245</sup> The religious freedom report seems to be saying two things at once: that Cuba has horrible religious freedom abuses and that these abuses

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<sup>238</sup> *Cuba Religious Freedom Report*, *supra* note 222, at 1.

<sup>239</sup> *Id.*

<sup>240</sup> *See generally, id.* For instance, the report states that religious groups were able to conduct services and provide classes to their members without interference by the government. *Id.* at 5. This is in sharp contrast to the reports on China and Iran, where religion is severely restricted. *See generally, China Religious Freedom Report*, *supra* note 184, and *Iran Country Report*, *supra* note 236.

<sup>241</sup> *Trafficking Report A-C*, *supra* note 185, at 137.

<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

<sup>245</sup> *Cf. Cuba Religious Freedom Report*, *supra* 223, at 1; with HRW Report, *supra* 156, at 237, and AI Report, *supra* note 152, at 120.

actually are not as bad as they seem.<sup>246</sup> Finally, the nature of the abuses reported seems inconsistent with the refugee admission numbers, which suggest that Cuban refugees have been singled out as more worthy of assistance than other refugees.<sup>247</sup> The author does not wish to minimize the extent of suffering Cubans experience at the hands of their government, however when compared with known human rights abuses in other countries, the percentage of Cuban refugees accepted compared with the percentage of refugees accepted in other countries is inconsistent with a purely humanitarian based admissions program.<sup>248</sup> For instance, the human rights abuses in Iran, Nigeria, and Turkey are as bad if not worse than those in Cuba, yet the United States took less than one percent of the total refugee

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<sup>246</sup> *Cuba Religious Freedom Report*, *supra* 223, at 1.

<sup>247</sup> For an example of this preference for Cuban refugees, consider the projected admissions numbers, which allow for any Cuban living in Cuba to automatically be considered for refugee status. *Refugee Report*, *supra* note 4, at 7.

<sup>248</sup> As an example, consider the Amnesty International and Human Rights Watch reports on American prisons. *HRW Report*, *supra* note 157. Clearly, prisons in Cuba are far worse; however, some of the abuses noted in Cuba are present in the United States. Some of the greatest abuses in Cuban prisons include extended solitary confinement, beatings, and severe overcrowding. *HRW Report*, *supra* note 157, at 236. Amnesty International reported that “excessive use of force and cruel prison conditions” were a major problem in American prisons. *AI Report*, *supra* note 152, at 342. In addition, Amnesty International focused on the extensive use of long-term isolation in prisons and executions of prisoners, sometimes after trials that were clearly unfair, or of prisoners who had proved rehabilitation. *Id.* at 344-45. Human Rights Watch reported that the United States is the only country that imposes sentences of life without the possibility of parole on youth offenders. *HRW Watch*, *supra* note 157, at 610. It also noted that the United States has the largest per capita incarceration rate in the world. *Id.* at 613. Sexual violence, including rape, is common in prisons. *Id.* Finally, Human Rights Watch reported that the European Court of Human Rights refused to extradite terrorism suspects to the United States because “their long-term incarceration in a US ‘supermax’ prison would violate Article 3 of the European Convention on Human Rights, which prohibits ‘torture or . . . inhuman or degrading treatment or punishment.’” *Id.* at 614. American prisons are not immune from overcrowding either. In 2011, the Supreme Court of the United States ordered California to reduce its prison population by 37,000 inmates. *Brown v. Plata*, 131 S. Ct. 1910, 1923 (2011). Even with that reduction, California’s prisons will still be at 137.5% of their intended capacity. *Id.* Again, this is in no way meant to argue that conditions in the United States are in any way as bad as conditions in Cuba; however, Cuba is the only country in this article that can even be compared with the United States with a straight face, so to speak. This is noted to emphasize the disparity between refugee admissions numbers and reported human rights abuses.

population from each of those countries, whereas it took 63% of Cuba's refugee population.<sup>249</sup> There is a clear disconnect between the actual numbers of refugees and the numbers of persons accepted to the United States which cannot be explained by geography alone.

#### *D. Iran*

Iran does not have diplomatic relations with the United States.<sup>250</sup> The United States has imposed numerous sanctions on Iran<sup>251</sup> and, for the most part, does not trade with the country.<sup>252</sup> Iran is also considered an enemy in the War on Terror,<sup>253</sup> and the United States views it as a sponsor of terrorism.<sup>254</sup> Freedom House categorizes Iran as "Not Free," with a 6 in both Political Rights and Civil Liberties and a downward trend arrow.<sup>255</sup> Iran has been a "Country of Particular Concern" since 1999.<sup>256</sup> It is a Tier 3 country on the Trafficking in Persons Report.<sup>257</sup> Additionally, in 2009, the UNHCR reported that there were 72,774 refugees or persons in refugee-like situations in Iran.<sup>258</sup> The United States accepted 5,381 refugees from Iran in 2009.<sup>259</sup>

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<sup>249</sup> Refugee Report, *supra* note 4, at 57.

<sup>250</sup> *Iran Country Report*, *supra* note 236, at 69. This is commonly understood as a sign that a country is an "enemy." The United States has not had diplomatic relations with Iran since 1980. Background Note: Iran, *supra* note 150.

<sup>251</sup> Background Note: Iran, *supra* note 150, HRW Report, *supra* note 157, at 529.

<sup>252</sup> Background Note: Iran, *supra* note 150.

<sup>253</sup> Swanwick, *supra* note 7, at 21.

<sup>254</sup> Background Note: Iran, *supra* note 150.

<sup>255</sup> *Freedom House Report*, *supra* note 164, at 13. See *supra* text accompanying note 169 for a definition of these ranks.

<sup>256</sup> Bureau of Democracy, *Human Rights, and Labor*, *July-December 2010 International Religious Freedom Report: Iran*, U.S. DEP'T OF STATE 2 (September 13, 2011), available at <http://www.state.gov/documents/organization/171734.pdf> [hereinafter *Iran Religious Freedom*].

<sup>257</sup> *Trafficking in Persons Report 2011: D-I*, U.S. DEP'T OF STATE 195, available at <http://www.state.gov/documents/organization/164454.pdf> [hereinafter *Trafficking Report D-I*].

<sup>258</sup> 2009 Global Trends, *supra* note 2, at 28.

<sup>259</sup> Refugee Report, *supra* note 4, at 57. Refugees from Iran made up 7.21% of the total refugees accepted in 2009. *Id.*

Iranians have faced severe restrictions on basic freedoms.<sup>260</sup> The United Nations' Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment expressed "serious concern" about detainees in Iran.<sup>261</sup> Arbitrary arrests were common,<sup>262</sup> and prison conditions were deplorable, with prisoners being tortured and denied proper medical assistance.<sup>263</sup> Iran was second only to China in the number of executions it performed.<sup>264</sup> Sentences of flogging and amputation were increasingly used, and the head of Iran's human rights body stated that the government did not consider either punishment to be torture.<sup>265</sup> Amnesty International reported that the government continued to use the death penalty and execution as political tools.<sup>266</sup> For example, apostasy (conversion from Islam) is a crime punishable by death.<sup>267</sup>

Religious minorities in Iran, particularly Sunni Muslims and Christians, continue to face harassment, arbitrary arrest, and other forms of persecution.<sup>268</sup> The government does not recognize

<sup>260</sup> *Iran Country Report*, *supra* note 236, at 1.

<sup>261</sup> *Id.* at 18.

<sup>262</sup> *Id.* at 13. Prisoners were often held for weeks or months without contact with family or legal representation. *Id.*

<sup>263</sup> AI Report, *supra* note 152, at 173, HRW Report, *supra* note 157, at 523. Amnesty International reported the case of one man who was arrested and tortured. *Id.* When he complained about the torture to a judge, the judge responded by telling him that he "deserved it." *Id.* Amnesty International has detailed forms of torture in the country, which included severe beatings (one man died from internal bleeding after one such beating), mock executions, and "forcing detainees' heads into toilets to make them ingest human excrement." *Id.*

<sup>264</sup> HRW Report, *supra* note 157, at 526. Iran also executed more juvenile offenders than any other country. *Id.* Human rights organizations reported at least 300 executions during the year, although the number could be far greater. *Id.* The State Department suggested that the number could be as high as 500. *Iran Country Report*, *supra* note 236, at 4.

<sup>265</sup> AI Report, *supra* note 152, at 175. Indeed, he stated that not only were the punishments not torture or cruel and unusual punishment, but that they were culturally justified. *Iran Country Report*, *supra* note 236, at 10. Deputy Judiciary Head Seyed Ebrahim Raeisi is quoted as saying that amputation is "based on the law and divine punishment" and is "a source of pride for us." *Id.*

<sup>266</sup> *Id.*

<sup>267</sup> *Iran Country Report*, *supra* note 236, at 4.

<sup>268</sup> AI Report, *supra* note 152, at 175. There were numerous reports of police forces entering and searching the homes of minorities and human rights activists without cause. *Iran Country Report*, *supra* note 236, at 26. This discrimination exists, despite the fact that the Iranian government has stated that

marriages between Muslim women and non-Muslim men.<sup>269</sup> Jews face increased discrimination because of the government's anti-Israel rhetoric.<sup>270</sup> Under the law, Bahai blood "can be spilled with impunity."<sup>271</sup>

Iran has been placed on Tier 3 in the Trafficking in Persons report for six consecutive years.<sup>272</sup> The Iranian government did not disclose its policies regarding trafficking, so it was difficult for organizations to obtain information about the trafficking situation within Iran.<sup>273</sup> Women can be executed for adultery, which is defined as sexual relations outside of marriage, which places female trafficking victims at great risk of punishment.<sup>274</sup>

The State Department report on Iran is very detailed and accurate, particularly when compared with other reports.<sup>275</sup> In addition, the report seems consistent with the United States' refugee policy towards Iran.<sup>276</sup> Iran is approved for admission under all three priorities because it is one of only three countries designated as "Countries of Particular Concern."<sup>277</sup> Iranian religious minorities are considered a "Group of Particular Concern" under Priority 2, and family members of Iranian refugees already in the United States are included in Priority 3, pending the resumption of that program.<sup>278</sup> In 2009, Iran was the fourth greatest source country for refugees

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pre-Islamic groups, including Zoroastrians, Christians, and Jews are "protected" religious minorities. *Iran Religious Freedom*, *supra* note 255, at 1. Religious minorities were also restricted in terms of employment. *Id.* at 3-4.

<sup>269</sup> *Iran Country Report*, *supra* note 236, at 54.

<sup>270</sup> *Id.* at 59. There were also reports of events during the year designed to deny the existence of the Holocaust. *Id.*

<sup>271</sup> *Iran Religious Freedom*, *supra* note 255, at 4. At the same time, the government frequently prevented Bahais from leaving Iran. *Id.* at 7.

<sup>272</sup> *Trafficking Report D-I*, *supra* note 256, at 195.

<sup>273</sup> *Id.* at 196.

<sup>274</sup> *Id.* In addition, under Iranian law, it takes the testimony of two women to counter the testimony of one man, which makes it even more difficult for female trafficking victims to defend themselves. *Id.*

<sup>275</sup> See *Iran Country Report*, *supra* note 236, at 54.

<sup>276</sup> See generally Refugee Report, *supra* note 4.

<sup>277</sup> Refugee Report, *supra* note 4, at 55. The other two countries are Eritrea and Burma. *Id.*

<sup>278</sup> *Id.* at 12.



entering the United States.<sup>279</sup> The United States' refugee policy towards Iran is what one would expect based on the human rights situation in Iran.

### *E. Nigeria*

Nigeria and the United States have had improving relations since 1999.<sup>280</sup> In 2011, the United States imported 826,000 barrels of crude oil and 876,000 barrels of petroleum per day from Nigeria.<sup>281</sup> Indeed, Nigeria is the fifth greatest exporter of crude oil to the United States, and the sixth greatest exporter of total petroleum.<sup>282</sup> Human Rights Watch suggests that the close economic ties between the two countries makes the United States hesitant about condemning Nigeria's human rights abuses.<sup>283</sup>

Nigeria is considered "Partly Free" by Freedom House, with a 4 in both Political Rights and Civil Liberties.<sup>284</sup> However, Freedom House notes that Political Rights in Nigeria have been improving since the last report.<sup>285</sup> Nigeria is not considered a "Country of Particular Concern" under the International Religious Freedom Act.<sup>286</sup> It is classified as Tier 1 by the Trafficking in Persons

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<sup>279</sup> *Id.* at 59. In 2009, 5,381 refugees entered the United States, making up 7.21% of total refugee admissions. *Id.* at 57.

<sup>280</sup> Background Note: Nigeria, *supra* note 150. The Background Note refers to Nigeria's cooperation with the United States as "excellent." *Id.*

<sup>281</sup> U.S. Energy Information Administration, *Petroleum and Other Liquids: Crude Oil and Total Petroleum Imports Top 15 Countries*, EIA (November 29, 2011), [http://www.eia.gov/pub/oil\\_gas/petroleum/data\\_publications/company\\_level\\_imports/current/import.htm](http://www.eia.gov/pub/oil_gas/petroleum/data_publications/company_level_imports/current/import.htm). This is a decrease from 2010 when the United States imported 1,018,000 and 1,053,000 barrels per day of crude oil and petroleum, respectively. *Id.*

<sup>282</sup> *Id.*

<sup>283</sup> HRW Report, *supra* note 157, at 153. HRW specifically stated, "Because of Nigeria's role as a regional power, leading oil exporter, and major contributor of troops to United Nations peacekeeping missions . . . the United States . . . [has] been reluctant to publicly criticize Nigeria's human rights record." *Id.*

<sup>284</sup> *Freedom House Report*, *supra* note 164, at 14. See *supra* text accompanying note 169 for a definition of these ranks.

<sup>285</sup> *Id.* at 16.

<sup>286</sup> *Bureau of Democracy, Human Rights, and Labor, July-December 2010 International Religious Freedom Report: Nigeria*, U.S. DEP'T OF STATE 1

Report.<sup>287</sup> In 2009, the UNHCR reported 15,609 persons living in refugee or refugee-like situations in Nigeria.<sup>288</sup> The United States accepted only three of these refugees.<sup>289</sup>

Nigeria has a troubling human rights record. The police regularly use unlawful killings, torture, and disappearances.<sup>290</sup> There have also been numerous reports of persons being stopped at checkpoints and being shot if they did not bribe the police.<sup>291</sup> Arbitrary arrests also have occurred and prisoners are held in inhumane conditions, often for weeks, months, or even years before trial.<sup>292</sup> In addition, torture was routinely used to obtain confessions.<sup>293</sup> By the end of the year, 920 people were on death row, with twenty of those persons being under the age of eighteen.<sup>294</sup> Violence in Plateau State was particularly intense, with some reports of over 900 dead during 2010.<sup>295</sup>

The police routinely raid homes without warrants.<sup>296</sup> Rape by police officers is common, with one human rights group reporting

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(September 13, 2011), available at <http://www.state.gov/documents/organization/171630.pdf> [hereinafter *Nigeria Religious Freedom*].

<sup>287</sup> *Trafficking in Persons Report 2011: N-S*, U.S. DEP'T OF STATE 279, available at <http://www.state.gov/documents/organization/164453.pdf> [hereinafter *Trafficking Report N-S*].

<sup>288</sup> 2009 Global Trends, *supra* note 2, at 28.

<sup>289</sup> Refugee Report, *supra* note 4, at 58. Nigerian refugees made up 0.00% of admitted refugees in 2009. *Id.*

<sup>290</sup> AI Report, *supra* note 152, at 245. These abuses were committed with impunity in most cases. HRW Report, *supra* note 157, at 148. The Legal Defense and Assistance Project, an NGO, reported that in 2009, at least 1,049 people were killed by the police. AI Report, *supra* note 152, at 246. Amnesty International estimated that of the 48,000 prison inmates in the country, 70% were pre-trial detainees. *Id.*

<sup>291</sup> *2010 Country Reports on Human Rights Practices: Nigeria*, U.S. DEP'T OF STATE 4-5 (April 8, 2011), available at <http://www.state.gov/documents/organization/160138.pdf> [hereinafter *Nigeria Country Report*].

<sup>292</sup> AI Report, *supra* note 152, at 245-46.

<sup>293</sup> AI Report, *supra* note 152, at 246. Amnesty International reported episodes of prisoners being hung from the ceiling and beaten with gun butts and machetes. *Id.*

<sup>294</sup> AI Report, *supra* note 152, at 246.

<sup>295</sup> HRW Report, *supra* note 157, at 148.

<sup>296</sup> *Nigeria Country Report*, *supra* note 289, at 21.

that it was seen as “one of the fringe benefits attached to night patrol.”<sup>297</sup> Human rights groups and defenders are routinely harassed.<sup>298</sup> There are also reports that 30% of women were forced to undergo female genital mutilation (FGM).<sup>299</sup> Homosexuality is illegal under the law and can be punished by 14 years in prison.<sup>300</sup>

In direct contradiction with reports by human rights organizations, the State Department reported that the government generally protects religious freedom.<sup>301</sup> These organizations have reported that many of the 900 deaths in Plateau State were the result of religious violence.<sup>302</sup> The violence in Plateau State is not limited to the 2008 incidents and has been ongoing for many years.<sup>303</sup>

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<sup>297</sup> *Id.* at 12.

<sup>298</sup> AI Report, *supra* note 152, at 245. Here is another example of inconsistencies within the State Department reports. The section on international and nongovernmental organizations begins with the statement that human rights groups operated “without government restriction,” yet a bit further down the report states that “[d]uring the year the government arbitrarily arrested NGO members” and went on to document these cases. *Nigeria Country Report*, *supra* note 289, at 45. One page later, the report states that the government cooperated with these organizations, which appears to be supported by the fact that HRW, AI, and UN agencies were able to publish reports on human rights in the country. *Id.* at 46. Perhaps it need not be said that each of these organizations were also able to publish reports on other countries, like Iran, which severely interfered with the rights of NGOs.

<sup>299</sup> *Nigeria Country Report*, *supra* note 289, at 51. As noted above, Matter of Kasinga, 21 I. & N. Dec. 357 (BIA en banc 1996) held that FGM satisfies the fear of persecution standard.

<sup>300</sup> *Nigeria Country Report*, *supra* note 289, at 58. In an odd moment, the State Department reported that “[t]here were no public gay pride marches.” *Id.* This is notable because comments regarding gay pride marches were absent from other reports on countries that criminalize homosexuality. In addition, it seems obvious that a country that criminalizes homosexuality will not have gay pride marches.

<sup>301</sup> *Nigeria Religious Freedom*, *supra* note 284, at 1. See *Room for Improvement At the State Department: Official Portrayal of Nigerian Violence Still Leaves Much To Be Desired*, JUBILEE CAMPAIGN BLOG (Sept. 16, 2011, 11:05 AM), <http://jubileecampaign.wordpress.com/2011/09/16/room-for-improvement-at-the-state-department/> [hereinafter *Room for Improvement*].

<sup>302</sup> See *id.* For more information, see also [www.eyesonnigeria.org](http://www.eyesonnigeria.org) (a separate website published by Amnesty International).

<sup>303</sup> *Annual Report of the United States Commission on International Religious Freedom*, USCIRF 11 (May 2011), <http://www.uscirf.gov/images/book%20with%20cover%20for%20web.pdf> [hereinafter *USCIRF Report*]. This report covers events from April 1, 2010-March

Indeed, the United States Commission on International Religious Freedom (USCIRF) estimates that 13,000 Nigerians have been killed since 1999 as a result of religious violence.<sup>304</sup> It reports that the lack of repercussions for perpetrators of religious violence has led to a sense of impunity.<sup>305</sup> For these reasons, USCIRF has recommended that Nigeria be considered a “Country of Particular Concern.”<sup>306</sup>

Nigeria is classified as a Tier 1 country for human trafficking purposes.<sup>307</sup> However, Nigeria still has substantial human trafficking problems. In 2010, between 20,000 and 40,000 Nigerian women who were forced into prostitution were discovered in Mali.<sup>308</sup> Nigeria apparently did not take action to rescue these women.<sup>309</sup> Despite a formal governmental organization devoted to the human trafficking problem that takes steps to protect victims, prevent trafficking, and punish traffickers, governmental remedies remain inadequate.<sup>310</sup> In spite of all this, the State Department reports that Nigeria’s compliance with the minimum standards of the Trafficking Act is sufficient to place it on Tier 1.<sup>311</sup>

The reports on Nigeria do not comport with refugee admissions in the United States. Of 15,609 refugees, only three were admitted in 2009.<sup>312</sup> While the Country Report itself appears accurate, all discussion of freedom of religion is severely lacking, and little attention is paid to the substantial problem of religious violence. This is particularly evident by the fact that USCIRF has

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31, 2011. *Id.* at ii. USCIRF was created by the International Religious Freedom Act of 1998 and is charged with monitoring religious freedom around the world. *Id.* at 4. It is an independent government body, separate from the State Department. *Id.*

<sup>304</sup> *Id.* at 11.

<sup>305</sup> *Id.*

<sup>306</sup> *Id.* at 98. USCIRF has recommended that Nigeria be a “Country of Particular Concern” since 2009. *Id.* Nigeria has been on its Watch List since 2002. *Id.* Jubilee Campaign echoes HRW when it suggests that Nigeria’s status as a leading oil source and supplier of United Nations Peacekeeping forces makes the United States hesitant to label it a “Country of Particular Concern.” *Room for Improvement*, *supra* note 301.

<sup>307</sup> *Trafficking Report N-S*, *supra* note 287, at 279.

<sup>308</sup> *Id.*

<sup>309</sup> *Id.*

<sup>310</sup> *Id.*

<sup>311</sup> *Id.* at 279.

<sup>312</sup> Refugee Report, *supra* note 4, at 58.

recommended numerous times that Nigeria be labeled a "Country of Particular Concern," but the United States government refuses to do so.<sup>313</sup> Human Rights Watch's concern that the United States is less willing to challenge Nigeria on its human rights abuses because of foreign policy<sup>314</sup> seems to also be reflected in the United States admittance of Nigerian refugees.

### F. Turkey

The Background Note on Turkey states that the United States has had a "friendship" with Turkey since the late 18th century.<sup>315</sup> Turkey is an ally in the War on Terror.<sup>316</sup> Human Rights Watch

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<sup>313</sup> USCIRF Report, *supra* note 303, at 98.

<sup>314</sup> HRW Report, *supra* note 157, at 153.

<sup>315</sup> Turkey Background Note, *supra* note 150. The State Department also speaks of the "close relationship" between the United States and Turkey. *Id.* Indeed, the United States government's bias in favor of Turkey is apparent in other contexts beyond refugee law. In 2010, BBC News reported the passing of a House resolution, which would have recognized the 1915 Armenian Genocide not as just simply war atrocities, but as an actual "genocide," something the United States has consistently refused to do. *See US Congress Panel Accuses Turkey of Armenian "genocide,"* BBC NEWS (Mar. 4, 2010), <http://news.bbc.co.uk/2/hi/americas/8550765.stm>. Such resolutions have passed through Congress before but have never been signed by the President. *Id.* Despite President Obama's campaign promises to recognize the mass killings as "genocide," he refused to sign the resolution, stating that "the US-Turkish alliance is simply too important to get side-tracked by a non-binding resolution passed by the House of Representatives." *Id.* In contrast, over twenty countries have acknowledged that what occurred was genocide. *Id.* The Christian Science Monitor noted that most other modern presidents admit that it was genocide. John Hughes, *Armenian Genocide Resolution: President Obama and the Price of Moral Courage*, THE CHRISTIAN SCIENCE MONITOR (Mar. 8, 2010), <http://www.csmonitor.com/Commentary/Opinion/2010/0308/Armenian-Genocide-Resolution-President-Obama-and-the-price-of-moral-courage>. Secretary of State Clinton vowed to stop the resolution, again citing foreign relations with Turkey. *Id.* This is consistent with the *Turkey Country Report*, which repeatedly refers to the genocide as the "Armenian issue," the "Armenian problem," or the "Turkish-Armenian conflict." *See 2010 Country Reports on Human Rights Practices: Turkey*, U.S. DEP'T OF STATE 15, 23 (Apr. 8, 2011), available at <http://www.state.gov/documents/organization/160479.pdf> [hereinafter *Turkey Country Report*]. It should also be noted that USCIRF, a governmental organization, recognizes the killings as "genocide." *USCIRF Report*, *supra* note 303, at 324.

<sup>316</sup> Swanwick, *supra* note 7, at 21.

criticized the United States for failing to pressure Turkey on its human rights abuses.<sup>317</sup> Turkey is considered “Partly Free” by Freedom House, with a 3 in both Political Rights and Civil Liberties.<sup>318</sup> Turkey is not a “Country of Particular Concern” under the International Religious Freedom Act.<sup>319</sup> It is classified as Tier Two in the Trafficking in Persons Report.<sup>320</sup> In 2009, the UNHCR identified 146,387 persons living in refugee or refugee-like situations in Turkey.<sup>321</sup> The United States did not accept any refugees from Turkey in 2009.<sup>322</sup>

Turkey’s human rights abuses, though improving, are still a major problem.<sup>323</sup> In 2011, Turkey enacted numerous constitutional amendments, but it is unclear how these amendments will change conditions in the country.<sup>324</sup> For example, despite these amendments, torture and ill-treatment continue both in and outside of prisons.<sup>325</sup> In

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<sup>317</sup> HRW Report, *supra* note 157, at 483. HRW reported that the United States focused primarily on Turkey’s foreign policy in the Middle East, rather than on its human rights record. *Id.* This is likely another example of the United States placing foreign policy with Turkey before principles. *See supra* text accompanying note 316.

<sup>318</sup> *Freedom House Report*, *supra* note 164, at 16. *See supra* text accompanying note 169 (defining ranks).

<sup>319</sup> Bureau of Democracy, *Human Rights, and Labor*, July-December 2010 *International Religious Freedom Report: Turkey*, U.S. DEP’T OF STATE 1 (Sep. 13, 2011), *available at* <http://www.state.gov/documents/organization/171727.pdf> [hereinafter *Turkey Religious Freedom*].

<sup>320</sup> *Trafficking in Persons Report 2011: T-Z and Special Cases*, U.S. DEP’T OF STATE 361, *available at* <http://www.state.gov/documents/organization/164458.pdf> [hereinafter *Trafficking Report T-Z*].

<sup>321</sup> 2010 Global Trends, *supra* note 2, at 29.

<sup>322</sup> Refugee Report, *supra* note 4, at 58.

<sup>323</sup> AI Report, *supra* note 152, at 327.

<sup>324</sup> *Id.* Amnesty International also reported that these amendments, while an improvement, “fell short of the fundamental change required.” *Id.* The European Commission expressed concern over the “limited scope” of these amendments. HRW Report, *supra* note 157, at 483. In addition, Turkey continued to refuse to amend its definition of minorities so that it conformed to international law and refused to consider international law, which upheld minority rights. *Id.*

<sup>325</sup> AI Report, *supra* note 152, at 326. AI reported the case of one man who was seen walking into prison in good health and was carried out dead of cerebral bleeding (presumably resulting from torture) three hours later. *Id.* HRW

response to this, the United Nations Committee against Torture has issued numerous recommendations to solve the “ongoing and consistent allegations of torture.”<sup>326</sup> Turkish Anti-Terrorism laws have also been routinely used to imprison and punish people for speaking out against the government or participating in demonstrations.<sup>327</sup> Prosecutions of government officials and security personnel are often drawn out and ineffective, contributing to a culture of impunity.<sup>328</sup> Furthermore, restrictions on publications and access to the Internet continued.<sup>329</sup> Indeed, the European Court of Human Rights found that Turkey had violated the rights of free expression in at least twelve rulings throughout the year.<sup>330</sup>

The State Department report on Turkey is completely different in tone from the other reports analyzed in this article. Unlike other reports, the Turkey report frequently refers to other human rights organizations as sources for the abuses reported.<sup>331</sup> The reports on other countries generally state the events in those countries without hesitancy or modifiers; however the report on Turkey does not follow this pattern.<sup>332</sup> In addition, the report often uses words such as “allegedly,” which tend to minimize or call into doubt the abuses discussed in the report.<sup>333</sup> The report also frequently uses the

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also reported that police often used guns on unarmed suspects. HRW Report, *supra* note 157, at 482.

<sup>326</sup> AI Report, *supra* note 152, at 327. The Committee expressed grave concern over the reports of torture in Turkey. *Id.*

<sup>327</sup> *Id.* at 328. These laws carried higher sentences than regular laws. *Id.* These laws are vague and overly broad, making it easier for them to be manipulated to imprison individuals for disagreeing with the government. *Id.* at 329.

<sup>328</sup> *Id.* at 329. Other problems with prosecutions include cases where important evidence was lost or where counterclaims were filed against victims. *Id.* See also HRW Report, *supra* note 157, at 482.

<sup>329</sup> HRW Report, *supra* note 157, at 480.

<sup>330</sup> *Id.*

<sup>331</sup> See generally *Turkey Country Report*, *supra* note 315. An example of the tone of the report is the following line, “Restraining orders were regularly issued by courts during the year to protect abused women, but human rights organizations reported that police rarely effectively enforced them.” *Id.* at 32.

<sup>332</sup> Cf. *Turkey Country Report*, *supra* note 315, with *Iran Country Report*, *supra* note 236.

<sup>333</sup> See e.g. *Turkey Country Report*, *supra* note 315, at 6. “According to a number of human rights groups and press reports, authorities allegedly tortured some suspects to obtain confessions . . . .” *Id.* at 5. This sentence is typical of the

word “some” to make abuses appear less widespread.<sup>334</sup> Finally, there are also statements within the report that seem inherently contradictory, a problem that is shared by the other reports discussed above.<sup>335</sup>

Turkey is classified as a Tier 2 country in the Trafficking in Persons Report.<sup>336</sup> The report describes the government as “making significant efforts” to comply with the minimum standards for eliminating trafficking.<sup>337</sup> The report explains that, although the government has proper procedures in place for training government and law enforcement personnel about trafficking, for sheltering trafficking victims, and for prosecuting trafficking perpetrators, the government’s efforts are largely insufficient.<sup>338</sup> Notably, the government did not follow up on two investigations concerning

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entire report. Abuse, such as torture, is discussed, but the State Department attributes the information regarding the torture to another organization and calls the truthfulness of that organization’s reporting into question by using the word “allegedly.” See also Gregory Treat, “*We are Unable to Confirm . . .*” *An Exercise in Burying our Heads in the Sand: The State Department and Oppressive Governments Everywhere*, JUBILEE CAMPAIGN (Jul. 28, 2011 4:27 PM), <http://jubileecampaign.wordpress.com/2011/07/28/we-are-unable-to-confirm/> (noting the State Department’s tendency to use words such as “alleged” or “unconfirmed” in reporting certain abuses and events).

<sup>334</sup> See e.g. *Turkey Country Report*, *supra* note 315, at 13 (describing trial practices in Turkey and explaining that “[d]efendants sometimes wait several years for their trials to begin” and “prosecutors in some instances failed to pursue torture allegations.”) (emphasis added).

<sup>335</sup> *Id.* at 2. Here, the report states “[t]he government or its agents did not commit any politically motivated killings; however, security forces killed some persons during the year . . . . Human Rights Foundation (HRF) reported that security forces caused the deaths of several persons during demonstrations.” *Id.* This statement appears inherently contradictory. Security forces are, by definition, agents of the government, and there are reports that these forces killed demonstrators. Amnesty International and Human Rights Watch both reported that demonstrators were killed, imprisoned, or tortured for expressing their political views. AI Report, *supra* note 152, at 329; HRW Report, *supra* note 157, at 480. Therefore, the statement that government agents did not commit politically motivated killings during the year is simply untrue when one considers not only the other human rights organization reports but the State Department report itself.

<sup>336</sup> *Trafficking Report T-Z*, *supra* note 320, at 361.

<sup>337</sup> *Id.*

<sup>338</sup> *Id.* at 361-63.



Turkish police officers engaged in trafficking offenses.<sup>339</sup> Moreover, one of three shelters in Turkey was forced to close down for eight months due to lack of funding.<sup>340</sup> In addition, problems with Turkish nationals abroad engaging in child sex tourism were not addressed.<sup>341</sup> Based on the report, and compared with Tier 3 nations like Iran and Cuba, it seems appropriate that Turkey is placed on Tier 2. However, it is odd that China is placed on the Tier 2 Watch List while Turkey is on Tier 2. The main difference between the two countries is that Turkey already has the necessary systems in place to deal with trafficking, whereas China has only recently begun putting these systems in place.<sup>342</sup> While Turkey's treatment of trafficking issues seemed to decline throughout the year, China also appeared to be making significant efforts at improving its own trafficking problem.<sup>343</sup> Thus, it is perplexing as to why Turkey is on Tier 2 and China is on Tier 2 Watch List.

Turkey has been placed on USCIRF's Watch List since 2009.<sup>344</sup> USCIRF noted that conditions for religious minorities in the country continued to deteriorate in 2011.<sup>345</sup> Turkey is a secular state, which creates problems for religious individuals in Turkey.<sup>346</sup> For example, minority religions are not given full legal status, which

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<sup>339</sup> *Id.* at 362. The two investigations began in 2008 and 2009, respectively. *Id.*

<sup>340</sup> *Id.*

<sup>341</sup> *Trafficking Report T-Z*, *supra* note 320, at 363.

<sup>342</sup> *Cf. Trafficking Report T-Z*, *supra* note 320, at 361-63, with *Trafficking Report A-C*, *supra* note 185, at 121-25.

<sup>343</sup> *Id.*

<sup>344</sup> *USCIRF Report*, *supra* note 303, at 317.

<sup>345</sup> *Id.* It is notable that this directly contradicts the State Department's report on religious freedom in Turkey, which states that conditions in Turkey improved during the year. *Turkey Religious Freedom*, *supra* note 319, at 1.

<sup>346</sup> *USCIRF Report*, *supra* note 303, at 317. While these problems are more notable for religious minorities in Turkey, it also affects the Muslim majority. *Id.* at 318. Perhaps the greatest problem is a law which bans people from wearing religious clothing in public. *Id.* There were reports of numerous women being expelled from universities and fired from jobs for wearing the Muslim headscarf. *Turkey Religious Freedom*, *supra* note 319, at 7. In addition, in 2010, 127 members of a Sufi brotherhood were arrested and sentenced to jail for wearing religious clothes as they walked to a mosque. *USCIRF Report*, *supra* note 303, at 321.

makes it difficult, if not impossible, for them to purchase property.<sup>347</sup> They are also not able to train potential clergy members in Turkey, which means most religious groups must send future clergy members out to be educated in other countries.<sup>348</sup> In addition, members of religious minorities reported that they faced harassment and discrimination.<sup>349</sup> Furthermore, the violence they faced as religious minorities was not always properly punished.<sup>350</sup> Some areas, such as Northern Cyprus, where members of minority religions are rarely allowed to access churches, are even more restrictive in religious freedom.<sup>351</sup> Despite the USCRIF report and recommendations regarding the ongoing mistreatment of religious minorities, the State Department continues to view Turkey's situation as improving, and has not accepted the recommendation that Turkey be placed on the Watch List.

In 2009, there were 146,387 refugees originating in Turkey.<sup>352</sup> However, the United States did not accept any Turkish refugees that year.<sup>353</sup> It is undeniable that the United States has a very close relationship with Turkey.<sup>354</sup> Indeed, Turkey is an important ally in the War on Terror and in the Middle East in general.<sup>355</sup> The Turkey Country Report is perhaps the clearest example of State Department bias that has been considered in this article. The report is hesitant to criticize Turkey's human rights record, often resorting to the use of modifiers such as "alleged," and

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<sup>347</sup> *USCRIF Report*, *supra* note 303, at 334. The inability to purchase property means that many of these groups cannot create houses of worship. *Id.* at 323.

<sup>348</sup> *Id.* at 317.

<sup>349</sup> *Id.* at 322. For instance, textbooks in public schools refer to Christian missionaries as "criminals." *Id.* at 326.

<sup>350</sup> *Id.* at 329. USCRIF reports that two gendarmerie officers killed a Turkish-Armenian journalist in 2007. *Id.* He had been convicted of "insulting Turkishness" for referring to the massacre of Armenians as "genocide." *Id.* The officers were not prosecuted. *Id.*

<sup>351</sup> *Id.* at 331. Many religious sites (reportedly around 500) in Northern Cyprus have fallen into disrepair, and looters have taken most of the icons from the churches to sell on the black market. *Id.* at 333.

<sup>352</sup> 2009 Global Trends, *supra* note 79, at 29.

<sup>353</sup> Refugee Report, *supra* note 4, at 58.

<sup>354</sup> Turkey Background Note, *supra* note 150.

<sup>355</sup> *Id.*

constantly attributing facts to other human rights organizations.<sup>356</sup> The effect of this is to water-down the human rights abuses in Turkey, particularly when the Country Report is compared with reports from other organizations. In addition, the religious freedom report completely contradicts the conclusion of the USCRIF report.<sup>357</sup> Finally, Human Rights Watch has blatantly stated that the United States has been unwilling to push the subject of Turkey's human rights record because of the alliance between the two countries.<sup>358</sup>

### G. Findings

As noted in Part III, there has been a trend toward making the Country Reports less biased and more factual; however, some bias is still apparent.<sup>359</sup> The reports on enemy countries, such as Iran and Cuba, are forceful and detailed,<sup>360</sup> which matches the number of refugees accepted each year from these countries. The report on China seems to occupy a middle ground as conflicted as the United States' relationship with that country. China is considered a Tier 2 Watch List country by the Trafficking in Persons report, yet it seems comparable to Turkey, a Tier 2 country.<sup>361</sup> The report itself is thorough and generally comports with reports from other organizations. However, refugee admissions numbers from China are still very low when compared with the number of total refugees

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<sup>356</sup> See generally *Turkey Country Report*, *supra* note 315.

<sup>357</sup> Cf. *Turkey Religious Freedom*, *supra* note 319, at 1, with *USCRIF Report*, *supra* note 300, at 318.

<sup>358</sup> HRW Report, *supra* note 157, at 483.

<sup>359</sup> For further detailed analysis of other countries, as well as Country Reports from previous years, see Poe, *supra* note 93. The report compares Amnesty International reports to State Department reports and concludes that there is still some bias in a small number of countries; however, it finds that overall the State Department reports have become far more objective since the end of the Cold War. *Id.* at 677. The report also indicates a trend in the Country Reports being more favorable to trading partners, whereas previously the reports were biased in favor of democratic regimes. *Id.*

<sup>360</sup> See generally *Iran Country Report*, *supra* note 236, with *Cuba Country Report*, *supra* note 235.

<sup>361</sup> Cf. *Trafficking Report A-C*, *supra* note 185, at 121-25, with *Trafficking Report T-Z*, *supra* note 318, at 361-63.

originating from China.<sup>362</sup>

The reports on Nigeria and Turkey are clearly flawed, with Turkey being the most flawed. The Nigeria report downplays the ongoing religious violence there, and ignores USCRIF's recommendation that Nigeria be labeled a "Country of Particular Concern."<sup>363</sup> The Turkey report is blatantly biased, both in its tone and in its conclusions.<sup>364</sup> The bias exhibited in these reports matches the countries' low admissions numbers, three and zero, respectively. Nevertheless, the State Department reports have improved vastly since the 1980s.<sup>365</sup> However, there is still a need for improvement if the United States is going to accept refugees in the most need of help.

## V. CONCLUSION

America. For many people, the very word calls up images of freedom, protection, and streets paved with gold. It is often said that people willingly leave their homes and friends to come to America for a better life. For refugees, America is a safe harbor from persecution. Refugees are not seeking merely a better life but rather the chance to have *a* life. To quote the introduction to the 2011 Human Rights Watch Report, "[d]efending human rights is rarely convenient. It may sometimes interfere with other governmental interests. But if governments want to pursue those interests instead of human rights, they should at least have the courage to admit it . . . ."<sup>366</sup> This article has attempted to determine whether and to what extent there is a foreign policy component to United States refugee acceptance procedures. Although this bias is far less prevalent than it once was, it is still apparent in the numbers of refugees the United States accepts from certain countries and in the Country Reports published by the State Department. Through this article, a link between the status of a country as an enemy or ally and the accuracy of the State Department reports on that country has been discovered.

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<sup>362</sup> Cf. UNHCR Global Report 2009, *supra* note 4, and Refugee Report, *supra* note 4, at 59.

<sup>363</sup> Cf. *Nigeria Country Report*, *supra* note 289, and *Nigeria Religious Freedom*, *supra* note 284, at 1, with *USCRIF Report*, *supra* note 303, at 98.

<sup>364</sup> See generally *Turkey Country Report*, *supra* note 315.

<sup>365</sup> Poe, *supra* note 93, at 2.

<sup>366</sup> HRW Report, *supra* note 157, at 20.

There is also a correlation between a country's status as ally or enemy and the numbers of refugee admissions. If America is ever to really help the helpless, humanitarian need should be the primary consideration in refugee admissions, rather than foreign policy. Perhaps that is not possible in this world, but the millions of helpless refugees deserve at least that we try.