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## [H.R. 4038, American Security Against Foreign Enemies \(SAFE\) Act of 2015](#)

### FLOOR SITUATION

On Thursday, November 19, 2015, the House will consider [H.R. 4038](#), *the American Security Against Foreign Enemies (SAFE) Act of 2015*, under a [closed rule](#). H.R. 4038 was introduced on November 17, 2015 by Rep. Michael McCaul (R-TX) and was referred to the Committee on the Judiciary.

### SUMMARY

H.R. 4038 prohibits the admission to the United States of refugees from Iraq and Syria unless the Director of the Federal Bureau of Investigation (FBI) certifies to the Secretary of the Department of Homeland Security (DHS) and the Director of National Intelligence (DNI) that such an alien has received a background investigation sufficient to determine whether the alien is a threat to the security of the United States. The bill requires the DHS Secretary, FBI Director, and DNI to certify to Congress that each refugee is not a security threat prior to his or her admission to the United States.

The bill also requires the DHS Inspector General to conduct a risk-based review of all certifications for admission of Iraqi or Syrian refugees made by DHS, FBI, and DNI each year and provide an annual report to Congress detailing its findings. The bill further requires the DHS Secretary to provide a monthly report to Congress on the total number of applications for admission of Iraqi and Syrian refugees for which certifications were made and the total number for whom a certification was not made, including the concurrence or non-concurrence of each required official.

The bill defines covered alien as a refugee who is a national or resident of Iraq or Syria, has no nationality and whose last habitual residence was in Iraq or Syria, or who has been present in one of those countries at any time on or after March 1, 2011.

Click [here](#) for a summary of the bill.

## BACKGROUND

The ongoing civil conflict in Syria has displaced millions of Syrians and created urgent humanitarian needs among Syrian civilians. The United Nations Office for the Coordination of Humanitarian Assistance (UNOCHA) estimates that of an overall population of just fewer than 21.4 million, nearly 50 percent (9.3 million) are in need of humanitarian assistance, including 6.5 million displaced inside Syria. The number of Syrians that have been displaced as refugees, primarily to countries in the immediate surrounding region, including Iraq, is estimated to be 2.8 million.<sup>1</sup>

The United States has been the largest worldwide donor of humanitarian assistance to Syrian civilians. The United States has provided “more than \$4.5 billion in humanitarian assistance since the start of the crisis, more than any other donor.”<sup>2</sup> The U.S. provided about 27 percent of the funding for the humanitarian response in 2014, and approximately 23 percent of such funding the previous two years. This assistance included medical care and medical supplies (including immunization programs), food, water, shelter, and other non-food items such as blankets and clothing.<sup>3</sup>

The Administration has also admitted Syrian refugees, and those from surrounding countries, such as Iraq, in response to the migration crisis. In fiscal year 2014, there were 19,769 refugee arrivals from Iraq (28.3 percent of the annual total) and 105 from Syria (0.2 percent of the annual total).<sup>4</sup> Sixty-two percent of all arriving refugees were resettled in 12 states in fiscal year 2014. The majority were placed in Texas (10.3 percent), followed by California (8.7 percent), New York (5.8 percent), Michigan (5.7 percent), Florida (5 percent), and Arizona (4.2 percent).<sup>5</sup> The states of Ohio (4 percent), Pennsylvania (3.9 percent), Georgia (3.8 percent), Illinois (3.6 percent), Washington (3.5 percent), and North Carolina (3.4 percent) also were in the top twelve states where refugees were resettled.<sup>6</sup>

The Administration admitted 1,682 Syrian refugees during fiscal year 2015, and Secretary of State John Kerry has stated that the U.S. will admit “at least 10,000” during fiscal year 2016.<sup>7</sup> The Administration initially indicated to Congress that it would set an overall refugee ceiling of 75,000 for fiscal year 2016. However, on September 20, 2015, Secretary of State John Kerry [announced](#) that the refugee ceiling for fiscal year 2016 would instead be 85,000.<sup>8</sup> The refugee ceiling and regional allocations are set forth in an annual Presidential Determination on Refugee Admissions. The fiscal year 2015 worldwide refugee ceiling was 70,000 and the allocation for the Near East/South Asia region, which includes Syria, was 31,000.<sup>9</sup> The [fiscal year 2016 allocation](#) provides a worldwide ceiling of 85,000 refugees, which includes 34,000 from the Near East/South Asia region.<sup>10</sup>

The Immigration and Nationality Act (INA) defines a refugee as a person who is outside his or her country and is unable or unwilling to return because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or

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<sup>1</sup> See CRS Report—“[Syria: Overview of the Humanitarian Response](#),” June 24, 2014 at 5.

<sup>2</sup> See Departments of State, Homeland Security, and Health and Human Services Report—“[Proposed Refugee Admissions for Fiscal Year 2016](#),” at iii.

<sup>3</sup> See CRS Report at 10 to 13.

<sup>4</sup> See Departments of State, Homeland Security, and Health and Human Services Report—“[Proposed Refugee Admissions for Fiscal Year 2016](#),” at 62 and 63.

<sup>5</sup> Id. at 61.

<sup>6</sup> Id. at 67 and 68 (See Table XI for refugee arrivals by state of initial resettlement in fiscal year 2014).

<sup>7</sup> Id. at iii and iv.

<sup>8</sup> See CRS INSIGHT—“[Syrian Refugee Admissions to the United States](#),” September 22, 2015.

<sup>9</sup> Id.

<sup>10</sup> See Presidential Determination—“[Presidential Determination on Refugee Admissions for Fiscal Year 2016](#),” September 29, 2015.

political opinion. In some circumstances, a refugee also may be a person who is within his or her country and is persecuted or has a well-founded fear of persecution for any of these reasons.<sup>11</sup>

The Department of State's (DOS) Bureau of Population, Refugees, and Migration is responsible for managing the U.S. [Refugee Admissions Program](#). The Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) is responsible for adjudicating refugee cases, which are handled by officers in its [Refugee Affairs Division](#).<sup>12</sup>

To be admitted to the United States in refugee status, a prospective refugee, in addition to meeting the INA's definition of a refugee, cannot be firmly resettled in any foreign country, must be determined to be of special humanitarian concern to the United States, and must be admissible to the United States under the applicable grounds of inadmissibility in the INA. Prospective refugees are subject to many of the INA's criminal and security-related grounds of inadmissibility and are subject to certain security checks before their applications can receive final approval.<sup>13</sup>

Individuals admitted to the United States in refugee status are placed in communities in the United States through the [DOS Reception and Placement program](#), which provides refugees with initial resettlement services. During fiscal year 2015, arrivals were placed in 48 states and the District of Columbia.<sup>14</sup> Longer-term transitional assistance is provided through a program administered by the Department of Health and Human Services through its [Office of Refugee Resettlement](#).

There are concerns that the admission and resettlement of Syrian refugees in the United States presents significant security risks. These fears were heightened after reports surfaced that one of the individuals believed to have participated in the terrorist attacks in Paris on November 13 had a Syrian passport and that fingerprints from the suspected attacker matched those of someone who passed through Greece in October.<sup>15</sup> A number of governors have publicly refused or expressed reluctance to allow the resettlement of Syrian refugees in their states.<sup>16</sup>

Top Administration counterterrorism and security officials have repeatedly told Congress that the current refugee vetting process is insufficient to ensure terrorists are not admitted as refugees. Most recently, FBI Director James Comey conceded at a hearing before the House Judiciary Committee that even with a decade of intelligence and forensic evidence available to us in Iraq, the U.S. still admitted Iraqi nationals as refugees who were terrorist threats. And while he noted that the vetting of refugees has improved, the reality is that with a conflict zone like Syria where there is “dramatically” less information available to use during the vetting process, Director Comey could not “offer anybody an absolute assurance that there’s no risk associated with” admitting Syrian nationals as refugees.<sup>17</sup>

Director Comey also testified before the House Committee on Homeland Security in October that “we can only query against that which we have collected, and so if someone has never made a ripple in the pond in Syria in a way that would get their identity or their interest reflected in our database, we

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<sup>11</sup> See [CRS INSIGHT](#)

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> See CBS News—“[Paris Attacks 9: Portrait of a terrorist ring emerges](#),” November 15, 2015.

<sup>16</sup> <http://www.cbsnews.com/news/more-states-say-no-to-syrian-refugees-after-paris-attacks/>

<sup>17</sup> *Oversight of the Federal Bureau of Investigation*, Hearing before the H. Comm. on the Judiciary, 114<sup>th</sup> Cong. (2015) (oral statement of James B. Comey, Director, Fed. Bureau of Investigation).

can query our database til the cows come home, but ... nothing will show up, because we have no record on that person.”<sup>18</sup>

The Homeland Security Committee recently released a [report](#) regarding the security risks and counterterrorism challenges associated with Syrian refugee flows. The report concluded that the Administration’s proposal to admit and resettle as many as 10,000 Syrian refugees “will have a limited impact on alleviating the overall crisis but could have serious ramifications for U.S. homeland security.”<sup>19</sup> The report also found that “widespread security gaps across Europe are increasing the terrorism risk to our allies and present long-term implications for the U.S. homeland.”<sup>20</sup>

According to the bill’s sponsor, “America has a proud tradition of welcoming refugees into our country, and we lead the world in humanitarian assistance. However, we also must put proper measures in place to ensure our country’s safety [. . .] The bill requires the nation’s top security officials—the Secretary of Homeland Security, the Director of the FBI, and the Director of National Intelligence—to certify before admitting any Syrian or Iraqi refugee into the United States that the individual does not represent a security threat.”<sup>21</sup>

### **COST**

A Congressional Budget Office (CBO) cost estimate is currently unavailable.

### **STAFF CONTACT**

For questions or further information please contact [Jerry White](#) with the House Republican Policy Committee by email or at 5-0190.

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<sup>18</sup> Melanie Hunter, *FBI Director Admits U.S. Will Have No Basis to Vet Some Syrian Refugees*, CNS News, (Oct. 21, 2015), <http://www.cnsnews.com/news/article/melanie-hunter/fbi-director-admits-us-will-have-no-basis-vet-some-syrian-refugees>.

<sup>19</sup> See Committee on Homeland Security Report—“[Syrian Refugee Flows: Security Risks and Counterterrorism Challenges](#),” November 2015, at 2.

<sup>20</sup> Id.

<sup>21</sup> See Press Release—“[McCaul and Hudson Introduce Bill to Protect Americans from ISIS](#),” November 18, 2015.