

NOTE

IMMIGRATION REFORM IN REFUGEE AND
ASYLUM POLICY:

DISENTANGLING IMMIGRATION FROM THE
NATIONAL SECURITY DISCOURSE

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ABSTRACT

After September 11, 2001, a large-scale overhaul of existing US immigration infrastructure fused immigration with the country's national security apparatus. Enhanced national security efforts became characterized by increased immigration enforcement and were purportedly justified by government officials' rhetoric portraying newcomers as a threat to public safety. The Trump Administration employed inflammatory anti-immigrant rhetoric to shore up popular support for harmful immigration policies, precluding the United States from fulfilling obligations to refugees and asylum-seekers under international law. This Note argues that the United States shares virtually none of the geopolitical challenges preventing certain countries from compliance with treaty obligations; however, rhetoric conflating immigration and national security results in immigration policy damaging to refugees and asylees seeking protection in the United States. This Note argues that the United States must work towards compliance with its international commitments by dismantling needlessly punitive immigration enforcement policies and abolishing xenophobic rhetoric, and by providing fair and full protection for the growing number of individuals displaced around the globe.

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I. INTRODUCTION

The tragic attacks of 9/11, 2001 left a lasting impact on the American people, compelling both government officials and the public to question the shortcomings of the United States' national security infrastructure. Most are familiar with what followed almost immediately thereafter, beginning with former President George W. Bush's announcement of the War on Terror military campaign.¹ What many do not acknowledge, however, is the devastating blow dealt by 9/11 and its aftermath to the US immigration system.²

Pursuant to the Bush Administration's belief in strict immigration enforcement as a counterterrorism tactic, Congress enacted the Homeland Security Act of 2002, creating the United States Department of Homeland Security ("DHS") which enveloped twenty-two federal agencies, including those performing immigration-related functions, under its purview.³ With the creation of DHS came the dissolution of the Immigration and Naturalization Service ("INS"), the agency formerly tasked with matters pertaining to immigration and

1. Deepa Iyer & Jayesh Rathod, *9/11 and the Transformation of United States Immigration Law and Policy*, AM. BAR ASS'N (Jan. 01, 2011), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol38_2011/human_rights_winter2011/9-11_transformation_of_us_immigration_law_policy/ [https://perma.cc/6FB9-MVLH]; George W. Bush, Text: President Bush Addresses the Nation (Sept. 20, 2001) (transcript available at https://www.washingtonpost.com/wp-srv/nation/specials/attacked/transcripts/bushaddress_092001.html [https://perma.cc/XW8N-Z2BE]).

2. *See generally* MARC R. ROSENBLUM, MIGRATION POL'Y INST., US IMMIGRATION POLICY SINCE 9/11: UNDERSTANDING THE STALEMATE OVER COMPREHENSIVE IMMIGRATION REFORM (2011).

3. *See id.* at 4.

naturalization.⁴ The overhaul of the former immigration infrastructure, along with other acts that followed, resulted in the virtual fusion of immigration into the national security apparatus, with enforcement becoming the primary concern.

Problems associated with conflating immigration and national security are now more apparent than ever. The world currently faces the largest refugee crisis since World War II, and the United States struggles with the humanitarian crisis at its southern border, with record numbers of asylum-seekers continuing to arrive daily.⁵ Justifying its actions with rhetoric emphasizing the protection of national security interests, the Trump Administration responded to these crises by enacting a multitude of measures to restrict the influx of refugees and asylum-seekers, and to dismantle years of protective policy. In doing so, it violated US obligations under international agreements including the Convention Relating to the Status of Refugees (“1951 Convention”) and the 1967 Protocol Relating to the Status of Refugees (“1967 Protocol”).⁶

While the United States neglects its commitments under international law, other nations attempt to accommodate the growing influx of refugees and asylum-seekers fleeing from persecution in their countries of origin. Where the Trump Administration weakened refugee and asylee protections in the United States, Canada surpassed the United States in refugee resettlement efforts.⁷ Further, member states of the European Union pledged to create tens of thousands of refugee

4. See Iyer & Rathod, *supra* note 1.

5. Molly O’Toole & Defense One, *Are Refugees Really a ‘National Security’ Threat to America?*, *American Enterprise* (Oct. 9, 2015), <https://www.theatlantic.com/international/archive/2015/10/us-policy-syrian-refugees/409822/> [https://perma.cc/23YU-HUX9]; Robert Barnes, *Supreme Court Says Trump Administration Can Begin Denying Asylum to Migrants While Legal Fight Continues*, *Washington Post* (Sept. 11, 2019), https://www.washingtonpost.com/politics/courts_law/supreme-court-says-trump-administration-can-begin-denying-migrants-asylum-while-legal-fight-continues/2019/09/11/94b90da4-d017-11e9-8c1c-7c8ee785b855_story.html [https://perma.cc/3VM9-HBAN].

6. See discussion *infra* notes 204-221.

7. Jynnah Radford & Phillip Connor, *Canada Now Leads the World in Refugee Resettlement, Surpassing the US*, *Pew Research Center* (June 19, 2019), <https://www.pewresearch.org/fact-tank/2019/06/19/canada-now-leads-the-world-in-refugee-resettlement-surpassing-the-us/> [https://perma.cc/V9TB-UZA3].

resettlement spots to mitigate the burden on Greece and Italy, whose immigration systems have been overwhelmed by refugees.⁸

This Note analyzes the United States' neglect of its guarantees to refugees and asylum-seekers under the 1951 Convention and its 1967 Protocol, explaining how anti-immigrant rhetoric has served as purported justification for the recent promulgation of increasingly harmful policies. Part II of this Note provides background on the evolution of United States immigration policies and rhetoric after 9/11, introducing United States obligations to refugees and asylum-seekers under international law and the impact of these changes on the United States government's ability to fulfill its obligations. Part III compares refugee and asylum policies of fellow state signatories to the 1951 Convention and its 1967 Protocol to those of the United States, discussing the troublesome effects of a narrative that conflates national security and immigration enforcement on countries' commitments to refugees and asylum-seekers under international law. Part IV of this Note discusses proposals for reforming US refugee and asylum policy, emphasizing the need to distinguish between immigration and national security concerns, while ensuring that national security interests do not fall by the wayside. The Note's conclusion affirms the 2021 US administration change as an opportune time to implement lasting immigration reforms that will result in increased US capability to fulfill its obligations under international law and subsequently reaffirm its commitment to protecting refugees and asylum-seekers.

8. See DETELIN IVANOV, LEGISLATION ON EMERGENCY RELOCATION OF ASYLUM SEEKERS IN THE EU, EUR. PARLIAMENTARY RSCH. CTR. (Oct. 2015). See also *Legislative Train Schedule Toward a New Policy on Migration*, EUR. PARLIAMENT, <https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-2nd-emergency-relocation-scheme> [<https://perma.cc/7DZ7-XX5J>] (last visited Jan. 11, 2021). In response to the refugee crisis, in September of 2015, the European Council agreed to relocate 40,000 asylum-seekers from Italy and Greece to other member states. Just three weeks after the first proposal, the Council adopted a (later amended) second proposal to relocate an additional 120,000 migrants. By March of 2018, approximately 34,000 asylum-seekers had been relocated—falling short of the relocation goals of the 2015 proposals. See *id.*

II. OVERVIEW: EVOLVING IMMIGRATION INFRASTRUCTURE & LEGAL OBLIGATIONS TO REFUGEES AND ASYLEES

A. US Obligations Under International and Domestic Law

In response to the displacement of millions after World War II, government leaders drafted the Convention Relating to the Status of Refugees, defining the term “refugee” and delineating a number of legal protections for those considered refugees.⁹ The most essential provision, the *non-refoulement* principle, codified as Article 33, states, “No Contracting State shall expel or return (“*refouler*”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”¹⁰ This binding rule of international law prohibits a country from returning a refugee to any country, not necessarily her country of origin, where her life or freedom is threatened.¹¹ The principle of *non-refoulement* is applicable to both refugees and asylees, and has since been codified in numerous human rights instruments. Drafters of international treaties have included the *non-refoulement* principle in a number of agreements, and consider it a fundamental feature of customary international law.¹²

The 1951 Convention sought to protect European refugees after World War II. The 1967 Protocol extended the 1951 Convention’s application, and prolonged the validity of the Convention’s provisions by removing time limitations on its applicability.¹³ The United States acceded to the 1967 Protocol in 1968 through a 98-0 vote in the Senate, with United Nations

9. See generally Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150 [hereinafter 1951 Convention].

10. See *id.* art. 33.

11. *Id.*

12. See Tilman Rodenhauer, *The principle of non-refoulement in the migration context: 5 key points*, RELIEFWEB (Mar. 30, 2018), <https://reliefweb.int/report/world/principle-non-refoulement-migration-context-5-key-points> [https://perma.cc/ADM8-X7TM]. The principle of non-refoulement has been included in numerous human rights treaties and regional human rights instruments, including the Convention Against Torture and the International Convention for the Protection of All Persons from Enforced Disappearance. See *id.*

13. See Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 [hereinafter 1967 Protocol].

representative James R. Wiggins emphasizing that “the proper, legal treatment of asylum seekers and refugees was a credit to our country, not a burden.”¹⁴

The Refugee Act of 1980 codified the United States’ commitments to its obligations under the 1967 Protocol into domestic law.¹⁵ Prior to 1980, the United States lacked the infrastructure for addressing the thousands of Vietnamese and Cambodian refugees fleeing from the disastrous aftermath of the Vietnam War.¹⁶ Congress was eager to establish an efficient refugee admission framework that would not rely as heavily on the executive parole power, and unanimously passed the Refugee Act of 1980.¹⁷ The Act, *inter alia*, brought the definition of refugee into conformity with that of the 1951 Convention, raised the annual refugee ceiling to 50,000, and created the Office of Refugee Resettlement.¹⁸ Debated by Congress for three years, the Refugee Act of 1980 demonstrated a commitment on the part of Congress to enact a “nondiscriminatory, universal refugee and asylum policy”¹⁹ that was to focus on the plight of the individual refugee in determining who would be admitted to the United States.²⁰

14. See Robert Barsky, *The Legal Responsibilities of the United States Towards Asylum Seekers*, CTR. FOR MIGRATION STUD. (Dec. 4, 2018), <https://cmsny.org/publications/barsky-us-legal-responsibilities-asylum-seekers/> [https://perma.cc/K696-NVDF].

15. See *id.*

16. See *United States Postwar Immigration Policy*, COUNCIL ON FOREIGN REL., <https://www.cfr.org/timeline/us-postwar-immigration-policy> [https://perma.cc/D873-RHTB], (last visited Oct. 14, 2020).

17. *Refugee Act of 1980*, NAT’L ARCHIVES FOUND., <https://www.archivesfoundation.org/documents/refugee-act-1980/> [https://perma.cc/N2KR-P5TH] (last visited Oct. 14, 2020). The United States lacked a comprehensive framework for addressing the influx of refugees from Southeast Asia, so the Ford Administration enacted the Indochina Migration and Refugee Assistance Act to help over a hundred thousand refugees. Executive parole power granted this influx, after which Congressional concern about such expansive use of the parole statute prompted the restructuring of the United States refugee admission system in the Refugee Act of 1980. See David A. Martin, *The Refugee Act of 1980: A Forlorn Anniversary*, LAWFARE (Mar. 19, 2020), <https://www.lawfareblog.com/refugee-act-1980-forlorn-anniversary> [https://perma.cc/Z58Y-V4WD].

18. See *id.*

19. Deborah Anker, *The Refugee Act of 1980 An Historical Perspective*, 5 IN DEFENSE OF THE ALIEN 89, 92 (1982).

20. See *id.* at 93.

For years following the passage of the Refugee Act of 1980, the United States was perceived as a country priding itself on providing a safe haven for refugees and asylum-seekers.²¹ However, despite having led the world in refugee admissions for decades and having admitted more refugees each year than any other country, America's refugee protections have been disintegrating, more so following the events of 9/11.²² The overhaul of America's immigration framework post 9/11 and subsequent transition to a focus on enforcement affected many of the immigrant and nonimmigrant classes, with particularly detrimental effects on humanitarian migrants.²³

B. Post 9/11 Changes to the United States' Immigration Framework

Prior to the events of 9/11, the trajectory of US immigration policy had anticipated comprehensive immigration reform. During the Clinton Administration, Congress passed "four laws . . . granting certain groups relief from some of the most restrictive provisions of the 1996 *Illegal Immigration Reform and Immigrant Responsibility Act* ("IIRIRA") and permitting some undocumented immigrants to legalize their status."²⁴ In the beginning of his presidency, George W. Bush seemed to favor a thorough restructuring of the US immigration framework. As a Spanish-speaking former governor of a border state, constituents expected Bush to follow through on his campaign promises of expediting immigration processing for families and employers.²⁵ Valuing the votes of the growing Hispanic population, he developed a close working relationship with Mexico's then-president, Vicente Fox, and anticipated improvements in the form of a new temporary worker program.²⁶ However, any efforts to facilitate migration negotiations with Mexico instantly broke off after the tragedy of 9/11, and US leaders were left to

21. *Blueprint: How to Address the Global Refugee Crisis and Safeguard United States National Security*, HUM. RTS. FIRST (Sept. 10, 2018), <https://www.humanrightsfirst.org/resource/how-address-global-refugee-crisis-and-safeguard-us-national-security> [https://perma.cc/BL8J-BMS8].

22. See O'Toole, *supra* note 5.

23. See *infra* notes 31-55.

24. ROSENBLUM, *supra* note 2, at 2.

25. See *id.* at 2-3. During Bush's campaign, he had argued that "immigration is not a problem to be solved; it is the sign of a successful nation." *Id.* at 3.

26. See *id.* at 3.

reconsider a national security framework that had failed to prevent one of the most catastrophic incidents in US history to date. The Bush Administration in 2007 and the Obama Administration in 2010 each attempted to revisit comprehensive immigration reforms, but pushback from anti-immigration politicians rendered attempts at reform fruitless.²⁷

Almost instantly after 9/11, the government's outlook on immigration drastically shifted. A trend of conflating immigration and national security emerged as the government deployed immigration resources pursuant to national security objectives.²⁸ Federal officials learned that the individuals responsible for carrying out the attacks had entered the country on student and visitor visas, thereby leading to a heightened scrutiny of immigration processes as the core of post-9/11 national security concerns.²⁹ In the weeks following the attacks, Congress and the Department of Justice ("DOJ") significantly broadened the scope of federal agencies including the former INS. They promulgated a regulation allowing for the detention of noncitizens for forty-eight hours or longer "in the event of 'an emergency or other extraordinary circumstances' without making any charging determinations."³⁰ As a result of this policy, the INS detained over 750 noncitizens in about one year, and placed them on the "INS Custody List" under suspicion that they had ties to the attacks or other terrorist activities.³¹ Over the course of the next several years, Congress and the Bush Administration passed a host of broad antiterrorism measures, all of which would affect immigration policy.³² The policies both expanded immigration enforcement powers within the United States, and restructured the existing immigration framework with an eye towards escalating national security efforts.

27. See Rachel Weiner, *How Immigration Reform Failed, Over and Over*, WASH. POST (Jan. 30, 2013), <https://www.washingtonpost.com/news/the-fix/wp/2013/01/30/how-immigration-reform-failed-over-and-over/> [<https://perma.cc/5S6E-EMCU>].

28. See Iyer & Rathod, *supra* note 1.

29. See ROSENBLUM, *supra* note 2, at 4. During the course of the 9/11 plot, the hijackers submitted 23 visa applications – 22 of which were approved. Secure Visas Act: Hearing Before the Subcommittee on Immigration Policy and Enforcement of the Committee on the Judiciary, House of Representatives, One Hundred Twelfth Congress, First Session, on H.R. 1741, May 11, 2001 43 (U.S. Government Printing Office, 2001).

30. Iyer & Rathod, *supra* note 1.

31. See *id.*

32. See ROSENBLUM, *supra* note 2, at 4-5.

Measures enacted in the first few years following 9/11 included the USA Patriot Act, which, among other provisions, mandated that the Federal Bureau of Investigation (“FBI”) provide criminal records to immigration agencies during visa screening.³³ A 2002 DOJ program implemented the Enhanced Border Security and Visa Entry Reform Act, necessitating “additional data sharing, tightening document security, and accelerated implementation of foreign student and entry-tracking systems.” The National Security Entry-Exit Registration System required male immigrants from twenty-five named countries to undergo complex screening measures, including the submission of biometric data, interviews with immigration officers, and annual registration requirements.³⁴ The US-VISIT program, implemented in 2004, ultimately merged these enhanced immigrant-tracking programs, making immigrants’ movements easier to document by requiring nonimmigrants on temporary visas to regularly submit biometric data, including when receiving a visa, at ports of entry, and when leaving the United States.³⁵ The US government instituted these policies, among others, pursuant to the push for restriction and heightened scrutiny of individuals seeking admission to the United States.

One of the most noteworthy changes of the post-9/11 era was Congress’ enactment of the Homeland Security Act of 2002, which brought twenty-two federal agencies under the scope of a new cabinet agency, the Department of Homeland Security.³⁶ In forming the new DHS, Congress made clear the department’s goal of preventing terrorism and minimizing the impact of terror attacks within the United States, and created a position within the cabinet for the DHS secretary.³⁷ DHS component agencies include the United States Coast Guard, the Federal Emergency Management Agency (“FEMA”), the United States Secret Service, the Countering Weapons of Mass Destruction Office, and the Transportation Security Agency (“TSA”). The INS, formerly the premier agency tasked with performing immigration-related

33. *See id.* at 5.

34. *See id.*

35. *See id.*

36. *See id.* at 4.

37. *See Iyer & Rathod, supra* note 1.

functions, was also dissolved and separated into three agencies within DHS: the United States Citizenship and Immigration Services (“USCIS”), Customs and Border Protection (“CBP”), and Immigration and Customs Enforcement (“ICE”).³⁸

Today, USCIS is the agency primarily responsible for adjudicating immigration and naturalization petitions, considering refugee and asylum claims, issuing employment authorization, and processing a vast array of nonimmigrant visa applications.³⁹ It processes some six million immigrant and nonimmigrant petitions annually, and funds its budget almost exclusively through steep processing fees charged to petitioners submitting applications.⁴⁰ USCIS takes on the critical role of assessing the qualification of applicants for admission to the United States.⁴¹ Its specific functions include confirming applicant eligibility for various immigration benefits and granting or withholding such benefits where appropriate. Additionally, it adjudicates refugee and asylum applications, and determines the eligibility of permanent residents applying for citizenship by assessing factors such as whether the individual possesses good moral character and has resided in the United States for the statutorily required period of time.⁴²

Frustration with USCIS today stems primarily from the agency’s trend of falling acutely behind on adjudication of visa applications and petitions, the timely processing of which may bear significantly on an individual’s immigration status.⁴³ Last year, after analysis revealed “crisis-level delays” in the agency’s processing of documents, the American Immigration Lawyers Association recommended that the agency rescind burdensome policies that significantly delay processing, to increase congressional oversight and to increase transparency to the

38. *See id.*

39. *See* WILLIAM A. KANDEL, CONG. RSCH. SERV., R44038, U.S. CITIZENSHIP & IMMIGRATION SERVICES (USCIS) FUNCTIONS AND FUNDING 1-2 (2015), <https://fas.org/sgp/crs/homesec/R44038.pdf> [<https://perma.cc/J344-58VY>].

40. *See id.* at 1, 3, 5.

41. *See id.* at 3-4.

42. *See id.* at 2-4.

43. *See* Paul Stern & Sharvari (Shev) Dalal-Dheini, *AILA Policy Brief: Crisis Level USCIS Processing Delays and Inefficiencies Continue to Grow*, AM. IMMIG. LAW. ASS’N (Feb. 26, 2020), <https://www.aila.org/advo-media/aila-policy-briefs/crisis-level-uscis-processing-delays-grow> [<https://perma.cc/3THP-98SL>].

public as to its operations.⁴⁴ Data from 2019 confirms that these inefficiencies remain and continue to worsen, as overall processing times rose another five percent, despite a ten percent decrease in cases.⁴⁵ Processing delays can be attributed to increasingly troublesome policies, including requiring local USCIS officers to perform comprehensive interviews of employment-based adjustment applicants and refugee/asylee relatives before adjudicating their applications, and a recently instituted policy of rejecting applications from “asylum seekers and victims of criminal activity if any fields are left blank on the form.”⁴⁶ Practically, local USCIS officers are left to closely scrutinize a multitude of forms varying in importance, with seemingly inconsequential clerical errors resulting in avoidable delays of the application process for applicants facing strict filing deadlines.⁴⁷

CBP, another of the three agencies tasked with performing immigration-related functions, is charged with border security, counterterrorism efforts, agricultural protection, and facilitating trade.⁴⁸ The agency’s mission statement is “to serve as the premier law enforcement agency enhancing the Nation’s safety, security, and prosperity through collaboration, innovation, and integration.”⁴⁹ Over the last several years, shocking accounts accusing CBP agents of abuse and mistreatment of immigrants seeking entry at the border have surfaced, resulting in calls for greater transparency and accountability on the part of the agency.⁵⁰ While instances of such misconduct recently came to demand more national attention, they are in no way a new development.⁵¹ For many years, organizations have cited the terribly inadequate medical assistance afforded migrants,

44. *Id.*

45. *See id.*

46. *Id.*

47. *See id.*

48. *About CBP*, U.S. CUSTOMS & BORDER PROT., <https://www.cbp.gov/about> [<https://perma.cc/Y2XF-B4PN>] (last visited Apr. 19, 2020).

49. *Id.*

50. *See* Suzanne Gamboa & Daniella Silva, *From accountability to medical care, critics cry for serious reform of border agency*, NBC NEWS (Dec. 23, 2018), <https://www.nbcnews.com/news/latino/accountability-medical-care-critics-cry-serious-reform-border-agency-n950046> [<https://perma.cc/X87R-XJZX>].

51. *See id.*

including young children, arriving at the border.⁵² A recent report by the American Civil Liberties Union (“ACLU”) revealed 30,000 pages of federal records “documenting complaints of abuse and mistreatment, including rape and assault of unaccompanied children by agents.”⁵³ Further, the conditions at migrant detention facilities have been abhorrent since the Obama Administration, when an ACLU lawsuit referred to these facilities as “*hieleras*” or “iceboxes,” and accused CBP of maintaining “appalling conditions” that left people in “freezing, overcrowded, and filthy cells for extended periods of time,” without access to soap and showers, let alone legal assistance.⁵⁴ Rather than increasing its capability to ensure the safety of vulnerable women and children in its custody, over the years CBP has become an organization devoted to arresting adult males attempting to cross the border.⁵⁵

Perhaps the most controversial agency established to take over the functions of the former INS is ICE, the government’s arm for domestic immigration enforcement.⁵⁶ ICE was established to “protect Americans from the cross-border crime and illegal immigration that threaten national security and public safety,”⁵⁷

52. *See id.*

53. *Id.*

54. Jason Lemon, *Are Migrant Detention Centers Worse Under Donald Trump Than Under Barack Obama?*, NEWSWEEK (July 2, 2019), <https://www.newsweek.com/migrant-detention-centers-trump-obama-1447160> [<https://perma.cc/6B36-3CX9>]; *see also*, Madeleine Joung, *What is Happening at Migrant Detention Centers? Here’s What to Know*, TIME (July 12, 2019), <https://time.com/5623148/migrant-detention-centers-conditions/> [<https://perma.cc/H9BE-X6K6>].

55. *See* Gamboa, *supra* note 50.

56. Ron Nixon & Linda Qiu, *What is ICE and Why Do Critics Want to Abolish It?*, N.Y. TIMES (July 3, 2018), <https://www.nytimes.com/2018/07/03/us/politics/fact-check-ice-immigration-abolish.html> [<https://perma.cc/4ARD-B8W3>]. Over the last several years, the “Abolish ICE” movement has gained tremendous momentum, and protestors have spoken out against the agency’s aggressive enforcement tactics, with politicians including Senator Kirsten Gillibrand “arguing that immigration issues should be separate from criminal enforcement” and calling for immigration reform. *Id.* *See also* *ICE and Border Patrol Abuses*, ACLU, <https://www.aclu.org/issues/immigrants-rights/ice-and-border-patrol-abuses> [<https://perma.cc/YE5A-WVYT>] (last visited Mar. 15, 2021); Marcela Garcia, *ICE should be fixed, not abolished*, BOS. GLOBE (Oct. 6, 2020), <https://www.bostonglobe.com/2020/10/06/opinion/should-ice-be-abolished/> [<https://perma.cc/4SQD-D3HE>].

57. *Immigration and Customs Enforcement*, DEP’T HOMELAND SEC., <https://www.dhs.gov/topic/immigration-and-customs-enforcement> [<https://perma.cc/RA2K-JL4L>] (last visited Feb. 26, 2021).

by working alongside law enforcement to identify priority aliens already incarcerated, to apprehend individuals deemed a public threat based on their immigration status, and to locate foreign nationals within the United States wanted for international crimes.⁵⁸ ICE's declared mission is to combat cross-border criminal activity and prevent terrorism, but the agency's website is a paradigmatic example of the rhetoric used to conflate immigration and national security, offering national security as a justification for deporting undocumented immigrants.

Deportations first began to increase dramatically during President Barack Obama's tenure, peaking at 409,849 deportations in fiscal year ("FY") 2012, but dropping again to 235,413 deportations by FY 2015.⁵⁹ Under the Trump Administration, immigration enforcement tactics became more aggressive as ICE officials began conducting raids at locations such as churches, schools, and factories, inflicting fear and panic upon immigrant communities.⁶⁰ Increasingly aggressive immigration policies shifted the agency's priorities from targeting undocumented immigrants charged with serious crimes, to targeting all undocumented immigrants without regard for criminal history.⁶¹ In the summer of 2019, President Trump announced "Operation Border Resolve," and threatened widespread ICE raids, causing immigrant families to relocate to

58. *Enforcement and Removal Operations*, U.S. ICE, <https://www.ice.gov/about-ice> (last visited Mar. 4, 2021).

59. *Immigration Policies Under Barack Obama*, BOUNDLESS (May 21, 2017), <https://www.boundless.com/blog/obama/> [<https://perma.cc/425S-KR8C>].

60. Miriam Jordan, *ICE Arrests Hundreds in Mississippi Raids Targeting Immigrant Workers*, N.Y. TIMES (Aug. 7, 2019), <https://www.nytimes.com/2019/08/07/us/ice-raids-mississippi.html> [<https://perma.cc/A7S8-FD3W>]; Caitlin Dickerson & Zolan Kanno-Youngs, *Thousands Are Targeted as ICE Prepares to Raid Undocumented Migrant Families*, N.Y. TIMES (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/ice-families-deport.html> [<https://perma.cc/ZD44-CN7E>].

61. Associated Press, *ICE Targeting Immigrants With No Criminal Records at Soaring Rate*, DAILY NEWS (Sept. 20, 2018), <https://www.nydailynews.com/news/national/ny-news-ice-targeting-immigrants-no-criminal-records-20180920-story.html> [<https://perma.cc/NQT6-P4FC>] (discussing how arrests of non-criminals have become a benchmark of the Trump administration's approach to immigration); see also Alan Gomez, *ICE Sets Record for Arrests of Undocumented Immigrants With no Criminal Record*, USA TODAY (Mar. 21, 2019), <https://www.usatoday.com/story/news/politics/2019/03/21/ice-sets-record-arrests-undocumented-immigrants-no-criminal-record/3232476002/> [<https://perma.cc/5GDW-RHFK>].

evade arrest and leaving immigration advocates scrambling to mobilize in time to counsel families about their rights.⁶² With immigrant communities on high alert, ICE agents increasingly turned to collateral arrests—where agents arrest others present alongside targeted individuals—and deceptive tactics including false pretenses to round up undocumented immigrants for deportation.⁶³

Ultimately, agencies performing immigration-related functions bend largely to the will of the executive branch, and emphasis on immigration enforcement has fluctuated with each administration change. Regardless, it cannot be deemphasized that the federal agencies carrying out immigration policies have long had counter-terrorism efforts as their predominant priority. In effectuating a large-scale overhaul of executive-branch functions and passing counterterrorism measures aimed at heightened scrutiny of foreign nationals within the United States, Congress and the Bush Administration compelled a fundamental shift in “the core American philosophy toward immigration, moving it away from one that is primarily welcoming to one that is largely deflective.”⁶⁴

C. U.S. Refugee and Asylum Policy & the Departure from a Legacy of Acceptance

Provisions of the USA Patriot Act of 2001 and the REAL ID Act of 2005 enacted in the name of national security increased the hurdles that refugees and asylum-seekers would have to

62. Miriam Jordan, *More Than 2,000 Migrants Were Targeted in Raids. 35 Were Arrested*, N.Y. TIMES (July 23, 2019), <https://www.nytimes.com/2019/07/23/us/ice-raids-apprehensions.html> [<https://perma.cc/5SMW-5XSY>]; see also *35 People in Custody After U.S. Immigration Raids that Targeted 2,100*, CBC (July 23, 2019), <https://www.cbc.ca/news/world/united-states-operation-border-resolve-1.5222358> [<https://perma.cc/4372-HHMQ>].

63. Nausicaa Renner, *As Immigrants Become More Aware of Their Rights, ICE Steps Up Ruses and Surveillance*, INTERCEPT (July 25, 2019), <https://theintercept.com/2019/07/25/ice-surveillance-ruse-arrests-raids/> [<https://perma.cc/N653-K797>]; see also *ICE Ruses*, IMMIGRANT DEF. PROJECT, <https://www.immigrantdefenseproject.org/ice-ruses/> [<https://perma.cc/4V9R-5GV5>] (last visited Jan. 15, 2021).

64. Jake Flanagan, *9/11 Forever Changed The Concept of Immigration in the US*, QUARTZ (Sept. 11, 2015), <https://qz.com/499481/911-forever-changed-the-concept-of-immigration-in-the-us/> [<https://perma.cc/TA74-Y7LL>]; ROSENBLUM, *supra* note 2, at 4-5.

overcome in proving their eligibility for resettlement in the United States.⁶⁵ In the years following the passage of these acts, President Barack Obama's legacy was marked by delayed efforts to resettle Syrian refugees and his inadequate reaction to the ongoing migration crisis on the US southern border. The Obama Administration was responsible for initiating practices of harsh detention policies and detaining families seeking asylum in immigrant detention in violation of US refugee protection commitments under international law.⁶⁶ With the refugee crisis worsening, echoes of familiar post-9/11 rhetoric of the need to protect national security through strict immigration enforcement purported to justify President Trump's hostile response.⁶⁷

The "Refugee" and "Asylee" immigration categories are largely similar in definition given that both are intended to protect individuals under US law. Differences between the two are procedural; an individual requesting protection from overseas is referred to as a "refugee," while an "asylee" is an individual meeting the definition of refugee while already present in the United States or arriving at a port of entry.⁶⁸ Eligibility for either status hinges upon meeting the definition of refugee found in Section 101(a)(42) of the Immigration and Nationality Act, which states that "a refugee is a person who is unable or unwilling to return to his or her country of nationality, or of last habitual residence if stateless, and who is unable or unwilling to avail himself or herself of the protection of that country, because of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."⁶⁹

To qualify for refugee status, the applicant must be of special humanitarian concern to the United States, must meet the aforementioned refugee definition, must be admissible, and must

65. See ROSENBLUM, *supra* note 2, at 5-6.

66. See *President Obama's Legacy on Human Rights*, HUM. RTS. FIRST, <https://www.humanrightsfirst.org/sites/default/files/HRFBackgrounderObamaLegacy.pdf> [<https://perma.cc/6JGN-9QWB>] (last visited Feb. 26, 2021).

67. See discussion *infra* notes 88-94.

68. Nadwa Mossaad, *Refugees and Asylees: 2018*, U.S. DEP'T HOMELAND SEC. OFF. IMMIGR. STAT. 1 (Oct. 2018), https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2018/refugees_asylees_2018.pdf [<https://perma.cc/MTS8-DYR>].

69. Immigration & Nationality Act § 101(a)(42), 8 U.S.C. § 1101 (1968).

not be firmly resettled in any other country.⁷⁰ An individual seeking refugee status will fall into one of three priority categories: first priority (P-1), consisting of those referred by the UN High Commissioner on Refugees, a United States Embassy, or certain NGOs; second priority (P-2), consisting of groups of special humanitarian concern; and third priority (P-3), consisting of family reunification cases.⁷¹ One year after admission to the United States, refugees must apply for legal permanent resident (“LPR”) status, and can then apply for US citizenship five years after admission.⁷²

Asylum claims are adjudicated differently from those of refugees, as individuals typically seek asylum from the interior of the United States or at ports of entry, including those along the southern border. Applications for asylum can be filed in one of two ways: affirmative asylum and defensive asylum.⁷³ Affirmative asylum occurs when an individual presents his/her case in a non-adversarial proceeding, typically in front of a USCIS officer.⁷⁴ Defensive asylum occurs where the government has commenced removal proceedings against an individual who must then contest his/her removability.⁷⁵

Individuals are precluded from obtaining asylum “for previously committing certain crimes, posing a national security threat, engaging in the persecution of others, or firmly resettling in another country before coming to the United States.”⁷⁶ A USCIS officer may make the determination as to an applicant’s eligibility for asylum during the affirmative asylum process.⁷⁷ Likewise, an immigration judge (“IJ”) may grant or deny asylum

70. Mossaad, *supra* note 68, at 2.

71. *Id.*

72. *Id.* at 4.

73. *Affirmative Asylum*, UNHCR, <https://www.unhcr.org/en-us/affirmative-asylum.html> [<https://perma.cc/P4K5-7CZC>] (last visited Jan. 11, 2021); *see also Asylum in the United States*, AM. IMMIGR. COUNCIL (June 11, 2020), <https://www.americanimmigrationcouncil.org/research/asylum-united-states> [<https://perma.cc/95DE-4DN8>].

74. *See Asylum in the United States*, *supra* note 73, at 2.

75. *See id.*

76. *Id.*; *Asylum Bars*, USCIS, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/asylum-bars> [<https://perma.cc/7JTD-YZHN>] (last visited Mar. 15, 2021).

77. *See id.*

during an individual's removal proceedings.⁷⁸ Unlike those seeking admission to the United States as refugees, asylum applicants are not subject to an annual admissions cap, and for each of the last several years, over 100,000 individuals have applied for asylum annually.⁷⁹

Each year, the President sets a ceiling for refugee admissions, indicating the maximum number of refugees who may settle in the United States for that fiscal year.⁸⁰ For years following the 1980 Refugee Act passed during the Carter Administration, the average admissions ceiling for refugees was 95,000 annually.⁸¹ Such high admissions levels endured throughout the Reagan Administration, as Cuban refugees arrived in thousands, along with those escaping the Khmer Rouge genocides in Cambodia, and Indochinese refugees arriving after the fall of Saigon.⁸² After 9/11, refugee admissions dipped, “due in part to security procedures and admission requirement changes after [9/11],” but increased again between 2001 and 2009, ultimately hitting a seventeen-year high of 84,988 refugees admitted in 2016 under the Obama Administration.⁸³

During his first year in office, President Trump quickly moved to suspend refugee admissions for four months, and issued three iterations of his “Muslim Ban,” upheld in its third version by the Supreme Court.⁸⁴ This proclamation prohibited travel to the United States by foreign nationals from six predominantly Muslim countries and North Korea, as well as certain Venezuelan government officials.⁸⁵ President Trump then reduced the refugee admissions ceiling by almost seventy-five percent over two years, lowering the cap to 30,000 in FY 2019 from

78. *Id.*

79. *Id.*

80. Jens Manuel Krogstad, *Key facts about refugees to the U.S.*, PEW RSCH. CTR. (Oct. 7, 2019), <https://www.pewresearch.org/fact-tank/2019/10/07/key-facts-about-refugees-to-the-u-s/> [<https://perma.cc/3HL9-3WVY>].

81. *Which United States Presidents Supported Refugees?*, REFUGEES WELCOME (Feb. 15, 2019), <https://www.rescue.org/article/which-us-presidents-supported-refugees-take-quiz> [<https://perma.cc/BY3X-3DWT>].

82. *Id.*

83. Mossaad, *supra* note 68, at 3.

84. *Trump v. Hawaii*, 878 F. 3d 662 (9th Cir. 2017); *see also Timeline of the Muslim Ban*, ACLU WASH., <https://www.aclu-wa.org/pages/timeline-muslim-ban> [<https://perma.cc/JJ7W-9SSV>] (last visited Apr. 18, 2020).

85. *Timeline of the Muslim Ban*, *supra* note 84.

the previous cap of 110,000 in FY 2017.⁸⁶ In FY 2020 the Trump Administration reduced the refugee admissions ceiling to a mere 18,000 refugees, the lowest number since the passage of the Refugee Act of 1980.⁸⁷

More notable than President Trump's decision to reduce the refugee admissions ceiling was his administration's response to migrants arriving at the southern border—an issue that the President routinely referred to as an “invasion” and a “national emergency.”⁸⁸ The problems inherent in conflating immigration and national security are glaringly evident here, as the President continuously invoked national security rhetoric to portray a pressing humanitarian crisis as an imminent threat to US national security. During his 2016 presidential campaign, Trump became notorious for his platform, largely premised on calls for increased border security to be accomplished by building a wall along the southern border.⁸⁹

As justification, Trump framed Latino immigrants as a threat, claiming that they import crime and drugs, are rapists, and are primarily arriving from Latin America, South America, and the Middle East.⁹⁰ Even as reports surfaced evidencing the lack of correlation between immigrants and crime, Trump continued to portray immigrants as the source of national security issues, claiming that a wall would “restore integrity and the rule of law to our borders.”⁹¹ In 2018, Trump's impassioned calls for a border wall resumed, this time in response to several migrant caravans, consisting mostly of Central Americans, headed towards the

86. Nicole Narea, *The US will admit just 18,000 refugees in the next year*, VOX (Sept. 26, 2019), <https://www.vox.com/policy-and-politics/2019/9/26/20886038/trump-refugee-cap-executive-order> [<https://perma.cc/U6C8-WC3T>]. See also Reuters Staff, *Trump Administration sets record low limit for new US refugees*, REUTERS (Oct. 28, 2020), <https://www.reuters.com/article/us-usa-immigration-refugees/trump-administration-sets-record-low-limit-for-new-u-s-refugees-idUSKBN27D1TS> [<https://perma.cc/5ZU9-4HDJ>] (indicating that the Trump Administration capped the number of refugees allowed to resettle in the US in FY 2021 at a record low of 15,000).

87. Krogstad, *supra* note 80.

88. Micah Luxen et al., *Is There a Crisis on the US-Mexico Border?*, BBC NEWS (July 11, 2019), <https://www.bbc.com/news/world-us-canada-44319094> [<https://perma.cc/4FB3-UDJC>].

89. Rebecca Morin, *A Quick History of Trump's Evolving Justifications for a Border Wall*, POLITICO (Jan. 08, 2019), <https://www.politico.com/story/2019/01/08/trumps-evolving-reasons-border-wall-1088046> [<https://perma.cc/3B25-TWZZ>].

90. *See id.*

91. *Id.*

southern border.⁹² The following year, news reports revealed that White House officials had dramatically falsified the number of known or suspected terrorists apprehended by CBP agents at the border.⁹³ While officials claimed that CBP had apprehended around 4,000 known or suspected terrorists crossing the border, news reports showed that just six foreign nationals apprehended at the southern border returned matches in the Terrorist Screening Database from October 1, 2017 to March 31, 2018.⁹⁴

President Trump and officials in his administration empowered USCIS, CBP, and ICE to carry out an agenda based primarily on enforcement, and manipulated immigration policy to slow down and complicate the adjudication of asylum claims.⁹⁵ Upon taking office, he quickly signed two executive orders—one focused on immigration enforcement in the interior, and one focused on border security.⁹⁶ Border security efforts were largely fixated on the southwest border with Mexico, evidenced by the President's plans to construct a border wall, as well as his desire to restrict the rising influx of asylum-seeking individuals and families arriving at the border.⁹⁷

Where enhanced border security efforts in previous years have largely targeted single men from Mexico seeking work in the United States, today's migrants are predominantly coming to the United States for humanitarian reasons, as asylum-seekers fleeing violence in Guatemala, Honduras, and El Salvador.⁹⁸ In 2018 alone, over 90,000 people made claims of credible fear, the first step in initiating the asylum process, at the border.⁹⁹ However, instead of shifting focus to the protection of these individuals, the Trump Administration's approach remained akin to earlier approaches towards border security—centering largely on

92. *See id.*

93. *See id.*

94. *See id.*

95. *See* discussion *infra* notes 105-113.

96. SARAH PIERCE, IMMIGRATION-RELATED POLICY CHANGES IN THE FIRST TWO YEARS OF THE TRUMP ADMINISTRATION, *MIGRATION POL'Y INST.* 1 (May 2019), <https://www.migrationpolicy.org/sites/default/files/publications/ImmigrationChangesTrumpAdministration-FinalWEB.pdf> [<https://perma.cc/J3WY-4CMT>]

97. *Id.* at 2.

98. Jo Craven McGinty, *The Changing Face of Illegal Border Crossings*, *WALL STREET J.* (July 13, 2018), <https://www.wsj.com/articles/the-changing-face-of-illegal-border-crossings-1531474201> [<https://perma.cc/36J5-XNPB>].

99. Luxen, *supra* note 88.

enforcement through apprehension.¹⁰⁰ In 2018, the Trump Administration's border security efforts developed into a zero-tolerance policy, resulting in the indiscriminate prosecution of all adults apprehended while crossing the US-Mexico border.¹⁰¹ Adherence to this policy triggered family separation on a large scale, and DHS began separating thousands of children from parents referred for prosecution until mass public condemnation of the practice led to its decline.¹⁰² The Trump Administration took additional measures to increase border security—it deployed national guard troops to the border, increased United States Border Patrol staff levels, and heightened investigation into family units to ensure that families arriving at the border were biologically related.¹⁰³ In 2019, after Congress appropriated significantly fewer funds than the President's requested amount for the continued construction of the border wall, Trump ordered upwards of six billion dollars in additional funding diverted from counterdrug activities, a Treasury Department fund for forfeitures, and military construction projects towards his plans to build a wall.¹⁰⁴

Recently, President Trump enacted two additional policies to deter asylum-seekers from the southern border. The first policy, officially referred to as the Migrant Protection Protocols,¹⁰⁵ stipulates that migrants at the southern border must stay in Mexico while the immigration agencies process their claims for asylum.¹⁰⁶ The second policy, involving a recent agreement with Guatemala akin to a Safe Third Country Agreement,¹⁰⁷

100. PIERCE, *supra* note 96; *see also* John Gramlich, *How Border Apprehensions, ICE Arrests and Deportations Have Changed Under Trump*, PEW RSCH. CTR. (Mar. 2, 2020), <https://www.pewresearch.org/fact-tank/2020/03/02/how-border-apprehensions-ice-arrests-and-deportations-have-changed-under-trump/> [<https://perma.cc/NNY5-MST9>].

101. *The Trump Administration's "Zero Tolerance" Immigration Enforcement Policy*, CONG. RSCH. SERV. (updated Feb. 26, 2019), <https://fas.org/sgp/crs/homesecc/R45266.pdf> [<https://perma.cc/EAJ6-L6ES>].

102. *Id.* at 9.

103. *See* PIERCE, *supra* note 96, at 2-3.

104. *Id.* at 4.

105. The policy is commonly referred to as "Remain in Mexico."

106. *Frequently Asked Questions: "Remain in Mexico" Policy*, JUST. FOR IMMIGRANTS, https://justiceforimmigrants.org/wp-content/uploads/2019/02/Remain-in-Mexico_en.pdf [<https://perma.cc/93XR-PVKN>] (last visited Oct. 16, 2020).

107. Asylum-seekers and refugees cannot be returned to their country of origin but may, at the discretion of the Attorney General, be removed to a safe third country where they "would have access to a full and fair procedure for determining a claim to asylum

disincentivizes immigration to the United States by requiring migrants to have made asylum claims at countries traversed en route to the US southern border, risking sending asylum-seekers to countries equally or more dangerous than those from which they fled.¹⁰⁸

Regarding interior enforcement, President Trump departed from the precedent of past administrations, opting to target all undocumented noncitizens rather than focusing on recent border crossers and those with criminal records or standing removal orders.¹⁰⁹ ICE, tasked with the detention and removal of undocumented immigrants, played an integral role in carrying out the Trump Administration's immigration enforcement operations.¹¹⁰ The agency's scope expanded with the creation of the Victims of Immigration Crime Engagement Office ("VOICE"), a vehicle for individuals to bring claims of victimization by criminal immigrants.¹¹¹ Further, under the Trump Administration, ICE was authorized to take enforcement actions against all noncitizens with final removal orders, even noncitizens abused while in the United States who indicated a willingness to aid law enforcement in investigating criminal activity in anticipation of receiving a U-Visa.¹¹² Among other actions taken to secure the interior, the Trump Administration attempted to restrict funding for sanctuary cities, allowed for the

or equivalent temporary protection." INA § 208(a)(2)(A). *See also* Nicole Narea, *Trump's agreements in Central America are dismantling the asylum system as we know it*, VOX (Nov. 20, 2019), <https://www.vox.com/2019/9/26/20870768/trump-agreement-honduras-guatemala-el-salvador-explained> [<https://perma.cc/G33T-8U3K>]. Safe Third Country Agreements "require migrants to seek asylum in the countries they pass through by deeming those countries capable of offering them protection." *Id.*

108. Jasmine Aguilera, *Trump's New Restrictions on Asylum Seekers Violate U.S. and International Law, Experts Say*, TIME (Jul. 24, 2019), <https://time.com/5626498/trump-asylum-rule-international-law/> [<https://perma.cc/ZH2G-JDF9>].

109. Ryan Devereaux, *Trump Targets Undocumented Families, Not Felons, in First 100 Days*, INTERCEPT (Apr. 28, 2017), <https://theintercept.com/2017/04/28/100-days-of-deportations-trump-policies-terrorize-immigrant-families-and-neglect-criminals/> [<https://perma.cc/V8GF-BXSJ>].

110. *See* KANDEL, *supra* note 39.

111. *Victims of Immigration Crime Engagement (VOICE) Office*, U.S. IMMIGR. & CUSTOMS ENF'T, <https://www.ice.gov/voice> [<https://perma.cc/6QME-HLDU>] (last visited Apr. 28, 2020).

112. PIERCE, *supra* note 96. U visas are allocated for certain crime victims who are helpful to government officials and law enforcement during ongoing investigations and criminal prosecutions. *Id.* at 5.

detention of pregnant women, increased worksite enforcement and investigation, and narrowed prosecutorial discretion, reducing the “instances in which the government should grant prosecutorial discretion to noncitizens identified for removal.”¹¹³

Further, under the Trump Administration, the role of the Justice Department regarding immigration policymaking vastly expanded. DOJ is the executive agency primarily charged with law enforcement and the administration of justice. Its role in the immigration system consists of criminal prosecutions and management of the US immigration court system.¹¹⁴ Attorneys General (“AGs”) under President Trump were pivotal in enacting policies detrimental to refugees and asylum-seekers and in perpetuating the Trump Administration’s anti-immigrant agenda. AG Jeff Sessions, known for being an immigration hardliner, used the AG’s power of review over immigration decisions rendered by the Board of Immigration Appeals (“BIA”) to impede asylum applications based on domestic or gang violence.¹¹⁵ Although the application of the ruling was later partially enjoined, in *Matter of A-B*, AG Sessions overruled the BIA’s landmark decision in *Matter of A-R-C-G*, which held that domestic violence survivors may be eligible for asylum protection.¹¹⁶ In conjunction with AGs using their power to impose limits on asylum for victims of domestic violence and to limit the scope of asylum hearings, in recent years, IJs have been instructed to weaken child-friendly court practices, to limit continuances and terminations in removal proceedings, and to discourage change of venue for court cases.¹¹⁷

Ultimately, under the facade of protecting the American people, the Trump Administration framed the plight of families fleeing persecution as a pressing national security concern. It failed to resolve the crisis at the US southern border and perpetuated the issues inherent in America’s immigration infrastructure since 9/11. Calls for increased border security,

113. *Id.* at 5.

114. *Id.* at 10.

115. *Id.* at 14-16.

116. *Matter of A-B: Case Updates, Current Trends, and Suggested Strategies*, AM. IMMIGR. L. ASS’N (Feb. 8, 2019), <https://www.aila.org/infonet/matter-of-a-b-case-updates-current-trends> [<https://perma.cc/Z53L-6WJK>].

117. PIERCE, *supra* note 96, at 13.

falsified figures, and rhetoric commending CBP officers for their work in combatting terrorism have all contributed to framing immigrants as a national security threat, while the current makeup of the migrant population coming to the border tells an entirely different story.

D. Modern-Day Humanitarian Migrant Demographics

For many years, violence, corruption, and extreme political and economic turmoil have plagued the Northern Triangle, a region that includes El Salvador, Guatemala, and Honduras.¹¹⁸ The migrant population arriving at the southern border today is overwhelmingly comprised of asylum seekers, primarily women and children fleeing from danger.¹¹⁹ Those abandoning their home countries to seek asylum have reasons markedly different from a desire to relocate, reunite with family, or reap economic benefits. Rather, they are typically individuals forced to escape from persecution, armed conflict, or widespread human rights violations.¹²⁰

A multitude of factors have driven people away from Northern Triangle countries in astonishingly large numbers. In both Guatemala and Honduras, over half of the population lives below their country's national poverty line.¹²¹ In all of the Northern Triangle countries, there is a deeply entrenched "criminal ecosystem" which includes gangs such as Mara Salvatrucha and the Eighteenth Street Gang, popularly known as MS-13, and MS-18, respectively.¹²² Gangs control poverty-stricken

118. *Fleeing For Our Lives: Central American Migrant Crisis*, AMNESTY INT'L (Apr. 1, 2016), <https://www.amnestyusa.org/fleeing-for-our-lives-central-american-migrant-crisis/> [https://perma.cc/6NBP-N9S7]; see also, Amelia Cheatham, *Central America's Turbulent Northern Triangle*, COUNCIL ON FOREIGN REL. (Oct. 1, 2019), <https://www.cfr.org/backgrounder/central-americas-turbulent-northern-triangle> [https://perma.cc/RB4Z-HYKS].

119. See *Fleeing For Our Lives: Central American Migrant Crisis*, *supra* note 118.

120. *Refugees, Asylum-Seekers and Migrants*, AMNESTY INT'L, <https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/> [https://perma.cc/W8FH-3U34] (last visited Apr. 18, 2020).

121. Astrid Galvan, *By the Numbers: Migration to the US-Mexico Border*, ASSOCIATED PRESS (July 25, 2019), <https://apnews.com/article/cbba8ede5436460ab4f792f981ee32e2>.

122. Cheatham, *supra* note 118.

neighborhoods in an ongoing fight for control of territory.¹²³ They are omnipresent, extorting poor civilians and small business owners, and discouraging families from routine activities like attending school, visiting relatives, or working in territories controlled by a rival gang.¹²⁴ Gangs have been a leading cause of many unaccompanied minors leaving their home countries as they seek to avoid recruitment or exploitation at the hands of these gangs.¹²⁵ Further, gender-based violence pervades the region, as women find themselves at increased risk of femicide, rape, kidnapping, and torture.¹²⁶ Ultimately, a number of push factors have culminated in the mass exodus of nationals from El Salvador, Honduras, and Guatemala, with the Trump Administration unwilling to address the humanitarian crisis that has resulted.¹²⁷

President Trump framed immigrants as a danger to US national security and warned that they threaten to drive up crime and violence in US cities.¹²⁸ On the contrary, extensive research has proven that the converse is true, and that immigrants are no more likely than US citizens to commit crimes.¹²⁹ A survey of fifty-one studies conducted to investigate the immigration-crime relationship, encompassing a comprehensive range of violent and property crimes, revealed a “null or nonsignificant association between immigration and crime.”¹³⁰ When assessing the immigrant-crime relationship with regard to the number of immigrants incarcerated, a Cato Institute study “found that legal and undocumented immigrants were less likely to be incarcerated than native-born Americans.”¹³¹ Many of the non-citizens that end

123. Seth Robbins, 3 *Crime Factors Driving Northern Triangle Migrants Out*, INSIGHT CRIME (Oct. 30, 2018), <https://www.insightcrime.org/news/analysis/crime-factors-pushing-northern-triangle-migrants-out/> [<https://perma.cc/ZM64-H7YA>].

124. *Id.*

125. *Fleeing For Our Lives: Central American Migrant Crisis*, *supra* note 118.

126. Cheatham, *supra* note 118; *Fleeing For Our Lives: Central American Migrant Crisis*, *supra* note 118.

127. *See* discussion *supra* notes 118-127.

128. Tanvi Misra, *For the Last Time, Here's the Real Link Between Immigration and Crime*, BLOOMBERG CITYLAB (Feb. 6, 2019), <https://www.citylab.com/equity/2019/02/crime-immigration-city-migrants-refugees-state-of-the-union/582001/> [<https://perma.cc/ZM64-H7YA>].

129. *Id.*

130. Graham C. Ousey & Charis E. Kubrin, *Immigration and Crime: Assessing a Contentious Issue*, 1 ANN. REV. CRIMINOLOGY 63, 68-69 (2018).

131. Misra, *supra* note 127.

up in the prison system are those whose immigration offenses have been treated as federal crimes, a fairly common occurrence as non-citizens often face harsh penalties for even the smallest of offenses.¹³² Some of the leading explanations for the weak correlation between crime and immigration suppose that immigrants “who come to the country either self-select so that they are less likely to cause crime to begin with, or they have much more to lose by committing crime and therefore are more easily deterred.”¹³³ Statistics addressing the immigration-crime relationship prove that negative national security implications threatened by the President’s rhetoric have been largely exaggerated.

III. THE EFFECTS OF NATIONAL SECURITY RHETORIC ON PUBLIC OPINION, IMMIGRATION POLICY, AND COMMITMENT TO TREATY OBLIGATIONS

International law can broadly be described as a complex web of rules, principles, and practices that govern relations between states, whose authority is derived solely from two sources: treaties and customary international law.¹³⁴ Treaties, binding agreements between two or more countries, are of particular importance as they serve to “ensur[e] stability, reliability, and order in international relations,” facilitating cooperation among their signatories.¹³⁵ Should a country fail to carry out its obligations pursuant to an international agreement, it may be subject to economic, diplomatic, or military sanctions, pressure and reprisals from the United Nations and its agencies, and lawsuits in a number of international tribunals.¹³⁶ As binding

132. *Id.*

133. *Id.*

134. See generally Malcolm Shaw, *International Law*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/international-law> (last visited Oct. 14, 2020).

135. ON THE ROLE OF TREATIES IN THE DEVELOPMENT OF INTERNATIONAL LAW, VIENNA CONVENTION ON THE LAW OF TREATIES I (Oliver Dorr & Kirsten Schmalenbach eds., 2012).

136. *Uphold International Law*, UNITED NATIONS, <https://www.un.org/en/sections/what-we-do/uphold-international-law/> [<https://perma.cc/RJ78-2EUX>] (last visited Oct. 14, 2020); see also, Frederic L. Kirgis, *Enforcing International Law*, AM. SOC’Y INT’L L. (Jan. 22, 1996), <https://www.asil.org/insights/volume/1/issue/1/enforcing-international-law> [<https://perma.cc/KNU5-HR7H>].

international agreements, the Convention Relating to the Status of Refugees and Protocol Relating to the Status of Refugees are accompanied by their respective obligations, characterized by the duty they impose on national governments to provide, without discrimination, enumerated protections for individuals fleeing persecution.¹³⁷

The United States is one of 146 state parties to the 1967 Protocol, which is interpreted and implemented differently across the world.¹³⁸ A country's capacity and willingness to process asylum and refugee applications may depend on its treaty obligations, as well as a host of various geopolitical factors including, *inter alia*, economic impact, demographic balance, political stability, regional instability, and religious sectarian tensions driving legitimate national security concerns.¹³⁹ Attitudes towards refugees and immigrants vary from country to country, though in each, government leaders' rhetoric affects the country's inclination to pursue resettlement goals, and often results in the politicization of humanitarian issues.¹⁴⁰ In examining the ability and readiness of the United States to accept refugees and asylees, the United States has arguably, especially in recent years, neglected or violated its international obligations under both the letter and spirit of the 1967 Protocol. Further, a majority of the geopolitical factors precluding a number of countries from hosting refugees in large numbers are either absent or a *de minimis* concern in the United States. As in other countries, however, anti-immigrant government rhetoric fuels nationwide anti-immigrant sentiment and harsh immigration policy, reducing the impetus for enacting reforms that would benefit refugees and asylum seekers, and ultimately, US citizens.

137. *Implementation of the 1951 Convention and 1967 Protocol Relating to the Status of Refugees EC/SCP/54*, UNCHR (July 7, 1989), <https://www.unhcr.org/en-us/excom/scip/3ae68cbe4/implementation-1951-convention-1967-protocol-relating-status-refugees.html#:~:text=The%201951%20Convention%20relating%20to,status%20in%20countries%20of%20asylum> [<https://perma.cc/NWS7-EEU4>]. *See also*, 1967 Protocol, *supra* note 13; 1951 Convention, *supra* note 9.

138. Luis Acosta, *Refugee Law and Policy in Selected Countries*, L. LIBR. CONG. (March 2016); *State Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol*, UNHCR, <https://www.unhcr.org/en-au/3b73b0d63.pdf> [<https://perma.cc/8D8A-7Q49>] (last visited Mar. 4, 2021).

139. *See* discussion *infra* notes 141-162.

140. *See id.*

Section III.A of this Note analyzes the refugee and asylum policies of the United States as compared to those of fellow state signatories to the 1951 Convention and the 1967 Protocol, distinguishing between those neglecting international obligations and those fulfilling their commitments to refugees and asylum-seekers. It discusses the rationale and repercussions of prohibitive immigration policies in states including Japan and Poland, comparing the detrimental effects of these policies to the net positive effects of immigration policy adhering to international obligations, such as that of Canada. It analyzes the role of geopolitical challenges and anti-immigrant rhetoric in perpetuating restrictive anti-immigrant policy, noting that government rhetoric, rather than any real threat posed by newcomers, may be the driving factor of countries including the United States' non-compliance with its international obligations. Lastly, it likens the ability of the United States to offer comprehensive refugee and asylee protections to that of Canada, a country welcoming of refugees, discussing how anti-immigrant rhetoric on the part of the government is impeding the United States' ability to fully comply with its international obligations. Section III.B examines specific detrimental refugee and asylum policies imposed by a demonstrably anti-immigrant administration, discussing the effects of xenophobic discourse on executive agencies' administration of these increasingly harmful policies. It then suggests the potential effects on the United States of continued non-compliance, drawing possibilities from the prior discussion of fellow signatories that have neglected their obligations under the 1951 Convention and 1967 Protocol. A fundamental shift in the government's attitude towards immigrants and the current immigration framework, supplemented by pro-immigrant initiatives, may suffice for purposes of providing adequate protection for refugees and asylum-seekers, and fulfilling US obligations under the 1951 Convention and 1967 Protocol.

*A. Prohibitive Refugee Policy and International Commitments: Japan
& Poland's Obligations Unfulfilled*

Among the state signatories of the 1951 Convention and its 1967 Protocol, several states continue to adhere to restrictive immigration policy, failing to provide agreed-upon protections

for refugees and asylees. In some cases, this neglect of international obligations can be attributed to unique geopolitical constraints; in others, to enduring anti-immigrant government rhetoric precluding more permissive immigration policy.¹⁴¹ The repercussions of unduly restrictive immigration policy likewise vary but tend to be unfavorable. The international community has admonished Japan, for instance, for its prohibitive refugee policy on an international scale, but domestically Japan also risks labor shortages due to an aging population and a historical aversion towards immigrants.¹⁴² Meanwhile, the international community's reproach of Poland for its failure to accept responsibility for resettlement of refugees pursuant to the EU resettlement scheme¹⁴³ culminated in its April 2020 appearance before the International Court of Justice.¹⁴⁴

Obstacles that preclude refugees from resettlement in Japan include procedural constraints on submitting applications and slow vetting processes, often resulting in years of wait time.¹⁴⁵ The government's lack of incentive to reconsider its refugee and asylee policies can be traced to a two hundred-year history of isolationism, resulting in a homogenous society and a general preference for maintaining such homogeneity.¹⁴⁶ Further, a conflict-ridden history with neighboring North Korea resulted in fears of opening the borders to increased numbers of North Korean refugees, giving the government a national-security related justification for low admission rates. Japan's undesirability as a resettlement destination also explains its numbers, with roadblocks including a mandatory six-to-nine-month orientation course, a high cost of living, and language barrier that renders it difficult for non-citizens to assimilate.¹⁴⁷

Japan's efforts to maintain ethnic homogeneity and discourage immigration have resulted in backlash from United

141. See, e.g., discussion *infra* notes 157-162.

142. See *infra* notes 148-149 and accompanying text.

143. See *Legislative Train Schedule Toward a New Policy on Migration*, *supra* note 8.

144. See generally *infra* notes 157-162 and accompanying text.

145. Tara Francis Chan, *No Entry: How Japan's shockingly low refugee intake is shaped by the paradox of isolation, a demographic time bomb, and the fear of North Korea*, BUS. INSIDER (Apr. 11, 2018), <https://www.businessinsider.com/why-japan-accepts-so-few-refugees-2018-4> [<https://perma.cc/YVX5-E9PH>].

146. *Id.*

147. *Id.*

Nations human rights experts,¹⁴⁸ and its restrictive policies have created demographic problems of their own, as the country's rapidly aging population precipitates a high risk of labor shortage.¹⁴⁹ As the United Nations pushes for Japan to align with its obligations under the 1967 Protocol and risks associated with its aging population intensifies, the Japanese government is slowly beginning to take steps to rectify and reform its anti-immigrant policies.¹⁵⁰ In allowing for an increase in immigration, Japanese government officials' rhetoric remained pragmatic rather than political, focusing on the need for an increased labor force in certain sectors.¹⁵¹ The public response has been overwhelmingly positive, proving that "increased immigration is possible without a mass backlash."¹⁵² For a nation whose isolationist history, geopolitical obstacles, and regional tensions have arguably resulted in neglect of its obligations towards refugees under international law, the Japanese government's slow progress towards opening new pathways for refugees and support for increased immigration indicate its desire to comply with its international obligations, and serves as evidence that increased immigration tends to benefit society at large.

In Europe, Poland was likewise condemned for its failure to adhere to the provisions of the 1951 Convention and 1967 Protocol among other international agreements. Sharing with Japan a societal preference for ethnic homogeneity but lacking similar geopolitical barriers to resettlement, the key factor driving Poland's aversion towards accepting a share of Europe's influx of refugees appears to be xenophobia, as illustrated by the rhetoric

148. Martin Gelin, *Japan Radically Increased Immigration—and No One Protested*, FOREIGN POL'Y (June 23, 2020), <https://foreignpolicy.com/2020/06/23/japan-immigration-policy-xenophobia-migration/> [https://perma.cc/3BAZ-U43D]; Quoc Trung Bui & Caitlin Dickerson, *What Can the United States Learn From How Other Countries Handle Immigration?*, N.Y. TIMES (Feb. 16, 2018), <https://www.nytimes.com/interactive/2018/02/16/upshot/comparing-immigration-policies-across-countries.html> [https://perma.cc/5UU7-YYYY].

149. David Green, *As Its Population Ages, Japan Quietly Turns to Immigration*, MIGRATION POL'Y INST. (Mar. 28, 2017), <https://www.migrationpolicy.org/article/its-population-ages-japan-quietly-turns-immigration> [https://perma.cc/2SV6-YNH2].

150. *Id.* The Japanese government recently launched a new resettlement program for Syrian refugees and implemented immigration reforms to expand visa programs over the course of five years. Chan, *supra* note 145; *see also* Gelin, *supra* note 148.

151. *See* Gelin, *supra* note 148.

152. *Id.*

of top government officials.¹⁵³ Poland has evolved from a nation that once generated a large number of the world's immigrants to a relatively wealthy nation with the economic capacity to resettle refugees in larger numbers than its policies currently allow.¹⁵⁴ However, Polish law pertaining to refugees and asylees still lacks provisions to offer adequate protection for asylum-seekers and refugees under the 1951 Convention's *non-refoulement* principle.¹⁵⁵ Fellow European Union member countries have criticized Poland for its failure to take in refugees, culminating in a recent European Court of Justice decision holding that the country violated the European Convention on Human Rights by denying thirteen Russian refugees the opportunity to apply for international protection.¹⁵⁶

Despite having pledged to resettle just 900 refugees under the European Union's relocation plan,¹⁵⁷ Poland failed to fulfill its obligations, citing the need to "protect Poland's internal

153. See *infra* notes 158-162 and accompanying text.

154. See The Conversation, *With History of Emigration, Poland Now Confronts Immigration Crisis*, U.S. NEWS (Sept. 24, 2015), <https://www.usnews.com/news/articles/2015/09/24/with-history-of-emigration-poland-now-confronts-immigration-crisis>.

155. Matina Stevis-Gridnef & Monika Pronczuk, *E.U. Court Rules 3 Countries Violated Deal on Refugee Quotas*, N.Y. TIMES (Apr. 2, 2020), <https://www.nytimes.com/2020/04/02/world/europe/european-court-refugees-hungary-poland-czech-republic.html> [<https://perma.cc/7B8X-TYAG>] (mentioning that Poland indicated it could swiftly relocate 100 persons to its territory but made no effort to do so, and made no additional relocation commitments); see also *Background Information on the Situation in Poland in the Context of the "Safe Third Country" Concept*, UNCHR (Nov. 1, 1995), <https://www.refworld.org/docid/3ae6b31d37.html> [<https://perma.cc/CV4E-8JW2>] (last visited Jan. 13, 2021); see also *Universal Periodic Review - Poland*, OHCHR (May 2017), <https://lib.ohchr.org/HRBodies/UPR/Documents/Session27/PL/PolandHCLetter.pdf> [<https://perma.cc/TL9L-Q95L>] (discussing the High Commissioner of Human Rights' recommendation that the Polish government fulfill its obligations under international human rights law and fully respect the non-refoulement principle so that refugees and asylum-seekers are not returned to territories where their life would be threatened).

156. See Reuters Staff, *Poland should help those fleeing persecution, U.N. says*, REUTERS (July 24, 2020), <https://www.reuters.com/article/us-un-poland-refugees/poland-should-help-those-fleeing-persecution-u-n-says-idUSKCN24PIJU> [<https://perma.cc/3AAA-G4EW>].

157. *Refugee Crisis - Q&A on Emergency Relocation*, EUR. COMM'N (Sept. 22, 2015), https://ec.europa.eu/commission/presscorner/detail/en/MEMO_15_5698 [<https://perma.cc/X4JK-MLTQ>]; see also *EU to sue Poland, Hungary, and Czechs for refusing refugee quotas*, BBC NEWS (Dec. 7, 2017), <https://www.bbc.com/news/world-europe-42270239> [<https://perma.cc/9SF2-NZPV>].

security and defend it against uncontrolled migration.”¹⁵⁸ Echoing the anti-immigrant rhetoric of President Trump, Jaroslaw Kaczynski, the leader of Poland’s right-wing Law and Justice Party, outwardly expressed disdain for the plan to provide for the resettlement of hundreds of thousands of refugees fleeing the Syrian civil war.¹⁵⁹ Kaczynski declared that migrants carry diseases, and that Poland would not accept refugees after “recent events connected with acts of terror.”¹⁶⁰ The European Commission ultimately sued Poland, Hungary, and the Czech Republic before the European Court of Justice for the countries’ refusal to implement the refugee quotas laid out in the European Union’s 2015 resettlement scheme.¹⁶¹ In April 2020, the court ruled that by “refusing to take in their fair share of asylum seekers at the height of the refugee crisis in 2015,” the three countries violated their obligations under international law, and may be subject to future repercussions determined by the European Commission.¹⁶²

A number of organizations performed research during the peak years of the migration crisis which calls the veracity of the Polish government’s rhetoric into question.¹⁶³ Whereas Poland’s right-wing government leaders have fueled domestic xenophobia

158. Stevis-Gridneff & Pronczuk, *supra* note 155; see also Helen Womack, *Polish city leads the way in solidarity with refugees*, UNCHR (Feb. 16, 2018), <https://www.unhcr.org/en-us/news/stories/2018/2/5a83febd4/polish-city-leads-way-solidarity-refugees.html> [<https://perma.cc/4RFM-D7LL>].

159. Matt Broomfield, *Poland refuses to take a single refugee because of ‘security’ fears*, INDEP. (May 9, 2016), <https://www.independent.co.uk/news/world/europe/poland-refuses-take-single-refugee-because-security-fears-a7020076.html> [<https://perma.cc/GP4F-JREF>].

160. *Id.*

161. See *EU to Sue Poland, Hungary, and Czechs for Refusing Refugee Quotas*, *supra* note 157.

162. See *European Union: Court of Justice Rules Against Poland, Czech Republic, and Hungary for Noncompliance with Migrant Relocation Obligations*, LIBR. CONG. (June 5, 2020), <https://www.loc.gov/law/foreign-news/article/european-union-court-of-justice-rules-against-poland-czech-republic-and-hungary-for-noncompliance-with-migrant-relocation-obligations/> [<https://perma.cc/C84D-9CJH>]. See also *E.U. Court Rules 3 Countries Violated Deal on Refugee Quotas*, *supra* note 155. Further action by the Commission has yet to be taken, but Poland’s contravention of its international obligations was viewed as offensive by fellow EU member states and Polish citizens alike. See generally Jan Cienski, *Why Poland doesn’t want refugees*, POLITICO (May 26, 2017), <https://www.politico.eu/article/politics-nationalism-and-religion-explain-why-poland-doesnt-want-refugees/> [<https://perma.cc/K7VD-K8WN>].

163. See, e.g., *infra* note 164 and accompanying text.

by painting immigrants as a national security threat, statistics taken from surrounding countries including Italy, who took in the majority of new arrivals, suggest that there is no correlation between arriving migrants and rising crime rates.¹⁶⁴ In Italy, data from the Italian National Institute of Statistics collected between 2007 and 2016 indicate that crime has decreased in all regions of the country by nearly twenty-five percent, while the number of individuals granted asylum increased exponentially.¹⁶⁵ Data gathered to determine the number of crimes committed by non-Italians during this time confirms the same decreasing trend within every region of Italy.¹⁶⁶ These statistics support the notion that regardless of the veracity of government leaders' rhetoric, it is a key factor in influencing public opinion and immigration policy, thus, determining the extent to which a country fulfills its obligations to refugees under the 1951 Convention and the 1967 Protocol.

B. Benefits of Pro-Refugee Policy: Canada's Commitment to Refugee Resettlement Under International Law

The dramatic effect of government rhetoric on refugee policy and public opinion is all the more evident when countries taking an anti-immigrant stance are contrasted against those with refugee policy developed in compliance with obligations under international law. In Canada, with popular support, the Trudeau administration has generally maintained its commitment to welcoming refugees and asylum seekers.¹⁶⁷ Canada acceded to the 1967 Protocol in 1969 and has recently surpassed the United States in refugee admissions, having resettled over 30,000

164. Donato Di Carlo et al., *Has immigration really led to an increase in crime in Italy?*, LONDON SCH. ECON. POL. SCI. (Mar. 3, 2018), <https://blogs.lse.ac.uk/europpblog/2018/03/03/has-immigration-really-led-to-an-increase-in-crime-in-italy/> [<https://perma.cc/D482-HUJ7>]; see also *EU research disproves link between immigration and increased crime*, CORDIS (Oct. 17, 2013), <https://cordis.europa.eu/article/id/20635-eu-research-disproves-link-between-immigration-and-increased-crime> [<https://perma.cc/R7DP-UDGS>].

165. *Has immigration really led to an increase in crime in Italy?*, *supra* note 164.

166. *Id.*

167. See Chantal da Silva, *Canada is Being 'Bombarded' With Anti-Immigrant Views from the U.S.—Here's How Their Immigration Minister is Fighting It*, NEWSWEEK (Aug. 1, 2019), <https://www.newsweek.com/canada-immigration-minister-ahmed-hussen-anti-immigrant-views-1452147> [<https://perma.cc/PG38-42QF>].

refugees in 2019.¹⁶⁸ Unaffected by the geopolitical factors that may prevent fellow signatory countries from resettling refugees in large numbers, Canada's successes in refugee resettlement can largely be attributed to proactive policies promulgated by government officials who frame the influx of newcomers as a benefit rather than a threat.¹⁶⁹

For over forty years, the Canadian government has gone to lengths to counter domestic anti-immigrant sentiments and create a place for refugees and asylum seekers within Canadian society.¹⁷⁰ The government has raised support for pro-immigrant initiatives by sharing success stories and has implemented programs including the longstanding Private Sponsorship of Refugees program and a more recently launched pilot program admitting refugees to Canada through economic immigration processes.¹⁷¹ Through the Private Sponsorship of Refugees Program, over two million Canadians have helped sponsor a refugee for a period of up to a year, providing aid in the form of monthly costs for necessities and emotional and social support to help newcomers settle in.¹⁷² These government initiatives serve not only to open the doors for refugees and asylees, but to influence public perception of arriving immigrants.¹⁷³ Their longevity and success correlates to the support from government officials, whose rhetoric generally assuages, rather than aggravates, national security concerns.¹⁷⁴

168. Maryam Shah, *The number of people displaced worldwide is at an all-time high. Can Canada do more?*, GLOBAL NEWS (June 20, 2020), <https://globalnews.ca/news/7088028/canada-refugees-resettlement-unhcr/#:~:text=Canada%20resettled%20more%20than%2030%2C000,a%20new%20United%20Nations%20report> [<https://perma.cc/EX87-5E7L>]. In 2019, Canada resettled over 30,000 refugees—more than any of the other 26 countries volunteering to do so. *Id.*

169. See discussion *infra* notes 170-74.

170. *Id.*

171. See da Silva *supra* note 167.

172. *Sponsor a Refugee*, GOV'T CAN., <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/help-outside-canada/private-sponsorship-program.html> [<https://perma.cc/6ADK-Z2GE>] (last visited Oct. 15, 2020); see also *By the Numbers - 40 Years of Canada's Private Sponsorship of Refugees Program*, GOV'T CAN. (July 21, 2020), <https://www.canada.ca/en/immigration-refugees-citizenship/news/2019/04/by-the-numbers-40-years-of-canadas-private-sponsorship-of-refugees-program.html> [<https://perma.cc/RUJ7-FKJJ>].

173. See da Silva *supra* note 167.

174. *Id.*

Canadian refugee and asylum policies exemplify the possibility of satisfying an international obligation to provide protections for refugees without sacrificing national security. Refugees eligible for resettlement from overseas camps first go through extensive screening procedures administered by the United Nations High Commissioner for Refugees (“UNHCR”), and about one percent of those screened are then selected for resettlement by countries like the United States and Canada.¹⁷⁵ Canadian visa officers responsible for the second round of screening conduct thorough interviews, take candidates’ biometrics, and perform background checks through the databases of the Canadian Security Intelligence Service, the Canada Border Services Agency, Royal Canadian Mounted Police, and Interpol.¹⁷⁶ The border agency then verifies newcomers’ identities a third time when they arrive at ports of entry.¹⁷⁷ As asylum-seekers apply from within the country, they bypass the UNHCR screening.¹⁷⁸ However, they must still complete the other above-mentioned security procedures and background checks.¹⁷⁹ The refugee determination process is designed to thoroughly screen candidates and check for a range of bars to admissibility, with little to no likelihood of a potential security risk going unnoticed.¹⁸⁰

The efficacy of Canada’s refugee vetting system is evidenced by the low crime rate among Canada’s immigrant population. In analyzing the results of studies performed by Statistics Canada, the Canadian Council for Refugees found that much like in Italy, the connection between immigration and crime in Canada is inverse, if any.¹⁸¹ In essence, increased immigration correlates to

175. Nicholas Keung, *Refugee Vetting in United States and Canada Already ‘Extreme,’ Experts Say*, STAR (Feb. 24, 2017), <https://www.thestar.com/news/immigration/2017/02/24/refugee-vetting-in-us-and-canada-already-extreme-experts-say.html> [<https://perma.cc/BYY9-N6PQ>].

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. *Facts About Refugees and Refugee Claimants in Canada*, CAN. COUNCIL FOR REFUGEES, <https://ccrweb.ca/en/myths-facts> [<https://perma.cc/EK3N-23VE>] (last visited Oct. 15, 2020).

181. Rachel Giese, *How Immigration Helps to Lower Crime Rates*, WALRUS (Jun. 12, 2011), <https://thewalrus.ca/arrival-of-the-fittest/> [<https://perma.cc/5X3E-8ATZ>].

less crime.¹⁸² For instance, a study evaluating the correlation between immigration and crime in the city of Toronto indicated that “the higher the proportion of recent immigrants in a neighborhood, the lower the rates of drug offenses, all types of violent crime, mischief and other thefts.”¹⁸³ The statistics discussed provide further support for the notion that refugees arriving in countries like the United States and Canada do not present a significant national security threat.¹⁸⁴ It is critical to remember that refugees and asylum-seekers flee their countries of origin with the intention of seeking protection from persecution. Thus, though there is always a possibility that individuals will try to use the US or Canadian immigration systems as a means to a wrongful end, the level of risk is statistically insignificant, failing to serve as adequate justification for turning these individuals away at the border.¹⁸⁵

182. *Id.*

183. *Neighbourhood Characteristics and the Distribution of Police-Reported Crime in the City of Toronto*, STAT. CAN., <https://www150.statcan.gc.ca/n1/pub/85-561-m/2009018/part1-eng.htm> [<https://perma.cc/U88G-EAFA>] (last visited Oct. 16, 2020). *See also Facts About Refugees and Refugee Claimants in Canada*, *supra* note 180.

184. Annie Flagg, *The Myth of the Criminal Immigrant*, N.Y. TIMES (Mar. 30, 2018), <https://www.nytimes.com/interactive/2018/03/30/upshot/crime-immigration-myth.html> [<https://perma.cc/BSU7-97JR>]; *see also* Arghavan Gerami, *Debunking the “Criminal Immigrant” Argument*, GERAMI L. PC (Feb. 13, 2019), <https://www.geramilaw.com/blog/debunking-the-criminal-immigrant-argument.html> [<https://perma.cc/47FR-EP3F>].

185. *See generally* Phil Gurski, *Linking immigration and terrorism is wrong, in Canada and elsewhere*, OTTAWA CITIZEN (Nov. 12, 2018), <https://ottawacitizen.com/opinion/columnists/gurski-linking-immigration-and-terrorism-is-wrong-in-canada-and-elsewhere> [<https://perma.cc/L26Y-7F4P>] (indicating that statistics gathered since the Canadian Security Intelligence Service’s screening procedure was put in place in 2001 indicate that newly arriving immigrants do not pose a significant national security concern. Likewise, in the United States, intelligence agencies have stated that Trump’s claim of ISIS using the cover of refugee flows to infiltrate the United States is not true); *see also* Brian Hill, *Just 0.3% of irregular migrants in Canada found to have serious criminal past*, GLOBAL NEWS (Sept. 20, 2019), <https://globalnews.ca/news/5918639/irregular-migrants-criminal-past/> [<https://perma.cc/BX2K-SQFU>]. Since 2017, only 140 of the approximately 45,000 migrants crossing the Canadian border as asylum-seekers had a criminal past serious enough to impede their refugee claims. This further affirms the idea that the efficacy of Canada’s refugee vetting system deters those with a criminal record from making refugee claims and risking the discovery of their criminal history. *Id.*

C. The United States

1. Effects of Rhetoric Conflating Immigration and National Security on Refugee and Asylum Policy

Consistent with the rhetoric of his 2016 presidential campaign, Donald Trump's presidency culminated in what was effectively a siege on immigration. During his campaign, President Trump framed both refugees fleeing from Syria and migrants escaping the Northern Triangle as national security threats.¹⁸⁶ His administration indiscriminately portrayed all immigrants, refugees and asylum-seekers included, as a threat to American society.¹⁸⁷ From the very first days of the Trump Administration, the President and those acting under him employed rhetoric conflating immigration and national security as alleged justification for directing immigration agencies to carry out a harsh, enforcement-based agenda.¹⁸⁸ Similarly, the Trump Administration invoked harmful rhetoric to fuel nationwide anti-immigrant perception in a clear effort to garner public support for said agenda.¹⁸⁹

There is ample evidence of the Trump Administration's use of inflammatory anti-immigrant rhetoric to influence US refugee and asylum policy. In an executive order promulgated in 2017, the President expounded the national security threat that undocumented aliens presented to the American public, erroneously emphasizing that terrorists and criminals seeking to harm Americans enter the United States by way of illegal immigration.¹⁹⁰ Such rhetoric was then used to illustrate the necessity of allocating substantial resources for the further

186. Deborah Amos, *2018 Was a Year of Drastic Cuts to U.S. Refugee Admissions*, NPR (Dec. 27, 2018), <https://www.npr.org/2018/12/27/680308538/2018-was-a-year-of-drastic-cuts-to-u-s-refugee-admissions> [<https://perma.cc/UTU9-F54G>]; Sarah Pedigo Kulzer & Ryan Phillips, *Those Who Must Die: Syrian Refugees in the Age of National Security*, HUM. RTS. REV. (Feb. 19, 2020), <https://link.springer.com/content/pdf/10.1007/s12142-020-00582-1.pdf> [<https://perma.cc/SE3A-HJL6>].

187. See *supra* notes 88-91 and accompanying text.

188. See discussion *infra* notes 190-96.

189. See, e.g., *infra* notes 198-203 and accompanying text.

190. Exec. Order No. 13767, 86 Fed. Reg. 8793, 8793 (2017), <https://www.federalregister.gov/documents/2017/01/30/2017-02095/border-security-and-immigration-enforcement-improvements> [<https://perma.cc/94T6-NSYR>].

development of detention facilities, and authorizing state and local law enforcement officials to act as immigration officers in investigating, apprehending, and detaining aliens.¹⁹¹ In stating that it is the executive branch’s policy “to end the abuse of parole and asylum provisions currently used to prevent the lawful removal of removable aliens,” the President suggested that asylum-seekers are abusing the system to gain entry into the United States—an assertion that has not been substantiated to date.¹⁹²

In a 2018 speech delivered by Attorney General Jeff Sessions, Sessions mirrored Trump’s rhetoric and explained that the Trump Administration’s zero-tolerance policy and transfer of additional prosecutors to the border was effectuated in the interest of national security, insinuating that those crossing the border are doing so with the deliberate intent to bypass lawful avenues for admission.¹⁹³ Trump’s Press Secretary, Sean Spicer, said that the President wanted to “take the shackles off” ICE agents so they could conduct more arrests, and given the increase in apprehensions inside of courthouses, at USCIS offices, and in workplaces, it appears that the President’s narrative has spurred ICE officers to do just that.¹⁹⁴ President Trump emboldened ICE to militantly step up enforcement efforts—with arrests increasing by forty-two percent within the first eight months of his administration. President Trump’s actions evidenced a stark contrast from his predecessors, who acted with a degree of compassion in focusing enforcement efforts on deportation of

191. *Id.*

192. *Id.*; Mariam Valverde, *Jeff Sessions claims asylum system rampant with fraud and abuse*, *POLITIFACT* (Oct. 19, 2017), <https://www.politifact.com/factchecks/2017/oct/19/jeff-sessions/jeff-sessions-claim-about-asylum-system-fraudulent/> [<https://perma.cc/X37N-SJUZ>].

193. Jeff Sessions, Attorney General, Remarks Discussing the Immigration Enforcement Actions of the Trump Administration (May 7, 2018) (transcript available at <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions> [<https://perma.cc/V3TW-4Z59>]).

194. Nicholas Kulish et al., *Immigration Agents Discover New Freedom to Deport Under Trump*, *N.Y. TIMES* (Feb. 25, 2017), <https://www.nytimes.com/2017/02/25/us/ice-immigrant-deportations-trump.htm> [<https://perma.cc/KA2D-YCWU>]; see also Trevor Timm, *ICE Agents are Out of Control. And They Are Only Getting Worse*, *GUARDIAN* (May 13, 2017) <https://www.theguardian.com/commentisfree/2017/may/31/ice-agents-out-of-control-immigration-arrests> [<https://perma.cc/TY43-SXWM>].

individuals with criminal records.¹⁹⁵ ICE officers, faced with the moral dilemma of arresting innocent individuals, grew accustomed to validating their actions with national-security justifications.¹⁹⁶ Thus, the executive's xenophobic rhetoric played a key role in the Trump Administration's promulgation of damaging anti-immigrant policy.

Further evidence connecting national-security based anti-immigrant rhetoric and policy is the public support for Trump-era policies, such as the highly publicized border wall.¹⁹⁷ In a 2016 survey of Trump's supporter base, sixty-six percent of registered voters supporting Trump perceived immigration as a "big problem," fifty-nine percent associated undocumented immigrants with serious criminal behavior, and an astounding seventy-nine percent favored construction of the US-Mexico border wall.¹⁹⁸ The same voter base overwhelmingly favored immigration law enforcement as an administrative priority, rather than providing a path to citizenship for undocumented immigrants.¹⁹⁹ A survey of sixty-four rallies held by Trump during his presidency showed that the President used the words "predator," "invasion," "alien," "killer," "criminal," and "animal" over 500 times while discussing immigration, including an exchange in which the President asked a crowd of supporters how best to stop an influx of people crossing the border, and an audience member responded "shoot them."²⁰⁰ The President's anti-immigrant vitriol sparked an upsurge in violence, with counties that hosted Trump rallies witnessing a dramatic increase in hate crimes, primarily targeting those perceived to be

195. Franklin Foer, *How Trump Radicalized Ice*, ATLANTIC (Sept. 2018), <https://www.theatlantic.com/magazine/archive/2018/09/trump-ice/565772/> [https://perma.cc/65EA-5SSW]; see also Timm, *supra* note 194.

196. See Foer, *supra* note 195.

197. Carroll Doherty, *5 facts about Trump supporters' views of immigration*, PEW RSCH. CTR. (Aug. 25, 2016), <https://www.pewresearch.org/fact-tank/2016/08/25/5-facts-about-trump-supporters-views-of-immigration/> [https://perma.cc/R2DJ-CV5Z]; see discussion *supra* notes 90-94.

198. See Doherty, *supra* note 197.

199. *Id.*

200. John Fritze, *Trump used words like 'invasion' and 'killer' to discuss immigrants at rallies 500 times*, USA TODAY (Aug. 8, 2019), <https://www.usatoday.com/story/news/politics/elections/2019/08/08/trump-immigrants-rhetoric-criticized-el-paso-dayton-shootings/1936742001/> [https://perma.cc/VW92-6AV8].

immigrants.²⁰¹ Perpetrators of recent acts of domestic terrorism, including the 2019 El Paso shooting and the 2018 Pittsburgh synagogue massacre, echoed nativist, anti-immigrant sentiments as their primary motivation.²⁰² While a majority of Americans disagree with the Trump Administration's immigration policy, radical voices endorsing Trump's immigration agenda indicate that a significant portion of the country perceives immigrants as a threat to US safety, and supports punitive policies aimed at reducing that illusory threat.²⁰³

There has been abundant international criticism of each policy enacted by the Trump Administration aimed at stemming immigration and deterring refugees and asylum applicants from seeking protection under US law.²⁰⁴ A number of the policies recently enacted were condemned as potentially violative of the key *non-refoulement* principle articulated in Article 33 of the 1951 Convention,²⁰⁵ which stipulates that refugees should not be forcibly returned to territories where they would experience persecution.²⁰⁶ The Agreement Between the Government of the

201. Tyler Anbinder, *Trump has spread more hatred of immigrants than any American in history*, WASH. POST (Nov. 7, 2019), https://www.washingtonpost.com/outlook/trump-has-spread-more-hatred-of-immigrants-than-any-american-in-history/2019/11/07/7e253236-f54-11e9-8bab-0fc209e065a8_story.html [https://perma.cc/LU25-5EAK]; see also Suman Ragnathan, *Trump's Xenophobic Vision of America is Inciting Racist Violence*, NATION (Jan. 27, 2018), <https://www.thenation.com/article/archive/trumps-xenophobic-vision-of-america-is-inciting-racist-violence/>.

202. See Anbinder, *supra* note 201.

203. *Public Priorities for US Asylum Policy: More Judges for Cases, Safe Conditions for Migrants*, PEW RSCH. CTR. (Aug. 12, 2019), <https://www.pewresearch.org/politics/2019/08/12/public-priorities-for-u-s-asylum-policy-more-judges-for-cases-safe-conditions-for-migrants/> [https://perma.cc/Z6LB-QADU].

204. See, e.g., *U.N. rights chief 'appalled' by US border detention conditions, says holding migrant children may violate international law*, UN NEWS (July 8, 2019), <https://news.un.org/en/story/2019/07/1041991> [https://perma.cc/4DXT-2VE7]; Mark Berman, *U.N. Experts say Trump immigration order violates U.S. human rights obligations*, WASH. POST (Feb. 1, 2017), <https://www.washingtonpost.com/news/post-nation/wp/2017/02/01/u-n-experts-say-trump-immigration-order-violates-u-s-human-rights-obligations/> [https://perma.cc/27LC-QT4C].

205. See, e.g., *USA: You Don't Have Any Rights Here*, AMNESTY INT'L, <https://www.amnesty.org/en/latest/research/2018/10/usa-treatment-of-asylum-seekers-southern-border/> [https://perma.cc/9NLT-EYZN] (last visited Jan. 13, 2021).

206. See 1951 Convention, *supra* note 9, art. 33; Peniel Ibe, *The dangers of Trump's "safe third country" agreements in Central America*, AM. FRIENDS SERV. COMM. (July 28, 2020),

United States of America and the Government of the Republic of Guatemala on Cooperation Regarding the Examination of Protection Claims, for instance, creates yet another roadblock for individuals fleeing dangerous conditions in their home countries.²⁰⁷ Under the agreement, if migrants fail to make an asylum claim in any of the countries traversed before reaching the border, they are deemed ineligible for asylum in the United States.²⁰⁸ They may then be sent to countries where they have access to adequate and fair procedures for adjudicating asylum claims, a reference to Guatemala.²⁰⁹

Guatemala, however, is one of the world's most violent and poverty-stricken countries, and its nationals account for a significant fraction of the current asylum-seeking migrant population.²¹⁰ Sending those seeking international protection from imminent danger to an equally dangerous location will have no significant positive impact on US national security, and will more likely result in increased regional instability.²¹¹ Further, by

<https://www.afsc.org/blogs/news-and-commentary/dangers-trumps-safe-third-country-agreements-central-america> [<https://perma.cc/H9AY-4HT3>].

207. Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala on Cooperation Regarding the Examination of Protection Claims, Guat.-U.S., Nov. 20, 2019, 84 Fed. Reg. 64095.

208. *Deportation with a Layover: Failure of Protection under the US-Guatemala Asylum Cooperative Agreement*, HUM. RTS. WATCH (May 19, 2020), <https://www.hrw.org/report/2020/05/19/deportation-layover/failure-protection-under-us-guatemala-asylum-cooperative> [<https://perma.cc/2X5U-USMC>]; Nicole Narea, *Trump's agreements in Central America are dismantling the asylum system as we know it*, VOX (Nov. 20, 2019), <https://www.vox.com/2019/9/26/20870768/trump-agreement-honduras-guatemala-el-salvador-explained> [<https://perma.cc/7KMC-N4FA>].

209. See Narea, *supra* note 208. The Trump Administration has decided that Guatemala's legal framework provides "access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection." *Id.* See also Kevin Sieff, *The US is Putting Asylum Seekers on Planes to Guatemala – Often Without Telling them Where They're Going*, WASH. POST (Jan. 14, 2020), https://www.washingtonpost.com/world/the_americas/the-us-is-putting-asylum-seekers-on-planes-to-guatemala-often-without-telling-them-where-theyre-going/2020/01/13/0f89a93a-3576-11ea-1ff-c48c1d59a4a1_story.html [<https://perma.cc/LH7Y-WNE5>]; U.S. Government's New "Safe Third Country" Deal with Guatemala Puts Asylum Seekers at Grave Risk, RELIEFWEB (Nov. 21, 2019), <https://reliefweb.int/report/united-states-america/us-government-s-new-safe-third-country-deal-guatemala-puts-asylum>.

210. See *supra* note 118 and accompanying text.

211. Stuart Anderson, *A 'Safe' Third Country Agreement with Guatemala Could be Dangerous*, FORBES (July 15, 2019), <https://www.forbes.com/sites/stuartanderson/2019/07/15/a-safe-third-country->

threatening to send refugees to unsafe countries lacking the infrastructure to properly integrate refugees, the agreement conflicts with the United States' commitment to *non-refoulement* under international law.²¹²

The “Remain in Mexico” policy, which has been enforced since 2019, violates the *non-refoulement* principle on the same grounds, by effectively preventing asylum-seekers from seeking US protection and returning them to a territory no safer than their home countries.²¹³ Since February of 2019, Human Rights First documented that approximately 1,300 asylum-seekers were assaulted after being turned away from the United States and compelled by the Trump Administration to stay in Mexico while the US immigration agencies adjudicate their asylum claims.²¹⁴ Mexico's lack of an adequate infrastructure to handle large numbers of asylum-seekers results in migrant families overcrowded in temporary border shelters, traumatized and impoverished, and forced to confront unemployment and a lack of resources.²¹⁵ In addition, the problematic policy has led to the separation of non-parental guardians from children who are then classified as “unaccompanied alien children,” and detained alone while their adult family members are sent to Mexico for the duration of their asylum cases, a process that could take as long as several years.²¹⁶ Trump Administration Policies over the last

agreement-with-guatemala-could-be-dangerous/?sh=1df5d74915a5
[<https://perma.cc/8VAT-6SEJ>].

212. See, e.g., Ibe, *supra* note 206.

213. Michelle Chen, *Trump's 'Remain in Mexico' Policy is Illegal Under International Law*, NATION (Mar. 7, 2019), <https://www.thenation.com/article/archive/trump-border-mexico-international-law-human-rights/> [<https://perma.cc/GU2B-ALF8>]; see also USA: *You Don't Have Any Rights Here*, *supra* note 205 (discussing Trump Administration policies aimed at deterring asylum-seekers from requesting US protection, resulting in US violation of the prohibition on refoulement).

214. Charles Davis, *Over 1,300 asylum-seekers assaulted in Mexico while remaining there under Trump administration policy, new report says*, BUS. INSIDER (Dec. 16, 2020), <https://www.businessinsider.com/asylum-seekers-assaulted-in-mexico-under-trump-policy-report-2020-12> [<https://perma.cc/6CTY-K5P6>].

215. See Chen, *supra* note 213.

216. *Fact Sheet, United States Asylum Process*, NAT'L IMMIGR. F. (Jan. 10, 2019), <https://immigrationforum.org/article/fact-sheet-u-s-asylum-process/#:~:text=The%20length%20of%20the%20asylum,his%20or%20her%20asylum%20claim> [<https://perma.cc/W9X9-23Y2>]. Asylum applications can take anywhere from six months to several years to be adjudicated. *Id.* The timing depends on factors such as whether the applicant applied affirmatively or defensively. *Id.* “As of July 2018, the average wait time for an immigration hearing during the defensive asylum process was

four years have violated fundamental provisions of international agreements to which the United States is a party and have made seeking protection within the United States all but impossible for humanitarian migrants.²¹⁷

The 1951 Convention and its 1967 Protocol impose upon the United States obligations to provide for the protection of refugees and asylees under US law, including a commitment not to return refugees and asylum-seekers to home countries where they have been persecuted.²¹⁸ Should the United States further neglect its obligations, it may not only find itself criticized by the international community, but may be taken to the International Court of Justice (“ICJ”) by a state seeking recourse for US violation of its commitments under the 1951 Convention and 1967 Protocol. The 1951 Convention provides that disputes between parties relating to the interpretation and application of the Convention may be referred to the ICJ at the request of any party to the dispute.²¹⁹ While no state has yet exhibited intent to do so, the United States made no reservation to Article 38; rendering it susceptible to future litigation.²²⁰ Member states of the European Union have in recent history been brought before international tribunals for violation of the *non-refoulement* principle, including Poland and Spain, which appeared in front of the European Court of Human Rights in 2015 for denying entry to asylum-seekers in the city of Melilla.²²¹ Should a timely claim be brought, the United States may thus be penalized for violation of the 1951 Convention and 1967 Protocol’s *non-refoulement* principle.

721 days.” *Id.* As the number of cases increases, there continues to be a huge backlog due to a lack of sufficient funding for immigration judges. *Id.*

217. See, e.g., discussion *supra* notes 204-217.

218. See 1951 Convention *supra* note 9, at art. 33.

219. See *id.* art. 38; see also, Shirley Llain Arenilla, *Violations to the Principle of Non-Refoulement Under the Asylum Policy of the United States*, 15 ANUARIO MEXICANO DE DERECHO INTERNACIONAL 316 (2015).

220. See Arenilla *supra* note 219, at 316.

221. N.D. v. Spain, App. Nos 8675/15, 8697/15 (Feb. 13, 2020), <http://hudoc.echr.coe.int/spa?i=001-201353>; see also *European Court Allows Spain’s “Push Back” of Undocumented African Migrants*, INT’L RESOURCE JUST. CTR. (Feb. 21, 2020), <https://ijrcenter.org/2020/02/21/european-court-allows-spains-push-back-of-undocumented-african-migrants/> [<https://perma.cc/5KXH-REP5>]; *Spain, ICJ and others intervene in case of pushbacks of asylum seekers*, INT’L COMM. JURISTS (Apr. 17, 2018), <https://www.icj.org/spain-icj-and-others-intervene-in-case-of-push-backs-of-asylum-seekers-2/> [<https://perma.cc/Z3FW-MTQK>].

2. United States v. Canada - Similar Security Guarantees, Different Rhetoric

Rhetoric appears to be the core factor differentiating US refugee and asylum policy from that of countries like Canada, which have comparable capacity to accept humanitarian migrants and equally comprehensive vetting procedures. Much like in Canada, in the United States, refugees and asylum-seekers undergo an extensive, multi-step screening process. Refugees facing resettlement from overseas become eligible through a number of pathways, including UNHCR or embassy recommendation.²²² Each applicant assigned for resettlement is then referred to one of nine US State Department Resettlement Centers (“RSCs”).²²³ The applicant goes through vetting procedures under the United States Refugee Admissions Program,²²⁴ a comprehensive process consisting of a series of security checks and interviews, first conducted by RSC staff, then in collaboration with the DHS, through USCIS. USCIS makes the final determination as to whether an individual qualifies for resettlement in the United States. Those who have been approved then undergo a health screening and cultural orientation course before arriving in the United States, at which point DHS again verifies their identity through CBP agents.²²⁵

Those applying for affirmative asylum from within the United States bypass UNHCR screening and must apply for asylum within a year of arrival by submitting USCIS Form I-589, an extensive affidavit detailing the basis for the application, and supporting documentation.²²⁶ They are then scheduled to attend a USCIS asylum interview, after which the asylum officer and reviewing supervisory asylum officer make the determination as

222. Claire Felter & James McBride, *How Does the United States Refugee System Work?*, COUNCIL ON FOREIGN RELATIONS (Oct. 10, 2018), <https://www.cfr.org/backgrounder/how-does-us-refugee-system-work> [https://perma.cc/3UVR-QVMK].

223. *Id.*

224. See Keung, *supra* note 175.

225. *Fact Sheet: United States Refugee Resettlement*, NAT’L IMMIGR. F. (Nov. 5, 2020), <https://immigrationforum.org/article/fact-sheet-u-s-refugee-resettlement/> [https://perma.cc/LX6J-5972].

226. Iona Bray, *Asylum or Refugee Status: How to Apply*, NOLO, <https://www.nolo.com/legal-encyclopedia/asylum-or-refugee-status-how-32299.html> [https://perma.cc/T4XW-TCQF] (last visited Oct. 15, 2020).

to eligibility.²²⁷ Individuals apprehended at or within 100 miles of the border in the first two weeks after crossing without documentation apply through defensive asylum.²²⁸ The defensive asylum process includes a “credible fear” interview, at which the asylum officer makes a threshold determination as to whether the individual has a credible fear of persecution or torture.²²⁹ Those who make it past the “credible fear” interview are referred to an immigration judge who then adjudicates the individual’s request for asylum.²³⁰ If approved, the individual becomes an asylee.²³¹

The breadth of US vetting processes outlined above leaves very little room for error, as confirmed by a number of studies examining the national security risk posed by refugees.²³² Over the last four decades, over 3 million refugees have been admitted to the United States, and only twenty of the “154 foreign-born terrorists that committed attacks in the United States since 1975” were refugees.²³³ Further, not a single American has been killed by Syrian refugee in a terrorist attack in the United States.²³⁴

Rather, studies examining the success of Syrian immigrants in the United States found that they are substantially more likely to become owners of successful businesses than US-born individuals, thus facilitating job creation and contributing

227. *The Affirmative Asylum Process*, USCIS, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/the-affirmative-asylum-process#:~:text=To%20apply%20for%20asylum%2C%20you,one%2Dyear%20filing%20deadline> [https://perma.cc/VE6V-C54Q] (last visited Oct. 15, 2020).

228. *About the Defensive Asylum Process in the United States*, ASYLUMCONNECT, https://asylumconnect.org/wp-content/uploads/2019/10/about-the-defensive-asylum-process-in-the-united-states-2_compressed.pdf [https://perma.cc/2LFB-UMDU] (last visited Nov. 12, 2020).

229. *See id.*; *Fact Sheet: Asylum in the United States*, AM. IMMIGR. COUNCIL (June 11, 2020), <https://www.americanimmigrationcouncil.org/research/asylum-united-states> [https://perma.cc/Z5GC-W29Y].

230. *Fact Sheet: US Asylum Process*, NAT’L IMMIGR. F. (Jan. 10, 2019), <https://immigrationforum.org/article/fact-sheet-u-s-asylum-process/> [https://perma.cc/JA9E-PKEG].

231. *Id.*

232. *See discussion supra* notes 128-133; *infra* notes 233-34; and accompanying text.

233. Felner & McBride, *supra* note 222.

234. Uri Friedman, *Where America’s Terrorists Actually Come From*, ATLANTIC (Jan. 30, 2017), <https://www.theatlantic.com/international/archive/2017/01/trump-immigration-ban-terrorism/514361/> [https://perma.cc/6E7U-UGCD].

positively to the US economy.²³⁵ Between 2005 and 2015, refugees and asylees in the United States since 1980 “contributed \$63 billion more to government revenues than they used in public services,”²³⁶ and refugees have tended to accept jobs in sectors of the economy with labor shortages.²³⁷ History has proven that much like in Canada, Japan, and a host of other countries, acceptance of refugees and asylum-seekers has a net positive impact on US society. This fact tends to get overlooked when obscured by the government’s outwardly anti-immigrant rhetoric, which in turn provides false justification for its increasingly restrictive refugee and asylum policies, some of which go so far as to compromise international obligations.²³⁸ President Trump has pushed the rhetoric of protecting national security through increased immigration enforcement to the extreme, noticeably departing from the policies of past US leaders who, although varying in levels of commitment to immigration enforcement, had avoided such large-scale attacks on asylees and refugees.²³⁹

An examination of the correlation between immigration and crime in the above-mentioned countries, among others, indicates that national-security related concerns associated with increased migration are negligible. Surely, geopolitical factors including regional tensions, political and sectarian disputes, and historic attitude towards immigrants affect some countries’ capacity to resettle refugees to a greater extent than others. The common factor affecting each country’s willingness and ability to resettle refugees, and subsequent commitment to its goals under the 1951 Convention and 1967 Protocol, however, is the rhetoric of

235. Ishaan Tharoor, *Syrian immigration to the U.S. has been a success, study finds*, WASH. POST (Dec. 13, 2016), <https://www.washingtonpost.com/news/worldviews/wp/2016/12/13/syrian-immigrants-represent-an-american-success-story-not-a-threat/> [https://perma.cc/7YTL-JBHA].

236. Madeline Buiano & Susan Ferriss, *Data Defies Trump’s Claims that Refugees and Asylees Burden Taxpayers*, CTR. FOR PUB. INTEGRITY (May 8, 2019), <https://publicintegrity.org/inequality-poverty-opportunity/immigration/data-defies-trump-claims-that-refugees-and-asylees-are-a-taxpayer-burden/> [https://perma.cc/AX22-UXHD].

237. *Id.*

238. *See, e.g.* discussion *supra* notes 88-102.

239. Cheatham, *supra* note 118 (discussing how While former Presidents George W. Bush and Barack Obama apportioned increased financial aid to Northern Triangle countries and facilitated agreements with their governments in the hopes of addressing rising regional crime rates, President Trump has effectively done the opposite).

government officials, which has the power to influence public opinion and drive immigration policy. The rhetoric employed by the US government after 9/11, and with particular vigor by the Trump Administration, has served only to vilify those fleeing persecution, inciting fear in the American population, and allegedly justifying the government's implementation of increasingly radical anti-immigration measures. A review of Canada's historical success with resettlement, by contrast, proves that the United States should perceive immigrants as an asset rather than a threat, and that it is possible for a country to fulfill its obligation to offer protection to refugees and asylum-seekers without compromising the importance of national security.

*IV. PROPOSALS FOR COMPREHENSIVE REFORM OF REFUGEE
AND ASYLUM POLICY WITHOUT COMPROMISING US
NATIONAL SECURITY*

The Trump Administration dramatically departed from the refugee admissions agenda of its predecessors, and imposed a score of inhumane policies to constrict the influx of migrants seeking asylum at the southern border.²⁴⁰ President Trump and those acting under him have used their authority to compel DHS component agencies to carry out questionable and often inhumane practices, targeting already vulnerable individuals and violating the United States' obligations to refugees and asylum seekers under international law.²⁴¹ Their xenophobic rhetoric shaped the way that many Americans perceive immigrants, resulting in widespread fear of, and even violence towards, newcomers.²⁴²

While previous administrations' efforts to initiate comprehensive immigration reform have focused on issues such as pathways to citizenship for undocumented immigrants, the

240. See, e.g., discussion *supra* notes 98-108.

241. See, e.g., discussion *supra* notes 193-196.

242. Tom Jacobs, *Research Suggests Trump's Anti-Immigrant Rhetoric is Making Americans More Xenophobic*, PACIFIC STANDARD (Oct. 15, 2018), <https://psmag.com/social-justice/trump-anti-immigrant-rhetoric-making-americans-more-xenophobic> [<https://perma.cc/73A5-L9C2>]; see also Julissa Arce, *Trump's Anti-Immigrant Rhetoric Was Never About Legality – It Was About Our Brown Skin*, TIME (Aug. 6, 2019), <https://time.com/5645501/trump-anti-immigration-rhetoric-racism/> [<https://perma.cc/WAM4-SZZ3>].

current humanitarian crisis perpetuated by the Trump Administration's approach towards refugee and asylum applicants poses a unique set of issues. The President's political strategy, resting on inciting public anxiety around immigration, has pursued the post-9/11 movement towards conflating the realms of immigration and national security vigorously.²⁴³ Thus, any potential reforms must account for national security concerns while focusing on providing adequate protection for a humanitarian migrant class fleeing danger and persecution.²⁴⁴

The 2021 administration change provides an opportunity to begin shifting the trajectory of US refugee and asylum policy, by implementing sustainable immigration reforms intended to reaffirm the nation's commitment to protecting humanitarian migrants. President Biden's immigration agenda hinges on immigration as "essential to who we are as a nation, our core values, and our aspirations for our future."²⁴⁵ Candidly acknowledging that while serving as Vice President, he and President Obama were unsuccessful in effecting comprehensive immigration reform, President Biden pledges to prioritize immigration through a multifaceted plan aimed in large part at overhauling the Trump Administration's harmful policies and addressing the crisis at the Southern border. President Biden's rhetoric framing immigrants as a benefit to society is an about-face from the Trump Administration's portrayal of immigrants as an imminent threat, and his proposals for immigration reform signify a pivot from excessive enforcement to providing safe and legal means for foreign nationals to be admitted to the United States.²⁴⁶ Thus, the 2021 administration change is a chance to begin untangling the immigration and national security realms,

243. See *Blueprint: How to Address the Global Refugee Crisis and Safeguard United States National Security*, *supra* note 21.

244. See *id.*

245. *The Biden Plan for Securing Our Values as a Nation of Immigrants*, BIDEN-HARRIS, <https://joebiden.com/immigration/#> [<https://perma.cc/Z5NK-ENUN>] (last visited Nov. 29, 2020).

246. *Id.*; Stuart Anderson, *A Biden Immigration Policy: New Hope for Immigrants and Businesses*, FORBES (Nov. 8, 2020), <https://www.forbes.com/sites/stuartanderson/2020/11/08/a-biden-immigration-policy-new-hope-for-immigrants-and-businesses/?sh=62d18c677842> [<https://perma.cc/9BKF-GEWP>] (discussing how the Biden Administration will likely shift resources from immigration enforcement to adjudication of backlogged cases at USCIS and DOS).

retaining policies such as thorough vetting procedures that ensure the safety of the US population, while creating an immigration framework rooted in the fundamental American principle of welcoming immigrants.²⁴⁷

Part IV of this Note introduces proposals for reshaping US refugee and asylum policy, with an eye toward differentiating immigration and national security concerns and creating an immigration infrastructure that ensures US commitment to pro-immigrant values and long-term adherence to its international obligations under the 1951 Convention and 1967 Protocol. It discusses the advantages of a plan to raise the refugee ceiling, allowing for the resettlement of a higher number of displaced individuals within the United States. It then addresses the need to dismantle harmful Trump-era policies precluding refugees and asylum-seekers from seeking US protection and preventing the United States from fulfilling its commitments under international law. It additionally proposes a program for the private sponsorship of refugees akin to that of Canada, intended to undo the troubling effects of xenophobic rhetoric and build a positive perception of newcomers. Finally, it recommends the establishment of a multinational coalition focused on capacity building for countries admitting large numbers of refugees, to ensure that neighboring countries are able to meet their international obligations without being overburdened.

A. Proposal I: Raise the Refugee Ceiling to Enable Resettlement of More Displaced Individuals

The Biden Administration has already pledged to raise the refugee ceiling to 125,000 in FY 2022, a marked departure from the historically low refugee caps set by his predecessor.²⁴⁸ The

247. *The Biden Plan for Securing Our Values as a Nation of Immigrants*, *supra* note 245; see also Silva Mathema, *Refugees Thrive in America*, CTR. FOR AM. (Nov. 19, 2018), <https://www.americanprogress.org/issues/immigration/reports/2018/11/19/461147/refugees-thrive-america/> [<https://perma.cc/RE4C-XFPT>] (discussing how the United States has long been a leader in affording protections for refugees and asylees, and noting that prior to the Trump Administration, every administration following the establishment of USRAP remained committed to resettlement objectives).

248. *The Biden Plan for Securing Our Values as a Nation of Immigrants*, *supra* note 245; see also Emily McFarlan Miller & Jack Jenkins, *Biden pledges to raise refugee ceiling to 125,000 in address to Jesuit group*, EPISCOPAL NEWS SERV. (Nov. 13, 2020),

domestic advantages of raising the refugee ceiling are great, both from a national security standpoint and in accounting for the important contributions made by refugees living in the United States. Along with efforts to raise the refugee ceiling, however, there should also be a floor. To prevent such drastic fluctuations in the refugee program as witnessed during Trump's presidency, Congress should consider amending INA § 207(a) to include a minimum for refugee admissions, from which future Presidents will not be able to deviate.²⁴⁹ From a national security perspective, the United States can help prevent conflict and instability by increasing resettlement efforts and encouraging similarly capable allies to do the same.²⁵⁰

When international human rights organization Human Rights First set forth a series of recommendations for comprehensive immigration reform, it urged the United States to resettle a larger number of refugees in order to alleviate the pressure on overwhelmed allies like Jordan, and to help safeguard the stability of overburdened regions that take in the majority of the world's refugees.²⁵¹ Refugees become a national security threat when countries ill-equipped to effectively resettle large numbers of refugees are faced with an influx of displaced persons. These situations have previously resulted in refugees competing over financial resources with local populations, tension between ethnic groups, and greater susceptibility of young men to become radicalized by terrorist groups.²⁵² By raising the refugee cap to allow for the safe resettlement of a greater number of vulnerable individuals, the United States would

<https://www.episcopalnewsservice.org/2020/11/13/biden-pledges-to-raise-refugee-ceiling-to-125000-in-address-to-jesuit-group/> [<https://perma.cc/XV2G-458D>].

249. INA § 207(a). "Except as provided in subsection (b) of this section, the number of refugees who may be admitted under this section in any fiscal year after fiscal year 1982 shall be such number as the President determines, before the beginning of the fiscal year and after appropriate consultation, is justified by humanitarian concerns or is otherwise in the national interest."

250. *Blueprint: How to Address the Global Refugee Crisis and Safeguard U.S. National Security*, HUM. RTS. FIRST, <https://www.humanrightsfirst.org/sites/default/files/BLUEPRINT%20REPORT%20sept%2010%20.pdf> [<https://perma.cc/QN7L-YHB2>] (last visited Mar. 6, 2021).

251. *Id.*

252. David Kampf, *Keeping Refugees Out Makes the United States Less Safe*, FOREIGN POL'Y (Sept. 13, 2019), <https://foreignpolicy.com/2019/09/13/keeping-refugees-out-makes-the-united-states-less-safe/> [<https://perma.cc/W36Z-ZWK6>].

simultaneously protect its own national security interests, ensuring the stability of its international allies, and work towards fulfilling its commitments to refugees and asylees under the 1951 Convention and its 1967 Protocol.

Raising the refugee ceiling and setting a minimum for refugee admissions will be all-around beneficial for the United States, protecting national security interests and bolstering the economy. Refugees have historically contributed immensely to US society, with the overwhelming majority integrating successfully, learning English, pursuing education, and quickly attaining economic self-sufficiency.²⁵³ A detailed Department of Health and Human Services report (rejected by Trump Administration officials opposed to refugee resettlement), found that from 2005-2014, refugees “brought in \$63 billion more revenue to federal, state, and local governments than they cost.”²⁵⁴ The employment rate of refugee women is on par with that of US-born women, and refugee men are more likely to work than US-born men.²⁵⁵ Studies indicate that skilled immigrant workers are likely to complement rather than displace their native counterparts.²⁵⁶ The immigration of unskilled workers may be slightly detrimental in the short-term to unskilled US workers, in the long-term compelling them to upgrade their skills and ultimately resulting in wage increases.²⁵⁷ Further, as previously indicated, the refugee population has proven entrepreneurial,

253. Kathleen Newland & Randy Capps, *Why Hide the Facts About Refugee Costs and Benefits?*, MIGRATION POLY INST. (Sept. 2017), <https://www.migrationpolicy.org/news/why-hide-facts-about-refugee-costs-and-benefits> [<https://perma.cc/4T89-49MZ>].

254. *Id.*; see also Mathema, *supra* note 247.

255. See Newland & Capps, *supra* note 253; see also *Immigrants as Economic Contributors: Refugees Are a Fiscal Success Story for America*, NAT'L IMMIGR. F. (June 14, 2018), <https://immigrationforum.org/article/immigrants-as-economic-contributors-refugees-are-a-fiscal-success-story-for-america/#:~:text=Refugees%20contribute%20billions%20of%20dollars,Americans%20can%20proudly%20call%20home> [<https://perma.cc/H38F-6QLC>].

256. See *Immigrants as Economic Contributors: Refugees Are a Fiscal Success Story for America*, *supra* note 255. Migrants and refugees that are complementary to the native labor force bring new skills and knowledge, and their presence can increase native workers' wages. *Id.*

257. *Id.*

with refugee-owned enterprises generating substantial business income and facilitating job creation for native workers.²⁵⁸

It cannot be underemphasized that the number of displaced persons is increasing year after year; therefore, even raising the refugee cap to 125,000 will provide for the resettlement of a very small percentage of these individuals.²⁵⁹ A similar realization led the European Union to amend the 2015 relocation plan which Poland and several other nations contravened, adding a goal of 120,000 additional individuals to be resettled along with the 40,000 included in the plan's first iteration.²⁶⁰ Any changes made by future administrations must be made with an eye towards domestic capacity-building, with the ultimate goal of continuing to raise the refugee cap in years to come.²⁶¹ The following Sections discuss avenues for capacity-building, starting with the fundamental need to abolish public anti-immigrant sentiment and the reshaping of policies designed to deter migrants from seeking protection under US law.

B. Proposal II: Dismantle Unnecessarily Punitive Immigration Policies While Retaining Effective Vetting Procedures

Future administrations will inevitably be tasked with the swift dismantling of problematic Trump-era policies that blocked access to asylum and jeopardized the fulfillment of its obligations under the 1951 Convention and the 1967 Protocol. As a starting point, the Biden-Harris immigration plan expressly acknowledges the harmful effects of policies implemented under President Trump, rebuking the Trump Administration for measures taken to prevent refugees and asylum-seekers from receiving protection under US law.²⁶² Over the last four years, by portraying these

258. See *Immigrants as Economic Contributors: Refugees Are a Fiscal Success Story for America*, *supra* note 255; see *supra* notes 235-239 and accompanying text.

259. *Global Trends: Forced Displacement in 2019*, UNCHR, <https://www.unhcr.org/globaltrends2019/> [https://perma.cc/MXP8-YWHS] (last visited Feb. 26, 2021). UN data from 2019 indicates that 79.5 million people were forcibly displaced worldwide, with only 107,800 successfully resettled. *Id.*

260. See *supra* note 8.

261. INA § 207(a)(2).

262. See *The Biden Plan for Securing Our Values as a Nation of Immigrants*, *supra* note 245. The plan acknowledges that, under the guise of protecting national security, national resources have been misallocated towards unnecessarily punitive enforcement

individuals as criminals, the Trump Administration succeeded in “employing punitive and harsh detention, criminal prosecution and family separation tactics” in an attempt to deter those fleeing persecution from seeking US protection.²⁶³ By doing so, it tarnished America’s legacy as a nation welcoming of immigrants, separating children from their parents, threatening to return asylees and refugees to dangerous conditions, and making asylum virtually impossible to attain.²⁶⁴ Undoing these policies will take time, as potential legal challenges and bureaucratic hurdles can potentially complicate the process of changing regulations.²⁶⁵ Therefore, future US leaders will continue the difficult task of ending policies of prolonged detention, and will have to continue holding immigration agencies accountable for poor treatment of asylum seekers, and putting an end to enforcement tactics meant solely to intimidate.²⁶⁶

The efficacy of the US vetting system for refugees and asylum-seekers serves as further proof that the Trump Administration’s policies were little more than unnecessary scare tactics imposed to discourage legitimate asylum-seekers and fuel anti-immigrant sentiment. The extensive multi-step refugee screening process detailed above has proven more than sufficient in protecting US national security interests. Albeit procedurally distinct, asylum-seekers are subject to similarly thorough vetting, including an assessment of admissibility under the many asylum

measures. *Id.* By ending such policies, anti-terror resources could be shifted to policy areas in which they could be put to better use.

263. *Blueprint: How to Address the Global Refugee Crisis and Safeguard United States National Security*, *supra* note 21, at 16.

264. Nicole Narea, *The demise of America’s asylum system under Trump, explained*, VOX (Nov. 5, 2019), <https://www.vox.com/2019/11/5/20947938/asylum-system-trump-demise-mexico-el-salvador-honduras-guatemala-immigration-court-border-ice-cbp>; see also Ben Fox, *Trump Leaves Mark on Immigration Policy, Some of it Lasting*, ASSOCIATED PRESS (Dec. 30, 2020), <https://apnews.com/article/joe-biden-donald-trump-politics-immigration-united-states-a5bfcbea280a468b431a02e82c15a150> [<https://perma.cc/9RRF-RJ37>]; Joel Rose, *Trump Changes Make it Difficult for Migrants to Gain Asylum*, NPR (Jan. 6, 2020), <https://www.npr.org/2020/01/06/793895352/trump-changes-make-it-difficult-for-migrants-to-gain-asylum> [<https://perma.cc/KW6R-SB98>].

265. Anita Kumar & Alice Miranda Ollstein, *Biden pledged to undo Trump’s immigration policies. It will take time.*, POLITICO (Dec. 7, 2020), <https://www.politico.com/news/2020/12/07/biden-trump-immigration-policies-443468> [<https://perma.cc/AP85-Z2YZ>].

266. See *The Biden Plan for Securing Our Values as a Nation of Immigrants*, *supra* note 245.

bars.²⁶⁷ Both Canada and the United States have implemented similarly efficient screening processes, with data from both systems demonstrating a negligible link between immigrants and crime.²⁶⁸ However, unlike the Canadian government, US government officials have perpetuated a public perception of immigrants as a national security threat, resulting in vindictive enforcement tactics which, with the advent of an opportune moment for comprehensive immigration reform, the government can now abolish.

C. Proposal III: Reframing the Immigration Narrative Through Private Sponsorship of Refugees Program and Additional Government-Backed Initiatives

Efforts to reform US refugee and asylum policy to align with the spirit of the 1951 Convention and 1967 Protocol will not succeed without contemporaneous, government-backed attempts to change the US population's perception of newcomers. Encouraging the US public to view refugees and asylees as human beings seeking protection, rather than a security threat, necessitates greater interaction between US citizens and newcomers, with an eye towards building understanding. Facilitating interaction among private individuals and refugees has proven to build support for resettlement, as evidenced by programs like Canada's Private Sponsorship of Refugees Program. By encouraging private citizens or members of organizations to raise funds and directly provide for the sponsorship of an immigrant individual or family for a year, the program has given Canadian citizens a key role in resettlement, resulting in enduring, positive public opinion of refugees.²⁶⁹ The

267. *Asylum Bars*, USCIS, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/asylum-bars> [<https://perma.cc/GTC5-VK6Y>] (last visited Nov. 30, 2020); see also *Frequently Asked Questions for Asylum Seekers*, HUM. RTS. FIRST, <https://www.humanrightsfirst.org/asylum/frequently-asked-questions-asylum-seekers> [<https://perma.cc/E7CP-ARCL>] (last visited Nov. 30, 2020). Bars to asylum include persecution of others, conviction of certain types of crimes within and outside of the US, terrorist activity, firm resettlement in another country, availability of a safe third country, and prior asylum denial. *Id.*

268. See discussion *supra* notes 222-231. See, e.g., *supra* notes 181-182 and accompanying text; *supra* notes 233-234 and accompanying text.

269. See Stephen Smith, *Canadian public opinion on immigration, refugees 'remarkably steady'; new survey finds*, CIC NEWS (May 1, 2019),

program has served as a model for refugee sponsorship programs throughout the world—Britain has launched a similar “community sponsorship program,” and approximately twelve additional countries have implemented or intend on implementing similar initiatives.²⁷⁰ The United States should implement a similar program alongside the United States Refugee Admissions Program to encourage a greater number of individuals to become directly involved in providing protection for refugees and effectuating US resettlement goals and international obligations.²⁷¹

D. Establish an International Coalition Aimed at Capability-Building in Countries Hosting Large Numbers of Asylum-Seekers and Refugees

In addition to raising the national refugee ceiling, the Biden administration should consider forming a coalition with neighboring countries, particularly Canada and Mexico, both of which receive a substantial number of refugee and asylum applications yearly, to aid in capacity-building efforts across borders. While domestic resettlement of a larger number of refugees and asylum-seekers will help mitigate the burden on countries with less developed immigration infrastructure, supporting the development of effective refugee and asylum systems will necessarily involve providing additional forms of aid.²⁷² President Biden’s immigration agenda anticipates the need for regional leaders to collaborate on a solution for addressing the factors driving migration out of the Northern Triangle, and acknowledges that strengthening US relations with Canada and Mexico will be a mutually beneficial means toward that end.²⁷³ A

<https://www.cicnews.com/2019/04/majority-of-canadians-maintain-positive-views-of-immigration-new-survey-finds-0412240.html#gs.ice51u> [https://perma.cc/53EJ-CS78].

270. da Silva, *supra* note 167.

271. INT’L REFUGEE ASSISTANCE PROJECT & HUMAN RIGHTS FIRST, PRIVATE SPONSORSHIP OF REFUGEE RESETTLEMENT IN THE UNITED STATES (2016), https://www.humanrightsfirst.org/sites/default/files/Private_Sponsorship_of_Refugees_in_the_United_States_White_Paper.pdf [https://perma.cc/57A9-9TBQ].

272. Leon Krauze, *Biden and Mexico must work together to help migrants. Here’s where to start.*, WASH. POST (Jan. 12, 2021), <https://www.washingtonpost.com/opinions/2021/01/12/biden-mexico-must-work-together-help-migrants-heres-where-start/> [https://perma.cc/66ME-Z2GC].

273. See *The Biden Plan for Securing Our Values as a Nation of Immigrants*, *supra* note 245.

lasting coalition between the three neighboring countries, aimed towards capability-building via increased funding and regional collaboration to address critical issues involving the growing migrant population, will enable all three countries to more effectively meet their international treaty obligations.

The immigration systems of the United States, Canada, and Mexico are interconnected; however, each of the three countries faces distinct difficulties precluding it from offering the highest extent of protection to asylees and refugees. Over the course of about a decade, Mexico has witnessed a dramatic uptick in asylum claims, reaching an all-time high of 70,000 in 2019, as compared to just 5,000 asylum requests in 2013.²⁷⁴ As a result, its immigration system has become overburdened, lacking adequate funding, staffing, and institutional capacity to effectively adjudicate high numbers of claims, and resulting in insufficient protection accorded to those fleeing from persecution in nearby Honduras, Guatemala, and El Salvador.²⁷⁵ The influx of asylum seekers in Mexico can largely be attributed to the restrictive asylum policies instituted by the Trump Administration, which made seeking asylum in the United States nearly impossible, pushing migrants to apply in Mexico instead.²⁷⁶

US actions have likewise contributed to rising numbers of refugees and asylum applications in Canada.²⁷⁷ The Canadian refugee framework was well-suited to accommodate a relatively steady number of refugees yearly, yet was unprepared for a sudden influx of migrants resulting from the US government's admissibility restrictions.²⁷⁸ Canada's refugee processing system

274. Rachel Schmidtke, *Report: A new way forward: strengthening the protection landscape in Mexico*, RELIEFWEB (Nov. 12, 2020), <https://reliefweb.int/report/mexico/report-new-way-forward-strengthening-protection-landscape-mexico> [https://perma.cc/K4T7-NCC2].

275. *Id.*

276. *Id.*

277. Phillip Connor & Jens Manuel Krogstad, *Asylum claims in Canada reached highest level in decades in 2017*, PEW RSCH. CTR. (Apr. 16, 2018), <https://www.pewresearch.org/fact-tank/2018/04/16/asylum-claims-in-canada-reached-highest-level-in-decades-in-2017/> [https://perma.cc/4RTS-K5L8].

278. Anna Mehler Paperny, *Collateral Damage: How Trump threw Canada's refugee system into turmoil*, REUTERS (Mar. 19, 2018), <https://www.reuters.com/article/us-trump-effect-canada-immigration/collateral-damage-how-trump-threw-canadas-refugee-system-into-turmoil-idUSKBN1GV0WQ> [https://perma.cc/F58F-5LFS]; see also Ashlyn Still & Anna Mehler Paperny, *Canada's new wave of asylum seekers*, REUTERS,

has witnessed backlogs, with lengthy case processing times of up to two years, and tens of thousands of individuals waiting to appear before Canada's Immigration and Refugee Board.²⁷⁹ It is evident that while each of the three countries faces unique obstacles, their immigration systems are deeply intertwined, and would benefit from increased transparency and coordination to enable them to better fulfill their obligations to the protection of refugees under international law.

V. CONCLUSION

The 2021 administration change provides the US government with an opportunity to comply with its obligations under the 1950 Convention and its 1967 Protocol by first, reversing the damage resulting from four years of xenophobic rhetoric and punitive immigration policy, and second, effectuating long-anticipated comprehensive reform of our nation's asylum and refugee infrastructure. Recognizing that, over the last several years, the United States has neglected its commitment to refugee protection under treaties including the 1951 Convention Relating to the Status of Refugees and subsequent 1967 Protocol Relating to the Status of Refugees, with the number of displaced individuals around the world only increasing, it is imperative that the United States increase its contribution to international refugee resettlement efforts. With a transition away from anti-immigrant rhetoric and unduly restrictive immigration policy, it is additionally the government's responsibility to reshape public perception of immigrants, ensuring that those fleeing persecution cease to be erroneously portrayed as a national security threat. To accommodate resettlement of individuals seeking protection under US law, future administrations have sufficient tools at their disposal, including comprehensive screening procedures proven to be reliable in protecting US security interests. Ultimately, to

<http://fingfx.thomsonreuters.com/gfx/rngs/TRUMP-EFFECT-CANADA-IMMIGRATION/0100617F2J1/index.html> [https://perma.cc/B6TY-QWWF] (last visited Dec. 1, 2020).

279. See Paperny, *supra* note 278. See also Rachel Browne, *What's next for Canadian refugee policies in 2020*, GLOBAL NEWS (Dec. 30, 2019), <https://globalnews.ca/news/6223499/canada-refugee-policy/> [https://perma.cc/JJ6M-DWRK].

effectively fulfill its obligations towards asylum-seekers and refugees under international law, the United States must shift the focus of its immigration policy away from national security concerns, recognizing the truly inconsequential nature of the threat posed by newcomers to US national security, and instead shaping policy aimed towards expanding protection of refugees and asylum-seekers.