

**SENATE JUDICIARY COMMITTEE**  
**Senator Hannah-Beth Jackson, Chair**  
**2019-2020 Regular Session**

AB 3133 (Aguiar-Curry)  
Version: May 4, 2020  
Hearing Date: July 30, 2020  
Fiscal: No  
Urgency: No  
AWM

**SUBJECT**

Refugees: resettlement

**DIGEST**

This bill prohibits local governments from withholding consent to refugee resettlement within their jurisdictions where such withholding will have the purpose or effect of discriminating on the basis of a protected characteristic.

**EXECUTIVE SUMMARY**

Since 1980, the United States has been committed to welcoming refugees from other countries and resettling them here. Refugee resettlement has historically been governed by federal law, with states and localities using federal funds to resettle refugees in new communities.

In 2019, President Donald Trump issued Executive Order 13888, which would prohibit the federal government from resettling refugees in an area unless the state and local governments consented to the resettlement. A federal court promptly enjoined the enforcement of Executive Order 13888 as contrary to federal law and the result of improper procedures; however, the order granting the injunction has been appealed, so the law's long-term status is unclear.

This bill addresses concerns about refugee resettlement within California if Executive Order 13888 is allowed to take effect. Specifically, AB 3133 would prohibit local governments from refusing consent to refugee resettlement in a way that has the purpose or effect of discriminating on the basis of protected characteristics such as race, religion, or ethnicity.

This bill is sponsored by the International Rescue Committee (IRC) and supported by other civil rights advocacy groups. There is no known opposition.

## PROPOSED CHANGES TO THE LAW

Existing federal law:

- 1) Defines a refugee as any person who is unable or unwilling to return to their country of nationality because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. (8 U.S.C. § 1101(a)(42).)
- 2) Grants the President of the United States the authority to set the number of refugees who may be admitted to the United States each year, based on the President's determination of what is justified in light of humanitarian concerns and the national interest, after "appropriate consultation." (8 U.S.C. § 1157(a)(2).)
  - a) Defines "appropriate consultation" to mean "discussions in person by designated Cabinet-level representatives of the President with members of the Committees on the Judiciary of the Senate and of the House of Representatives to review the refugee situation or emergency refugee situation, to project the extent of possible participation of the United States therein, to discuss the reasons for believing that the proposed admission of refugees is justified by humanitarian concerns or grave humanitarian concerns or is otherwise in the national interest." (8 U.S.C. § 1157(e).)
- 3) Establishes the Office of Refugee Resettlement, within the Department of Health and Human Services, to fund and administer, in consultation with the Secretary of State, refugee resettlement and assistance programs. (8 U.S.C. § 1521.)
- 4) Requires the Director of the Office of Refugee Resettlement to, in consultation with representatives of voluntary agencies and State and local governments, develop and implement policies and strategies for the placement and settlement of refugees within the United States, including, to the extent possible based on available appropriations:
  - a) making available sufficient resources for employment training and placement in order to achieve economic self-sufficiency among refugees as quickly as possible;
  - b) providing refugees with the opportunity to acquire sufficient English language training to enable them to become effectively resettled as quickly as possible;
  - c) [e]nsuring that cash assistance is made available to refugees in such a manner as not to discourage their economic self-sufficiency; and
  - d) [e]nsuring that women have the same opportunities as men to participate in training and instruction. (8 U.S.C. § 1522.)
- 5) Depending on the outcome of pending legislation, could prohibit the resettlement of refugees in localities unless both the state and local governments have consented to receive refugees under the State Department's Reception and Placement Program. President Donald Trump issued Executive Order 13888 imposing the consent

requirement on September 26, 2019. (Exec. Order No. 13888, 84 Fed. Reg. 52,355 (Sept. 26, 2019).) However, a federal court enjoined enforcement of Executive Order 13888 on January 15, 2020, on the basis that the plaintiffs had preliminarily demonstrated that, as of the date of the promulgation of the order, the relevant federal executives “failed to adequately consider a number of factors in promulgating the order,” including “to what extent might State and Local Governments’ decisions to exclude refugees be based on bias or prohibited discriminatory considerations.” (*HIAS, Inc. v. Trump* (D.Md. 2020) 415 F.Supp.3d 669, 672, 683-685 (*HIAS*)). The federal government appealed the order, and the case is pending before the United States Court of Appeals for the Fourth Circuit. (See *Hias, Inc. v. Trump*, 4th Cir., Case No. 20-1160.) If the Fourth Circuit reverses the order granting the injunction, the federal government will not be able to resettle refugees without permission from the state and local governments in the area in which resettlement is sought.

Existing state law:

- 6) Establishes a Statewide Director of Immigrant Integration, who serves as the statewide lead for the planning and coordination of immigrant services and policies in California. (Gov. Code, § 65050.)
- 7) Requires the California Department of Social Services (CDSS) to allocate federal funds for refugee social services programs to eligible counties and qualifies nonprofit organizations based on the number of refugees receiving aid in each eligible county, and to partner with qualified nonprofit organizations to administer federally funded refugee cash assistance within a county. (Welf. & Inst. Code, §§ 13276, 13284.)
- 8) Prohibits any state or state-funded program or activity from unlawfully subjecting to discrimination, or unlawfully denying full and equal access to the benefits to, any person in the State of California on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation. (Gov. Code, § 11135(a).)

This bill:

- 1) Makes findings and declarations relating to California’s role in, and benefits reaped from, refugee resettlement, including:
  - a) The United States Refugee Resettlement program has saved the lives of over three million refugees who were fleeing violence, conflict, or instability, including Albert Einstein, Andy Grove, and Sergey Brin;
  - b) California has received newly arrived refugees, who have successfully made California their home;

- c) Since 2018, newly arrived refugees become affiliated with and receive direct support services from resettlement agencies located throughout California;
  - d) California has benefitted, and continues to benefit, from the significant economic and cultural contributions of refugees, who hold \$17 billion in spending power in the state;
  - e) Many of California's recently resettled refugees are holders of special immigrant visas, given to individuals who worked side by side with members of the United States Armed Forces during Operation Enduring Freedom and Operation Iraqi Freedom;
  - f) Federal Executive Order 13888 was issued on September 26, 2019, and generally prohibits a refugee from being resettled in a state or locality if the state or locality has not consented to receiving refugees.
  - g) On December 20, 2019, Governor Gavin Newsom sent a letter to Secretary of State Mike Pompeo, consenting to receive refugees in the State of California.
- 2) Prohibits the denial of resettlement of refugees anywhere in California based on any criterion, method of administration, or practice that has the purpose or effect of discriminating on the basis of race, religion, ethnicity, sexual orientation, or any other characteristic identified in Government Code section 11135 (race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation).

### COMMENTS

1. Author's comment

According to the author:

The Trump Administration put a travel ban in place, has continually reduced total refugee arrivals to their lowest levels ever, and separated families at the border while criminalizing desperate people seeking refuge. AB 3133 codifies California's commitment to resettling refugees without discrimination as part of the United States Reception and Placement program, and recognizes the importance of the refugee resettlement program as a humanitarian, national security, and foreign policy imperative of the United States.

2. California's status as a leader in refugee resettlement

The current regime for resettling refugees in the United States dates back to 1980. Congress authorized the president, in consultation with Cabinet-level executives and members of Congress, to each year set the number of refugees the United States would

accept in the following year.<sup>1</sup> The federal Office of Refugee Resettlement is then tasked with working with funding and administering refugee resettlement, in consultation with state and local governments, and with implementing programs to place refugees in homes and jobs and provide other resettlement assistance.<sup>2</sup>

It is worth noting that the process of being admitted as a refugee in the United States is an arduous one. The Department of State funds and manages seven Resettlement Support Centers (RSC) around the world, which perform the initial case process for potential refugees.<sup>3</sup> To even be considered by an RSC, a refugee generally must have a referral from a U.S. embassy or a specially trained non-governmental organization; in limited circumstances, a refugee may apply if they are a close relative of an asylee or refugee already in the United States or if they belong to specific groups identified by statute or the Department of State as eligible for direct access.<sup>4</sup> The RSC collects information about the refugee, which is presented to United States Citizenship and Immigration Services (USCIS) for adjudication as to whether the refugee is approved for resettlement.<sup>5</sup> If USCIS grants conditional approval, the RSC obtains “sponsorship assurance” for the refugee from a U.S.-based resettlement agency and the refugee undergoes a health screening.<sup>6</sup> Assuming no issues arise, the RSC transfers the case to the International Organization for Migration so that the refugee can obtain transportation to the United States.<sup>7</sup>

Once a refugee arrives in the United States, they are not abandoned. To the contrary, the federal Office of Refugee Resettlement provides funding for continuing social services that help refugees become self-sufficient as quickly as possible.<sup>8</sup> Much of this work is done in partnership with nonprofit refugee resettlement agencies such as bill sponsor IRC. As refugee resettlement agency IRC explains in support of the bill, these resettlement agencies

provide intensive case management services that include but are not limited to: securing housing and identifying employment activities; enrolling clients in English courses; and registering children in school... Refugees are eager to rebuild their lives in the U.S. and their resilience is a testament to the warm welcome extended by the state of California.

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<sup>1</sup> 8 U.S.C. § 1157.

<sup>2</sup> 8 U.S.C. § 1522.

<sup>3</sup> Dept. of State, *U.S. Refugee Admissions Program: Overseas Application and Case Processing*, <https://www.state.gov/refugee-admissions/application-and-case-processing/> [last visited June 30, 2020].

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> 8 U.S.C. §1522.

In the 1980s, the United States accepted and resettled nearly one million refugees, with an annual low of 61,218 and an annual high of 207,116.<sup>9</sup> In the 1990s, the United States accepted and resettled just over one million refugees, with an annual low of 70,488 and an annual high of 132,531.<sup>10</sup> The numbers declined in the 2000s, with the United States resettling just over half a million refugees; the annual numbers declined precipitously after September 11. And in the 2010s, the United States accepted and resettled close to 600,000 refugees – though, as explained below, this number represents a precipitous drop in refugees accepted by the Trump Administration.<sup>11</sup>

California is, and has been, a leader in accepting refugees. Historically, California has received the largest number of new refugee arrivals each year.<sup>12</sup> California has maintained that leadership in recent years, as sponsor International Refugee Committee explains:

For the last three years, California has been a leader in supporting recently resettled refugees into our state. We have established in-state tuition rates for refugees at California State Community Colleges; provided resources for schools with high populations of refugee students; and passed a resolution calling on the Administration to raise the number of refugees admitted to the United States.<sup>13</sup>

In particular, California is, by far, the leader in accepting refugees resettled under the special immigrant visa program for Afghan and Iraqi citizens who worked with the United States government in their home countries.<sup>14</sup> Many of California's accepted

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<sup>9</sup> Refugee Processing Center, *Refugee Admissions By Region, Fiscal Year 1975 through May 31, 2020*, available at

<https://www.wrapsnet.org/documents/Refugee%20Admissions%20by%20Region%20since%201975%20as%20of%206-5-20.pdf> [last visited June 30, 2020].

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> Cal. Dept. of Public Health, Office of Refugee Health, Background, <https://www.cdph.ca.gov/Programs/CID/ORH/Pages/Program%20Overview.aspx> [last visited June 30, 2020]; <sup>12</sup> Krogstad, *Key facts about refugees to the U.S.*, Pew Research Center, Oct. 7, 2019, available at <https://www.pewresearch.org/fact-tank/2019/10/07/key-facts-about-refugees-to-the-u-s/> [last visited June 30, 2020] (California has accepted the most refugees dating back to 2002).

<sup>13</sup> See also Galvin, *Where do refugees resettle in America?*, U.S. News & World Report, Jan. 10, 2018, available at <https://www.usnews.com/news/best-states/slideshows/10-states-that-took-the-most-refugees-in-2017?slide=11#:~:text=There%20were%201%2C903%20refugees%20resettled%20in%20New%20York,29%20percent%20came%20from%20either%20Myanmar%20or%20Congo.> [last visited June 30, 2020] (California accepted the most refugees of any state in the United States in 2017).

<sup>14</sup> See Pew Research Center, "California and Texas are top states for resettlement among special immigrant visa holders," Dec. 8, 2017, [https://www.pewresearch.org/fact-tank/2017/12/11/afghans-who-worked-for-u-s-government-make-up-growing-share-of-special-immigrant-visa-recipients/ft\\_17-12-07\\_specialvisas\\_state/](https://www.pewresearch.org/fact-tank/2017/12/11/afghans-who-worked-for-u-s-government-make-up-growing-share-of-special-immigrant-visa-recipients/ft_17-12-07_specialvisas_state/). Texas, which had previously accepted the most Afghan and Iraqi citizens who assisted U.S. troops under the special immigrant visa program, announced it would stop receiving refugees entirely under Executive Order 13888/ (See Romo, *Gov. Greg Abbott Says New Refugees Won't Be Allowed To Settle In Texas*, NPR, Jan. 10, 2020, available at

refugees “pay it forward” in the form of public service; for example, supporter California Public Defenders Association notes that, for many of the individuals working as lawyers and staff in their offices, “the memories and stories of escaping persecution in other countries led to their commitment to defend the constitutional rights of the indigent in this country.”

### 3. The current presidential administration’s unprecedented limitations on refugee resettlement

In 2016, President Barack Obama set the 2017 cap on refugees at 110,000.<sup>15</sup> After taking office, President Donald Trump issued an executive order reducing the 2017 cap to 50,000 and prohibiting the resettlement of any refugees from Syria.<sup>16</sup> The United States ended up resettling just over 53,000 refugees that year.<sup>17</sup> President Trump reduced the cap again for 2018, setting it at 45,000 refugees;<sup>18</sup> the United States came in far short of the cap, however, taking in fewer than 23,000 refugees.<sup>19</sup> President Trump reduced the cap yet again in 2019, to 30,000 refugees, and admitted exactly that many.<sup>20</sup>

For 2020, President Trump set the refugee cap at 18,000 refugees.<sup>21</sup> This is the lowest number of refugees accepted by the United States since the program began in 1980.<sup>22</sup> The Trump Administration’s break with the United States’ tradition of accepting

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<https://www.npr.org/2020/01/10/795414116/gov-greg-abbott-says-new-refugees-wont-be-allowed-to-settle-in-texas> [last visited June 30, 2020].)

<sup>15</sup> Presidential Determination on Refugee Admissions for Fiscal Year 2017, 81 Fed. Reg. 70,315 (Sept. 28, 2016).

<sup>16</sup> Exec. Order No. 13769, 82 Fed. Reg. 8,977, § 5(c)-(d) (Jan. 27, 2017). Executive Order 13769 – infamous for imposing a “travel ban” on all immigration from Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen – was partially blocked by various courts and superseded a few months later by Executive Order 13780, which maintained the 50,000-refugee cap. (Exec. Order No. 13780, 82 Fed. Reg. 13,209, § 6(b) (Mar. 6, 2017).) Executive Order 13780 eliminated the refugee-specific ban on Syrian immigration but retained the wholesale ban on immigration from Syria. (*Id.*, § 1(f).)

<sup>17</sup> Office of Immigration Statistics, Office of Strategy, Policy, & Plans, *Annual Flow Report, Refugees and Asylees: 2017*, March 2019, at 2, available at

[https://www.dhs.gov/sites/default/files/publications/Refugees\\_Asylees\\_2017.pdf](https://www.dhs.gov/sites/default/files/publications/Refugees_Asylees_2017.pdf) [last visited June 30, 2020].

<sup>18</sup> Presidential Determination on Refugee Admissions for Fiscal Year 2018, 82 Fed. Reg. 49,083 (Sept. 29, 2017).

<sup>19</sup> Krogstad, *Key facts about refugees to the U.S.*, Pew Research Center, Oct. 7, 2019, available at <https://www.pewresearch.org/fact-tank/2019/10/07/key-facts-about-refugees-to-the-u-s/> [last visited June 30, 2020].

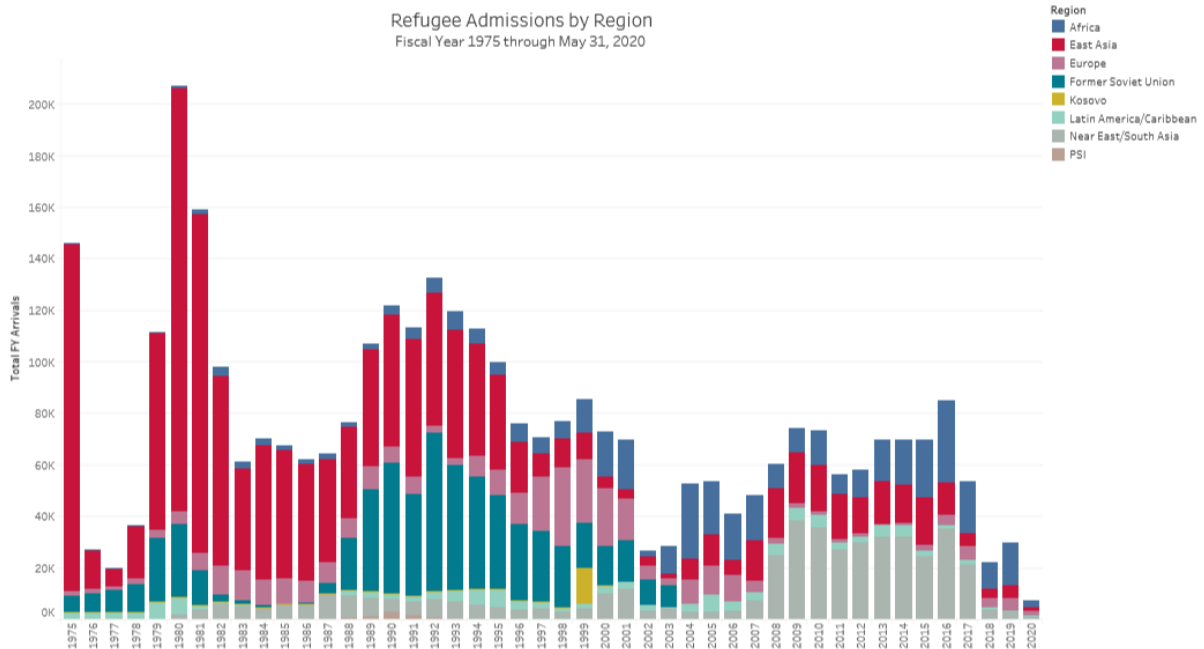
<sup>20</sup> Presidential Determination on Refugee Admissions for Fiscal Year 2019, 83 Fed. Reg. 55,091 (Oct. 4, 2018); Refugee Processing Center, *Refugee Admissions Report May 31, 2020*, available at <https://www.wrapsnet.org/admissions-and-arrivals/> [last visited June 30, 2020].

<sup>21</sup> Presidential Determination on Refugee Admissions for Fiscal Year 2020, 84 Fed. Reg. 65,903 (Nov. 1, 2019).

<sup>22</sup> Refugee Processing Center, Department of State, *Refugee Admissions By Region, Fiscal Year 1975 through May 31, 2020*, available at

<https://www.wrapsnet.org/documents/Refugee%20Admissions%20by%20Region%20since%201975%20as%20of%206-5-20.pdf> [last visited June 30, 2020].

refugees is stark when viewed graphically, as presented by the Refugee Processing Center, which is the data processing arm of the Department of State's Bureau of Population, Refugees, and Migration:<sup>23</sup>



At the end of 2019, President Trump further impeded refugee resettlement in the United States with the issuance of Executive Order 13888.<sup>24</sup> The order stated that, while it was already federal policy to consult with state and local governments regarding refugee resettlement, some states and localities believed the existing consultation was “insufficient.”<sup>25</sup> On that basis, the order directs the federal government to resettle refugees only in jurisdictions where both the state and local governments have consented to receive refugees, and directs the Secretaries of State and Health and Human Services to develop a process to obtain written consent to refugee resettlement from state and local governments.<sup>26</sup>

Although Executive Order 13888 refers vaguely to states and localities being dissatisfied with the existing level of consultation with the federal government, it is unclear what, if any, particular events or discussions spurred the president to issue the order. In 2016, a handful of states enacted programs attempting specifically to block, or receive more information, regarding specifically Syrian refugees; the federal courts unanimously recognized that federal law does not give state and local governments the authority to

<sup>23</sup> *Ibid.*

<sup>24</sup> Exec. Order No. 13888, 84 Fed. Reg. 52,355 (Sept. 26, 2019).

<sup>25</sup> *Id.*, § 1.

<sup>26</sup> *Id.*, §§ 1, 2.



block federal resettlement decisions.<sup>27</sup> But there is little evidence that, in the wake of President Trump's executive order banning all immigration from Syria,<sup>28</sup> states and localities had any specific or good faith objections to the implementation of the federal refugee resettlement program.

Three resettlement agencies – HIAS, Inc., Church World Service, Inc., and Lutheran Refugee Service, Inc. – sued President Trump and three cabinet secretaries in federal court, seeking preliminary and permanent injunctive relief staying enforcement of Executive Order 13888 on the basis that the order's consent scheme was not only illegal, but was "little more than a politically motivated decision that will engender hate and divisiveness throughout the country."<sup>29</sup> On January 15, 2020, the court granted the organizations' request for a preliminary injunction.<sup>30</sup> Specifically, the court found that the federal enacting statutes did not permit any delegation of the president's refugee-related authority, that the order would result in a state-by-state, locality-by-locality approach counter to the Refugee Act's purpose, i.e., "to provide comprehensive and uniform provisions for the effective resettlement and absorption of those refugees who are admitted," and that the order flew in the face of the express legislative intent against giving "States and localities veto power over refugee placement decisions."<sup>31</sup> The court further noted that, because the Constitution vests sole authority for immigration in the federal government, the order making "the resettlement of refugees wholly contingent upon the consents of State or Local Governments...raises four-square the serious matter of federal pre-emption under the Constitution."<sup>32</sup>

With respect to the cabinet secretary defendants, the court agreed that the plaintiffs raised "several valid concerns under the Administrative Procedure Act" relevant to the cabinet secretary defendants, including that the order appeared to be " 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance of law' [citation], among other things because it 'entirely fails to consider an important aspect of the problem.' "<sup>33</sup> The matters Secretaries Pompeo, Azar, and Wolf appeared to have failed to consider included:

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<sup>27</sup> See *Exodus Refugee Immigration, Inc. v. Pence* (7th Cir. 2016) 838 F.3d 902, 903-905 (affirming preliminary injunction of then-Governor of Indiana Mike Pence's order forbidding reimbursement of resettlement agencies providing assistance to resettled Syrian refugees, noting that no evidence supported Governor Pence's belief that Syrian refugees were sent by ISIS to engage in terrorism, and calling Governor Pence's belief "nightmare speculation"); *Alabama v. United States* (N.D.Ala. 2016) 198 F.Supp.3d 1263, 1266, 1267 (dismissing, for failure to state a claim, Alabama's suit against various federal agencies placing Syrian refugees in Alabama for failure to state a claim); *Texas HHS Comm'n v. United States* (N.D.Tex. 2016) 193 F.Supp.3d 733, 736-737 (dismissing, for failure to state a claim, Texas's suit against various federal agencies and nonprofit organizations for refusing to provide additional information regarding Syrian refugees).

<sup>28</sup> Exec. Order No. 13780, 82 Fed. Reg. 13,209, § 6(b) (Mar. 6, 2017).

<sup>29</sup> *HIAS, supra*, 415 F.Supp.3d at pp. 671, 677, 679.

<sup>30</sup> *Id.* at p. 671.

<sup>31</sup> *Id.* at p. 680-681 (emphases in original).

<sup>32</sup> *Id.* at p. 682.

<sup>33</sup> *Id.* at pp. 682-683.

(1) precisely why should the prior statutory policy of consultation involving Resettlement Agencies should [*sic*] be modified; (2) how would the matter of “secondary migration”, [citation] be handled, i.e. what would happen if a refugee admitted to one jurisdiction were to re-migrate to a nonconsenting State or locality...; (3) to what extent might State and Local Governments' decisions to exclude refugees be based on bias or other prohibited discriminatory considerations, particularly if the State or Local Government declines to give any reason for not consenting – which the Order permits them to do; (4) how could the Resettlement Agencies be expected to deal with the complexity of identifying and gaining the consent of multiple State and Local Governments, given their highly diverse nature...; (5) what account was taken or should have been taken with respect to the reliance of Resettlement Agencies on the previous policy of resettlement over many years, including their well-developed relationships with local organizations, as well as their establishment and maintenance of local resettlement sites and their undertakings with local suppliers and vendors; (6) what consideration was given to foster families that have undergone extensive preparations to take in refugee children in accordance with the Unaccompanied Refugee Minors (URM) Program, [citation] and (7) what will be the effect of the Order on investments, including infrastructure improvements, that some States and local communities have made over the years in reliance on the presence of refugees, if they are no longer permitted to resettle in those jurisdictions?<sup>34</sup>

In the same vein, the court was persuaded that the plaintiffs would be able to demonstrate, at least as to the cabinet secretaries, “that in one or more respects, the Order’s grant of veto power is ... inherently susceptible to hidden bias.”<sup>35</sup> The defendants have appealed the order granting the injunction to the United States Court of Appeal for the Fourth Circuit, where the case is currently pending.<sup>36</sup>

The federal court’s conclusion that the *HIAS* plaintiffs made a *prima facie* showing that Executive Order 13888 was not a rational response to any actual problems with the refugee resettlement program is bolstered by the response of states and localities prior to the entry of the injunction. Before the executive order was enjoined, California and 36 other states had already consented to accept refugees, including 13 states with

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<sup>34</sup> *Id.* at pp. 683-684.

<sup>35</sup> *Id.* at p. 684.

<sup>36</sup> See *Hias, Inc. v. Trump*, 4th Cir., Case No. 20-1160. California, along with 18 other states, filed an amici curiae brief in support of affirming the injunction. (See Amicus Brief of the States of California, Illinois, Maryland, Colorado, Connecticut, Delaware, Maine, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington in Support of Affirmance of the Preliminary Injunction Issued in Favor of Appellees, *Hias, Inc. v. Trump*, 4th Cir., Case No. 20-1160, Dkt. No. 29-1 (June 1, 2020), available at <https://oag.ca.gov/system/files/attachments/press-docs/%5B29-1%5D%20Filed%20Amicus%20Brief.pdf> (last visited June 29, 2020).)

Republican governors; only one state—Texas—had announced its intention to refuse consent.<sup>37</sup> The Bureau of Population, Refugees, and Migration stopped accepting consents in light of the injunction,<sup>38</sup> so it is unknown how many states and localities would provide consent.

#### 4. This bill seeks to avoid discrimination in the use of localities' veto power

Although the enforcement of Executive Order 13888 is currently enjoined, the administration's appeal leaves uncertain the question of whether localities will have to consent to refugee resettlement. As noted above, California has already provided the necessary consent for the resettlement of refugees.<sup>39</sup> Executive Order 13888 would, however, prevent resettlement in California except in localities that had *also* provided written consent;<sup>40</sup> prior to the administration's cessation of acceptance of consents in light of the injunction, only locality—the County of Los Angeles—provided that consent.<sup>41</sup> It thus remains an open question whether certain California localities would have accepted Executive Order 13888's invitation to turn their backs on California's, and the United States', roles as leaders in refugee resettlement.

AB 3133 seeks to address one of the most harmful outcomes contemplated by Executive Order 13888 if the injunction is lifted on appeal, i.e., that localities would refuse the humanitarian mission of refugee resettlement based on discriminatory motives against protected classes. As the district court noted in enjoining the order, Executive Order does not require state and local governments to deny consent without explanation, giving rise to the possibility that "State and Local Governments' decisions to exclude refugees [could] be based on bias or other prohibited discriminatory considerations."<sup>42</sup> This bill would, accordingly, close the door that Executive Order 13888 left open, and prohibit localities from refusing consent to resettle refugees based on practices that have the purpose or effect of discriminating based on race, religion, ethnicity, and other protected characteristics. In the words of the Anti-Defamation League, which supports the bill, "AB 3133 puts into California law affirmative language stating that no matter

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<sup>37</sup> Bureau of Population, Refugees, and Migration, *State and Local Consents Under Executive Order 13888*, <https://www.state.gov/state-and-local-consents-under-executive-order-13888/> [last visited June 30, 2020]; Associated Press, *Republican governors wrestle with whether they will accept refugees*, Dec. 23, 2019, <https://www.cbsnews.com/news/republican-governors-wrestle-whether-they-will-accept-refugees/> [last visited June 30, 2020]; Romo, *Gov. Greg Abbott Says New Refugees Won't Be Allowed To Settle In Texas*, NPR, Jan. 10, 2020, available at <https://www.npr.org/2020/01/10/795414116/gov-greg-abbott-says-new-refugees-wont-be-allowed-to-settle-in-texas> [last visited June 30, 2020].

<sup>38</sup> Bureau of Population, Refugees, and Migration, *State and Local Consents Under Executive Order 13888*, <https://www.state.gov/state-and-local-consents-under-executive-order-13888/> [last visited June 30, 2020].

<sup>39</sup> Bureau of Population, Refugees, and Migration, *State and Local Consents Under Executive Order 13888*, <https://www.state.gov/state-and-local-consents-under-executive-order-13888/> [last visited July 1, 2020].

<sup>40</sup> Exec. Order No. 13888, 84 Fed. Reg. 52,355 (Sept. 26, 2019).

<sup>41</sup> Bureau of Population, Refugees, and Migration, *State and Local Consents Under Executive Order 13888*, <https://www.state.gov/state-and-local-consents-under-executive-order-13888/> [last visited July 1, 2020].

<sup>42</sup> *HIAS, supra*, 415 F.Supp.3d at p. 684.

what occurs federally, refugees will remain welcome and accepted without discrimination here.”

AB 3133 admittedly could be difficult to enforce as a practical matter. The bill would create a right of action against a county that refuses to provide consent for refugee resettlement based on practices that have the purpose or effect of discrimination; presumably a locality sued under the bill would offer a facially neutral reason for refusing consent, and the challenges of proving discriminatory motives in the face of facially neutral justifications are well known. But the fact that proving discrimination can be an uphill battle does not make discrimination any less abhorrent in the eyes of the State and the law. By providing a basis for challenging a local government’s refusal to consent to refugee resettlement, this bill provides recourse against localities who would close their doors to some of the world’s most vulnerable populations on the basis of discriminatory animus.

### **SUPPORT**

International Refugee Committee (sponsor)  
ACLU of California  
Anti-Defamation League  
Asian Americans Advancing Justice – California  
California Immigrant Policy Center  
California Public Defenders Association  
National Association of Social Workers – California  
Santa Barbara Women’s Political Committee

### **OPPOSITION**

None known

### **RELATED LEGISLATION**

#### **Pending Legislation:**

AB 3134 (Reyes, 2020) is a companion to AB 3133 and provides for eight months of state-funded refugee cash assistance to be paid after the federally funded eight months of refugee cash assistance has been exhausted. AB 3134 is pending before the Senate Human Services Committee.

AB 2973 (Santiago, 2020) establishes the Immigrant and Refugee Affairs Agency to assist immigrants and refugees. AB 2983 was held in the Assembly Appropriations Committee.

#### **Prior Legislation:**

SB 80 (Committee on Budget and Fiscal Review, Ch. 27, Stats. 2019) amended Chapter 5.5 (commencing with Section 13275) of Part 3 of Division 9 of the Welfare and Institutions Code, addressing the administration of refugee social services and cash assistance, to modify the procedures and requirements for administering those programs and funds to counties and allow nonprofit organizations to contract with the Office of Refugee Resettlement for those purposes.

AB 1113 (Chiu, 2019) would have established the Immigrant and Refugee Affairs Agency to assist immigrants and refugees. AB 1113 was held in the Assembly Appropriations Committee.

**PRIOR VOTES:**

Assembly Floor (Ayes 74, Noes 0)

Assembly Judiciary Committee (Ayes 10, Noes 0)

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