


Case No. 06-60629

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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Petitioner,

v.

ALBERTO R. GONZALES,  
U.S. ATTORNEY GENERAL,  
Respondent.

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On Petition For Review Of An Order Of  
The Board Of Immigration Appeals

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**BRIEF FOR AMICI CURIAE IN SUPPORT OF PETITIONER**

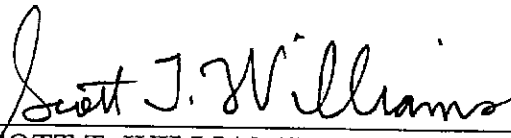
ON BEHALF OF  
HUMAN RIGHTS FIRST,  
HUMAN RIGHTS WATCH,  
HARVARD LAW SCHOOL IMMIGRATION AND REFUGEE CLINICAL  
PROGRAM, AND  
HARVARD LAW SCHOOL HUMAN RIGHTS PROGRAM'S  
INTERNATIONAL HUMAN RIGHTS CLINIC

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The undersigned counsel of record certifies that the following listed persons and entities as described in the second sentence of 5th Cir. R. 29.2 have an interest in this *amicus curiae* brief. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

  
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### OTHER AUTHORITY

Address by Mr. Bill Clinton, President of the United States, 87 <sup>th</sup> Session International Labor Organization (June 16, 1999) .....	15 n.8
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Bureau of Democracy, Human Rights and Labor, and Bureau of Public Affairs, U.S. Dep't of State, <i>Supporting Human Rights and Democracy: The U.S. Record 2005-2006</i> (April 2006) .....	11, 13, 15, 16, 17
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Human Rights First, <i>Abandoning the Persecuted: Victims of Terrorism and Oppression Barred from Asylum</i> (2006).....	26 n.14
Human Rights Watch, <i>Leave None to Tell the Story: Genocide in Rwanda</i> (Mar. 1999, Updated Apr. 1, 2004) .....	25

International Labour Organization, Governing Body, <i>Forced Labour in Myanmar (Burma), Report of the Commission of Inquiry appointed under Art. 26 of the Constitution of the International Labour Organization to examine the observance of Myanmar of the Forced Labour Convention, 1930 (No. 29) (July 2, 1998)</i> .....	20
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## STATEMENT OF INTEREST OF AMICI

**Human Rights Watch** (“HRW”) is a non-profit organization established in 1978 that investigates and reports on violations of human rights in more than 70 countries worldwide. It is the largest international human rights organization based in the United States. By exposing and calling attention to human rights abuses committed by state and non-state actors, HRW seeks to bring international public opinion to bear upon offending governments and others and thus bring pressure on them to end abusive practices. HRW has filed *amicus* briefs before various bodies, including U.S. courts and international tribunals.

**Human Rights First** (formerly the Lawyers Committee for Human Rights) is also a non-profit organization established in 1978. It works to protect and promote fundamental human rights and to ensure protection of the rights of refugees, including the right to seek and enjoy asylum. Human Rights First operates one of the largest *pro bono* asylum representation programs in the country, providing legal representation without charge to hundreds of indigent asylum applicants. Human Rights First is committed to ensuring that the protections guaranteed to refugees and asylum seekers under the Refugee Convention and the Protocol remain available to them in the United States. Human Rights First has conducted research, convened legal experts, and provided guidance to assist in the development of effective and fair methods for excluding



from refugee protection those who are not entitled to the protection of the Refugee Convention and Protocol. *See, e.g.*, Lawyers Committee for Human Rights, *Refugees, Rebels & the Quest for Justice* (2002).

**The Harvard Law School Immigration and Refugee Clinical Program** has assisted hundreds of immigrants and refugees from around the world since its founding in 1984. The **Harvard Law School Human Rights Program's International Human Rights Clinic** engages in regular overseas missions to document human rights abuses and to promote respect for the rule of law, and in particular seeks to uphold refugee rights. The Harvard Clinics are active in the development of asylum policy and theory on both the national and international levels. They have been *amicus curiae* in cases before the Supreme Court, the Courts of Appeals, and the Board of Immigration Appeals ("BIA"), and have been engaged by the U.S. Department of Justice in the training of immigration judges and asylum officers on issues related to asylum law. The Harvard Clinics have engaged in extensive field and policy research directly relevant to the instant case, including a 2006 study of Burmese refugees in Malaysia and Thailand affected by the material support of terrorism bar to asylum.

The *Matter of S-K-* raises concerns for *amici* regarding U.S. refugee protection, including protection for asylum seekers whose cases are currently

pending in the United States and refugees worldwide who are the victims of oppression and abuse.

### SUMMARY OF ARGUMENT

Human Rights First, Human Rights Watch, the Harvard Law School Immigration and Refugee Clinical Program and the Harvard Law School Human Rights Program's International Human Rights Clinic ("Harvard Clinics"), as *amici curiae*, submit this brief in support of reversal of the decision of the Board of Immigration Appeals, in order to illustrate the absurd and inequitable results of the BIA's mechanical application of section 212(a)(3)(B) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1182(a)(3)(B) (West 2005), without reference to U.S. treaty obligations. In this case, the BIA has denied refugee protection to a woman who it found would be persecuted, simply because she gave money to the Chin National Front ("CNF"), an organization that the BIA found has defended the ethnic Chin minority against brutal repression by the Burmese military junta, universally recognized as among the most despotic regimes in the world. The BIA's statutory analysis not only yields an inequitable outcome for S-K-, but also implies that refuge in the United States is off limits for all those who have used any sort of weapon to resist genocide, mass human rights abuses, or other government-sponsored repression.

In short, the BIA's analysis of INA section 212(a)(3)(B) means that *anyone* who at *any* time provided *anything* of value to *any* group of two or more people engaged in *any* armed resistance deemed unlawful by their government (no matter how repressive or corrupt that government may be) is ineligible for admission to the United States, and therefore also ineligible for refugee protection. This nonsensical result has no support in our own laws, policies, and traditions or in fundamental concepts of international human rights and refugee law.

*First*, the BIA's interpretation of INA section 212(a)(3)(B) ignores U.S. treaty obligations with respect to refugees, which a court is bound to consider where, as is the case here, there is no clear Congressional intent to override those obligations. Specifically, the BIA's holding that S-K- provided "material support" to a "terrorist organization" fails to consider whether the specific circumstances of her case—*i.e.*, the conduct of the group to which she donated, and the nature of her contribution—meet the standards for denying a person refugee protection. Indeed, the circumstances here do not meet these standards. The decisions of the Immigration Judge ("IJ") and the BIA do not rest on any finding that S-K- provided support to an organization engaged in criminal acts against civilians or that S-K- herself committed any crimes that would render her ineligible for refugee protection or otherwise make her a danger to the United States. Rather, the BIA's holding rests solely on the finding that she gave money to the CNF and that the

CNF engaged in armed activity against the Burmese military, even though this armed activity was to resist brutal repression. S-K-'s support of the CNF cannot exclude her from refugee protection under a proper interpretation of U.S. law, which includes its treaty obligations.

*Second, amici* are concerned that further mechanical application of INA section 212(a)(3)(B) would, contrary to international law, shut U.S. doors to refugees who are fleeing or resisting internationally-recognized mass human rights violations and oppression in conflict zones. The BIA's statutory interpretation would lead to the exclusion of those, for example, who resisted the Nazis in the Warsaw Ghetto or fought back against attacks during the Rwandan genocide, or who, today, repel the Janjaweed militias from attacking their villages in Darfur. For its entire history, the United States has given refuge to those who resist repression and fight to protect their rights in these types of situations. Certainly Congress did not intend for INA section 212(a)(3)(B) to undermine this proud tradition of providing refugee protection to those in the most need of help.

## ARGUMENT

### **A. Neither the Law nor the Facts Support Denying S-K- Refugee Protection**

The absurd result of the BIA's decision—denying refugee protection to an individual who poses no threat to the United States and whom the IJ found likely to be persecuted by a regime that has been repeatedly condemned by the United

States and the world as a human rights abuser—rests on an interpretation of INA section 212(a)(3)(B) that is at odds with U.S. treaty obligations.

The law of asylum in the United States directly derives from the 1951 United Nations Convention Relating to the Status of Refugees (“Refugee Convention”)<sup>1</sup> and the 1967 United Nations Protocol Relating to the Status of Refugees (“Refugee Protocol”),<sup>2</sup> which incorporates the key elements of the Refugee Convention by reference.<sup>3</sup> The United States acceded to the Refugee Protocol in 1968 and incorporated its provisions into domestic law through the Refugee Act of 1980 (“Refugee Act”). Pub. L. No. 96-212, 94 Stat 102 (1980). A primary purpose of Congress in passing the Refugee Act “was to bring United States refugee law into conformance with the 1967 United Nations Protocol.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 436 (1987).

Of particular relevance to this case, the United States has committed and legally bound itself to the principle of non-return (*non-refoulement*) of refugees. The principles of refugee protection that underlie the Refugee Convention and

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<sup>1</sup> Convention Relating to the Status of Refugees, art. 1(A)(2), *opened for signature* July 28, 1951, 19 U.S.T. 6577, 189 U.N.T.S. 150.

<sup>2</sup> Protocol relating to the status of Refugees, *opened for signature* Jan. 31, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267 (1967).

<sup>3</sup> The Refugee Convention, the basis for current international refugee law, is designed to protect an individual who has a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.” *See* Refugee Convention art. 1(A)(2), 19 U.S.T. 6577, 189 U.N.T.S. 150.

Protocol are subject to very limited exceptions. Those relevant to this case are contained in Article 1F and Article 33(2) of the Refugee Convention. Article 1F excludes from refugee status and accompanying protection persons who have committed the narrow band of offenses so grave (*e.g.*, crimes against humanity, crimes against peace, serious non-political crimes) that they are undeserving of international refugee protection.<sup>4</sup> Article 33(2) applies to persons already recognized as refugees and allows for an exception to the obligation of *non-refoulement* only if a refugee's presence would endanger to the safety of the host country.<sup>5</sup> Absent the existence of one of these bars or exclusions, the United States is obligated to provide refugee protection to applicants like S-K- who qualify under the Refugee Convention.<sup>6</sup>

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<sup>4</sup> Article 1F provides that the 1951 Convention "shall not apply to any person with respect to whom there are serious reasons for considering" that: (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) he has been guilty of acts contrary to the purposes or principles of the United Nations.

<sup>5</sup> Article 33(2) provides for an exception to the obligation of non-refoulement only in two situations: (1) when there are "reasonable grounds for regarding [the refugee] as a danger to the security of the country"; and, (2) when the refugee, "having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country."

<sup>6</sup> The United States also has an obligation not to return individuals to countries where there are substantial grounds for believing they would be in danger of being subjected to torture. Article 3, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted and opened for signature* Dec. 10, 1984, G.A. Res. 39/46, 39 U.N. GAOR Supp. No. 51, at 197, U.N. Doc. A/RES/39/708 (1984) (entered into force June 26, 1987; for the United States Apr. 18, 1988) ("Convention Against Torture").

Nothing in the text or history of INA section 212(a)(3)(B) indicates any intent by Congress to override U.S. obligations under the Refugee Convention. As explained in the brief of *amicus curiae* United Nations High Commissioner for Refugees (“UNHCR”), a court (or an administrative agency) must construe statutes consistent with U.S. treaty obligations unless Congress expressed a clear intent to override international law. *Murray v. The Charming Betsy*, 2 Cranch 64, 118, 2 L.Ed. 208 (1804). See Brief for the United Nations High Commissioner for Refugees As Amicus Curiae In Support of Petitioner, *Matter of S-K- v. Gonzales*, at 6-9 (Jan. 9, 2007)(No. 06-60629) [hereinafter UNHCR Amicus Brief].

Compliance with the obligation to protect refugees whose life or freedom is threatened because of their race, religion, nationality, affiliation with a particular social group, or political opinion, requires the United States to evaluate, on a case-by-case basis, the applicant’s situation, including an individualized inquiry that takes into account the totality of the circumstances and evaluates whether the applicant is excluded from protection under the provisions of the Refugee Convention. As detailed in the UNHCR Amicus Brief, these obligations require that a court engage in an individualized determination as to whether the asylum applicant committed a heinous or serious non-political crime under the Refugee

Convention or constitutes a danger to security of the United States.<sup>7</sup> *See* UNHCR Amicus Brief at 6-22. Absent such a determination, the individual may not be excluded from protection under the Refugee Convention. *Id.* at 14-19. As part of this inquiry, the court must consider the context of the applicant's activity, including what the applicant individually did and the nature and targets of the use of armed force by the group the applicant supported. These factors are relevant to any judgment of whether, for example, armed resistance (or support of a group engaged in such activity) constitutes a crime under the Refugee Convention or indicates that an applicant poses a danger to the security of the United States.

In this matter, the BIA failed to perform any such inquiry, and instead mechanically applied the INA without any regard for U.S. commitments under the Refugee Convention and other treaties and without considering the context in which S-K- made donations to the CNF. The BIA instead confined its analysis to the INA itself, which defines "terrorist organization" to include "a group of two or more individuals, whether organized or not, which engages in" terrorist activity. § 212(a)(3)(B)(vi). "Terrorist activity" is defined as "*any* activity which is unlawful under the laws of the place where it is committed" or under U. S. law, and involves

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<sup>7</sup> In oral argument before the BIA, even the Department of Homeland Security attorney conceded that one must look "at all the facts of the situation" to determine if a person, such as a supporter of the British military at the time of the invasion of Iraq, would be considered a supporter of a terrorist organization. Oral Argument at 24- 25, *Matter of S-K-*, 23 I&N Dec. 936.



any of a number of acts, including the use of a firearm or any other dangerous device “with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial property damage.” INA § 212(a)(3)(B)(iii). Significantly, “terrorist activity” also includes “commit[ing] an act that . . . affords material support . . . to a terrorist organization.” INA § 212(a)(3)(B)(iv). The INA states that “any alien who . . . has engaged in terrorist activity . . . is inadmissible.” § 212(a)(3)(B). Those who are inadmissible on these grounds are also ineligible for asylum and withholding of removal under the INA. 8 U.S.C. § 1158(b)(2)(A)(v); 8 U.S.C. § 1227(a)(4)(B).

By applying INA § 212(a)(3)(B) without any consideration of the Refugee Convention or the situation in which the CNF operates, the IJ and the BIA arrived at an absurd result: that S-K- qualifies for asylum, is likely to be persecuted by the Burmese military regime, and poses no danger to the United States—but nevertheless is barred from refugee protection in the United States because she gave money to a group (the CNF) that, under the BIA’s shallow reading of the INA, qualifies as a terrorist organization because it was defending against repression by the Burmese regime. An individualized inquiry in this case shows the inequity—and unlawfulness—of the BIA’s decision. The BIA’s finding that the CNF is a “terrorist” organization under INA § 212(a)(3)(B) is based not on any finding that the CNF committed terrorist crimes or any consideration of the

repression it is resisting, but simply on its finding that the CNF engaged in the “use of force only in self-defense” against repression by the Burmese military regime, one of the most brutal regimes in the world. *Matter of S-K-*, 23 I&N Dec. 936, 936 (BIA 2006). In the context of the internationally-recognized mass human rights violations committed by the Burmese military against the Chin minority, S-K-’s support of the CNF was not a “criminal act,” nor is she a threat to the United States. *Id.* at 950 (“It is clear that the respondent poses no danger whatsoever to the national security of the United States.”) (Osuna, concurring).

1. *Burma is Ruled by a Repressive Military Junta that Engages in Systematic and Widespread Human Rights Abuses*

The United States and international community have long condemned the ruling Burmese junta for routinely violating the basic human rights of its citizens. Burma has been controlled by authoritarian military regimes since 1962, when General Ne Win seized control of the country through a military coup and suspended the constitution. Burma currently is controlled by an illegitimate, repressive military junta—the State Peace and Development Council (“SPDC”). The SPDC is Burma’s *de facto* government and is an authoritarian military regime composed primarily of members of the majority Burman ethnic group. Bureau of Democracy, Human Rights and Labor, U.S. Dep’t of State, *Country Reports on Human Rights Practices 2005, Burma* at \*1 (Mar. 8, 2006) [hereinafter *State Dept. 2005 Human Rights Report, Burma*], available at

<http://www.state.gov/g/drl/rls/hrrpt/2005/61603.htm>; Bureau of East Asian and Pacific Affairs, U.S. State Dep't, Background Note: *Burma* (Sept. 2006) [hereinafter *State Dept. 2006 Background Note: Burma*], available at <http://www.state.gov/r/pa/ei/bgn/35910.htm>.

In March 1988, student-led demonstrations in response to worsening economic conditions in the country widened the demand for regime-change. *Id.* On March 20, 1988, the CNF was formed with the purpose of restoring democracy in Burma and the Chin people's right to self-determination. Chin National Front: *Chin Self-Determination, Federalism, and Democracy in Burma*, <http://www.chinland.org/cnf/index.html> (last visited Dec. 27, 2006). Tragically, on August 8, 1988, military forces killed more than 1,000 demonstrators. *State Dept. 2006 Background Note: Burma*. Many members of the public joined in the demonstrations which continued throughout the year. *Id.* Soon thereafter, on September 18, 1988, the military ousted General Ne Win's socialist party from power and established a new ruling military junta. *Id.* The new military junta immediately suppressed the demonstrations and in the process killed an estimated 3,000 civilian demonstrators. *Id.*

In 1990, national parliamentary elections finally were held in Burma, but after a pro-democracy party (the National League for Democracy ("NLD")) won the election by a landslide, the military junta refused to cede control. *Id.* The junta

imprisoned numerous political activists immediately preceding and following the elections and the junta (presently called the SPDC) remains in power today. *Id.*

Daw Aung San Suu Kyi, leader of the popularly-elected NLD, has been under military detention, primarily house arrest, for more than ten of the years following the 1988 demonstrations and military coup. *Profile: Aung San Suu Kyi*, BBC News, May 25, 2006, available at <http://news.bbc.co.uk/1/hi/world/asia-pacific/1950505.stm>. Other democracy activists in Burma frequently disappear, and activists and political prisoners are regularly killed, raped, beaten, and tortured by the military. *State Dept. 2005 Human Rights Report, Burma*. The SPDC's torture of political prisoners is reported to be brutal and systematic, and includes severe beating, repeated electrocution, and using dogs to rape male prisoners. *Id.* The military regime is known to "arrest, detain, convict, and imprison citizens for expressing political opinions critical of the government, and for distributing or possessing publications in which opposition opinions were expressed." *Id.*

President George W. Bush repeatedly has expressed strong support for Daw Aung San Suu Kyi and the democratic opposition in Burma and has emphasized that "although the Burmese people live in the darkness of tyranny, one day they will have their liberty." Bureau of Democracy, Human Rights and Labor, and Bureau of Public Affairs, U.S. Dep't of State, *Supporting Human Rights and Democracy: The U.S. Record 2005-2006*, at 73 (April 2006), available at

<http://www.state.gov/documents/organization/64057.pdf>. In light of the military junta's brutal repression of any opposition or democratic political activity, the U.S. State Department has concluded that "[c]itizens in Burma [do] not have the right to change their government." *Id.*

The Burmese regime also has engaged in systematic and brutal repression of minority groups. *State Dept. 2005 Human Rights Report, Burma* at \*1. "Over five decades, Burma's military regime has sustained itself through brutalization and unconscionable human rights abuses, resulting in over one million internally displaced people and many more international refugees." U.S. State Dep't, *Burma: A Human Rights Disaster and Threat to International Security* (Sept. 19, 2006), available at <http://www.state.gov/r/pa/scp/2006/72840.htm> (last visited Jan. 4, 2007)(reporting that "[h]undreds of thousands of Burmese refugees have fled conflict and persecution over the last two decades").

The Chin people, who are predominantly Christian, have been one target of the regime's oppression. *State Dept. 2005 Human Rights Report, Burma* at \*1. The ethnic Chin, who live primarily in the Chin State bordering Bangladesh and India on the west, have not been allowed to freely practice their religion and are pressured by the military regime to convert to Buddhism. *Id.* Religious persecution is not the only abuse suffered by the Chin at the hands of the SPDC. The U.S. State Department reports that:

Wide-ranging governmental and societal discriminations against minorities persisted [in Burma in 2005]. Animosity between the country's many ethnic minorities and the Burman majority, which has dominated the government and armed forces since independence [from the British], continues to fuel active conflict that resulted in serious abuses during the year. These abuses included reported killings, beatings, torture, forced labor, forced relocations, and rapes of Chin, Karen, Karenni, Shan, Mon, and other ethnic groups by SPDC soldiers.

*Id.*

The U.S. government spares no criticism of the Burmese military regime. In his 2006 State of the Union address, for example, President Bush grouped Burma in with the "Axis of Evil" nations North Korea and Iran, noting that the people of these countries "require their freedom" and stating that we should "show compassion abroad." President George W. Bush, *President George W. Bush's Address Before A Joint Session of the Congress on the State of the Union*, Jan. 31, 2006.<sup>8</sup>

In 2006, the U.S. State Department reported to Congress that the Burmese junta's "deplorable human rights record" worsened in 2005. U.S. government goals in Burma include establishing the most basic elements of freedom: "pressing the Burmese regime to establish a constitutional democracy, respect human rights,

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<sup>8</sup> President Clinton has expressed similar sentiments. See e.g., Address by Mr. Bill Clinton, President of the United States, 87<sup>th</sup> Session International Labor Organization (June 16, 1999), available at <http://www.ilo.org/public/english/standards/re/m/ilc/ilc87/a-clinto.htm>.

release all political prisoners, end the military's abuses, especially in ethnic minority regions, and combat trafficking in persons." *Supporting Human Rights and Democracy: The U.S. Record 2005-2006*, at 73. The report stated that many of the "egregious human rights abuses perpetrated by the Burmese army" are directed at ethnic minority civilians. *Id.* at 75. Successive Burmese military juntas have forced the relocation of ethnic minorities over the past several decades to keep them from supporting armed ethnic groups. *State Dept. 2005 Human Rights Report, Burma*. John Bolton, U.S. ambassador to the UN, has been a vociferous advocate for a UN Security Council resolution on the situation in Burma, arguing that "the policies the [Burmese] government has been pursuing . . . continue to contribute to instability in the region, and therefore . . . constitute a threat to international peace and security." U.S. Dep't of State, *U.S. Drafting Security Council Resolution on Burma* (Nov. 27, 2006).<sup>9</sup>

U.S. opposition to the Burmese regime and support of its opponents has not been merely rhetorical. President Bill Clinton implemented the first round of sanctions against Burma in May 1997 under Executive Order 13047, prohibiting new investment in Burma by U.S. citizens. Exec. Order No. 13047 of May 20,

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<sup>9</sup> The U.S. Senate has similarly requested a Security Council resolution, calling in May 2006 for the UN to pass "a binding, non-punitive resolution calling for the immediate and unconditional release of Daw Aung San Suu Kyi and all other prisoners of conscience in Burma, condemning these atrocities, and supporting democracy, human rights, and justice in Burma." S. Res. 484 (May 18, 2006).

1997, Prohibiting New Investment in Burma, 62 Fed. Reg. 28299 (May 22, 1997). Congress supplemented these sanctions with the Burmese Freedom and Democracy Act of 2003. H.R. 2330, Jan. 7, 2003. Finding that the Burmese government “continues egregious human rights violations against Burmese citizens” and “is engaged in ethnic cleansing against minorities within Burma,” as well as contributing to the strength of the illegal drug trade by “provid[ing] safety, security, and engage[ing] in business dealings with narcotics traffickers under indictment by United States authorities,” H.R. 2330 2(5), (6), and (8), the Burmese Freedom and Democracy Act imposes a more substantial network of sanctions on the Burmese regime.

Currently, the United States blocks all bilateral aid to the Burmese military junta, bans the export of financial services to Burma and new U.S. investment in the country, and maintains an arms embargo. *Supporting Human Rights and Democracy: The U.S. Record 2005-2006*, at 73. Burma received a Tier 3 ranking on the U.S. State Department’s Trafficking in Human Persons Report, which constitutes grounds for the denial of all non-humanitarian aid. Congressional Research Service, *Foreign Affairs, Defense, and Trade: Key Issues for the 110<sup>th</sup> Congress*, at 39 (Dec. 20, 2006).

The international community has also issued strong condemnations of the Burmese military junta. Last month, the European Parliament censured the



Burmese regime, stating that it continued “to subject the people of Burma to appalling human rights abuses, such as forced labour, persecution of dissidents, conscription of child soldiers and forced relocation.’ The [European Parliament] ‘condemns the SPDC for its relentless suppression of the Burmese people over 40 years and its total failure to make any significant move towards democracy.’” See European Parliament, *Human Rights: Fiji, Burma and sexual abuses by UN forces in Liberia and Haiti*, Press Release (Dec. 18, 2006), available at [http://www.europarl.europa.eu/news/expert/briefing\\_page/1353-345-12-50-20061207BRI01143-11-12-2006-2006/default\\_p001c012\\_en.htm](http://www.europarl.europa.eu/news/expert/briefing_page/1353-345-12-50-20061207BRI01143-11-12-2006-2006/default_p001c012_en.htm). (last visited Jan. 4, 2007).

The UN repeatedly has denounced Burma’s atrocious human rights record. In 1992, the Human Rights Commission established the mandate of the Special Rapporteur on the situation of human rights in Myanmar (Burma). See Commission on Human Rights Res. 1992/58, U.N. Doc. E/CN.4/RES/1992/58 (Mar. 3, 1992). The report of the most recent Special Rapporteur, Paulo Sergio Pinheiro, noted that “the situation regarding the exercise of fundamental human rights and freedoms remains grave. The intimidation, harassment, arbitrary arrest and imprisonment of civilians for peacefully exercising their civil and political rights and freedoms continue.” The Special Rapporteur, *Report of the Special Rapporteur on the Question of the Violation of Human Rights and Fundamental*

*Freedoms in Any Part of the World: Situation of Human Rights in Myanmar, delivered to the Economic and Social Council's Commission on Human Rights, U.N. Doc. E/CN.4/2006/34 (Feb. 7, 2006).*

In a statement to the UN General Assembly in 2005, the Special Rapporteur on the Situation of Human Rights in Myanmar said:

[t]he Government has shown little interest in examining allegations of serious human rights abuses by its forces against its own citizens. Successive requests for investigations to be conducted into allegations of rape of ethnic women in Shan state and the Depayin killings were met with inertia. The culture of impunity is such that complaints, which are brought to the authorities' attention, are frequently met with threats and reprisals. The machinery of law, order and justice, far from upholding the rights of citizens, has been employed as an implement of repression and to silence dissent.

*Statement to 60<sup>th</sup> Session of the General Assembly Third Committee, Item 71 (Oct. 27, 2005).*<sup>10</sup>

The UN General Assembly and UN Human Rights Commission also have issued specific resolutions on Burma nearly every year since 1993, indicating that the human rights situation in the country has continuously caused grave concern to the members of the UN.<sup>11</sup> The annual resolutions confirm the absence of progress towards goals of democracy and respect for human rights by the ruling junta.

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<sup>10</sup> available at [http://www.ibiblio.org/obl/docs/Collected\\_SRM\\_GA\\_reports.htm](http://www.ibiblio.org/obl/docs/Collected_SRM_GA_reports.htm) (last visited January 9, 2007).

<sup>11</sup> G.A. Res. 47/144, U.N. Doc. A/RES/47/144 (Mar. 1, 1993); G.A. Res. 48/150, U.N. Doc. A/RES/48/150 (Jan. 31, 1994); G.A. Res. 49/197, U.N. Doc. A/RES/49/197 (Mar. 9, 1995);

Likewise, the International Labour Organization (“ILO”), the UN specialized agency that seeks the promotion of social justice and internationally-recognized human and labor rights,<sup>12</sup> has condemned the Burmese regime for “crimes against humanity.” See International Labour Organization, Governing Body, *Forced Labour in Myanmar (Burma), Report of the Commission of Inquiry appointed under Art. 26 of the Constitution of the International Labour Organization to examine the observance of Myanmar of the Forced Labour Convention, 1930 (No. 29)* at ¶ 538 (July 2, 1998), available at <http://www.ilo.org/public/english/standards/relm/gb/docs/gb273/myanmar.htm>. In its exhaustive report, the ILO found “pervasive use of forced labour imposed on the civilian population throughout Myanmar by the authorities and the military.” *Id.* at ¶ 528. “The burden of forced labor . . . appears to be particularly great for non-Burmese ethnic groups,” *id.* at ¶ 534, like the Chin.

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G.A. Res.50/194, U.N. Doc. A/RES/50/194 (Mar. 11, 1996); G.A. Res. 51/117, U.N. Doc. A/RES/51/117 (Mar. 6, 1997); G.A. Res. 53/162, U.N. Doc. A/RES/53/162 (Feb. 25, 1999); G.A. Res. 54/186, U.N. Doc. A/RES/54/186 (Feb. 29, 2000); G.A. Res. 56/231, U.N. Doc. A/RES/56/231 (Feb. 28, 2002); G.A. Res. 59/263, U.N. Doc. A/RES/59/263 (Mar. 17, 2005); O.H.C.H.R. Res. 1997/17, U.N. Doc. E-CN 4/RES/52/17 (Apr. 23, 1999).

<sup>12</sup><http://www.ilo.org/public/english/about/index.htm> (last visited Dec. 29, 2006).

2. *The IJ Found the CNF to be a “Terrorist Organization” Solely because it has Resisted the Burmese Military’s Repression*

Many Chin in S-K-’s position believe that resistance to the widespread and constant repression perpetrated by the Burmese military regime against the ethnic Chin is necessary for survival. The mere act of supporting resistance against a military that the United States has repeatedly condemned does not make one a threat to the United States. Nevertheless, and without any finding that the CNF has targeted civilians or engaged in any other conduct meant to terrorize the populace, the IJ concluded that the CNF is a “terrorist organization” under INA § 212(a)(3)(B). *See* UNHCR Amicus Brief at 14-19. The IJ based his conclusion that the CNF is a “terrorist organization” on the naked finding that the CNF is engaged in armed conflict with the Burmese military. *Matter of S-K-*, Immigration Judge Dec. at 6 (Feb. 2, 2005). Likewise, the BIA held that the CNF is defined as a “terrorist organization” under section 212(a)(3)(B) because, “despite its democratic goals and use of force only in self defense,” it has used force against the repression of the Burma regime. *Matter of S-K-*, 23 I&N Dec. at 936.

These findings are not sufficient to deny S-K- obligatory protection under the Refugee Convention. Article 33(1) of the Refugee Convention requires that contracting states not return a refugee to a country where “his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” Only refugees who are a danger to the

security of the country in which they are seeking protection, or who have been convicted of a particularly serious crime and constitute a danger to the community of that country are denied this protection. Refugee Convention, art. 33(2).

In this case, the IJ found that S-K- was a refugee “due to her well founded fear of future persecution on account of her actual or imputed political opinion.” Immigration Judge Dec. at 5. Had the IJ conducted the necessary individualized inquiry to determine if S-K- had committed a serious non-political crime or other heinous act warranting exclusion under Articles 1F or 33(2) of the Refugee Convention, he undoubtedly would have concluded that that S-K- could not be excluded from the protection of the Refugee Convention. There is clearly no basis to find that S-K- is a danger to the security of the United States; indeed, the record supports the very opposite. *Matter of S-K-*, 23 I&N Dec. at 950 (“It is clear that the respondent poses no danger whatsoever to the national security of the United States.”) (Osuna, concurring).

Moreover, S-K-’s activity—providing financial support to the CNF, an organization described by the IJ as promoting self-defense and democracy—is in many ways consistent with the U.S. government’s own policy. Indeed, the U.S. Senate recently allocated \$11 million “to support democracy activities in Burma, along the Burma-Thailand border, for activities of Burmese student groups and other organizations located outside Burma, and for the purpose of supporting the

provision of humanitarian assistance to displaced Burmese along Burma's borders." Foreign Operations, Export Financing, and Related Programs Appropriations Act of 2006, Pub. L. No. 109-102, Nov. 14, 2005.

**B. The BIA's Mechanical Application of the INA would Label as "Terrorists" those Resisting Internationally-Recognized Mass Human Rights Violations and Oppression in Conflict Zones**

The BIA's analysis of INA § 212(a)(3)(B) without reference to U.S. obligations under the Refugee Convention not only deprived S-K- of refugee protection, but also could lead to the unintended consequence of excluding and denying refugee protection to individuals whom the United States historically has supported and welcomed with open arms. The following examples demonstrate how a mechanical application of section 212(a)(3)(B) would label as "terrorists" those who have resisted mass human rights violations and oppression that has been recognized and condemned by the international community. The examples provide evidence that, in passing INA § 212(a)(3)(B), Congress could not have intended to override its obligations under the Refugee Convention by labeling these groups as "terrorists" and barring them from refugee protection. These are only illustrations—the BIA's interpretation of the statute is so broad that it would designate as "terrorists" any two or more people joining together to use force to resist human rights abuses or other repression.

### 1. *The Warsaw Ghetto Uprising*

The Warsaw Ghetto Uprising of 1943 highlights the way in which a mechanical application of INA § 212(a)(3)(B) would prohibit some of the most deserving refugees from entering the United States, creating a perverse and wholly unintended outcome. The Warsaw Ghetto Uprising was an extraordinary act of resistance in which the remaining 60,000 Jews contained within the Warsaw Ghetto by the Nazis rose up in armed resistance against their inevitable deportation to the death camps. Yehuda Bauer, *A History of the Holocaust* (1982) at 254-265.

Under the BIA's mechanical application of INA § 212(a)(3)(B), this heroic act of resistance against the Nazi regime would be a "terrorist activity" because it involved the use of firearms and other weapons against Nazi soldiers and the Gestapo. Furthermore, any person who provided a hiding place or meeting house for the resistance fighters would be considered a "material supporter" to the Jewish resistance fighters and denied refugee protection in the United States for these activities. The Jews in the Warsaw Ghetto were facing annihilation based on their ethnicity, and some used force to resist the military and Gestapo only as a last resort. A Jewish resistance fighter in the Warsaw Ghetto uprising could hardly be deemed to have committed crimes against humanity or peace, nor would he be a threat to the security of the United States. Suggestion that Jewish refugees who had participated in the Warsaw Ghetto Uprising were in any way engaged in

“terrorist activity” that would allow or justify denial of refugee protection is incompatible not only with the spirit and letter of the Refugee Convention, but also with common sense notions of preservation of life and liberty.

## 2. *The Rwandan Genocide*

The Rwandan Genocide provides another grim example of how resistance to state-sponsored genocide could, using the BIA’s analysis, render a victim of such acts “inadmissible” as a refugee in the United States. During a period of about 100 days from April 6 through mid-July 1994, Hutu extremist militia groups massacred hundreds of thousands of ethnic Tutsi civilians and Hutu political opponents of President Habyarimana in Rwanda. *See* Human Rights Watch, *Leave None to Tell the Story: Genocide in Rwanda* (Mar. 1999, Updated Apr. 1, 2004) at [http://www.hrw.org/reports/1999/rwanda/Geno1-3-01.htm#P6\\_41](http://www.hrw.org/reports/1999/rwanda/Geno1-3-01.htm#P6_41) (last visited Dec. 30, 2006). The Hutu militias employed sophisticated war tactics and the use of heavy weapons, including grenades, machine guns, and even mortars against unarmed civilian Tutsis, and encouraged Hutu civilians, armed with machetes, hammers, and clubs, to attack their Tutsi neighbors to finish the massacre. *Id.*

Under the BIA’s interpretation of INA § 212(a)(3)(B), any group of two or more Tutsis who fought, even in an unorganized fashion, against the Hutu militias would be denied refugee protection in the United States. Moreover, anyone who gave information, food, or shelter to members of the rebel movement (the



Rwandan Patriotic Force (“RPF”)) that ultimately drove out the genocidaires would be deemed a “material supporter” of a terrorist organization and also barred.<sup>13</sup> This interpretation of the INA simply cannot be squared with U.S. obligations under the Refugee Convention. Based solely on their aid to the RPF, Tutsi civilians could not be considered a threat to the United States, nor could their support of the RPF be labeled a serious or heinous crime against peace or humanity in the context of the 1994 Rwandan Genocide.

### 3. *Resistance to the Killing in Darfur*

Based on the track record of inequitable outcomes resulting from an incorrect application of INA § 212(a)(3)(B),<sup>14</sup> the BIA’s faulty analysis would also keep the victims of today’s mass human rights violations in Darfur from receiving refugee protection in the United States. As reported daily, Sudanese in Darfur are the

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<sup>13</sup> The RPF had been fighting the Hutu-dominated government since 1990. When the international community pulled out of Rwanda, the RPF’s ability to repel the extremist Hutu militias was likely the only thing that saved many Tutsis from annihilation. *The Rwandan Patriotic Front*. Human Rights Watch. (March 1999, updated Apr. 1, 2004) at <http://www.hrw.org/reports/1999/rwanda/Geno15-8-03.htm> (last visited Jan. 4, 2007).

<sup>14</sup> For example, the BIA, Immigration Courts or the Department of Homeland Security have denied or relegated to a long-term administrative process the asylum requests of the following refugees because, under section 212(a)(3)(B), they were found to have provided “material support” to a “terrorist organization”: (1) a nurse from Colombia who was kidnapped, assaulted and forced to provide medical treatment to terrorists; (2) a journalist from Nepal who was beaten, threatened and forced to hand over money to Maoists; and (3) a fisherman from Sri Lanka who was abducted by the Tamil Tigers and forced to pay his own ransom. Human Rights First, *Abandoning the Persecuted: Victims of Terrorism and Oppression Barred from Asylum* (2006), available at <http://www.humanrightsfirst.info/pdf/06925-asy-abandon-persecuted.pdf> (last visited Jan. 4, 2007).

victims of mass killings, which President Bush has deemed genocide. *See* U.S. Dep't of State, *United States Provides More Emergency Food for Sudan*, Washington File (Oct. 18, 2006), *available at* <http://usinfo.state.gov/xarchives/display.html?p=washfile-english&y=2006&m=October&x=20061018182414WCyeroC0.3966638> (last visited Jan. 10, 2007).

The Janjaweed militias' three-year campaign against non-Arab civilians in the Darfur region of western Sudan has left at least 200,000 dead from the violence, starvation and disease. *Id.* The Sudanese government, which has been accused of supporting and participating in joint attacks with the Janjaweed militia, has opposed UN peacekeeping efforts in the region to date, which has only exacerbated the crisis. *U.N. Official Warns of Major New Sudanese Offensive in Darfur*, Wash. Post, Aug. 18, 2006, at A16. The United States unequivocally condemns the acts of the Janjaweed and the Sudanese government, and, on October 13, 2006, President George W. Bush signed the Darfur Peace and Accountability Act, which restated the U.S. position that the Darfur conflict constitutes genocide, strengthened existing sanctions against U.S. citizens who engage in oil-related transactions with Sudan, and imposed travel bans and asset freezes on parties complicit in the Darfur atrocities. *Darfur Accountability Act of 2006*, H.R. 3127, 109th Cong. (2006).

Nevertheless, if the BIA's interpretation of section 212(a)(3)(B) holds, any villagers who would forcibly resist a Janjaweed militia before the killing campaign reaches their village would be deemed "terrorists," without any further analysis. Any of their family members or fellow villagers who provide them supplies or housing or any other "material support" could likewise be barred from refugee protection in the United States. Using the BIA's analysis from *Matter of S-K-*, any non-governmental attack on the Janjaweed militia by two or more persons would alone be sufficient to exclude those involved from refugee status without any individual inquiry into their specific circumstances to determine whether they had committed any crimes or would pose any danger to the United States. This result defies fundamental concepts of justice, as well as the Refugee Convention, and cannot be allowed to stand.

In fact, the definition of terrorist organization is, under the administration's own interpretation, so broad as to cover U.S. Marines when they invaded Iraq because they bore arms with the intent to endanger the Iraqi military, against the laws of the ruling government—that of Saddam Hussein. According to one of the Department of Homeland Security's own lawyers, the Iraqi national who provided information to the U.S. Marines who rescued Private Jessica Lynch would "indeed" have provided material support to a terrorist organization. Transcript of Oral Argument at 25, *Matter of S-K-*, 23 I&N Dec. 936.

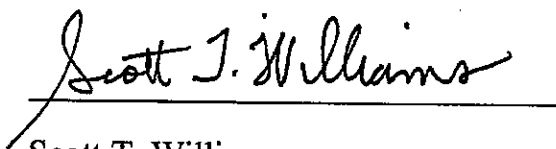
Interpreted in the context of U.S. international treaty obligations under the Refugee Convention, the statute need not be utilized to such inequitable ends. INA § 212(a)(3)(B) should not—and cannot under U.S. international treaty obligations—be read in the mechanical way the BIA has read it, but must include an individualized assessment of the applicant’s particular case. If applied properly, those defending themselves and their neighbors in the Warsaw Ghetto, during the Rwandan genocide, or in Darfur would not be denied refugee protection based solely on their acts of resistance. Nor should INA § 212(a)(3)(B) be read to deny refugee protection to S-K-.

#### CONCLUSION

The BIA's analysis in this matter did not comport with U.S. international legal obligations and accordingly led to an inequitable and legally unsustainable result. The conclusions by the BIA and the IJ that the CNF engaged in self-defense in the face of massive human rights violations by the Burmese military and that S-K- donated money to the CNF do not warrant her exclusion from refugee protection. Therefore, the decision of the BIA in this matter should be vacated and asylum should be granted.

Dated January 11, 2007

Respectfully submitted,

A handwritten signature in cursive script that reads "Scott T. Williams". The signature is written in black ink and is positioned above a horizontal line.

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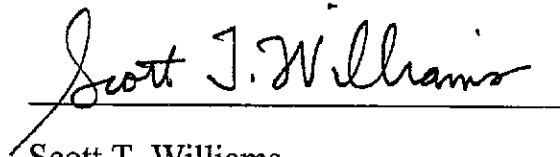
**CERTIFICATE OF COMPLIANCE**

Pursuant to Fed. R. App. P. 32(a)(7)(B), this Brief for Amici Curiae in Support of Petitioner complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6921 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft© Word 2003 software in Times New Roman 14 point font in text and Times New Roman 12 point font in footnotes.

Dated: January 11, 2007

Respectfully submitted,

A handwritten signature in cursive script that reads "Scott T. Williams". The signature is written in black ink and is positioned above a horizontal line.

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**CERTIFICATE OF SERVICE**

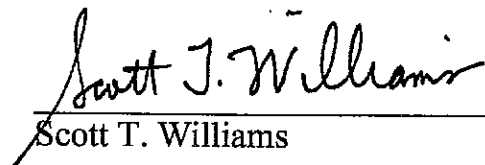
I, Scott T. Williams, hereby certify that I served a copy of the foregoing Motion and attached Brief via Federal Express this 11<sup>th</sup> Day of January, 2007 on the following:

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