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State Challenges to Refugee Resettlement

Anthony E. Wadas

INTRODUCTION

The civil war in Syria has sparked large migration of refugees into Europe, and President Obama has vowed to increase the number of refugees accepted into the United States from that region to 10,000 individuals.¹ Since the start of the war, 13.5 million people in Syria are in need humanitarian assistance, 4.6 million Syrians are refugees, and 6.6 million are displaced within Syria; half are children.² Since the Paris attacks on November 13, at least 29 US governors have vowed to keep new Syrian refugees outside their state borders.³ Resistance by Republican lawmakers to accepting new refugees from Syria further intensified following the Brussels terrorist attack.⁴

Despite the public statements, little has been done by governors to stop the resettlement of refugees within their borders. According to Annita Maddali, a law professor and researcher on immigration law, there is “not really a whole lot governors can do other than putting pressure on legislators and congress to not fund Office of Refugee Resettlement.”⁵ The Office of Refugee Resettlement contracts with state organizations – in Illinois, this includes World Relief, Heartland Alliance, and Refugee One – to assist in resettling refugees.⁶ Refugees are allowed to apply for a green card one year after they are granted refugee status.⁷ This puts them on the path to citizenship.⁸ Once a citizen, they are entitled to same benefits as any other citizen.⁹ Until that time,

¹ Stephen Dinan, *Obama demands compassion for Syrian refugees as he swears in new citizens*, THE WASHINGTON TIMES, December 15, 2015, <http://www.washingtontimes.com/news/2015/dec/15/obama-demands-compassion-for-syrian-refugees-as-hel/>.

² *Syria refugee crisis FAQ: How the war is affecting children*, WORLD VISION, April 11, 2016, <http://www.worldvision.org/wv/news/Syria-war-refugee-crisis-FAQ>.

³ *US state backs down from blocking Syrian refugees*, AL JAZEERA, December 5, 2015, <http://www.aljazeera.com/news/2015/12/state-backs-blocking-syrian-refugees-151205055854547.html>.

⁴ Esther Yu-Hsi Lee, *Republican Lawmakers Already Using Brussels Attack To Revive Efforts To Ban Syrian Refugees*, THINKPROGRESS, March 22, 2016, <http://thinkprogress.org/immigration/2016/03/22/3762418/republican-lawmakers-revive-refugee-halt/>.

⁵ Phone Interview with Anita Maddali, Law Professor, Northern Illinois University (Apr. 1, 2016).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

there is federal funding provided to refugees and states have little involvement.¹⁰

IN THE COURTS

On November 16, 2015, Indiana Governor Mike Pence issued a statement directing state agencies to suspend the resettlement of additional Syrian refugees pending assurances from the federal government that proper security measures had been achieved.¹¹ This included withholding federal grant funds to local refugee resettlement agencies for social services these agencies provide to the Syrian refugees they help resettle in Indiana.¹² Shortly after Gov. Pence issued this order, Exodus Refugee Immigration, Inc., a social services agency, filed its Complaint against the State of Indiana asserting that the State's action was preempted by federal law and discriminated against Syrians in violation of the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964.¹³ The Court found in that case The State's conduct clearly discriminates against Syrian refugees based on their national origin. In addition, the Court also found that although the State says it has a compelling reason for doing discriminating against Syrians—the safety of Indiana residents—the withholding of federal grant funds from social service agencies in Indiana that are used to provide social services to Syrian refugees in no way furthers the State's asserted interest in the safety of Indiana residents.¹⁴ For these reasons, the Court granted a preliminary injunction against the State.¹⁵

The case was later affirmed by the 7th Circuit on October 3, 2016 where the court found no evidence to support the State's concerns that the refugees posed a threat, and referring to the State's concerns as “nightmare speculation.”¹⁶ In the Opinion, the court stated that Indiana's argument is “the

¹⁰ Phone Interview with Anita Maddali, Law Professor, Northern Illinois University (Apr. 1, 2016).

¹¹ Matt Adams, *Gov. Pence suspends resettlement of Syrian refugees to Indiana following Paris terror attacks*, FOX59, November 16, 2015, <http://fox59.com/2015/11/16/pence-suspends-resettlement-of-syrian-refugees-following-paris-terror-attacks/>.

¹² *Exodus Refugee Immigration, Inc. v. Pence*, 115CV01858TWPDKL, 2016 WL 772897, at *1 (S.D. Ind. Feb. 29, 2016).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*; See also Kylee Wierks, *Judge blocks Gov. Pence's order barring state agencies from helping Syrian refugees resettle*, FOX59, February 29, 2016, <http://fox59.com/2016/02/29/judge-blocks-gov-pences-order-barring-state-agencies-from-helping-syrian-refugees-resettle/>.

¹⁶ *Exodus Refugee Immigration, Inc. v. Pence*, 16-1509, 2016 WL 5682711, at *1 (7th Cir. Oct. 3, 2016)

equivalent of his saying . . . that [Governor Pence] wants to forbid black people to settle in Indiana not because they're black but because he's afraid of them, and since race is therefore not his motive he isn't discriminating. But that of course would be racial discrimination, just as his targeting Syrian refugees is discrimination on the basis of nationality."¹⁷

LEGAL STANDARDS REGARDING REFUGEES

Under federal law, the term "refugee" is defined as "[a]ny person who is outside any country of such person's nationality. . . and who is unable or unwilling to return to, or is unable and unwilling to avail himself or herself of the protection of, that country because of persecution or well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."¹⁸ The number of refugees accepted by the United States is determined by the President each year as "justified by humanitarian concerns or is otherwise in the national interest."¹⁹ The President has determined that up to 85,000 refugees shall be admitted to the United States in 2016, at least 10,000 of whom will be Syrian.²⁰

The Refugee Act created the Office of Refugee Resettlement ("ORR") within the Department of Health and Human Services to fund and administer the federal programs related to the resettlement of refugees in the United States.²¹ Additionally, within the Department of State, the Bureau of Population, Refugees, and Migration ("PRM") is responsible for determining which refugees are eligible for resettlement.²² PRM funds and manages nine Resettlement Support Centers ("RSCs") around the world, which are operated by international nongovernmental organizations.²³ The RSCs prepare applications for refugees seeking resettlement in the United States.²⁴ This process includes the collection of information from the refugees, security screenings at the direction of the Department of State and the Department of Homeland Security,

¹⁷ *Exodus Refugee Immigration, Inc. v. Pence*, 16-1509, 2016 WL 5682711, at *3 (7th Cir. Oct. 3, 2016)

¹⁸ 8 U.S.C. § 1158(b)(1).

¹⁹ 8 U.S.C. § 1157(a)(2).

²⁰ *Exodus*, 115CV01858TWPDKL, 2016 WL 772897, at *2.

²¹ See 8 U.S.C. § 1521.

²² *Exodus*, 115CV01858TWPDKL, 2016 WL 772897, at *2.

²³ *Id.*

²⁴ *Id.*

and health screenings.²⁵ The approval process for refugees through PRM usually takes eighteen to twenty-four months.²⁶

Refugees accepted for resettlement in the United States are placed into all fifty states through one of three mechanisms: (1) the voluntary adoption of a State Plan for the acceptance of refugees pursuant to the Refugee Act; (2) the Wilson-Fish program; or (3) a joint private-public partnership.²⁷ To receive federal funds for the resettlement of refugees, the State Plan submitted to ORR must comply with the various requirements of the Refugee Act.²⁸

CONCLUSION

Governors have little recourse to preventing the resettlement of refugees within their borders. Though some states such as Indiana took legal action, initial rulings by the courts sided with the federal government and the prospects appear favorable for those who have successfully passed the refugee screening process and are being resettled within the United States.

²⁵ *Exodus*, 115CV01858TWPDKL, 2016 WL 772897, at *2.

²⁶ *Id.*

²⁷ *Exodus*, 115CV01858TWPDKL, 2016 WL 772897, at *2.

²⁸ See 8 U.S.C. § 1522(a)(6)(A).