

ISSUE BRIEF

No. 4472 | OCTOBER 20, 2015

The Rising Tide of Migrants and Refugees: Due Diligence and Adherence to Law Required

Steven P. Bucci, PhD, and David Inserra

Europe has been dealing with an overwhelming influx of refugees and migrants from the Middle East and other areas. What is often called the Syrian refugee crisis involves the largest numbers of migrating people that Europe has seen since World War II. The vast number of refugees—Germany alone is expecting up to 1.5 million people by the end of the year¹—will eventually affect the U.S., since some will be coming to America.

Americans should have a frank and honest discussion about the situation now, rather than simply waiting to see what happens.

There are many issues at stake, ranging from cultural and immigration questions to concerns over national security, public health, and government budgets, all overshadowed by a humanitarian desire to help those in need, especially those who are persecuted. Such difficult issues understandably provoke emotional responses, and U.S. policymakers and citizens must know the facts instead of jumping to conclusions.

Refugees, Asylum Seekers, and Migrants

It is important to clarify what exactly a refugee is. Under the U.N. Convention and Protocol Relating to the Status of Refugees, a treaty to which the U.S. and most other nations in the world are signatories, a refugee

- has a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion”;
- “is outside the country of his nationality”; and
- “is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.”²

Another distinction is between refugees and asylum seekers. Refugees are seeking to come to a refugee-receiving country, while asylum seekers are already in such a country and are requesting to stay. So in this case, an individual in a refugee camp in Jordan applying to come to Germany is a refugee. An individual who has already entered Germany and is applying to stay due to persecution in his home country is generally considered an asylum seeker.³

Such a definition ensures that individuals who need help the most—those whose own government or society persecutes them—are able to receive it. While there are countless other individuals across the world in difficult circumstances, ranging from endemic crime and corruption to crippling poverty and lack of economic opportunities, they are not refugees.

According to current data, it is clear that many migrants making their way to Europe do not have a legitimate claim for asylum. From April to June 2015, the EU statistical agency found that only 21 percent, about one in five people, came from Syria.⁴ While people from many other countries may face persecution as well, many are simply economic migrants, seeking a better life for themselves and their families. For example, 15 percent of those

This paper, in its entirety, can be found at
<http://report.heritage.org/ib4472>

The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

entering the EU seeking asylum were from Serbia, Albania, or Kosovo, relatively poor Balkan states that may have some oppression, but not likely at the level of Syria. Other press reports point to individuals from as far away as India claiming to be from Syria,⁵ and a black market trading in fake Syrian passports is booming.⁶

One takeaway from this reality is that the U.S., when debating which, or how many, refugees to accept in America, should focus on those residing in refugee camps in Jordan, Lebanon, and Turkey. Economic migrants are less likely to spend months in a refugee camp, continuing on to Europe—and free lodging, health care, and other services—instead. The population remaining in a refugee camp is much more likely to be comprised of those who have been truly displaced. By focusing on these camps, the U.S. will have fewer non-refugees to sort through, and will be better able to provide help to those who need it the most.

The U.S. Refugee System

U.S. law gives the executive branch near complete discretion on determining how many refugees can be admitted every year. The State Department sets the number each year based on the unrest in the world, though it can change the number at any point. Congress is to be consulted, but nothing in the process empowers Congress to stop or alter the State

Department's proposed levels. For each of the past several years, the U.S. has taken in about 70,000 refugees from around the world. Secretary of State John Kerry has announced an increase to 85,000 for 2016,⁷ and to 100,000 in 2017.⁸ At least 10,000 slots in 2016 will be reserved for Syrians.

The State Department then fields refugee requests, primarily coming from the U.N. High Commissioner for Refugees. The Department of Homeland Security (DHS) and the State Department then run background checks and interview the refugee applicants.⁹ If approved, the State Department and the Department of Health and Human Services work with approved private-sector voluntary agencies (VOLAGs) to resettle refugees in the U.S.¹⁰ The State Department estimates that it generally takes between 12 and 18 months from application to entering the U.S.¹¹

Real Concerns

Security is a major concern. Given a population of this size, from a war-torn area, the Islamic State (ISIS) or other Islamist terrorist groups will most certainly try to “slip” in some of their personnel with the refugees. Thus far, there have been few examples of this happening. The Terrorism Research & Analysis Consortium (TRAC), a noted independent terrorism-monitoring organization

-
1. See, for instance, “Germany Expects Up to 1.5 Million Asylum Seekers in 2015, Says Report,” *The Guardian*, October 5, 2015, <http://www.theguardian.com/world/2015/oct/05/germany-now-expects-up-to-15-mln-migrants-in-2015-report> (accessed October 15, 2015).
 2. U.N. High Commissioner on Refugees, Convention and Protocol Relating to the Status of Refugees, <http://www.unhcr.org/3b66c2aa10.html> (accessed October 8, 2015).
 3. Refugee and asylum seekers must also have not “committed a crime against peace, a war crime, or a crime against humanity.” Ibid.
 4. News release, “Over 210 000 First Time Asylum Seekers in the EU in the Second quarter of 2015,” Eurostat Press Office, September 18, 2015, <http://ec.europa.eu/eurostat/documents/2995521/6996925/3-18092015-BP-EN.pdf/b0377f79-f06d-4263-aa5b-cc9b4f6a838f> (accessed October 7, 2015).
 5. Souad Mekhennet and William Booth, “They May Sound Indian, But If Anyone Asks, They’re From Syria,” *The Washington Post*, September 2015.
 6. See, for instance, Barbara Tasch, “Migrants Are Buying Fake Syrian Passports—and It Could Disrupt an Already Fragile Political Climate,” *Business Insider*, September 15, 2015, <http://www.businessinsider.com/fake-syrian-passport-market-is-booming-2015-9> (accessed October 15, 2015).
 7. U.S. Department of State, Bureau of Population, Refugees, and Migration, “Proposed Refugee Admissions for Fiscal Year 2016,” October 1, 2015, <http://www.state.gov/j/prm/releases/docsforcongress/247770.htm> (accessed October 8, 2015).
 8. “John Kerry: U.S. to Increase Refugee Admissions to 100,000 by 2017,” Associated Press, September 20, 2015, http://www.huffingtonpost.com/entry/john-kerry-syrian-refugees_55fed7b0e4b0fde8b0ce9f59 (accessed October 8, 2015).
 9. U.S. Department of State, Bureau of Population, Refugees, and Migration, “U.S. Refugee Admissions Program,” <http://www.state.gov/j/prm/ra/admissions/index.htm> (accessed October 7, 2015).
 10. U.S. Department of Health and Human Services, Office of Refugee Resettlement, “Voluntary Agencies,” July 17, 2012, <http://www.acf.hhs.gov/programs/orr/resource/voluntary-agencies> (accessed October 7, 2015).
 11. U.S. Department of State, Bureau of Population, Refugees, and Migration, “U.S. Refugee Admissions Program FAQs,” <http://www.state.gov/j/prm/releases/factsheets/2013/210135.htm> (accessed October 7, 2015).
-

has only recorded six publicly known instances of terrorist operatives being caught trying to exploit the current flow of migrants to mask their infiltration.¹² Considering that it does not take many terrorists to execute a deadly operation, this number cannot be ignored, but it does not warrant a refusal to accept any refugees.

An additional challenge is that with these refugees, there is an increased chance of individuals becoming radicalized, such as the Tsarnaev brothers, who bombed the Boston Marathon years after their family came to the U.S. as refugees.¹³ Life as a refugee can be difficult, and some who are dissatisfied with their new life could be easy targets for terrorist recruitment. While most of the refugees are people who are just in need of help, the U.S. must ensure that it is assimilating refugees into U.S. society to reduce the risk of radicalization.

There are significant difficulties with properly vetting refugees, particularly from the Middle East. Many come from countries where their home governments are unable or unwilling to help the U.S. with the vetting process, such as areas controlled by the Syrian regime or ISIS, Libya, or other areas with weak or hostile governments.

There are ways to minimize the security risks. Specifically, the U.S. should accept refugees about which it has some information. Put simply, the U.S. will not be able to collect reliable information on many people applying for refuge or asylum. There are likely some groups or individuals about whom the U.S. does have more credible information or can more easily collect relevant information—these should be the focus of U.S. refugee efforts.

The agencies responsible for vetting refugee seekers, including DHS, the State Department, and members of the intelligence community, already have significant and difficult vetting tasks, a reality

that cannot be ignored. Additionally, in some past instances, screening and background checks have given way to political imperatives. For example, when the Administration implemented its Deferred Action for Childhood Arrivals (DACA) program in 2012, it was not prepared for the workload and moved to a “lean and lite” system of background checks, where cases were quickly approved even when lacking information or documents.¹⁴

More recently, the DHS Inspector General found that Alejandro Mayorkas, the former director of U.S. Citizenship and Immigration Services within DHS, and now the Deputy Secretary of the department, “exerted improper influence in the normal processing and adjudication of the EB-5 immigration benefits,” to benefit Democratic lawmakers and associates.¹⁵ With such examples of normal immigration processes being circumvented, it has become necessary that the Administration demonstrate that it will not use similar gimmicks in the case of these refugees.

The flow of refugees is indicative of a larger problem in Syria and Iraq. Most of the Syrian refugees are fleeing from attacks launched by the Assad regime, while most of the Iraqi refugees are fleeing from the Islamic State. A humanitarian expansion of the U.S. refugee system is only a stopgap measure to these problems. The U.S. needs to address the root causes of this conflict by doing more to work with allies in the region to defeat the Islamic State and other Islamist terrorists, and support moderate Syrian rebel groups that would accept a political settlement after Syrian dictator Bashar Assad is forced out of power.

The Path Forward

If the President decides the U.S. should provide additional help to refugees fleeing persecution in Syria and other countries, the Administration should:

-
12. Hanumath Ramesh and Veryan Khan, “TRAC Insight: Syrian Refugees—Organised Crime’s New Market and Jihad’s New Cover,” TRAC Insight, September 15, 2015.
 13. Peter Finn, Carol D. Leonnig, and Will Englund, “Tamerlan Tsarnaev and Dzhokhar Tsarnaev Were Refugees from Brutal Chechen Conflict,” *The Washington Post*, April 19, 2013, http://www.washingtonpost.com/politics/details-emerge-on-suspected-boston-bombers/2013/04/19/ef2c2566-a8e4-11e2-a8e2-5b98cb59187f_story.html (accessed October 7, 2015).
 14. “Documents Reveal DHS Abandoned Illegal Alien Background Checks to Meet Amnesty Requests Following Obama’s DACA,” Judicial Watch, June 11, 2013, <http://www.judicialwatch.org/press-room/press-releases/homeland-security-documents-reveal-dhs-abandoned-required-illegal-alien-background-checks-to-meet-flood-of-amnesty-requests-following-obamas-deferred-action-for-childhood-arrivals-directive/> (accessed October 7, 2015).
 15. U.S. Department of Homeland Security, Office of Inspector General, “Investigation into Employee Complaints about Management of U.S. Citizenship and Immigration Services’ EB-5 Program,” March 24, 2015, https://www.oig.dhs.gov/assets/Mga/OIG_mga-032415.pdf (accessed October 7, 2015).
-

- **Present a risk assessment for Congress to understand the risks entailed in accepting additional refugees.** This should not be a political document but one that is developed independently by the U.S. intelligence community to accurately inform Congress of the risks.
- **Develop a plan to properly screen and vet all the people being considered for resettlement here in the United States.** This plan should demonstrate to Congress how the Administration plans to adequately screen incoming refugees in light of the risk assessment provided by the intelligence community.
- **Determine appropriate sources of refugees.** Starting with applications from those in refugee camps in Jordan, Lebanon, and Turkey, rather than those entering Europe, is likely the best way to focus U.S. refugee efforts on those who need help the most. Similarly, the U.S. should focus its efforts on those groups and individuals about whom the best background information can be gathered.
- **Fully follow the law as established,** with no deviations or executive overreach outside existing statute.
- **Fully consult with Congress,** first on the development of the plan, then on the final substance of it, and lastly on the execution of the operation.
- **Defeat ISIS and support Syrian rebel groups that would accept a political settlement after Assad is forced out of power.** The U.S. must do more to deal with the cause of the refugee and migrant crisis by defeating ISIS, pushing Assad out of power, and countering the influence of Iran and Russia in the region.

America has always been a beacon of hope in this world. She should always retain that role. At the same time, the Islamic State and other radical Islamists would seek to harm America in the midst of her philanthropy and good will. The U.S. can both help refugees *and* keep the homeland safe—if the government is able to implement a clear plan that minimizes risks and leverages the many resources of multiple government agencies and private-sector organizations.

—*Steven P. Bucci, PhD, is Director of, and David Inserra is Policy Analyst for Homeland Security and Cyber Security in, the Douglas and Sarah Allison Center for Foreign and National Security Policy of the Kathryn and Shelby Cullom Davis Institute for National Security and Foreign Policy, at The Heritage Foundation.*