

BY FAX OR E-MAIL

February 2, 2016

Representative Carlos Trujillo
Chair
Criminal Justice Subcommittee
417 House Office Building
402 S. Monroe Street
Tallahassee, FL 32399-1300

Re: House Bill 1095

Dear Representative Trujillo,

On behalf of the Anti-Defamation League (ADL), we urge the Criminal Justice Subcommittee to oppose House Bill 1095, "An act relating to prevention of acts of war" ("HB 1095"), when it is heard by the Subcommittee on February 3rd.

ADL is the nation's leading civil rights and human relations organization combating anti-Semitism and all forms of bigotry, as well as promoting understanding and diversity throughout the United States and abroad. Since its founding in 1913, ADL has advocated for fair and humane immigration policies that honor our values as a nation of immigrants.

HB 1095 would prohibit state or local government and their employees from assisting in the resettlement of refugees in Florida. Furthermore, it would bar any person who has received state funds for any purpose from providing resettlement assistance for five years, and similarly for a period of five years would prohibit the state from providing any funds to a person who has provided resettlement assistance. It would also require a person who has provided refugee resettlement assistance to provide the state with identifying information about the refugees they assist for security screening purposes.

We urge the Subcommittee to oppose this legislation because it is un-American, unnecessary, likely unconstitutional, and as applied to faith-based organizations will likely violate Florida law.

HB 1095 Is Contrary to American Values

Almost seventy years ago, America gave into unfounded fears about refugees, which resulted in our nation turning away thousands of European Jews who were fleeing Nazi persecution. Tragically, many of these refugees found no country to take them and perished in the Holocaust. Today, the world faces the worst refugee crisis since WWII. In the 21st Century, we must embrace America's values as a nation of immigrants and welcome these refugees into our country.

In July 1938—three years after the Nuremberg Laws had stripped Jews of German citizenship, deprived them of most political rights, and left hundreds of thousands of Jews seeking international refuge—Fortune magazine asked Americans, "What is your attitude toward allowing German, Austrian, and other political refugees to come to the U.S.?" Shamefully, more than two thirds said we should keep the refugees out.

In November 1938, Kristallnacht (the "Night of Broken Glass") left windows of Jewish homes and businesses in Germany shattered, synagogues destroyed, 91 Jews murdered, 26,000 deported to concentration camps and hundreds of thousands of Jews now desperate to flee Germany. With news of Kristallnacht as the backdrop, in January 1939 another poll asked whether the U.S. government should permit "10,000 refugee children from Germany—most of them Jewish—to be taken care of in American homes." An astounding and shameful 61 percent said no.

In May of 1939, the St. Louis, carrying 937 German refugees—mostly Jews fleeing the Third Reich—set sail for Cuba. Most had applied for U.S. visas. Turned away from Cuba, as the St. Louis sailed so close to Florida that the passengers could see the lights from Miami, they appealed to President Roosevelt to give them safe harbor. With public opinion opposed to lifting the stringent immigration quotas or to make an exception for the ship's passengers, the St. Louis returned to Europe. Almost a quarter of the passengers perished in the Holocaust.

Today, almost 60 million people around the world have been forcibly displaced from their homes. The war in Syria, fueled by the unparalleled brutality of ISIS, is largely responsible for the spike. And once more—shamefully—there is a push for the United States to turn a blind eye to the suffering of refugees and shut our doors to those in need.

In the aftermath of the horrific attacks in Paris, the response has too often been calls to reject Syrian refugees—the very same people fleeing ISIS's brutality. Many will say that today's refugee crisis is not comparable to that of the 1930s and 1940s. They will say that Jews in the 1930s were innocent victims, but what we take for granted today only became apparent in hindsight. "Of all the groups in the 20th Century, refugees from Nazism are now widely and popularly perceived as 'genuine,' but at the time German, Austrian and Czechoslovakian Jews were treated with ambivalence and outright hostility as well as sympathy," described the authors of the 1999 book *Refugees in the Age of Genocide*. Anti-Semitism, as well as fears of communist infiltration and anarchy, stoked anti-refugee sentiment.

With news that one of the attackers in Paris may have slipped into France with a fake passport amid Syrian refugees, today people claim it is too dangerous to take in Syrian refugees. After Paris, the possibility of further attacks of course raises fear and anxiety. However, America has put up high hurdles for refugees seeking to enter the U.S., creating screening processes that are unparalleled for any other entry method. These fears are therefore unfounded, and should be rejected.

HB 1095 Is Unnecessary Because The Federal Government Already Subjects Refugees to Rigorous Security Screening

Refugees must first apply for entrance to the U.S. at an American embassy or through the United Nations. If they pass that screening, the Department of State conducts an investigation into their background and identity. The FBI checks their fingerprints and photographs, officials from the Department of Homeland Security conduct in-person interviews, and both American and international intelligence agencies conduct further investigations. Every refugee must undergo a thorough medical exam. Refugee status is the single most difficult way to enter the United States.

The American screening process for refugees works. With millions of refugees admitted to the United States since 1980, including hundreds of thousands admitted since 9/11, there have been no

recorded terrorist attacks committed in the U.S. by refugees. Unlike European countries, the U.S. has the luxury of admitting refugees only after their applications and background screenings are complete—often after a three year process. It is important to note that the attacker who may have slipped into France with refugees was not himself a refugee. He had never applied through official channels, cleared stringent international background checks, or been granted refugee status. He was a terrorist with a fake passport, not a refugee.

HB 1095 is Likely Unconstitutional

Under the doctrine of preemption, a state may not enter a field that the federal government has reserved for itself or pass a law that stands in contradiction to a federal law. With regard to immigration policy, the U.S. Supreme Court has long held that “the government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.” See, e.g., *Arizona v. United States*, 132 S. Ct. 2492 (2012).

The federal government has clearly already created a rigorous security screening process for refugees. Furthermore, in 1980 Congress enacted a comprehensive law addressing the resettlement of refugees entitled, “The Refugee Act” (“Act”).¹ As outlined in the following provisions of the Act, it clearly contemplates cooperation among the federal government, state governments and private organizations or persons in the resettlement of refugees, as well as funding of organizations or persons who or which provide resettlement assistance.

- *[L]ocal voluntary agency activities should be conducted in close cooperation and advance consultation with State and local governments.*
- *The Director and the Federal agency administering subsection (b)(1), shall consult regularly (not less often than quarterly) with State and local governments and private nonprofit voluntary agencies concerning the sponsorship process and the intended distribution of refugees among the States and localities before their placement in those States and localities.*
- *The Director shall develop and implement, in consultation with representatives of voluntary agencies and State and local governments, policies and strategies for the placement and resettlement of refugees within the United States.*
- *No funds may be made available under this chapter (other than under subsection (b)(1)) to States or political subdivisions in the form of block grants, per capita grants, or similar consolidated grants or contracts. Such funds shall be made available under separate grants or contracts-*
- *[S]ubmit to the Director a plan which provides ... for the designation of an individual, employed by the State, who will be responsible for insuring coordination of public and private resources in refugee resettlement ...*

Therefore, a federal court would likely invalidate HB 1095 on two preemption grounds. First, through the Act and existing refugee security screening programs, the federal government has reserved the area of refugee resettlement. As a result, states cannot enact laws addressing this type of immigration regulation. Second, the Act contemplates close cooperation between the federal and state governments on refugee resettlement, inclusive of persons or private entities receiving funding to assist in refugee resettlement. HB 1095’s prohibition on government cooperation with refugee resettlement and its penalties for persons who do so clearly are in conflict with the Act.

¹ See <http://www.acf.hhs.gov/programs/orr/resource/the-refugee-act> (web-page last visited on February 2, 2016).

HB 1095 Likely Violates the Florida Religious Freedom Restoration Act

Multiple religious and faith-based organizations support and are actively involved with refugee resettlement.^{2 3 4} In instances where such organizations⁵ or persons affiliated with them seek to provide resettlement assistance to refugees on religious grounds, HB 1095 would likely violate the Florida “Religious Freedom Restoration Act of 1998” (“RFRA”). See Florida Statute §761.01 et. seq.

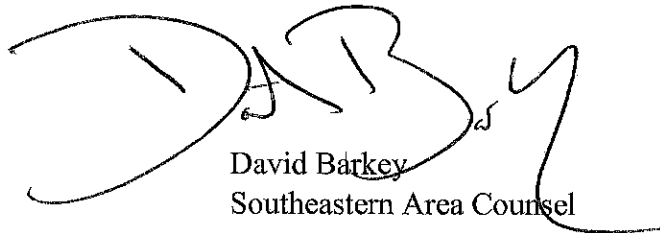
RFRA requires that state or local government within Florida demonstrate strict scrutiny, the most stringent constitutional standard, when it “substantially burden[s]” free exercise of religion. The statute defines “Exercise of religion” as “an act or refusal to act that is substantially motivated by a religious belief, whether or not the religious exercise is compulsory or central to a larger system of religious belief.”

Clearly, an institution or person who assists refugees for religious reasons would fall within the protections of RFRA. Given that the federal government is currently resettling refugees within the U.S. and under the Act desires cooperation among the federal government, state governments, and private organizations in these efforts, we do not believe that the State could demonstrate a “compelling governmental interest” for the legislation and that HB 1095 “[i]s the least restrictive means of furthering that compelling governmental interest,” as required by the RFRA.

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In light of these moral and legal considerations, we urge the Subcommittee to oppose HB 1095.

Sincerely,



David Barkey
Southeastern Area Counsel

cc: House Criminal Justice Subcommittee

² *Refugee Crisis Response*, Religious Action Center of Reform Judaism - <http://www.rac.org/refugee-crisis-response> (web-page last visited on February 2, 2016).

³ *Christian groups break with GOP over Syrian refugees*, Politico, November 17, 2015 - <http://www.politico.com/story/2015/11/refugees-christians-215991> (web-page last visited February 2, 2016).

⁴ *Syrian Refugee Crisis*, United States Conference of Catholic Bishops, <http://www.usccb.org/about/migration-policy/syrian-refugee-crisis.cfm> (web-page last visited February 2, 2016).

⁵ In *Burwell v. Hobby Lobby*, the U.S. Supreme Court found that non-profit religious corporations, as well as certain for-profit corporations were persons for the purposes of the federal Religious Freedom Restoration Act. See 134 S. Ct. 2751 (U.S. 2014).