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D R A F T

TERRORISM, MATERIAL SUPPORT, THE INHERENT RIGHT TO SELF-DEFENSE, AND THE U.S. OBLIGATION TO PROTECT LEGITIMATE ASYLUM SEEKERS IN A POST-9/11, POST-PATRIOT ACT, POST-REAL ID ACT WORLD

By

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I. INTRODUCTION

In the aftermath of September 11, 2001, the United States acted swiftly to enforce existing laws and enact new ones designed to protect our country and our citizenry from further horrific atrocities at the hands of dangerous terrorists. Chief among these was the USA PATRIOT Act ("the Patriot Act") which was signed into law on October 26, 2001. The Act's title is an acronym for its stated goal: "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism." [1] Unfortunately some of these "tools" have been applied not against perpetrators of terror -- but against innocent victims thereof.

Although much has been written about "privacy" concerns raised by the Patriot Act, this article will focus elsewhere. In it we explore "material support," and how this issue affects countless legitimate refugees who have fled persecution in their homelands, only to be barred from seeking protection in the United States. This unconscionable bar arose from changes to the Immigration and Nationality Act ("INA") as a result of provisions contained in the Patriot Act, and more recently in the REAL ID Act of 2005 ("REAL ID Act"). [2]

INA § 212(a)(3)(B) bars from asylum anyone who has "engaged in terrorist activity," as well as anyone who "affords material support" to one who "has committed or plans to commit a terrorist activity." On the surface, most would agree that individuals truly engaged in terrorist activity and those materially supporting terrorists should not be granted asylum in the United States. But just beneath the surface, one finds that both

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"terrorist activity" and "material support" are defined so broadly that innocent victims of torture, rape, and other atrocities committed against them by brutal totalitarian regimes bent on their very annihilation, could themselves be labeled "terrorists" or "material supporters" thereof, and thus barred from the protection of asylum in the United States -- and have been by immigration courts. This is particularly true of those who have taken up arms in resistance in self-defense against such violent forces, as well as for those who have provided financial support or even food or clothing to others engaged in resistance and protection on their behalves.

The barring of vulnerable refugees under INA § 212(a)(3)(B) has devastating implications for the most brutally oppressed and intensely vulnerable ethnic and religious minorities in the world. In conjunction with Section 805 of the Patriot Act and Section 103 of the REAL ID Act, the proliferation of this bar by the Department of Homeland Security ("DHS") and other government agencies against legitimate refugees is both abhorrent and anathema to the very foundations upon which the United States stands.

II. HISTORY OF U.S. LAW CONCERNING "MATERIAL SUPPORT"

Even before September 11, 2001, U.S. law categorically barred from asylum terrorists and those engaged in providing material support to terrorist organizations. 18 U.S.C. § 2339(B) prohibits "providing material support or resources" to organizations designated by the Secretary of State as "foreign terrorist organizations." The material support bar was first passed as part of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA").[3]

Congress was concerned that terrorist organizations with charitable and humanitarian arms were raising funds in the United States that would be filtered into terrorist activities. The AEDPA provision made unlawful any support to these groups, even where the support was intended for charitable or humanitarian purposes. AEDPA's definition of "material support or resources" included providing tangible support such as money, goods and materials, as well as intangible support such as "personnel" and "training."

In Section 805 of the Patriot Act, the definition was expanded to include "expert advice and assistance" -- a definition deemed unconstitutionally vague in Federal Court.[4] In response, Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004.[5] The Act provided more detailed definitions of the terms "personnel," "training," and "expert advice or assistance" (§ 6603(b)). It also amended the material support provision, requiring a person to have "knowledge that the organization is a designated terrorist organization,... that the organization has engaged or engages in terrorist activity,... or that the organization has engaged in or engages in terrorism." (§ 6603(c)(2)).

After a noble effort by the U. S. House of Representatives to seemingly narrow the definition of terrorist organizations and material supporters thereof, the refugee and human rights community was shocked and appalled by the introduction of the patently

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anti-refugee provisions of the REAL ID Act of 2005 initially passed by the House. Many lengthy articles have already been written on the subject, and the outcry was swift and widespread. Groups ordinarily at odds with each other joined together to protect the most vulnerable from unconscionable burdens of proof, utterly impossible documentary requirements, and impermissible and unreviewable discretion placed in a single trier of facts that could have rested determinations on no more than a refugee's perceived "demeanor." Ultimately, the Act was reconciled with the U. S. Senate in a form less detrimental to legitimate asylum seekers. Yet, the effects of these Acts have so impinged on existing immigration laws, that persecuted refugees face harsher treatment in the United States than ever before.[6]

Members of many ethnic and religious minority groups who have fled terror and persecution in their homelands now face being mislabeled "terrorists" by the United States and turned away from our shores. Among the most vulnerable are the Chin of Burma. As the authors have become personally and professionally involved in the cases of two Chin refugees in recent months, it is with their cases in mind that we write this article. The asylum applicants will be referred to in this article only as Mrs. MSK and Mr. ZC. The applicants are unrelated, and their lives took different turns. But, what they have in common is that both are of the Chin ethnic minority in Burma and both now face being barred from asylum for having resisted the brutal forces that sought their demise, along with the annihilation of their people.

III. THE CHIN ETHNIC MINORITY BURMA: MATERIAL SUPPORTERS OF TERRORISM, OR PERSECUTED REFUGEES ENGAGED IN THEIR GOD-GIVEN NATURAL RIGHT TO SELF-DEFENSE?

Widespread human rights abuses are committed systematically against ethnic and religious minorities in Burma (renamed "Myanmar" by the illegitimate military junta ruling the government). Burma has been savagely ruled for decades by this military junta that is not recognized by the United States. The abysmal human rights record has been well-documented by the U.S. Department of State and countless non-governmental human rights organizations. Ethnic minorities, particularly the Chin, Karin, and Karinni, are routinely and systematically subjected to torture, rape, forced servitude, and execution. Minority homes, lands, and crops necessary for survival are destroyed systematically by the military junta, which acts with impunity.

Human rights activists argue that the gross and systematic attacks by the Burmese military on its own civilian population amount to acts of state-sponsored terrorism and certainly constitute Crimes Against Humanity if not Genocide. The brutal terror directed against the ethnic Chin minority has given rise to a necessary resistance movement. Groups of ethnic minorities in Burma have naturally joined together to defend themselves, their people, and their homeland from tyranny and destruction. Such groups include the National Democratic Front (NDF), the Chin National Front (CNF), and earlier the Chin National Army (CAN). All of these organizations have admittedly taken up arms to resist the brutal regime and to fight for the survival of their people in an

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ongoing struggle to protect the Chin from torture, rape, murder, and other atrocities.

Both Mr. ZC and Mrs. MSK are members of the Chin ethnic minority. Mr. ZC was widely-known in Burma as a pro-democracy advocate and political dissident. He was an active member of the organizations listed above. As such, he could be barred from asylum under INA § 212(a)(3)(B).

Mrs. MSK was never herself a member of any organized resistance group. She did, however, provide a portion of her meager finances to support those engaged in resisting the savage military junta government on her behalf. But because of her small contribution to the CNF, and because she provided a few household items to the group, she was denied asylum on account of having provided "material support to a terrorist organization."

It should be noted that none of the Chin groups have been designated as terrorist organizations by the Attorney General. Rather, Mrs. MSK was labeled as such because of the overly broad and easily abused provisions of INA § 212(a)(3)(B). Such a bar was never intended by Congress, and would have cataclysmic implications not only for Mrs. MSK and Mr. ZC, but for the most brutally oppressed and intensely vulnerable ethnic and religious minorities in the world.

The following arguments address only the narrow issue described as it has broad implications to refugees of the Chin, Karin, Karinni, and other ethnic and religious minorities who have endured decades of gross and systematic human rights violations, arguably amounting to genocide of their tribes, at the hands of Burma's brutal and illegitimate ruling military junta. Acts of self-defense against such tyranny is inherently not unlawful and specifically not unlawful in the United States.

To consider a human being either "a terrorist" or a material supporter of terrorism for either taking up arms to protect his own life or the lives of others, or for joining those engaged in countering tyranny on his behalf and the behalf of his people, would be reprehensible and in stark contradiction both to recognized inalienable rights and to the firm foundation and great humanitarian traditions of the United States.

Mankind's inherent and natural right to self-defense and preservation of life and property is firmly established in our Constitution and Bill of Rights and in volumes of writings by our nation's founding fathers. This inalienable right has been recognized for centuries, and in the common law traditions upon which our nation was founded. It is inconceivable that the United States Congress contemplated legislating away this inherent right without an explicit abrogation of such common law and Constitutionally recognized right within the text of INA § 212(a)(3)(B).

Neither natural law nor congressional intent supports the barring from asylum of those who have exercised their inherent and legal right to self-defense. It is respectfully submitted that the U.S. must not bar from asylum those like Mrs. SWK and Mr. ZC, who have simply participated in the resistance movement necessary to protect the Chin

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ethnic minority from state-sponsored terror. **IV. ARGUMENT ONE: The Inherent Natural Right To Self-Defense, Along With The Common Law And Constitutional Right To Bear And Use Arms Against Aggressors And Tyrants Is An Inherent Right And A Constitutional Right, Not Abrogated By INA § 212(A)(3)(B)'S Bar To Asylum**

Perhaps more than any other natural and inherent right, the right to self-defense is fundamental. The U.S. Constitution, the Bill of Rights, the Constitutions of 44 States, and the laws of all 50 States recognize the right to use arms in one's self-defense. Before extending consideration to the myriad of writings recognizing this right, it is logical to look to our nation's founding documents, and the clear and stated intent of our founding fathers -- beginning with the Constitution.

Thomas Jefferson, in a letter to William Johnson, wrote:

On every question of construction [of the Constitution] let us carry ourselves back to the time when the Constitution was adopted, recollect the spirit manifested in the debates, and instead of trying what meaning may be squeezed out of the text, or invent against it, conform to the probable one in which it was passed.[7]

So with regard to the right to bear and use arms in self-defense and resistance, we begin with those involved in the Constitutional process. Samuel Adams, during debates and proceedings in the 1788 U.S. Constitution ratification convention in Massachusetts, said:

That the said Constitution [shall] be never construed to authorize Congress to infringe the just liberty of the press, or the rights of conscience; or to prevent the people of the United States, who are peaceable citizens, from keeping their own arms.[8]

James Madison of Virginia wrote:

The Constitution preserves the advantage of being armed which Americans possess over the people of almost every other nation.... (where) the governments are afraid to trust the people with arms.[9]

To the founding fathers, the right to self-defense and the right to bear arms was not only constitutional, but pre-existed the Constitution. They believed it an inherent, natural right that no man may take away.

Fisher Ames, Delegate to the Massachusetts Constitutional Ratification Convention of 1788, who was later elected to the U.S. House of Representatives in 1789, wrote:

The rights of conscience, of bearing arms, of changing the government, are declared to be inherent in the people.[10]

Ames wrote the previous year:

It is a natural right which people have reserved to themselves, confirmed by the [English] Bill of Rights, to keep arms for their own defense; and as Mr. Blackstone

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observes, it is to be made use of when the sanctions of society and law are found insufficient to restrain the violence of oppression.[11]

Samuel Adams wrote:

Among the natural rights of the Colonists are these: First, a right to life; Secondly, to liberty; Thirdly, to property; together with the right to support and defend them in the best manner they can.... it is the greatest absurdity to suppose it in the power of one, or any number of men, at entering into society, to renounce their essential natural rights, or the means of preserving those rights; when the grand end of civil government, from the very nature of its institution, is for the support, protection, and defense of those very rights; the principal of which, as is before observed, are Life, Liberty, and Property. If men, through fear, fraud, or mistake, should in terms renounce or give up any essential natural right, the eternal law of reason and the grand end of society would absolutely vacate such renunciation. The right to freedom being the gift of God Almighty, it is not in the power of man to alienate this gift and voluntarily become a slave.[12]

Clear words, a clear intent, and clearly no room for interpretation. The right of mankind to take up arms in self-defense pre-existed the laws of man, and neither law nor man can deny this inherent right. The early courts recognized and upheld these truths.

If cowardly and dishonorable men sometimes shoot unarmed men with army pistols or guns, the evil must be prevented by the penitentiary and gallows, and not by a general deprivation of a constitutional privilege.[13]

The right to bear arms has roots in the common law heritage of our nation, and was specifically recognized by our founding fathers. Alexander Hamilton and James Madison, among others, specifically intended that the Second Amendment would provide an individual right to keep and bear arms.

Hamilton wrote:

If the representatives of the people betray their constituents, there is then no recourse left but in the exertion of that original right of self defense which is paramount to all positive forms of government.[14]

Albert Gallatin of the New York Historical Society, wrote on October 7, 1989:

The whole of the Bill [of Rights] is a declaration of the right of the people at large or considered as individuals.... It establishes some rights of the individual as unalienable and which consequently, no majority has the right to deprive them of.[15]

Tench Coxe, a prominent Federalist from Pennsylvania and author of the commentary /American Citizen, confirmed:

Congress has no power to disarm the militia. Their swords, and every other terrible implement of the soldier, are the birth-right of an American... the unlimited power of the sword is not in the hands of either the federal or state governments, but, where I trust in God it will ever remain, in the hands of the people.[16]

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George Mason of Virginia agreed:

That the people have a Right to mass and to bear arms; that a well regulated militia composed of the Body of the people, trained to arms, is the proper natural and safe defense of a free state...[17]

And Thomas Jefferson's intentions were never in question:

The constitutions of most of our States assert that all power is inherent in the people; that... it is their right and duty to be at all times armed.[18]

Richard Henry Lee fought under George Washington, introduced the motion leading to the Declaration of Independence, and was himself a signer of the Declaration of Independence. Lee served as U.S. Senator from Virginia, and helped secure ratification of U.S. Bill of Rights. He wrote:

... of the liberty of conscience in matters of religious faith, of speech and of the press; of the trial by jury of the vicinage in civil and criminal cases; of the benefit of the writ of habeas corpus; of the right to keep and bear arms.... If these rights are well defined, and secured against encroachment, it is impossible that government should ever degenerate into tyranny.[19]

The inherent right to self-defense has been strongly recognized for centuries. Justinian wrote in 529 A.D.:

That which someone does for the safety of his body, let it be regarded as having been done legally.[20]

Our pre-colonial common law fathers recognized these unalienable rights as well. Sir William Blackstone, the great English jurist often referred to as the "father of English common law," observed in his 1766 Commentaries on the Laws of England, that the English Bill of Rights recognized "the right of having and using arms for self-preservation and defense" as one of the five auxiliary rights people possess "to protect and maintain inviolate the three great and primary rights," the first of which is "personal security." Blackstone continued:

Self defense is justly called the primary law of nature, so it is not, neither can it be in fact, taken away by the laws of society.[21]

Blackstone termed the use of arms for self-preservation and defense an "auxiliary" right, because it was one of the subordinate rights which were to guarantee the existence and enjoyment of the primary rights of personal security, personal liberty and private property. Id., at 141.

Thus at common law, the right to keep and bear arms was an individual right -- not merely for its own sake -- but recognized as a natural and vital instrument for defense and self-protection. It constituted the final barrier from oppression in any form, private or governmental. Another authoritative statement from this era is from Pleas of the Crown; "every private person seems authorized by the Law to Arm himself for [various] purposes." 1 Hawkins, Pleas of the Crown, Ch. 28, §14 (7th ed. 1795).

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There exists a wealth of common law and colonial history that indicates that both Englishmen and pre-revolutionary colonists possessed that individual right to keep and bear arms. It is well known that the founding fathers of this nation recognized Sir William Blackstone as an authority of the common law. Therefore, it should be highly probative of the founding fathers' understanding of an individual's rights to review a portion of Blackstone's authoritative treatise of the common law. [22]

Blackstone was not alone. Sir Michael Foster, judge of the Court of King's Bench, wrote:

The right of self-defence in these cases is founded in the law of nature, and is not, nor can be, superseded by any law of society. For before societies were formed, (one may conceive of such a state of things though it is difficult to fix the period when civil societies were formed,) I say before societies were formed for mutual defence and preservation, the right of self-defence resided in individuals; it could not reside elsewhere, and since in cases of necessity, individuals incorporated into society cannot resort for protection to the law of the society, that law with great propriety and strict justice considereth them, as still, in that instance, under the protection of the law of nature.[23]

In Institutes of the Laws of England, 1628, Sir Edward Coke wrote:

And yet in some cases a man may not only use force and arms, but assemble company also. As any may assemble his friends and neighbors, to keep his house against those that come to rob, or kill him, or to offer him violence in it, and is by construction excepted out of this Act; and Sheriff, etc., ought not to deal with him upon this Act; for a man's house is his Castle, and a person's own house is his ultimate refuge; for where shall a man be safe, if it be not in his house. And in this sense it truly said, and the laws permit the taking up of arms against armed persons."

Perhaps John Locke states it most concisely in Two Treatises of Government, 1689: Must men alone be debarred the common privilege of opposing force with force, which nature allows so freely to all other creatures for their preservation from injury? I answer: self defense is a part of the law of nature, nor can it be denied the community, even against the king himself....

Self-defense and preservation from injury is indeed a part of the law of nature that can never be denied. This natural right is inherent, and extends to all mankind -- even to the persecuted Chin of Burma.

In the same volume, John Locke boldly writes:

And hence it is, that he who attempts to get another man into his absolute power, does thereby put himself into a state of war with him; it being to be understood as a declaration of a design upon his life. This makes it lawful for a man to kill a thief, who has not in the least hurt him, nor declared any design upon his life, any further than by the use of force, so to get him in his power, as to take away his money, or what he pleases from him: because using force, where he has no right, to get me into his power, let his pretense be what it will, I have no reason to suppose that he, who would

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take away my liberty, would not when he had me in his power, take away everything else. And therefore it is lawful for me to treat him as one who has put himself into a state of war with me, i.e. kill him if I can; for to that hazard does he justly expose himself, whoever introduces a state of war, and is aggressor in it.

Echoing this sentiment, Algernon Sidney wrote in *Discourses Concerning Civil Government*, 1698: "Swords were given to men, that none might be Slaves, but such as know not how to use them."

Baron De Montesquieu wrote in *The Spirit of the Laws*, 1748: "Who does not see that self-defense is a duty superior to every precept?" If only the Immigration Judge shared this understanding.

Cesare Beccaria observed in 1764:

It is a false idea of utility to sacrifice a thousand real advantages for the sake of one disadvantage which is either imaginary or of little consequence; this would take fire away from men because it burns and water because it drowns people; this is to have no remedy for evils except destruction. Laws forbidding people to bear arms are of this nature; they only disarm those who are neither inclined nor determined to commit crimes. On the other hand, how can someone who has the courage to violate the most sacred laws of humanity and the most important ones in the statute books be expected to respect the most trifling and purely arbitrary regulations that can be broken with ease and impunity and that, were they enforced, would put an end to personal liberty -- so dear to each man, so dear to the enlightened legislator -- and subject the innocent to all the vexations that the guilty deserve? Such laws place the assaulted at a disadvantage and the assailant at an advantage, and they multiply rather than decrease the number of murders, since an unarmed person may be attacked with greater confidence than someone who is armed. These laws should not be deemed preventive, but rather inspired by a fear of crime. They originate with the tumultuous impact of a few isolated facts, not with a rational consideration of the drawbacks and advantages of a universal decree.[24]

And Daniel Webster of Massachusetts famously proclaimed, "God grants liberty only to those who love it, and are always ready to guard and defend it." [25]

There is no question that the founding fathers counted as natural, inherent, and of infinite importance, the right to use arms for self-preservation and defense. American colonists explicitly reserved the right to bear arms in 1774. Moreover, State constitutions written during the Revolutionary War period contained an explicit right to bear arms, and indicate awareness that such a right was an integral feature in any list of freedoms. As these early State constitutions served as models for the federal Bill of Rights, a few examples are in order.

Vermont: "... the people have a right to bear arms for the defense of themselves and the State..."; [26] Massachusetts: "The people have a right to keep and bear arms for the common defense"; Id., at 337, 342. New York: "And whereas it is of the utmost

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importance to the safety of every State that it should always be in a condition of defense; and it is the duty of every man... to be prepared and willing to defend it...";
Id

., at 301, 312. Pennsylvania: "... the people have a right to bear arms for the defense of themselves and the State....";

Id

., at 262, 266.

No one knew better than America's founders the importance of an armed population that could defend itself from tyranny. The founders understood that the first step tyrannical governments take to control and enslave the people of a nation is to disarm them.

George Mason was a Virginia delegate to the Constitutional Convention of 1787, and a delegate to the Virginia Constitutional Ratification Convention of 1788. He also helped Thomas Jefferson draft the Virginia Declaration of Rights, which served as the basis for the U.S. Bill of Rights. According to Mason:

[W]hen the resolution of enslaving America was formed in Great Britain, the British Parliament was advised by an artful man, who was governor of Pennsylvania, to disarm the people; was the best and most effectual way to enslave them; but that they should not do it openly, but weaken them, and let them sink gradually... I ask, who are the militia? They consist now of the whole people, except a few public officers.[27]

Fellow Virginian, Patrick Henry, agreed:

Are we at last brought to such humiliating and debasing degradation that we cannot be trusted with arms for our defense? Where is the difference between having our arms in possession and under our direction, and having them under the management of Congress? If our defense be the real object of having those arms, in whose hands can they be trusted with more propriety, or equal safety to us, as in our own hands?[28]

During Virginia's U.S. Constitution ratification convention, Henry continued: "Guard with jealous attention the public liberty. Suspect everyone who approaches that jewel."[29]

Forseeing what might likely befall a nation that arms its government and military, but forbids arms for the people, Tench Coxe of Pennsylvania wrote:

As civil rulers, not having their duty to the people before them, may attempt to tyrannize, and as the military forces which must occasionally be raised to defend our country, might pervert their power to the injury of their fellow citizens, the people are confirmed by the next article (of amendment) in their right to keep and bear their private arms.[30]

It is ludicrous to suppose that our great nation would now punish those who adhere to these very principles, by denying them refuge and returning them to the savage tyrants who seek their demise.

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Even Mahatma Ghandi recognized forced disarming as "the blackest" of Great Britain's strategies in enslaving the Indian people: "Among the many misdeeds of the British rule in India, history will look upon the act of depriving a whole nation of arms, as the blackest." [31]

Elbridge Gerry was a Massachusetts delegate to the Constitutional Convention of 1787, a delegate to the Massachusetts Ratification Convention of 1788, and the Vice President of the United States during President James Madison's second term (from 1813 until his death in 1814). Gerry too recognized this great evil:

What, sir, is the use of militia? It is to prevent the establishment of a standing army, the bane of liberty.... Whenever Government means to invade the rights and liberties of the people, they always attempt to destroy the militia, in order to raise a standing army upon its ruins. [32]

Prominent newspapers of the era echoed this sentiment. In the January 7, 1788 Hartford Courant (Connecticut):

Tyrants never feel secure, until they have disarmed the people. But the people of this country have arms in their hands; they are not destitute of military knowledge; every citizen is required by Law to be a soldier; we are all martialled into companies, regiments, and brigades, for the defense of our country. This is a circumstance which increases the power and consequence of the people; and enables them to defend their rights and privileges against every invader.

In the April 23, 1788 Pennsylvania Gazette:

God forbid we should ever be twenty years without such a rebellion.... And what country can preserve its liberties, if its rulers are not warned from time to time, that this people preserve the spirit of resistance? Let them take arms....

And in the October 12, 1789 Fayetteville Gazette (North Carolina):

While the people have property, arms in their hands, and only a spark of noble spirit, the most corrupt Congress must be mad to form any project of tyranny.

Quotes from our founding fathers on the Constitutional, natural, inherent, and inalienable right to bear and take up arms in self-defense and self-preservation are voluminous. Patrick Henry said:

No free government was ever founded or ever preserved its liberty, without uniting the characters of the citizen and soldier in those destined for the defense of the state. The great object is that every man be armed. Everyone who is able may have a gun. [33]

Have we no means of resisting disciplined armies, when our only defense, the militia, is put in the hands of Congress? Of what service would the militia be to you when, most probably, you will not have a single musket in the state? For, as arms are to be provided by Congress, they may or may not provide them. They tell us, Sir, that we are weak... but when shall we be stronger? Will it be when we are totally disarmed? [34]

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Thomas Jefferson put it succinctly in the proposed Virginia Constitution, 1776: "No free man shall ever be debarred the use of arms." In his Commonplace Book (1774-1776), Jefferson wrote:

Laws that forbid the carrying of arms... disarm only those who are neither inclined nor determined to commit crimes. Can it be supposed that those who have the courage to violate the most sacred laws of humanity will respect the less important and arbitrary ones.... Such laws make things worse for the assaulted and better for the assailants; they serve rather to encourage than to prevent homicides, for an unarmed man may be attacked with greater confidence than an armed man.[35]

Nothing could more clearly describe the situation for the ethnic and religious minority Chin people of Burma. Should the ravaged Chin lie down and accept the rape, torture, and murder of their people and the utter destruction of their lands and crops? It would be nothing short of madness to consider an attempt at self-defense and preservation by a people marked for genocide as "terrorism."

Burma is governed by a repressive racist military regime that perpetuates political and economic domination for the Burmese ethnic majority by violently persecuting ethnic minority groups. Just this year, the U.S. Department of State (USDOS) reported:

Wide-ranging governmental and societal discrimination against minorities persisted. Animoshies between the country's many ethnic minorities and the Burman majority, which has dominated the Government and the armed forces since independence, continued 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. Some armed ethnic groups also may have committed abuses, but on a much smaller scale than the Burmese Army (see Sections 1.a., 1.c., 1.f., and 1.g.). [36]

Although the genocidal rampage of Burma's military junta has been directed against ethnic minorities, the religious element cannot be ignored. The U.S. Secretary of State has designated Burma a "country of particular concern" under the International Religious Freedom Act for particularly severe violations of religious freedom every year since the designation was introduced in 1999. The U.S. Commission on International Religious Freedom (USCIRF) reports:

Repression by the military regime in Burma is widespread and continues systematically to include severe violations of religious freedom and other abuses. The government exercises strict control over many religious activities, imposes restrictions on certain religious practices, and, in some areas of the country, forcefully promotes Buddhism over other religions.

Members of minority religious groups, especially those in the ethnic minority areas, face serious abuses of religious freedom and other human rights on account of their religion. In some localities, the military reportedly has forcibly conscripted members of religious minorities as porters and killed those who have refused. Christians have been forced to engage in the destruction of churches and graveyards for the purpose of clearing sites for military camps.[37]

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And according to the U.S. State Department:

There continued to be evidence that Christian Chins were pressured to attend Buddhist seminaries and monasteries and were encouraged to convert to Buddhism. In April, an exile Chin human rights group reported that local authorities forced 15 Chin pastors to participate in Buddhist New Year events to demonstrate "unity" with Burman Buddhists. The same human rights group claimed that local government officials lodged the children of Chin Christians in Buddhist monasteries in which they were given religious instruction and converted to Buddhism without their parents' knowledge or consent. Reports suggested that the Government sought to induce members of the Naga ethnic group in Sagaing Division to convert to Buddhism by similar means.[38]

Should such atrocities be committed against the people of the United States, our founding fathers had clear instructions. Thomas Jefferson wrote:

And what country can preserve its liberties, if its rulers are not warned from time to time that this people preserve the spirit of resistance? Let them take arms.... The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure.[39]

This "spirit of resistance" is all the Chin people have to preserve their lives. But a spirit of resistance without arms with which to defend themselves would be both an exercise in futility and an invitation to further enslavement and slaughter.

It is difficult to find a single founding father who did not agree. Noah Webster, of Pennsylvania wrote:

Before a standing army can rule, the people must be disarmed; as they are in almost every kingdom in Europe. The supreme power in America cannot enforce unjust laws by the sword; because the whole body of the people are armed, and constitute a force superior to any band of regular troops that can be, on any pretence, raised in the United States. A military force, at the command of Congress, can execute no laws, but such as the people perceive to be just and constitutional; for they will possess the power, and jealousy will instantly inspire the inclination, to resist the execution of a law which appears to the unjust and oppressive.[40]

Alexander Hamilton, of New York wrote:

[I]f circumstances should at any time oblige the government to form an army of any magnitude, that army can never be formidable to the liberties of the people while there is a large body of citizens, little if at all inferior to them in discipline and the use of arms, who stand ready to defend their rights and those of their fellow citizens.[41]

Thomas Paine, of Pennsylvania wrote:

Weakness allures the ruffian, but arms, like laws, discourage and keep the invader and plunderer in awe, and preserve order in the world as well as property. Horrid mischief would ensue were the law-abiding citizens deprived of the use of them, and the weak will become a prey to the strong.[42]

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John Adams, in his *A Defense of the Constitutions of the Government of the United States of America*, 1788, addressed specifically the absurdity of not allowing citizens to keep arms for their own defense:

To suppose arms in the hands of citizens, to be used at individual discretion, except in private self-defense... is a dissolution of the government.[43]

The founders recognized beyond a shadow of a doubt that governments can become tyrannical, and that individual citizens must have the strength and the arms to protect themselves in such event. Thomas Jefferson took it a step further in recognizing the right of the people not only to stand their ground, but to overthrow and institute a new government when necessary. A shocking, obscure writing you suggest? Hardly -- these are Jefferson's words in the third sentence of the Declaration of Independence:

...that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundations on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

With regard to our own nation, the Second Amendment right to keep and bear arms has become both fundamental, and a right firmly established in our great tradition. And over more than two hundred years, private gun ownership has become engrained in our concept of "liberty" under the due process clauses of the Fifth and Fourteenth Amendments. Moreover, there unquestionably exists a natural right of an individual in his personal security and a concomitant right to protect one's family and self.

The Ninth Amendment indicates that the Bill of Rights is not an exhaustive list of freedoms enjoyed by the people. The U.S. Supreme Court has consistently found fundamental rights existing under the due process clauses of the Fifth and Fourteenth Amendments. Thus in addition to the Second Amendment's right to bear arms, and the due process clauses of the Fifth and Fourteenth Amendment applying this right to the States, the "people" of the United States have "retained" the right to keep and bear arms for more than two hundred years, and this right must certainly be recognized as fundamental under the Ninth Amendment.

Early U.S. Supreme Court Justices recognized the natural inherent right of individuals to self-defense and to bear arms. Justice Joseph Story, a U.S. Supreme Court Justice from 1812 to 1845 wrote:

The right of the citizens to keep and bear arms has justly been considered a palladium of the liberties of a Republic; since it offers a strong moral check against usurpation and arbitrary power of rulers and will generally, even if these are successful in the first instance, enable people to resist and triumph over them.[44]

And also:

...One of the ordinary modes, by which tyrants accomplish their purposes without resistance, is, by disarming the people, and making it an offence to keep arms, and by substituting a regular army in the stead of a resort to the militia. The friends of a free government cannot be too watchful, to overcome the dangerous tendency of the

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public mind to sacrifice, for the sake of mere private convenience, this powerful check upon the designs of ambitious men.[45]

In *U.S. v. Cruikshank* (92 U.S. 542, (1876)), the U.S. Supreme Court recognized that the right to arms preexisted the Constitution and is thus an individual right. Chief Justice Morrison R. Waite, issued the majority opinion, in which he wrote:

The right there specified is that of "bearing arms for a lawful purpose." This is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The second amendment declares that it shall not be infringed; but this, as has been seen, means no more than that it shall not be infringed by Congress. This is one of the amendments that has no other effect than to restrict the powers of the national government, leaving the people to look for their protection against any violation by their fellow-citizens of the rights it recognizes, to what is called.... the "powers which relate to merely municipal legislation, or what was, perhaps, more properly called internal police," "not surrendered or restrained" by the Constitution of the United States.

In *Beard v. U.S.* (158 U.S. 550, 1895), the Court approved the common law rule that a person "may repel force by force" in self-defense, and concluded that when attacked a person "was entitled to stand his ground and meet any attack made upon him with a deadly weapon, in such a way and with such force" as needed to prevent "great bodily injury or death."

In *Presser v. Illinois*, 116 U.S. 252 (1886), the U.S. Supreme Court decision suggested that the Second Amendment applies to the states through the 14th Amendment and thus that a state cannot forbid individuals to keep and bear arms for lawful purposes.

In addition to the clearly stated intentions of our founding fathers and early U.S. Supreme Court justices, the laws of all 50 states and the constitutions of 44 states recognize the right to use armed force in self-defense.[46] There is simply no question that among the chief fundamental rights upon which our nation was founded, is the natural, inherent, right of every human being to bear and take up arms for self-defense and preservation.

It would thus be absurd and wholly un-American to suggest that our lawmakers and the jurists charged with interpreting our laws would deny refuge and asylum to victims of widespread, systematic, and horrifically violent persecution on the basis that these refugees joined or supported organizations formed to resist the brutal and tyrannical regime seeking their annihilation.

It is of grave concern that the potential application of the label "terrorist" to a group of self-defenders will remove the ability of those forced to engage in self-defense from seeking to flee persecution and torture, remove them from consideration of refugee protection, deprive them of their fundamental, natural, and unquestionably inherent right of self-defense, and banish them to certain torture and death.

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This was never the intention of our founding fathers, and it must never be accepted as legal or moral by those now writing, enforcing, and interpreting laws in our great nation.

The beliefs and intents of our founders are clearly preserved in records of their own powerful words. Among their most compelling beliefs, is that human beings are endowed by their Creator with a natural and inherent right to protect themselves from tyranny, and to do so with the use of arms. This right pre-existed our Constitution and all man-made laws, and will exist until the end of time. Thus any provision in modern law that seemingly seeks to, or inadvertently results in, denying this right is inherently flawed and wholly unenforceable.

To suggest that a human being is in any way "a terrorist" or supporter of terrorism for either taking up arms to protect his own life, or for providing financial or other support to those engaged in countering tyranny on his behalf, would be reprehensible and in stark contradiction both to the laws of nature, and to the firm foundation and great humanitarian traditions of the United States. And to deny asylum and refuge to such a one simply can never be.

The inherent natural right of self-defense, along with the Common Law and

Constitutional right to bear and use arms against aggressors and tyrants must be recognized as a fundamental right which abrogation was not contemplated within INA § 212(a)(3)(B)'s bar to asylum. And the exercise by Mr. ZC and Mrs. MSK of this inherent right must not serve as the basis to return them to those who seek their death. V.

ARGUMENT TWO: It Is Anathema To Jurisprudence And Tradition, As Well As To Our Treaty Obligations With Regard To The Protection Of Refugees, That Groups Of Persecuted Religious And/Or Ethnic Minorities Who Have Banded Together To Defend Themselves Against Gross And Systematic Torture, Rape, And Execution Be Labeled "Terrorist Organizations," And Those Who Resist Their Oppressors Be Barred From Seeking Asylum

Congressional intent behind INA § 212(a)(3)(B) was never to bar from asylum those who have defended their lives from brutal tyranny.[47] Acts of self-defense are inherently not unlawful and specifically not unlawful in the United States. Self-defense is a defense to otherwise criminal acts in all 50 states. Congress did not intend to punish the oppressed and reward the tyrant. To suggest so is to discard more than two centuries of benevolent humanitarian legislation designed to protect and uphold the rights of the vulnerable.

The relevant portions of INA § 212(a)(3)(B) are:

INA 212 (a)(3)(B)

(B) Terrorist activities--

(i) IN GENERAL. Any alien who--

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(I) has engaged in a terrorist activity,

(iii) **TERRORIST ACTIVITY DEFINED.** As used in this Act, the term "terrorist activity" means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:

(V) The use of any--

(b) explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

(iv) **ENGAGE IN TERRORIST ACTIVITY DEFINED.** As used in this chapter, the term "engage in terrorist activity" means, in an individual capacity or as a member of an organization--

(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training--

(bb) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity....

Were Immigration Judges and the Department of Homeland Security too broadly apply these selected portions of INA § 212(a)(3)(B) devoid of an understanding of both Congressional intent and the intentions of our nation's founders, countless persecuted refugees would be denied asylum. In fact, every persecuted individual who has ever lent a helping hand, a few shekels, or a warm meal to a person or group protecting them from brutal tyrants would be barred from asylum. And any group engaged in what our founding fathers cherished as the inherent right to "resist," would be labeled terrorists. Therefore, INA § 212(a)(3)(B) cannot be so broadly read as to abrogate the common-law right and Constitutional right of self-defense. The relevant sections of the Constitutions of all 50 states of this union recited on pages 19-21, supra, reveal that the Respondent's actions did not violate the laws of any State of this Union.

Too illustrate, a widely publicized case comes immediately to mind. On April 23, 2003, the Department of Homeland Security (DHS) granted asylum to Mohammed Odeh Al Rehaief. Mr. Al Rehaief is the Iraqi citizen who risked his life to provide information to U.S. Marines that led to the rescue of Private Jessica Lynch from a hospital in Nassiriyah, Iraq. The United States was so proud of this asylum grant that press releases were issued on April 29, 2003 by both the White House[48] and DHS.[49]

But an overly broad application of INA § 212(a)(3)(B) to Mr. Al Rehaief's case would have had a far darker outcome. As the U.S. Marines were engaged in the use of firearms "with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property," they would be labeled a "terrorist organization" engaged in "terrorist activities" under this provision.

An overly broad application would not take into consideration the nature of the armed

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conflict in which the marines were engaged, or their noble intentions to liberate a people oppressed for decades under a brutal dictatorial regime. It would look only to the fact that the "terrorists" (i.e., our brave Marines) used guns in violation of the laws of Saddam Hussein's Iraq with the intent to endanger those loyal to Saddam Hussein. And of course Mr. Al Rehaief had provided material support to this "terrorist organization," as he had provided "communications" to them.

One would immediately argue that when the U.S. military engages in armed defense, or in this case armed aggression, it would be preposterous to suggest they were engaged in terrorist activities. This widely publicized example illustrates the fact that not all armed actors are terrorists, and not all individuals who assist them are guilty of material support of terrorism.

Immigration Judges must not apply an overly broad interpretation of the law such as to discard the common law and Constitutional rights of self-defense which INA § 212(a)(3)(B) does not explicitly abrogate. Our nation was born out of resistance to and liberation from tyrants. We have cherished and embraced for more than two hundred years our inherent right to protect and preserve our lives and liberty.

Our government has encouraged, supported, and even armed those engaged in similar struggles in their homelands. It would be the height of hypocrisy to consider turning our backs on those who have embraced the values we hold dear.

It is essential that the United States uphold both its own fundamental values, and its international treaty obligations to protect persecuted refugees -- not to forcibly refoul them to countries where they would likely suffer torture and death. It is anathema to U.S. jurisprudence and tradition, as well as to our treaty obligations with regard to the protection of refugees, that groups of persecuted religious and/or ethnic minorities who have banded together to defend themselves against gross and systematic torture, rape, and execution be labeled "terrorist organizations," and those who resist their oppressors be barred from seeking asylum. Congress removed the right of terrorists to receive asylum, withholding of removal, and withholding under the convention against torture. It certainly did not and would not, however, bar from these protections refugees who have exercised the right of self defense against tyranny and state-sponsored terrorism.

Indeed, the U. S. Congress provided within the Patriot Act and maintained within the REAL ID Act a waiver provision whereby the Secretary of the Department of Homeland Security and the Secretary of the Department of State, after consultation with one another and the Attorney General, may determine that the material support to a terrorist organization ground of inadmissibility does not apply to an individual or a specific organized group. However, although government lawyers from these departments have met regularly to establish guidelines and a procedure to implement this waiver authority, to date no action has been taken. Consequently, Immigration Judges have been left without guidance and have over-broadly applied the material support provisions cited above to deny asylum, withholding of removal, and the Convention

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Against Torture relief from removal. In the case of Mrs. MSK whose "material support" consisted of giving a flashlight and raincoats to members of one of the Chin resistance organizations, this lady remains in a US immigration detention facility pending the outcome of her appeal to the Board of Immigration Appeals. Should this decision prevail, Mrs. MSK will have been stripped of refugee protection on account of supporting her inherent right of self-defense and will be returned into the hands of the military junta whose atrocities our government otherwise condemns.

A natural inherent right exists to self-defense even when the exercise of that right necessitates armed resistance. In light of the overly broad interpretation of the material support bar by the Department of Homeland Security District Counsels and Department of Justice Immigration Judges, Congress' effort to narrow the relevant provision in the Intelligence Reform and Terrorism Prevention Act of 2004 has failed this Constitutional test. Since the natural and inherent right to self-defense was not abrogated by Congress in the Patriot's Act, asylum seekers who engage in that right against tyranny should not be barred in the event that they may have provided "material support" to a group engaged in defending the defenseless. Either the Executive Branch must implement its authority to grant waivers to the bar, or this overbroad provision will again be found un-Constitutional.

It would be deeply at odds with our history and our values as a nation to shun a minority group organized for the sole purpose of defending its people against gross and systematic raping and torture of villagers, pillaging, forced portering, mass destruction of villages, infanticide, and summary executions. These atrocities are routinely committed in Burma, carried out with impunity by an armed military junta at the behest of one of the most brutal and repressive illegitimate regimes on Earth propped up by drug trafficking, specifically on account of the ethnic and religious identity of the displaced and brutalized Chin, Karin, and Karinni people. Currently some 10,000 ethnic and religious minority refugees from Burma are unable to begin the process for refugee resettlement in the United States because of their support of ethnic or religious organizations that oppose the repressive military regime in Burma. VI.

CONCLUSION

It is essential that the United States protect our country from terrorists, terrorist organizations, and those who provide unquestionable material support to terrorists -- such as knowingly providing flight training to suicide hijackers or knowingly providing bomb-making instructions to Al Qaeda operatives. The US PATRIOT Act, therefore, has an important role in our nation's ability to prevent and punish those who seek to harm us. But just as essential, and just as fundamental, is the responsibility and obligation of the United States to protect persecuted refugees and legitimate asylum seekers who have fled terror in their homelands for the safety of our shores.

The barring of asylum to refugees under INA § 212(a)(3)(B) has devastating implications for the most brutally oppressed and intensely vulnerable ethnic and

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religious minorities in the world. In conjunction with Section 805 of the Patriot Act and Section 103 of the REAL ID Act, the proliferation of this bar by the Department of Homeland Security and other government agencies against legitimate refugees and asylum seekers is both abhorrent and anathema to U.S. jurisprudence, tradition, and our treaty obligations. Persecuted ethnic and/or religious minorities who stand together against brutal tyranny, systematic torture, rape, and other atrocities must not be labeled terrorists, and those who resist their oppressors must not be barred from seeking asylum.

The United States was founded by individuals who held dear the God-given natural rights to self-defense and to resist and rise out of tyranny. Never let it be said that we now cast away refugees who have embraced our values and who share in our struggle.

[1] The USA PATRIOT Act, Pub. Law 107-56, October 26, 2001.

[2] The REAL ID Act of 2005, Pub. Law 109-13, May 15, 2005, 119 Stat. 303-323.

[3] The Antiterrorism and Effective Death Penalty Act of 1996, Pub. Law 104-132, April 24, 1996.

[4] Humanitarian Law Project, et al. v. Ashcroft, 309 F. Supp.2d 1185, 1200 (C.D. Cal. 2004).

[5] The Intelligence Reform and Terrorism Prevention Act of 2004, Pub. Law 108-458, December 17, 2004.

[6] For more details concerning recent treatment of asylum seekers in the United States, see the United States Commission on International Religious Freedom (USCIRF): "Asylum Seekers in Expedited Removal," February 2005, available online at: <http://www.uscirf.gov/countries/global/asylum%5Frefugees/2005/february/execsum.pdf>

[7] Letter of Thomas Jefferson to William Johnson, June 12, 1823.

[8] Debates and Proceedings in the Convention of the Commonwealth of Massachusetts, at 6-87 (Peirce & Hale, eds., Boston, 1850. 2, col. 2.

[9] The Federalist, No. 46

[10] Letter of Fisher Ames to F.R. Minoe, June 12, 1789.

[11] Fisher Ames, A Journal of the Times (Boston, Massachusetts, 1788).

[12] Samuel Adams, The Rights of Colonists, November 20, 1772.

[13] *Wilson v. State*, 33 Ark. 557, at 560, 34 Am. Rep. 52, at 54 (1878).

[14] *Federalist* # 28.

[15] Letter by Albert Gallatin to Alexander Addison, Oct. 7, 1789, MS. in N.Y. Hist. Soc. _A.G. Papers, 2.

[16] Letter of Tench Coxe to James Madison during adoption of the Bill of Rights in the United States Congress, (1789).

[17] Within Mason's declaration of "the essential and unalienable Rights of the People," -- drafted by Thomas Jefferson, George Mason and others, and later adopted by the Virginia ratification convention, 1788.

[18] Letter to John Cartwright, 1824. (The Writings of Thomas Jefferson, Memorial Edition), Lipscomb and Bergh, editors, 20 Vols., Washington, D.C., 1903-04, 16:45.

[19] Richard Henry Lee, Letters from the Federal Farmer 53, 1788.

[20] Justinian: Digest of Roman Law, 529 A.D.

[21] William Blackstone, Commentaries on the Laws of England, 1766.

[22] Charles L. Cantrell, The Right to Bear Arms: A Reply, 53 Wis. B. Bull. 21-26 (Oct. 1980).

[23] Michael Foster, Crown Cases 273-74 (London 1776). Cases of justifiable self-defense include "[w]here a known felony is attempted upon the person, be it to rob or murder..., [a] woman in defence of her chastity..., [and] arson or burglary in the habitation." Id. at 274.

[24] Cesare Beccaria, On Crimes and Punishment, Chapter XL: False Ideas of Utility; 1764.

[25] Senator Daniel Webster, remarks in the Senate, June 3, 1834. The Writings and Speeches of Daniel Webster, vol. 7, p. 47 (1903).

[26] 1 Schwartz, The Bill of Rights: A Documentary History, 319, 324 (1971).

[27] George Mason, from debates during the Constitutional convention, quoted in 3 J. Elliot, Debates in the Several State Conventions 45, 2d Ed. Philadelphia, 1836.

[28] Patrick Henry, 3 J. Elliot, Debates in the Several State Conventions 45, 2d Ed. Philadelphia, 1836.

[29] Id.

[30] Tench Coxe, Federal Gazette, June 18, 1789.

[31] Mahatma Gandhi, Autobiography. Translated from the Gujarati by Mahadev Desai. Public Affairs Press, Washington, D.C. 1948.

[32] Elbridge Gerry, of Massachusetts, Debate, U.S. House of Representatives, August 17, 1789.

[33] Patrick Henry, from debates during the Constitutional convention, quoted in Elliot's Debates, 1836 (later quoted with approval by George Washington).

[34] Patrick Henry, "The War Inevitable" speech to the Virginia assembly, March, 1775.

[35] Thomas Jefferson, quoting from On Crimes and Punishment (1764), by Enlightenment philosopher Cesare Beccaria. Jefferson translated Beccaria's work and copied into his Com
monplace Book
of great quotations.

[36] USDOS: Country Reports on Human Rights Practices 2004: Burma February 28, 2005.

[37] USCIRF: Annual Report on Religious Freedom: Burma (May 2004), at pg. 27.

[38] USDOS: Country Reports on Human Rights Practices 2004: Burma February 28, 2005.

[39] Thomas Jefferson: Letter to William S. Smith, Paris, Nov. 13, 1787.

[40] Noah Webster, An Examination of the Leading Principles of the Federal Constitution, October 17, 1787.

[41] Alexander Hamilton, The Federalist, No. 29.

[42] Thomas Paine, Thoughts On Defensive War, 1775.

[43] John Adams, A Defense of the Constitutions of the Government of the United States of America, 1788.

[44] Joseph Story, Commentaries on the Constitution 3:§§ 1890—91.

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[45] Joseph Story, A Familiar Exposition of the Constitution of the United States, § 450, at 264 (1840).

[46] Alabama: That the great, general and essential principles of liberty and free government may be recognized and established, we declare.... That every citizen has a right to bear arms in defense of himself and the state. (Art. I, § 26); Alaska : A

well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. (Art. I, § 19);

Arizona

: The right of the individual citizen to bear arms in defense of himself or the State shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed body of men. (Art. II, § 26);

Arkansas

: The citizens of this State shall have the right to keep and bear arms for their common defense. (Art. II, § 5);

Colorado

: The right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called in question; but nothing herein contained shall be construed to justify the practice of carrying concealed weapons. (Art. II, § 13);

Connecticut

: Every citizen has a right to bear arms in defense of himself and the state. (Art. I, § 15);

Delaware

: A person has the right to keep and bear arms for the defense of self, family, home and State, and for hunting and recreational use. (Art. I, § 20)

Florida

: The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law. (Art. I, § 8, [a]);

Georgia

: The right of the people to keep and bear arms shall not be infringed, but the General Assembly shall have the power to prescribe the manner in which arms may be borne. (1982 Constitution, Art. I, § 1, para. 8);

Hawaii

: A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. (Art. I, § 15);

Idaho

: The people have the right to keep and bear arms, which right shall not be abridged; but this provision shall not prevent the passage of laws to govern the carrying of weapons concealed on the person nor prevent passage of legislation providing minimum sentences for crimes committed while in possession of a firearm, nor prevent passage of legislation providing penalties for the possession of firearms by a convicted felon, nor prevent the passage of legislation punishing the use of a firearm.

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No law shall impose licensure, registration or special taxation on the ownership or possession of firearms or ammunition. Nor shall any law permit the confiscation of firearms, except those actually used in the commission of a felony. (Art. I, § 11)

Illinois

: Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed. (Art. I, § 22);

Indiana

: The people shall have a right to bear arms, for the defense of themselves and the State. (Art. I, § 32);

Kansas

: The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be tolerated, and the military shall be in strict subordination to the civil power. (Bill of Rights, § 4);

Kentucky

: All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned:... Seventh: The right to bear arms in defense of themselves and of the state, subject to the power of the general assembly to enact laws to prevent persons from carrying concealed weapons. (Bill of Rights, § 1, para. 7);

Louisiana

: The right of each citizen to keep and bear arms shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of weapons concealed on the person. (Art. I, § 11);

Maine

: Every person has a right to keep and bear arms and this right shall never be questioned. (Art. I, § 16);

Massachusetts

: The people have a right to keep and bear arms for the common defence. And as, in time of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it. (Part I, Art. XVII);

Michigan

: Every person has a right to keep or bear arms for the defense of himself and the State. (Art. I, § 6);

Mississippi

: The right of every citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but the legislature may regulate or forbid carrying concealed weapons. (Art. III, § 12);

Missouri

: That the right of every citizen to keep and bear arms in defense of his home, person, and property, or when lawfully summoned in aid of the civil power, shall not be questioned; but this shall not justify the wearing of concealed weapons. (Art. I, § 23);

Montana

: The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question; but nothing herein contained shall be held to permit the carrying of

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concealed weapons. (Art. II, § 12) "Militia forces shall consist of all able-bodied citizens of the state except those excepted by law. (Art. VI, § 14);

Nebraska

: All persons are by nature free and independent, and have certain inherent and inalienable rights; among these are life, liberty, the pursuit of happiness, and the right to keep and bear arms for security or defense of self, family, home and others, and for lawful common defense, hunting, recreational use and all other lawful purposes, and such rights shall not be denied or infringed by the state or any subdivision thereof. (Art. I, § 1)

Nevada

: Every citizen has the right to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes. (Art. I, § 11, [1]);

New Hampshire

: All persons have the right to keep and bear arms in defense of themselves, their families, their property and the state. (Part I, Art. 2a) No person, who is conscientiously scrupulous about the lawfulness of bearing arms, shall be compelled thereto. (Part I, Art. 13);

New Mexico

: No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons. No municipality or county shall regulate in any way, an incident of the right to keep and bear arms. (Art. II, § 6);

North Carolina

: A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice. (Art. I, § 30);

North Dakota

: All individuals are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; pursuing and obtaining safety and happiness; and to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreational and other lawful purposes, which shall not be infringed. (Art. I, § 1);

Ohio

: The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power. (Art. I, §4);

Oklahoma

: The right of a citizen to keep and bear arms in defense of his home, person or property, or in aid of the civil power, when thereunto legally summoned, shall never be prohibited; but nothing herein contained shall prevent the Legislature from regulating the carrying of weapons. (Art. II, § 26);

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Oregon

: The people shall have the right to bear arms for the defence of themselves, and the State, but the Military shall be kept in strict subordination to the civil power. (Art. I, § 27);

Pennsylvania

: The right of the citizens to bear arms in defence of themselves and the State shall not be questioned. (Art. I, § 21);

Rhode Island

: The right of the people to keep and bear arms shall not be infringed. (Art. I, § 22);

South Carolina

: A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. As, in times of peace, armies are dangerous to liberty, they shall not be maintained without the consent of the General Assembly. The military power of the State shall always be held in subordination to the civil authority and be governed by it. No soldier shall in time of peace be quartered in any house without the consent of the owner nor in time of war but in the manner prescribed by law. (Art. I, § 20);

South Dakota

: The right of the citizens to bear arms in defense of themselves and the state shall not be denied. (Art. VI, §24)

Tennessee

: That the citizens of this State have a right to keep and bear arms for their common defense; but the Legislature shall have power, by law, to regulate the wearing of arms with a view to prevent crime. (Art. I, § 26);

Texas

: Every citizen shall have the right to keep and bear arms in lawful defense of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime. (Art. I, § 23) Note: The Texas Declaration of Independence stated that "[The Mexican government] has demanded us to deliver up our arms, which are essential to our defense -- the rightful property of freemen -- and formidable only to tyrannical governments";

Utah

: The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the legislature from defining the lawful use of arms. (Art. I, § 6);

Vermont

: That the people have a right to bear arms for the defence of themselves and the State -- and as standing armies in time of peace are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to and governed by the civil power. (Chapter I, Art. 16);

Virginia:

That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural and safe defense of a free state, therefore, the right of the people to keep and bear arms shall not be infringed; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be

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under strict subordination to, and governed by, the civil power. (Art. I, § 13);

Washington

: The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed body of men. (Art. I, § 24);

West Virginia:

A person has the right to keep and bear arms for the defense of self, family, home, and state, and for lawful hunting and recreational use. (Art. 3, § 22);

Wisconsin

: The people have the right to keep and bear arms for security, defense, hunting, recreation, or any other lawful purpose. (Art. 1, § 25) Note: This provision was approved by Wisconsin voters in Nov. 1998 by a 3:1 margin.;

Wyoming

: The right of the citizens to bear arms in defense of themselves and of the state shall not be denied. (Art. I, § 24).

Notes

: California, Iowa, Maryland, Minnesota, New Jersey, and New York do not have "right to keep and bear arms" amendments in their state constitutions. Iowa's constitution (Art. I, § 1) states: All men are, by nature, free and equal, and have certain inalienable rights -- among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness. New Jersey's (Art. I, § 1) states: All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety, and happiness.

Reference

: These summaries have been taken from NRA-ILA fact sheet at

<http://www.nraila.org/Issues/FactSheets/Read.aspx?ID=63>

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[47] No United States national interest is served by such a bar. No threat to U.S. foreign policy is served by such a bar. The recent re-negotiation between members of the U.S. Senate and members the U.S. House of Representatives of the final text of the REAL ID Act as well as the final committee report language reveal the intent of Congress to preserve asylum in the United States as a viable benefit to legitimate refugee seekers such as the Respondent and balance this protection with the concern to prevent terrorists from gaining entrance to our nation.

[48] White House Press Release, "DHS Grants Asylum to Iraqi Who Aided Jessica Lynch Rescue," April 29, 2003. Available at <http://www.whitehouse.gov/news/releases/2003/04/20030429-12.html>

[49] DHS News Release, "'Asylum Granted to Iraqi Who Aided Jessica Lynch Rescue,'" April 29, 2003. Available at <http://www.dhs.gov/dhspublic/display?content=580> .

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