

# RISK ANALYSIS IN REFUGEE RESETTLEMENT

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*Refugees are individuals who hold a well-founded fear of persecution based upon their race, religion, nationality, political opinion or membership in a particular social group and who have resultingly been forced to flee their country. Public awareness of refugee resettlement has grown exponentially in the wake of the Syrian refugee crisis, raising questions about the risks and costs that arise from providing refuge and resettling foreigners. This article takes a look at the most frequently cited risks of the resettlement process and analyzes how they are weighted by the public and regulatory bodies. It compares the approach of the United States to strategies adopted in Europe and Australia for recognizing refugees and implementing resettlement programs.*

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## INTRODUCTION

“The United States will not be a migrant camp, and it will not be a refugee holding facility . . . [T]hey could be murderers and thieves and so much else.”<sup>1</sup> On January 27, 2017, President Trump signed an executive order instituting a temporary ban upon refugee resettlement in the United States in response to tensions in Syria that had led thousands to flee their country.<sup>2</sup> The Syrian migrant crisis and President Trump’s response sparked national awareness and concern about refugees and the resettlement process.<sup>3</sup> Currently there are roughly 14.4 million refugees recognized worldwide, of which only a small number will ever be resettled.<sup>4</sup> The resettlement process is executed via partnerships between international institutions and national regulations and each country applies its own unique strategies towards the recognition and rehabilitation of refugee populations, reflecting broad diversity in the assessment, perception, and management of risks. This varied spectrum of approaches leads to widespread inconsistencies and inefficiency in global refugee resettlement.

Resettlement regulation begins on the international stage with the United Nations High Commissioner for Refugees (UNHCR). UNHCR was created following World War II and is comprised of over 16,000 staff in 138 countries.<sup>5</sup> It operates to provide advocacy, resources, and resettlement opportunities for over 68 million forcibly displaced persons worldwide.<sup>6</sup> Basic principles of refugee protection and resettlement are built upon a number of protected rights outlined in the 1951 UN Convention Relating to the Status of Refugees, later modified by the 1967 Protocol. These rights include the freedom of movement and the right to family life as well as rights to liberty and security. Additionally and particularly key to the protection of refugees is the right of non-refoulement, preventing states from returning refugees to a country where they will likely face persecution and risk of

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1. Donald Trump, President, Remarks at a Meeting with the National Space Council and the Signing of Space Policy Directive-3 (June 18, 2018), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-meeting-national-space-council-signing-space-policy-directive-3/>.

2. Liam Stack, *Trump’s Executive Order on Immigration: What We Know and What We Don’t*, N.Y. TIMES (Jan. 29, 2017), <https://www.nytimes.com/2017/01/29/us/trump-refugee-ban-muslim-executive-order.html>.

3. *Id.*

4. *Solutions*, UNHCR, <http://www.unhcr.org/en-us/solutions.html> (last visited Apr. 25, 2018).

5. *History of UNHCR*, UNHCR, <http://www.unhcr.org/en-us/history-of-unhcr.html> (last visited Apr. 25, 2018).

6. *Figures at a Glance*, UNHCR, <https://www.unhcr.org/en-us/figures-at-a-glance.html> (last visited Feb. 27, 2019).

severe harm or death.<sup>7</sup> Every nation that agrees to resettle in accordance with UNHCR's protocol accepts responsibility for protecting the rights as stated in the Convention. The commitment that countries have made adds particular pressure to the regulators who must determine how many refugees will be permitted to enter national borders. Nations may be able to turn a blind eye prior to the refugee's entry, but once admitted to a "third country," they are bound to uphold the protections as set out in the 1951 Convention.<sup>8</sup>

Article 1 of the 1951 Convention provides the foundational definition of a refugee as a person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country."<sup>9</sup> The definition of a refugee applies a number of qualifying conditions: (1) presence outside the individual's home country; (2) a well-founded fear of persecution (more than a mere risk of harm); and (3) the inability to rely upon protections of the individual's home state.<sup>10</sup> As recognized in international law, refugees do not include internally displaced persons, economic migrants, victims of natural disasters, or persons fleeing violence who are not facing discrimination-based persecution.<sup>11</sup>

### *United States*

The United States adopted the UN's definition of refugees in its creation of a federal resettlement program with the Refugee Act of 1980.<sup>12</sup> Refugees who are resettled to the U.S. undergo more stringent screening processes than any other type of traveler, with checks administered by the National Counterterrorism Center, FBI, Department of Homeland Security, Department of Defense and the Department of State.<sup>13</sup> The screening process

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7. Eric Ormsby, *The Refugee Crisis as Civil Liberties Crisis*, 117 COLUM. L. REV. 1191, 1198–99 (2017).

8. A "third country" is the country to which refugees are resettled by UNHCR. See *Resettlement*, UNHCR, <http://www.unhcr.org/en-us/resettlement.html> (last visited May 1, 2018).

9. Convention Relating to the Status of Refugees art. 1, July 28, 1951, 189 U.N.T.S. 137, 19 U.S.T. 6259 [hereinafter 1951 Convention].

10. Ionel Zamfir, *Refugee Status Under International Law*, EUR. PARLIAMENTARY RES. SERV. BLOG (Oct. 27, 2015), <https://epthinktank.eu/2015/10/27/refugee-status-under-international-law/>.

11. *Id.*

12. United States Refugee Act of 1980, Pub. L. No. 96–212, 94 Stat. 102 (1980).

13. *U.S. Refugee Admissions Program*, U.S. DEP'T OF STATE, <https://www.state.gov/j/prm/ra/admissions/> (last visited Jan. 31, 2019).

takes upwards of 36 months to complete.<sup>14</sup> Following these security screenings, government officials conduct in-person interviews and biometric checks before the refugees are granted approval to travel to the United States.<sup>15</sup> Syrian refugees undergo even more extensive vetting (“Enhanced Syrian Review”) due to the increased scrutiny surrounding their resettlement.<sup>16</sup> The Enhanced Syrian Review process involves additional biographical screenings by specialists and fingerprint checks by three government agencies.<sup>17</sup> Once within the United States, two agencies share primary responsibility for the resettlement process: the U.S. Department of Health and Human Services’ Office of Refugee Resettlement (ORR) and the U.S. Department of State’s Bureau of Population, Refugees, and Migration (PRM).<sup>18</sup>

The United States began tracking resettlement numbers in 1975. Since the implementation of the resettlement program, over three million refugees from all over the world have been approved for resettlement to the United States.<sup>19</sup> Under 8 U.S.C. § 1157, the President holds the sole authority to set a cap on the number of refugees that will be granted admission over the course of a year.<sup>20</sup> The statute requires the President to seek “appropriate consultation” with the Senate and House Judiciary committees regarding the

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14. *How the U.S. Refugee Vetting and Resettlement Process Really Works*, RESCUE.ORG, <https://www.rescue.org/article/how-us-refugee-vetting-and-resettlement-process-really-works> (last updated Mar. 24, 2017).

15. U.S. DEP’T OF STATE, *supra* note 13.

16. Eliza Griswold, *Why Is It so Difficult for Syrian Refugees to Get into the U.S.?*, N.Y. TIMES (Jan. 20, 2016), <https://www.nytimes.com/2016/01/24/magazine/why-is-it-so-difficult-for-syrian-refugees-to-get-into-the-us.html>.

17. Everett Rosenfeld, *How America’s Screening of Syrian Refugees Works*, CNBC (Nov. 17, 2015), <https://www.cnbc.com/2015/11/17/how-americas-screening-of-syrian-refugees-works.html>.

18. U.S. DEP’T OF STATE, *supra* note 13.

19. *Resettlement in the United States*, UNHCR, <http://www.unhcr.org/en-us/resettlement-in-the-united-states.html> (last updated Jan. 2018).

20. 8 U.S.C. § 1157 (2005); Jessica Donati, *U.S. to Cap Refugee Admissions at 30,000 in 2019*, POMPEO SAYS, WALL ST. J. (Sept. 17, 2018), <https://www.wsj.com/articles/u-s-to-cap-refugee-admissions-at-30-000-in-2019-pompeo-says-1537222609>.

proposed cap.<sup>21</sup> President Trump has not complied with this element of the statute.<sup>22</sup>

Refugee admissions dropped dramatically following President Trump's inauguration in January 2017. The United States now imposes its most restrictive resettlement caps since the first implementation of a limit under the 1980 Refugee Act.<sup>23</sup> On September 17, 2018, Secretary of State Mike Pompeo announced the most recent reduction for future resettlement, capping refugee admittance at just 30,000 per year.<sup>24</sup> This marked a further decrease from fiscal year 2018 which limited resettlement numbers to 45,000.<sup>25</sup> In fiscal year 2017 the U.S. admitted 53,716 refugees,<sup>26</sup> but by the end of fiscal year 2018 only 20,825 refugees (less than half permitted under the already restricted cap) had been admitted.<sup>27</sup> The administration's justification for the repeated reductions asserts their focus on increasing screening measures to appease concerns about the national security and public safety risks that result from resettlement.<sup>28</sup>

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21. § 1157 (“The term “appropriate consultation” means, with respect to the admission of refugees and allocation of refugee admissions, discussions in person by designated Cabinet-level representatives of the President with members of the Committees on the Judiciary of the Senate and of the House of Representatives to review the refugee situation or emergency refugee situation, to project the extent of possible participation of the United States therein, to discuss the reasons for believing that the proposed admission of refugees is justified by humanitarian concerns or grave humanitarian concerns or is otherwise in the national interest, and to provide such members with the following information.”)

22. See Stuart Andersen, *Here's What Trump's New Limits on Refugees Mean*, FORBES (Sep. 20, 2018), <https://www.forbes.com/sites/stuartanderson/2018/09/20/trump-official-announces-controversial-new-limits-on-refugees/#64d72dae410a> (stating that the new cap won't be official until the president meets with Congress); see also Victoria Macchi, *Congress Still Has a Say on Low US Refugee Cap*, VOA NEWS (Sept. 18, 2018), <https://www.voanews.com/a/congress-still-has-a-say-on-low-us-refugee-cap/4577299.html> (stating the same and noting the importance of Congress's input).

23. *U.S. Annual Refugee Resettlement Ceilings and Number of Refugees Admitted, 1980-Present*, MIGRATION POL'Y INST., <https://www.migrationpolicy.org/programs/data-hub/charts/us-annual-refugee-resettlement-ceilings-and-number-refugees-admitted-united> (last visited Apr. 25, 2018).

24. Ted Hesson & Nahal Toosi, *Trump Administration to Slash Refugee Cap*, POLITICO (Sept. 17, 2018), <https://www.politico.com/story/2018/09/17/trump-refugees-limits-ceiling-826302>; David Inerra, *Refugee Number Deserves More Than President's "Consultation" from Congress*, THE HERITAGE FOUNDATION (Oct. 4, 2017), <https://www.heritage.org/immigration/commentary/refugee-number-deserves-more-presidents-consultation-congress>.

25. *President Donald J. Trump is Taking a Responsible and Humanitarian Approach on Refugees*, THE WHITE HOUSE (Sept. 29, 2017), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-taking-responsible-humanitarian-approach-refugees/>; Dep't of State Bureau of Population, Refugees, and Migration, *PRM Admissions Graph*, REFUGEE PROCESSING CTR. (Mar. 31, 2018), <http://www.wrapsnet.org/admissions-and-arrivals/> (select “PRM Admissions Graph” from Admissions Reports); Hesson & Toosi, *supra* note 24.

26. Dep't of State Bureau of Population, Refugees, and Migration, *supra* note 25.

27. Hesson & Toosi, *supra* note 24.

28. THE WHITE HOUSE, *supra* note 25.

Syrians specifically comprise only a minute number of the total refugees resettled, owing at least in part to the Enhanced Syrian Review process. In the final year of Barack Obama's presidency, 15,479 Syrian refugees were resettled to the United States.<sup>29</sup> That number dropped to just 3,024 in 2017.<sup>30</sup> From January to mid-April 2018, only eleven Syrian refugees were accepted for resettlement in the United States.<sup>31</sup> With over 14 million total refugees still stranded around the world, the United States has clearly placed deliberate constraints upon its resettlement program in recent years.

### *Resettlement in Other Countries*

As signatories of the 1951 Convention, many other countries adhere to the same general principles of refugee resettlement, but each country has modified the way in which they adopt and impose the regulatory framework. As a result, the number of refugees resettled in each country and the benefits they receive upon resettlement will vary. For a general sense of how resettlement approaches can be different from the American approach, it is worth examining the process in Germany and Australia, two nations that face similar problems in garnering public support for resettlement.

In 1999 the European Union (EU) created a common asylum system based upon "full and inclusive application of the Geneva Convention."<sup>32</sup> The Dublin Regulation, adopted in 2003, allocates refugees and asylum seekers to the various European states, generally placing responsibility of resettlement upon the state in which the migrant first entered Europe.<sup>33</sup> In accordance with non-refoulement principles, the EU requires that immigrant applications be considered for anybody who has reached a European border, including territorial waters and transit zones.<sup>34</sup> Article 3 of the European Convention on Human Rights further protects any individual from being turned away at the border when the individual is at risk of torture or

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29. Deborah Amos, *The U.S. Has Accepted Only 11 Syrian Refugees This Year*, NPR ALL THINGS CONSIDERED (Apr. 12, 2018, 11:49 PM), <https://www.npr.org/sections/parallels/2018/04/12/602022877/the-u-s-has-welcomed-only-11-syrian-refugees-this-year>.

30. *Id.*

31. *Id.*

32. FRANCES NICHOLSON & JUDITH KUMIN, A GUIDE TO INTERNATIONAL REFUGEE PROTECTION AND BUILDING STATE ASYLUM SYSTEMS, UNHCR 22 (2017), <http://www.unhcr.org/publications/legal/3d4aba564/refugee-protection-guide-international-refugee-law-handbook-parliamentarians.html>.

33. THE DUBLIN REGULATION, UNHCR (Sept. 1, 2009), <http://www.unhcr.org/4a9d13d59.pdf>.

34. HANDBOOK ON EUROPEAN LAW RELATING TO ASYLUM AND IMMIGRATION, EUR. UNION AGENCY FOR FUNDAMENTAL RTS. 35–36 (June 2014), [http://fra.europa.eu/sites/default/files/fra\\_uploads/handbook-law-asylum-migration-borders-2nd-ed\\_en.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/handbook-law-asylum-migration-borders-2nd-ed_en.pdf).

inhumane and degrading treatment.<sup>35</sup> Though the U.S. has historically had the largest consistent refugee resettlement program, European arrivals shot up dramatically as a result of the Syrian refugee crisis.<sup>36</sup> At the peak of migration in 2015, Germany alone admitted 890,000 asylum seekers over a twelve-month period.<sup>37</sup> However, Germany saw an even more dramatic drop than the U.S. in 2017, with total asylum seekers amassing only 186,644.<sup>38</sup>

Australian refugee resettlement also incorporates provisions of the 1951 Convention directly into domestic law via the Migration Act.<sup>39</sup> Refugees in Australia must be assessed by the Australian Security and Intelligence Organisation (ASIO) before being granted a protection visa.<sup>40</sup> For fiscal year 2018-2019, Australia's Humanitarian Programme is set to accept 18,750 displaced persons.<sup>41</sup> An additional 12,000 spots are allocated specifically for the resettlement of Syrian and Iraqi refugees.<sup>42</sup> However, Australia expressly refuses immigration status to any individuals who have arrived illegally by boat, giving military forces control of these asylum seekers and often resulting in their redirection to offshore processing centers.<sup>43</sup> Australia has been sharply disparaged for this policy, with critics asserting that the

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35. *Id.* at 36.

36. Phillip Connor, *Number of Refugees to Europe Surges to Record 1.3 Million in 2015*, PEW RES. CTR. (Aug. 2, 2016), <http://www.pewglobal.org/2016/08/02/number-of-refugees-to-europe-surges-to-record-1-3-million-in-2015/>.

37. Jefferson Chase, *Refugee Numbers in Germany Dropped Dramatically in 2017*, DW (Jan. 16, 2018), <http://www.dw.com/en/refugee-numbers-in-germany-dropped-dramatically-in-2017/a-42162223>. Refugees and asylees receive distinct legal statuses in the U.S. based upon whether recognition was received within the country or abroad. As most Syrians and other migrants fleeing to Germany enter the country prior to receiving official status, the German Office of Migrants and Refugees measures these individuals as asylum seekers. *Id.*

38. *Id.*

39. *See Refugee Law*, AUSTL. GOV'T (last updated Feb. 8, 2012), <https://www.alrc.gov.au/publications/22-refugee-law/refugee-law-australia-0> ("Australia is a signatory to the Refugees Convention. . .").

40. Recent Changes in Australian Refugee Policy, REFUGEE COUNCIL OF AUSTL. (July 7, 2018), <https://www.refugeecouncil.org.au/recent-changes-australian-refugee-policy/4/>.

41. *Australia's Response to the Syrian and Iraqi Humanitarian Crisis*, AUSTL. GOV'T DEP'T OF HOME AFF. 1, <https://archive.homeaffairs.gov.au/trav/refu/response-syrian-humanitarian-crisis> (last visited Apr. 29, 2018).

42. *Id.*

43. *Operation Sovereign Borders*, AUSTL. GOV'T DEP'T OF HOME AFF., <https://osb.homeaffairs.gov.au/en/Outside-Australia> (last visited Apr. 25, 2018); *Australia Asylum: Why is it Controversial?*, BBC NEWS (Oct. 31, 2017), <http://www.bbc.com/news/world-asia-28189608>.

action of deterring refugee arrivals places Australia's adherence to Convention obligations of non-refoulement in jeopardy.<sup>44</sup>

## I. RISK ASSESSMENT

In setting the U.S. refugee cap, the President must provide Congress with an analysis of the anticipated social, economic, and demographic impact of the proposed resettlement.<sup>45</sup> As with any regulatory policy, the risks that result from resettling refugees can become infinite in number if every possible scenario is considered and weighed. It is thus necessary to avoid over-complication at attempting a fully comprehensive analysis, and instead focus the assessment upon three central risks that are primarily considered when regulating refugee resettlement. These include the risk of terrorist action, risks to the peace and safety of the domestic population (i.e. domestic crime), and the risk of an unsupportable and substantial drain on the economy.

### A. Terrorism

Ever since the terrorist attack on the World Trade Center on September 11, 2001, Americans have exhibited heightened awareness and concern in matters of national security. Many Americans believe that the threat of a terrorist attack in the near future is a serious threat, with roughly half of respondents in surveys from 2001 and 2005 worrying that someone in their family was likely to become a victim of terrorism.<sup>46</sup> However, though terrorism and refugees are often linked, empirical data supporting the connection is limited. As of September 2016, more than three million refugees had been resettled to the United States in the past forty years, but only twenty of those individuals attempted or plotted terrorist action.<sup>47</sup> Furthermore, only three of those twenty refugees succeeded in their attacks, each attack being executed prior to the adoption of extensive screening procedure reforms in 1980.<sup>48</sup> Since that study's release, the odds of refugee terrorism did increase after an attack at Ohio State University in 2016 when a Somali refugee drove a car into pedestrians before exiting the vehicle and

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44. Ben Doherty, *Asylum Seeker Boat Turnbacks Illegal and Don't Deter People, Report Finds*, THE GUARDIAN, (May 2, 2017, 10:01 AM), <https://www.theguardian.com/world/2017/may/03/asylum-seeker-boat-turnbacks-illegal-and-dont-deter-people-report-finds>.

45. 8 U.S.C. § 1157(e)(4).

46. Cass R. Sunstein, *On the Divergent American Reactions to Terrorism and Climate Change*, 107 COLUM. L. REV. 503, 516 (2007).

47. Alex Nowrasteh, *Terrorism and Immigration: A Risk Analysis*, CATO INST. 8 (Sept. 13, 2016), <https://www.cato.org/publications/policy-analysis/terrorism-immigration-risk-analysis>.

48. *Id.* at 13.

stabbing individuals, hospitalizing thirteen.<sup>49</sup> But the linkage between refugee status and terrorism remains tenuous. Though ISIS claimed responsibility for the Ohio State attack, it has been the subject of dispute whether the actor had actually established any ties to terrorist organizations and whether the risk was attributable to homegrown terrorism (as distinguished from his status as a refugee).<sup>50</sup> Taking these factors into account, the likelihood of an American being killed by a refugee terrorist has been roughly 1 in 3.64 billion.<sup>51</sup> This is an exceptionally small risk in comparison to common risks Americans face on a daily basis. For example, the risk of being killed by a drunk driver is 5 in 100,000.<sup>52</sup> Yet terrorism is almost exclusively cited as the primary concern driving U.S. regulation of refugee resettlement.

### B. Domestic Safety

An additional, related concern of increasing refugee resettlement is the potential for increased crime and conflicts between communities. Regulators are concerned with ensuring that refugee resettlement does not lead to a substantial increase in violent crime. This concern has been stoked by accounts of increased conflict in Europe as a result of the Syrian migration. One German report stated that refugees were 90 percent responsible for an increase in violent crime in 2015 and 2016.<sup>53</sup> And resettlement may lead to increases in violence as existing communities lash out against the entering population. Mobs in Germany have targeted refugee populations, resulting in rising violence between communities.<sup>54</sup> However, research indicates that resettlement in the United States has had the opposite effect on crime rates, with one study reflecting that violent crime dropped as much as 77% in

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49. Mitch Smith & Adam Goldman, *From Somalia to U.S.: Ohio State Attacker's Path to Violence*, N.Y. TIMES (Dec. 1, 2016), <https://www.nytimes.com/2016/12/01/us/from-somalia-to-us-ohio-state-attackers-path-to-violence.html>.

50. Will Oremus, *Somali Refugees Are Not a Threat*, SLATE (Dec. 3, 2016), <https://slate.com/news-and-politics/2016/12/trump-is-wrong-to-blame-somali-refugees-for-the-ohio-state-terror-attack.html>.

51. Nowrasteh, *supra* note 47, at 2.

52. STEPHEN BREYER, *BREAKING THE VICIOUS CIRCLE: TOWARD EFFECTIVE RISK REGULATION* 6 (1993).

53. Riham Alkousaa, *Violent Crime Rises in Germany and Is Attributed to Refugees*, REUTERS (Jan. 3, 2018), <https://www.reuters.com/article/us-europe-migrants-germany-crime/violent-crime-rises-in-germany-and-is-attributed-to-refugees-idUSKBN1ES16J>.

54. Lizzie Dearden, *Gang 'Hunting Refugees' Beat Man to Death in Germany*, INDEPENDENT (May 3, 2017), <https://www.independent.co.uk/news/world/europe/four-men-germany-trial-beat-man-death-hunt-refugees-waldbroel-vigilante-gangs-bonn-court-migrants-a7715511.html>.

response to increased resettlement.<sup>55</sup> Though the U.S. does not appear to suffer the same consequences of increased crime that result from European resettlement, these risks remain prevalent as important considerations in regulating a resettlement program.

### C. Economic Cost

Many also raise concerns that allowing for extensive refugee resettlement will undermine the health of the economy and limit the ability to use public funds to assist other underprivileged populations such as the poor and disabled. The Trump administration cited economic cost as an additional justification for their lowered cap on refugee resettlement.<sup>56</sup> Refugees resettled to the United States are permitted to access social welfare programs such as TANF (Temporary Assistance for Needy Families), Food Stamps and Medicaid while awaiting their documents and searching for employment.<sup>57</sup> Calculations released by the White House surmised that between 2005 and 2014 over \$96 billion was spent on programs benefiting refugees.<sup>58</sup> Thus it is important to consider and weigh the economic impact of having an expansive resettlement program.

## II. RISK PERCEPTION

Regardless of what the facts present as the risks of refugee resettlement, members of the public often approach the matter with a more skeptical and risk-averse mindset than is warranted by the facts. Polls have shown that the American public has seldom approved of accepting large numbers of refugees.<sup>59</sup> This reflects a common trend where the public's perception of risks conflicts directly with the evaluations of experts in the field.<sup>60</sup> Though

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55. *Is There a Link Between Refugees and U.S. Crime Rates?*, NEW AM. ECON. RES. FUND (Feb. 7, 2017), <https://research.newamericaneconomy.org/report/is-there-a-link-between-refugees-and-u-s-crime-rates>.

56. *See* THE WHITE HOUSE, *supra* note 25 (stating that “increasing refugee resettlement increases financial strain on Americans”).

57. OFF. OF THE ASSISTANT SEC’Y FOR PLAN. AND EVALUATION, U.S. DEP’T HEALTH AND HUM. SERVICES, OVERVIEW OF IMMIGRANTS’ ELIGIBILITY FOR SNAP, TANF, MEDICAID, AND CHIP 2 (Mar. 27, 2012), <https://aspe.hhs.gov/basic-report/overview-immigrants-eligibility-snap-tanf-medicaid-and-chip>.

58. THE WHITE HOUSE, *supra* note 25.

59. Polls from October 2016 showed that 54% of registered voters believe the U.S. has no responsibility to accept Syrian refugees. Jens Manuel Krogstad & Jynnah Radford, *Key Facts About Refugees to the U.S.*, PEW RES. CTR. (Jan. 30, 2017), <http://www.pewresearch.org/fact-tank/2017/01/30/key-facts-about-refugees-to-the-u-s/>. Historical polls show that Americans have largely opposed refugee resettlement. *Id.*

60. Breyer, *supra* note 52, at 33 n.1.

there is no singular settled theory to explain this outcome, scholars have identified a number of factors biasing public risk perception including the availability heuristic, probability neglect, the identifiable perpetrator, and cultural bias. These each hold significant influence in the context of refugee resettlement.

The availability heuristic is an attempt to understand and conceptualize a risk by comparing it to examples that are easily conceivable.<sup>61</sup> The more that people find a risk to be familiar and salient, the more likely they are to take that risk seriously.<sup>62</sup> Cass Sunstein, former head of the Office of Information and Regulatory Affairs (OIRA), proposes that the availability heuristic is directly responsible for heightened fears about particular risks.<sup>63</sup> The breadth of media coverage on conflicts around the world and the increase in international communication and travel have all contributed to making the risks of refugee resettlement more available to public conception than ever before. Media coverage of terrorist attacks and violence from Europe have made it easier than ever for Americans to visualize the potential harms of permitting refugee entry and to see themselves as the potential victims.<sup>64</sup> Contrastingly, media coverage of war-torn nations and refugee camps are visuals with which the average American cannot as easily identify.<sup>65</sup> As a result, Americans are innately biased against the idea of resettling refugees and towards their own isolation and protection.

Probability neglect plays a similar role in the context of refugee regulation. Where risks inspire strong emotions, individuals may expend very little effort in assessing the actual probability of harm.<sup>66</sup> Instead, their emotional state will define their judgment about the situation, disregarding attempts to accurately assess the likelihood of harm or benefit.<sup>67</sup> This plays a key role in the terrorism context where the risks at hand prey upon

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61. Sunstein, *supra* note 46, at 534.

62. *Id.* at 535.

63. Cass R. Sunstein, *Precautions against What? Perceptions, Heuristics, and Culture*, in *THE REALITY OF PRECAUTION* 492, 493 (Jonathan B. Wiener et al. eds., 2011).

64. Emily Dreyfuss, *The Cognitive Bias President Trump Understands Better than You*, *WIRED* (Feb. 18, 2017), <https://www.wired.com/2017/02/cognitive-bias-president-trump-understands-better>.

65. Sunstein, *supra* note 63, at 501–02. *See also* Kenneth E. Miller, *Are Refugees a Threat to Americans?*, *PSYCHOL. TODAY* (Feb. 20, 2017), <https://www.psychologytoday.com/us/blog/the-refugee-experience/201702/are-refugees-threat-americans> (contrasting the fear of extremism from refugees and asylum seekers with the risk of threat from those refugees). *But see* Silvia De Poli, Niklas Jakobsson & Simone Schüller, *The Drowning-Refugee Effect: Media Saliency and Xenophobic Attitudes*, 24 *APPLIED ECON. LETTERS* 1167, 1170 (Dec. 3, 2016) (finding that viewing refugees as victims may help to mitigate bias against immigrants).

66. Sunstein, *supra* note 46, at 540.

67. *Id.*

particularly visceral emotions including fear, anger, resentment and patriotism. It also serves to explain some of the discrepancy between the actual probability of harm (1 in 3.64 billion) and the percentage of the population (52%) that believes refugees pose enough of a risk to further limit their entry to the United States.<sup>68</sup>

Theorists have also come to recognize the power of having a defined adversary (commonly referred to as “the Goldstein Effect”).<sup>69</sup> As with Osama Bin Laden and Saddam Hussein, people become more emotionally invested and therefore more responsive when the source of a risk is an identifiable person rather than a faceless adversary (e.g. climate change).<sup>70</sup> This natural impulse to recognize and target an identifiable perpetrator presents a concerning problem if it is applied to images of a culture or a group rather than a single person. In the wake of the September 11 terrorist attacks, Muslim culture was often linked to acts of terrorism and consequently much of the American public immediately began subconsciously equating the two.<sup>71</sup> Because a huge percentage of refugees originate from predominantly Muslim countries, many Americans seem to have directly transposed their fears of the perpetrators of terrorist attacks to members of refugee groups, as encouraged by mainstream media sources.<sup>72</sup> This has provided individuals an easy target upon which to direct their fear and anger regardless of any consideration of whether that bias is warranted.

Cultural bias also plays some role in public perception. Research has found that groups tend to align with those of similar cultural backgrounds in their assessment of risks.<sup>73</sup> Some scholars have even attempted to sort cultures into categories pertaining to their respective approach.<sup>74</sup> This ‘cultural cognition’ seems to be at least partially attributable to the social

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68. See Laurie Kellman & Emily Swanson, *Poll: Americans Divided on Admitting Refugees*, ASSOCIATED PRESS (Mar. 6, 2017), <http://www.apnorc.org/news-media/Pages/Poll-Americans-divided-on-admitting-refugees.aspx> (finding that just over half the population believes refugees are a great enough risk to warrant more stringent restrictions on entry to the country); Nowrasteh, *supra* note 47, at 2.

69. Sunstein, *supra* note 46, at 542.

70. *Id.* at 543.

71. See *For American Muslims, 9/11 Shaped Careers, Politics, and Identity*, THE TAKEAWAY (Sept. 11, 2018) <https://www.wnycstudios.org/story/american-muslims-september-11-careers-politics-identity> (acknowledging the Islamophobia that developed from the aftermath of 9/11).

72. See, e.g., Kellman & Swanson, *supra* note 68 (“‘Maybe it’s the media. They are making refugees sound like they aren’t legal immigrants and I don’t necessarily understand, but they are different to me,’ said Gibson, who works in a Greensboro, North Carolina, grocery store”).

73. See Sunstein, *supra* note 46, at 546 (citing research by Dan Kahan on cultural cognition, or “risk-related judgments that are a product of cultural orientations, which serve as a kind of heuristic for more fine-grained judgments”).

74. *Id.*

influences upon perception that are generated in a community of trust.<sup>75</sup> However, it is important to remember that over-emphasizing these divisions can lead to the development of misleading stereotypes.<sup>76</sup>

Clear divisions exist even within the American population in risk perception of refugee resettlement. In polls conducted in January 2017, only 31% of Americans ages 18-34 viewed Syrian and Iraqi refugees as major threats to the well-being of the United States, whereas 61% of those over 64 shared the same concerns.<sup>77</sup> Further splits existed between those that identified as Democrat or Republican, as well as between those who had completed post-graduate studies and those with only a high school degree.<sup>78</sup> Therefore, while there may be some measure of risk perception that can be attributable to cultural background, it fails to provide an adequate explanation for American society's overall reaction to the acceptance (or lack thereof) of refugees.

Direct and potentially disastrous effects may be generated by these gaps between public perception and actual risk. In particular, embracing alarmist narratives can lead to tragic consequences. On January 29, 2017 a shooter attacked a mosque in Quebec City, killing six individuals.<sup>79</sup> In statements made to the police following the attack, the shooter attributed his actions directly to his fear of refugees being resettled in his area and the potential of terrorist attacks.<sup>80</sup> Tragedy struck again when another shooter killed eleven at a Jewish synagogue in Pittsburgh on October 27, 2018. The perpetrator had publicly blamed Jews for helping migrant caravans in Central America to reach the United States.<sup>81</sup> The statements made by these homegrown

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75. *Id.*

76. Jonathan B. Wiener, *The Rhetoric of Precaution*, in *THE REALITY OF PRECAUTION* 3–35, 26 (Jonathan B. Wiener et al. eds., 2011).

77. Samantha Smith, *Young People Less Likely to View Iraqi, Syrian Refugees as Major Threat to U.S.*, PEW RES. CTR. (Feb. 3, 2017), <http://www.pewresearch.org/fact-tank/2017/02/03/young-people-less-likely-to-view-iraqi-syrian-refugees-as-major-threat-to-u-s>.

78. *Id.*; see also Steven Shepard, *Poll: Voters Support Allowing Syrian Refugees*, POLITICO (Apr. 20, 2017), <https://www.politico.com/story/2017/04/20/poll-syrian-refugees-united-states-237406> (finding that the issue also generates a gender gap, with men backing Syrian resettlement at only 52% while 62% of women support taking in more Syrian refugees).

79. *Quebec City Mosque Shooter Feared Trudeau's Refugee Policy*, BBC (Apr. 13, 2018), <http://www.bbc.com/news/world-us-canada-43759003> [hereinafter *Quebec City*].

80. See *id.* (stating that Bissonnette said in his confession that he was pushed to act by television coverage of the Canadian prime minister's intention to bring more immigrants in Canada and said "they will kill my parents, my family and me too").

81. See Nicole Chavez, Emanuella Grinberg & Elliott C. McLaughlin, *Pittsburgh Synagogue Gunman Said He Wanted All Jews to Die, Criminal Complaint Says*, CNN (Oct. 31, 2018), <https://www.cnn.com/2018/10/28/us/pittsburgh-synagogue-shooting/index.html> (stating that the shooter told police that Jewish people were "committing genocide to my people"); Ben Collins, *Pittsburgh*

terrorists reflect the strong anti-refugee sentiment that can develop as a result of the availability heuristic, probability neglect, the desire to name an identifiable perpetrator, and cultural bias. They signify a pervasive lack of understanding by the population on refugee resettlement matters.

### III. RISK MANAGEMENT

In this particular area of regulation, oversight and risk management play vital roles to help accurately measure the risks and determine the most effective regulatory strategies. Because of the salience and complexity of the topic, there are almost no limits on what factors may play a role in influencing regulatory decisions regarding refugee resettlement. However, applying traditional tools of analysis such as the precautionary principle and cost-benefit analysis can help to inform a better understanding of current regulatory approaches.

#### A. Precautionary Principle

The precautionary principle has been summarized as “better safe than sorry” and emphasizes adopting a cautious approach towards regulation, erring on the side of minimizing the risk as much as possible.<sup>82</sup> Particularly in the case of refugee resettlement and restrictions on immigration, the precautionary principle weighs in favor of strict regulations because it is impossible to guarantee that any refugee will pose no future risk to the safety of U.S. citizens.<sup>83</sup> As humans are inherently unpredictable and creatures of emotion and change, no amount of security and background checks can unreservedly guarantee that a refugee will not someday pose a threat to the society in which they are resettled. Although the promise of the precautionary principle is better protection from the risks, the reality is that most steps to mitigate the risk may implicate additional risks in some manner.<sup>84</sup>

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*Synagogue Shooting Suspect Threatened Jewish Groups, Pushed Migrant Caravan Conspiracies*, NBC NEWS (Oct. 27, 2018), <https://www.nbcnews.com/news/crime-courts/pittsburgh-synagogue-shooting-suspect-threatened-jewish-groups-pushed-migrant-caravan-n925256> (reporting that the shooter posted an image that “appears to show refugees hopping on to the bed of a truck with a Star of David on the side”).

82. Wiener, *supra* note 76, at 4.

83. See Nowrasteh, *supra* note 47 (indicating that only a complete moratorium on immigration would suffice to entirely eliminate the risk of all terrorism by immigrants).

84. Jonathan B. Wiener, *The Real Pattern of Precaution*, in *THE REALITY OF PRECAUTION* 519–65, 545 (Jonathan B. Wiener et al. eds., 2011).

## B. The Economics of Refugee Resettlement

Managing the economic cost of refugees is an important factor in developing a successful regulatory strategy. Because of the inherently quantitative nature of the valuation, economic impact is one of few areas that can be effectively analyzed through a traditional cost-benefit analysis. Despite the Trump administration's statements that refugees cost the country over \$96 billion between 2005 and 2014 due to their reliance upon federally funded welfare programs, their calculation omits pertinent information that drastically changes the cost-benefit result.<sup>85</sup> The widespread consensus among economists is that the costs paid out to support refugees are recouped after a period of nine years.<sup>86</sup> In fact, William Evans, chair of the economics department at the University of Notre Dame, asserts that over the course of twenty years, refugees pay approximately \$20,000 more in taxes than the initial cost they place upon federal programs (which is estimated to be roughly \$180,000 per refugee).<sup>87</sup> The White House neglected to report these full results of the Department of Health and Human Services (DHHS) report which clarified that despite the billions spent on resettlement, between 2005 and 2014 refugees actually brought the American government \$63 billion more than they cost.<sup>88</sup>

When balancing this economic calculus, it is also necessary to consider the possibility of 'needle in the haystack' refugees who contribute benefits that are less easily quantifiable. Some of the greatest figures in American history came to the country as refugees including Madeleine Albright, Henry Kissinger, and Albert Einstein.<sup>89</sup> The benefits that refugees have provided to the United States and to humanity in the past and their potential future advancements cannot be reduced to an economic analysis. Many things that modern society takes for granted, such as doughnuts, and the internet, were made possible in part because of the resettlement of refugee persons who

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85. THE WHITE HOUSE, *supra* note 25.

86. See Joel Rose, *Trump Administration to Drop Refugee Cap to 45,000, Lowest in Years*, NPR (Sept. 27, 2017), <https://www.npr.org/2017/09/27/554046980/trump-administration-to-drop-refugee-cap-to-45-000-lowest-in-years> (discussing that while refugees tend to be net takers for the first nine years they spend in the country, they then pay more to the government than they take out after the ninth year).

87. *Id.*

88. *Id.*

89. *Famous Refugees*, RESCUE.ORG (Jan. 9, 2017), <https://www.rescue.org/article/famous-refugees>; see also *Famous Refugees*, REFUGEE WEEK (2015), <http://refugeeweek.org.uk/resources/facts-figures-and-contributions/famous-refugees> ("Famous or not, refugees bring much more than their belongings with them to their new countries.").

would have otherwise had no safe environment to pursue their discoveries.<sup>90</sup> It is not difficult to imagine how restricting further resettlement could deny scientists, artists, and leaders from making further breakthroughs that will advance the future of humanity.

### C. Risk Trade-offs

When considering how to manage the risks of resettlement, risk trade-offs also come into play, particularly regarding national security. Adopting exclusionary and xenophobic resettlement regulations increases the risk of radicalization both domestically and abroad.

Within the United States, individuals that were resettled as refugees may find themselves increasingly ostracized from society when more stringent refugee caps are enforced and public commentary centers upon the potential risks of resettlement. Extremism may lead to increased homegrown terrorism and violence as refugees feel less and less connected to local populations. Furthermore, terrorist groups will be able to exploit the rhetoric about refugees for recruitment and radicalization. Former U.S. ambassador to Afghanistan and Iraq Ryan Crocker remarked on ISIS's ability to capitalize upon statements made by U.S. officials to promote their terrorist agenda stating: "[I]t sets the stage for the next generation of terrorists."<sup>91</sup>

On the other hand, if refugees are welcomed and offered the opportunity to integrate, not only can radicalization be avoided, but there is a potential for increased security by using refugees as intelligence assets. It stands to reason that individuals who have directly suffered at the hands of terrorist groups would be particularly interested in ensuring that the country to which they've fled remains as safe and secure as possible. For individuals who have gone to the lengths of fleeing their homes and dragging their children across oceans in the pursuit of a place of refuge, it would be illogical to presume they would then be easily swayed by a terrorist cell to turn against the United States.

Furthermore, refugees provide national security forces with a level of access to the terrorist groups that cannot be easily replicated. As survivors and victims of terrorism abroad, refugees may hold key information on the terrorists including names, photographs, and other personally identifying data that could be put to use by U.S. counterterrorism forces to identify

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90. *Five Things That Were Invented by Refugees*, RESCUE.ORG (Apr. 5, 2018), <https://www.rescue.org/article/5-things-were-invented-refugees>.

91. Krishnadev Calamur, *Trump's Plan for Refugees*, THE ATLANTIC (Jan. 26, 2017), <https://www.theatlantic.com/news/archive/2017/01/trump-refugees/514445/>.

terrorist actors and prevent future attacks.<sup>92</sup> Their own personal experiences may provide invaluable insight into the strategies being employed by foreign terrorists, providing the U.S. forces with unique opportunities to gather intelligence and protect American lives.

Take the example of Special Immigrant Visa-holders (SIVs).<sup>93</sup> SIVs receive visas as a result of working alongside the U.S. military in Iraq and Afghanistan.<sup>94</sup> The program incentivizes cooperation and assistance from foreign military forces by ensuring an opportunity for the individuals and their families to seek refuge in the United States.<sup>95</sup> However, SIVs are subject to many of the same extensive vetting procedures and restrictions as refugees, raising concerns about the utility of the program.<sup>96</sup> The required background checks and processing can take years to carry out, during which time any individual who has openly worked with or supported U.S. forces has placed a target for terrorist groups on their backs and those of their family members and networks. As a result, the more difficult and lengthy the resettlement process becomes, the more that potential allies are incentivized to betray American forces in order to protect their families. But if risks can be managed to encourage an efficient and speedy resettlement process, U.S. military on deployment can find it much safer to carry out their missions by relying upon the support of loyal, local individuals who are eager to receive U.S. protections after their service.

Managing misguided apprehension is also necessary in order to accurately weigh important domestic principles of privacy and prevent the rise of fascism. When the public gives into heightened fears of terrorism, it becomes too simple for the government to capitalize upon those fears to impose drastic security measures. For example, the Patriot Act came as a direct result of fears related to terrorism and has been sharply criticized for

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92. Patrick G. Eddington, *Refugee Resettlement: The Smart Way to Defeat ISIS*, CATO INST. (Nov. 23, 2015), <https://www.cato.org/publications/commentary/refugee-resettlement-smart-way-defeat-isis>.

93. Though SIVs have a different status than refugees and were not directly included in President Trump's refugee ban, the two groups are often treated similarly within the resettlement system. See LastWeekTonight, *Translators: Last Week Tonight with John Oliver (HBO)*, YOUTUBE (Oct. 19, 2014), <https://www.youtube.com/watch?v=QplQL5eAxIY> (discussing the bureaucratic problems of the SIV resettlement process).

94. *Special Immigrant Visas (SIVs) for Iraqi and Afghan Translators/Interpreters*, U.S. DEP'T OF STATE BUREAU OF CONSULAR AFF., <https://travel.state.gov/content/travel/en/us-visas/immigrate/siv-iraqi-afghan-translators-interpreters.html> (last visited Apr. 29, 2018).

95. See *An Afghan Military Interpreter Finds Footing In The U.S. Gig Economy*, NPR (Apr. 1, 2018), <https://www.npr.org/2018/04/01/598256725/an-afghan-military-interpreter-finds-footing-in-the-u-s-gig-economy> ("Translators whose lives were in danger who had worked directly for the U.S. for more than a year could apply, and if accepted, immigrate to the U.S. with their spouses and children.")

96. *Special Immigrant Visas (SIVs) for Iraqi and Afghan Translators/Interpreters*, *supra* note 94.

its quick passage and neglect of comprehensive review of the matter.<sup>97</sup> Responses in other nations have been similarly reactive. Just two days after an attack in Berlin, Germany passed legislation increasing public and police surveillance.<sup>98</sup> For individuals who are concerned with their privacy and independence, sincere care should be paid to public perception of refugees as the regulations and narratives adopted play a direct role into what other measures receive support in the name of national security.

Finally, improving public perception of refugees generally would also increase the safety of the nation by undermining the fears that drive actors such as the Quebec shooter to react with violence and aggression.<sup>99</sup> Embracing xenophobic rhetoric increases hate crimes and leads to marginalization and exclusion of refugee populations.<sup>100</sup> If American communities are not being encouraged to find common ground with the refugee populations, there is an increased likelihood that violence and general public discord will result.

#### D. Protecting America's International Reputation and Honoring its Obligations

The U.S. has spent decades characterizing itself as the world's leader in refugee resettlement, admitting more than two-thirds of the world's resettled refugees from 1982 until 2016.<sup>101</sup> More than six in ten Americans sees legal immigration as a means to promote the country's reputation as "a land of opportunity."<sup>102</sup> However, recent U.S. rhetoric about refugees has spurred criticism from the international community. France criticized comments made by President Trump regarding refugees as "isolationist."<sup>103</sup> His

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97. Beryl A. Howell, *Seven Weeks: The Making of the USA Patriot Act*, 72 GEO. WASH. L. REV. 1145, 1205–06 (2004).

98. Jake Levin, *World Should Embrace, Not Vilify, Refugees*, THE HILL (Feb. 21, 2017), <http://thehill.com/blogs/pundits-blog/immigration/320374-world-should-embrace-not-vilify-refugees>.

99. *Quebec City*, *supra* note 79.

100. *Combating Violent Hate Crime Against Refugees, Asylum-Seekers, and Migrants: Recommendations for States*, HUM. RIGHTS FIRST, <https://docplayer.net/47184882-Combating-violent-hate-crime-against-refugees-asylum-seekers-and-migrants-recommendations-for-states.html> (last visited Feb. 4, 2019). See also Anna Gotlib, *Refugees, Narratives, or How to Do Bad Things with Words*, KENNEDY INST. OF ETHICS J. (July 20, 2017), <https://kiej.georgetown.edu/refugees-narratives-bad-things-words>.

101. Phillip Connor, *U.S. Resettles Fewer Refugees, Even as Global Number of Displaced People Grows*, PEW RES. CTR. (Oct. 12, 2017), <http://www.pewglobal.org/2017/10/12/u-s-resettles-fewer-refugees-even-as-global-number-of-displaced-people-grows>.

102. Kellman & Swanson, *supra* note 68.

103. Amanda Erickson, *Here's How the World Is Responding to Trump's Ban on Refugees, Travelers from 7 Muslim Nations*, WASH. POST (Jan. 28, 2017), <https://www.washingtonpost.com>.

remarks were similarly condemned by Germany, Norway and many other nations.<sup>104</sup> The United Nations specifically urged President Trump to reconsider his ban citing the urgent needs of the refugee community.<sup>105</sup>

The U.S. should care about the perception of other nations on this matter because none of the resettlement strategies exists in a vacuum. The U.S. works extensively with the EU in developing its resettlement regulations. On June 25, 2016, PRM Assistant Secretary Anne C. Richard gave a speech recognizing the successful partnership of Germany and the U.S. in refugee resettlement matters.<sup>106</sup> She remarked that “between [Germany and the United States], close cooperation at all levels over government is not remarkable. It is routine.”<sup>107</sup> Similar cooperation exists between the Australia and the United States. In November 2016, the two countries reached a deal to resettle up to 1250 stranded refugees from Nauru and Manus Island to the U.S..<sup>108</sup> As of February 11, 2018, four groups of refugees comprising a total of about 110 individuals had been resettled as a result of that deal.<sup>109</sup> Thus it is important that the United States maintain credibility in the international sphere not only to prevent backlash but also to ensure that security clearances and transfers continue to operate smoothly with the full cooperation of each participating country.

Furthermore, the United States has a duty to comply with international law and uphold its treaty obligations. A continued push to minimize the number of refugees and asylum seekers in the country places the U.S. at a risk of violating the principle of non-refoulement. Article 33 of the 1951 Convention restricts states from expelling or returning a refugee to territories where his or her life or freedom would be in jeopardy.<sup>110</sup> Under the treaty, governments are permitted to refool the individual if they determine that refugee poses a danger to the security of the country, but the government

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com/news/worldviews/wp/2017/01/28/heres-how-the-world-is-responding-to-trumps-ban-on-refugees-travelers-from-7-muslim-nations/?noredirect=on&utm\_term=.cc9961adfb4.

104. *Id.*

105. *Id.*

106. Anne C. Richard, Assistant Secretary, Keynote Address at the RBFAA Annual Meeting and Gala Dinner: U.S. and Germany Then and Now: Refugees & Migration (June 25, 2016), <https://de.usembassy.gov/de/2016-06-25-refugees-migration/>.

107. *Id.*

108. Recent Changes in Australian Refugee Policy, REFUGEE COUNCIL OF AUSTL. (July 7, 2018), <https://www.refugeecouncil.org.au/recent-changes-australian-refugee-policy/9/>.

109. Michael Slezak, *Fourth Group of Refugees Set to Leave Nauru for the US*, THE GUARDIAN (Feb. 11, 2018), <https://www.theguardian.com/australia-news/2018/feb/11/fourth-group-of-refugees-set-to-leave-nauru-for-the-us>.

110. 1951 Convention, art. 33, *supra* note 9.

must have ‘reasonable grounds’ for that determination.<sup>111</sup> The Convention further stipulates that (with specific exceptions) refugees should not be punished for their illegal entry into a country.<sup>112</sup> Recent events including the advancing Central American caravan raise concerns regarding the legality of refusals to accept the migrants into the United States. An earlier caravan that reached the United States border in April 2018 included 401 individuals who applied for asylum upon entry.<sup>113</sup> Ninety-three percent passed the initial test of having a “credible fear” of persecution.<sup>114</sup> If the government cannot provide reasonable grounds as to why each asylums-seeking migrant in the approaching caravan threatens the security of the country, they may violate the 1951 Convention by any action taken to expel or blockade such individuals.

#### E. Alternative Strategies to Combat Terrorism

The statistic highlighting the resettlement of just eleven Syrian refugees in 2018 was released to the press only a day before airstrikes were launched by President Trump targeting Syria’s chemical weapons program.<sup>115</sup> Though President Trump has expressed his outrage at the violence inflicted upon Syrian civilians, many have criticized his statements and military action as hypocritical in the face of his stringent restrictions on Syrian refugee resettlement.<sup>116</sup> This is particularly notable regarding the White House’s sharp criticism of the costs of refugee resettlement programs (even disregarding the full report proving that costs are more than recouped over

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111. *Id.*

112. *Id.*, art. 31.

113. Alan Gomez, Ronald J. Hansen & Rafael Carranza, *Migrant Caravan: What is Asylum, and Can President Trump Shut It Down?*, USATODAY (Oct. 26, 2018), <https://www.usatoday.com/story/news/politics/2018/10/26/asylum-explained-can-trump-shut-down-process-migrant-caravan/1775728002/>; see also Border and Maritime Security Subcommittee, *Stopping the Daily Border Caravan: Time to Build a Policy Wall* (May 22, 2018) (video available at <https://homeland.house.gov/hearing/stopping-the-daily-border-caravan-time-to-build-a-policy-wall/>) states that as of May 22, 2018 approximately 327 caravan members had applied for asylum, and 95% of those already screened had proven a credible fear).

114. Gomez, Hansen & Carranza, *supra* note 113.

115. *Id.*; James Doubek, *Russia Calls Syria Strikes ‘Danger To World Peace’ While U.S. Allies Praise Attack*, NPR (Apr. 14, 2018), <https://www.npr.org/sections/thetwo-way/2018/04/14/602416994/russia-calls-syria-strikes-danger-to-world-peace-while-western-allies-praise-att>.

116. See, e.g., Editorial Board, *Trump’s Compassion for Syrians Stops at U.S. Shores*, WASH. POST (Apr. 12, 2018), [https://www.washingtonpost.com/opinions/trumps-compassion-for-syrians-stops-at-us-shores/2018/04/12/ad2b211c-3db8-11e8-a7d1-e4efec6389f0\\_story.html?noredirect=on&utm\\_term=.2c0dab815b00](https://www.washingtonpost.com/opinions/trumps-compassion-for-syrians-stops-at-us-shores/2018/04/12/ad2b211c-3db8-11e8-a7d1-e4efec6389f0_story.html?noredirect=on&utm_term=.2c0dab815b00); Sasha Abramsky, *Trump Bans Syrian Refugees. Now He Bombs Their Tormentor. What’s the Real Strategy?*, THE SACRAMENTO BEE (Apr. 13, 2018), <http://www.sacbee.com/opinion/california-forum/article208877499.html>.

time), as the missiles deployed on the morning of April 13, 2018 are estimated to have cost American taxpayers roughly \$119 million.<sup>117</sup> Deploying missiles to eliminate chemical weapons has a decent likelihood of resulting in continued violence and warfare. Contrastingly, increased resettlement has proven to provide very little increase in risk of actual harm to American lives. All else being equal, the cost-benefit analysis on this matter appears to weigh heavily in favor of resettlement strategies as opposed to military action, raising questions about the goals and decisions underlying President Trump's strategies.

#### IV. UNDERLYING CHALLENGES IN RISK PERCEPTION AND REGULATION

The consensus of experts in the fields of national security and economics confirm that permitting resettlement of refugees with the screening processes as implemented since 1980 leads overwhelmingly to benefits for the nation. National security experts from both political parties including General Petraeus (former CIA director) and Henry Kissinger (former Secretary of State) have spoken out against strict restrictions on resettlement.<sup>118</sup> Similarly, economists are in agreement that refugees are a net positive for the economy over time.<sup>119</sup> Yet public opinion remains unpersuaded, demonstrating the sharp distinction between public perception and the actual risk of harm. Pushing back against effective risk management in the regulation of refugee resettlement are a number of significant challenges in reshaping public perception and defining effective policies.

##### A. Agency Overcompensation

An additional pressure is put upon agencies when public concern reaches particularly high levels. As the public becomes increasingly driven by fears regarding perceived risks, their confidence in the agency's tactics will be undermined.<sup>120</sup> As the agency faces the possibility of losing public support, they will be incentivized to err on the side of safety with an

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117. Amanda Macias, *US Taxpayers Paid Millions of Dollars for the Airstrikes on Syria. Here's a Breakdown of Key Costs*, CNBC (Apr. 16, 2018), <https://www.cnn.com/2018/04/16/syria-airstrikes-cost-to-us-taxpayers.html>.

118. Letter from Former National Security Advisor to Senators and Representatives on Refugees, Hum. Rights First (Dec. 1, 2015), <https://www.humanrightsfirst.org/sites/default/files/FormerNatSecOfficialsLetterRefugees.pdf>; see also Eliza Collins, *Albright, Kissinger Ask Congress to Back Off Refugee Legislation*, POLITICO (Dec. 10, 2015), <https://www.politico.com/story/2015/12/national-leaders-write-letter-congress-refugee-legislation-216318>.

119. Rose, *supra* note 86.

120. BREYER, *supra* note 52, at 50–51.

increased interest in adopting the public's risk agenda.<sup>121</sup> Unfortunately for the agency, however, if the public confidence has already been dramatically undermined, it is highly unlikely that any agency action will sufficiently alleviate the public's concerns.<sup>122</sup>

## B. Manipulation of the Facts

Another key challenge in developing a coherent resettlement policy rests upon the rhetoric that has been put forth by politicians and the media in mischaracterizing the risks at hand. During his presidential campaign, Donald Trump repeatedly made statements that directly misinformed the public about the risks associated with refugee resettlement.<sup>123</sup> His actions and remarks mirror an extremist trend in the media that tends to distort the facts on refugee resettlement risks.<sup>124</sup> Furthermore, the choice to bury the full results of the DHHS spending report on refugee costs further worked to manipulate and bias public perception.<sup>125</sup> Similarly, mass media has been criticized as capitalizing upon sensationalism and going so far as to breach basic ethical and professional journalistic principles.<sup>126</sup> While books could be written on how the media and President Trump have characterized the refugee population and therefore influenced the public's reaction and the overarching regulatory scheme, it is central here simply to note that misinformation being distributed by the administration and the press serve as substantial hurdles to rational consideration of effective regulatory choices.

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121. *Id.*

122. *Id.*

123. *All Tweets from @realDonaldTrump that Include the Word "Refugee" or "Refugees" since Donald Trump Declared his Candidacy for President on June 16, 2015*, NAT'L IMMIGRATION LAW CTR., <https://www.nilc.org/issues/litigation/trump-tweets-with-refugee-refugees> (last visited Apr. 29, 2018) (cataloguing President Trump's tweets regarding refugees since he declared candidacy in 2015).

124. *See, e.g.*, Jacqueline Thomsen, *Jeffrey Lord Rebuked on Conservative Network After Equating Refugees with Nazis*, THE HILL (Apr. 26, 2018), <http://thehill.com/homenews/media/385059-jeffrey-lord-rebuked-on-conservative-network-after-equating-refugees-to-nazis>; Todd Starnes, *Liberals Want US to Admit All the Refugees and Pray We Don't Get Blown Up*, FOX NEWS (Jan. 30, 2017), <http://www.foxnews.com/opinion/2017/01/30/liberals-want-us-to-admit-all-refugees-and-pray-dont-get-blown-up.html> (making remarks equating refugees to Nazis and overstating their link to terrorism).

125. Christopher Ingraham, *The Incredible Shrinking Refugee Cap*, in *One Chart*, WASH. POST (Sept. 26, 2017), [https://www.washingtonpost.com/news/wonk/wp/2017/09/26/the-incredible-shrinking-refugee-cap-in-one-chart/?utm\\_term=.e09692fbfcfe3](https://www.washingtonpost.com/news/wonk/wp/2017/09/26/the-incredible-shrinking-refugee-cap-in-one-chart/?utm_term=.e09692fbfcfe3).

126. *See* Rossen Bosev & Maria Cheresheva, *Bulgaria: A Study in Media Sensationalism*, in MOVING STORIES: INT'L REV. OF HOW MEDIA COVER MIGRATION 19 (Aidan White ed., 2015). *See, e.g.*, Lizzie Dearden, *The Fake Refugee Images that Are Being Used to Distort Public Opinion on Asylum Seekers*, THE INDEPENDENT (Sept. 16, 2015), <https://www.independent.co.uk/news/world/europe/the-fake-refugee-images-that-are-being-used-to-distort-public-opinion-on-asylum-seekers-10503703.html> (criticizing how public opinion has been distorted by fake images of refugees).

### C. Motivations for Resettlement

Developing a clear and enforceable resettlement strategy is further complicated by the nature of the risk. Although the countries of resettlement have the capacity to consider and balance factors such as economic cost, the refugees themselves are independent actors operating outside of this rational calculus. As a result, regardless of what regulatory strategy is officially implemented, nations may find that refugees will manage to find their way across closed borders.

Since the rise of the Syrian migrant crisis, human trafficking and smuggling has increased in Europe. Refugees increasingly rely upon smugglers without having ever met them in person in the hopes of accessing safety.<sup>127</sup> The traffickers facilitate risky smuggling strategies even when they are well aware that the journey will be unsuccessful without additional outside assistance. They deliberately take advantage of governments' goodwill and rescue programs, restricting resources to inflate their own profits and thereby ensuring that more refugees become stranded.<sup>128</sup> Where smuggling is prevalent the governments of third countries do themselves no favors by implementing strict restrictions to immigration and instead end up spending extra resources to ensure that the stranded refugees are rescued.

Furthermore, refugees are not deterred from attempting access to "safe" countries even when the journey incorporates a tragically high risk of death. Every year overcrowded boats of refugees sink off of the coasts of Australia and Italy as their passengers seek a slight chance of refuge.<sup>129</sup> In 2015 alone, over 3770 individuals lost their lives in the Mediterranean in attempts to access Europe.<sup>130</sup> The refugees are aware of the high risks associated with these maneuvers, nicknaming the voyage the "journey of death"; however, when faced with an equally high risk of remaining in a country where they and their families are targeted by violent groups, many refugees cannot be

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127. See, e.g., Marianna Karakoulaki & Dimitris Tosidis, *Closed Borders Boost People Smuggling Across Balkans*, DW (Nov. 22, 2017), <http://www.dw.com/en/closed-borders-boost-people-smuggling-across-balkans/a-41467977>.

128. Charlotte Hauswedell, *Refugee Crisis in the Mediterranean: "The Smugglers' Calculations are Obvious"*, DW (Mar. 26, 2017), <http://www.dw.com/en/refugee-crisis-in-the-mediterranean-the-smugglers-calculations-are-obvious/a-38122983>.

129. See *Refugees and Migrants Face Heightened Risks While Trying to Reach Europe*, UNHCR (Feb. 27, 2017), <http://www.unhcr.org/en-us/news/press/2017/2/58b458654/refugees-migrants-face-heightened-risks-trying-reach-europe-unhcr-report.html>; See also CBS, *Refugee Boat Sinks in Australia*, YOUTUBE (Dec. 15, 2010), <https://www.youtube.com/watch?v=K6vwhszk6S0>.

130. *Migrant Crisis: Migration to Europe Explained in Seven Charts*, BBC (Mar. 4, 2016), <http://www.bbc.com/news/world-europe-34131911>.

deterred from the slight chance at a successful voyage.<sup>131</sup> They speak casually of the ten percent chance of drowning and are undeterred by previous arrests or high costs imposed by smugglers.<sup>132</sup> Their determination is reflective of just how desperate these individuals are to escape the danger and lack of opportunity in their home country. Any regulatory strategy adopted to prevent continued attempts to illegally cross borders is unlikely to succeed because the refugees will always choose to defy the laws if it results in an increased chance of survival.

## V. RESETTLEMENT STRATEGIES

For decades, the United States has touted itself as the world leader in resettlement programs, granting refuge to more individuals than every other country in the world combined.<sup>133</sup> But in the wake of the Syrian crisis, the U.S. is losing its stance as a world leader in refugee resettlement.<sup>134</sup>

There is a general perception that the United States tends to be more precautionary than the EU.<sup>135</sup> This precaution manifests itself through the extensive vetting process employed by the U.S. to ensure that refugees admitted to the country pose as minimal a risk as possible to Americans. The EU has been unable and unwilling to implement screening that is as thorough as the U.S. approach. However, some of the other regulatory choices made by European countries demonstrate more heightened levels of concern with refugees than the United States and pose different risks as a result.

In Germany, some refugees that have entered the country may be permitted to remain, but they are not granted full refugee status. Although Article 34 of the 1951 Convention requires state parties to facilitate the assimilation and naturalization of refugees, the German government instead grants approximately 22% of Syrian refugees the status of “subsidiary protection.”<sup>136</sup> The consequence of this approach is that these refugees do

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131. See Priyanka Motaparthy, *Why Syrian Refugees Risk the “Journey of Death” to Europe*, THE NATION (Feb. 11, 2015), <https://www.thenation.com/article/why-syrian-refugees-risk-journey-death-europe>; Hauswedell, *supra* note 128.

132. Motaparthy, *supra* note 131.

133. THE WHITE HOUSE, *supra* note 25.

134. Connor, *supra* note 101.

135. See Lucas Bergkamp & Turner T. Smith Jr., *Legal and Administrative Systems: Implications for Precautionary Regulation*, in THE REALITY OF PRECAUTION: COMPARING RISK REGULATION IN THE UNITED STATES AND EUROPE 434, 468 (Jonathan B. Wiener et. al. eds., 2011) (claiming U.S. risk regulation is better implemented and tends to be more precautionary than regulatory action in the European Union).

136. See 1951 Convention, art. 34, *supra* note 9 (requiring states to provide for the assimilation and naturalization of refugees as far as possible); *Merkel Cabinet Agrees Law Change to Let All Refugees*

not have access to social welfare that would otherwise be provided for German residents and they remain segregated into a different community. Creating this secondary status not only arguably violates the 1951 Convention, it reinforces harmful social norms.<sup>137</sup> Allowing for a marked division between the communities encourages xenophobic behavior and led to the rise of vigilante mobs claiming to “hunt refugees.”<sup>138</sup> Attempting to resettle foreigners while maintaining divisions in legal rights and privileges has fostered a skepticism that has contributed to the increase in violence and conflict from refugees in Germany. “If they cannot be integrated into local communities, then they risk perpetuating, or even exacerbating, the tensions between Muslim and non-Muslim communities in Europe.”<sup>139</sup> The secondary status has been cited as one of the reasons for the high rate of refugee crime, attributing criminal acts to refugees who are concerned they will not be permitted to remain in the country.<sup>140</sup> It also helps to explain the discrepancy with the much lower crime rates in the U.S., where refugees are granted full legal status and are permitted to remain in the country indefinitely.

Additionally, whereas police forces across Europe have struggled to maintain control over the burgeoning refugee population, in the United States the police have developed more effective strategies to assist in a smooth resettlement process. Law enforcement strategies for refugee populations in Europe have tended towards aggressive tactics of control. In France, refugees who had resigned themselves to sleeping on the streets of Paris were violently forced to move and reported instances of physical abuse and tear gas at the hands of the police.<sup>141</sup> This tension between refugees and law enforcement substantially increases the risks associated with refugee resettlement. Many refugee communities already resettled within the U.S. retain a misperception that relying upon law enforcement endangers the

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*Bring Families to Germany*, THE LOCAL (May 9, 2018), <https://www.thelocal.de/20180509/merkel-cabinet-agrees-law-change-to-let-all-refugees-bring-families-to-germany>.

137. See *FDP Migration Proposal Outlines New Refugee Status*, DEUTSCHE WELLE (Sept. 11, 2017), <https://www.dw.com/en/fdp-migration-proposal-outlines-new-refugee-status/a-40454050>.

138. Dearden, *supra* note 54.

139. Daniel L. Byman, *Do Syrian Refugees Pose a Terrorism Threat?*, BROOKINGS (Oct. 27, 2015), <https://www.brookings.edu/blog/markaz/2015/10/27/do-syrian-refugees-pose-a-terrorism-threat>.

140. Derek Scally, *Does Germany Have a Problem with Criminal Refugees?*, THE IRISH TIMES (Jan. 7, 2018), <https://www.irishtimes.com/news/world/europe/does-germany-have-a-problem-with-criminal-refugees-1.3345325>.

141. Lizzie Dearden, ‘Get out of France’: Paris Police Tear Gassing Refugees and Stealing Blankets in Freezing Conditions, Report Reveals, THE INDEPENDENT (Feb. 11, 2017), <https://www.independent.co.uk/news/world/europe/refugee-crisis-paris-migrants-france-police-sleeping-bags-blankets-violence-refugee-rights-data-a7575376.html>.

liberties of their family and can lead to their children being taken away or to undesired intervention in domestic affairs.<sup>142</sup> American police forces have developed extensive programs to combat these misconceptions, integrate refugee communities and incentivize cooperation with law enforcement.<sup>143</sup> One particular program in Boise, Idaho was highlighted in a recent documentary.<sup>144</sup> In Boise, the police department created a specific position of a refugee liaison for the sole purpose of building a trusting relationship between refugee communities and the police force.<sup>145</sup> With the increased focus on building trusting relationships between law enforcement and traditionally ostracized communities, the U.S. has not experienced the same issues of conflict and violence that have plagued the EU.

The United States also has a different risk of economic harm than other nations, owing to restrictions that it places on the benefits granted to refugees as well as its encouragement of the swift attainment of self-sufficiency. In contrast to Germany's "temporary status," the Swedish approach resettlement as a final determination with no requirement for self-reliance on the part of the resettled individuals. Refugees in Sweden receive expansive welfare benefits, but rigid labor market regulations result in most refugees subsisting in poverty for decades.<sup>146</sup> Because refugees resettled to Sweden need not seek work or be concerned about their financial security, they are more likely to be a direct drain on the Swedish population than the refugees that are resettled in the United States.

On the other side of the precautionary scale, the Australian approach to refugee resettlement is markedly different from either the United States or the European Union and has sparked harsh criticism over the years. Some have gone so far as to call Australia's refugee policy a crime against

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142. Alexia Fernández Campbell, *How Some Refugees in Seattle Learned to Trust the Police*, THE ATLANTIC (June 16, 2015), <https://www.theatlantic.com/politics/archive/2015/06/how-some-refugees-in-seattle-learned-to-trust-the-police/432138/>.

143. *Refugee Outreach and Engagement Programs for Police Agencies*, POLICE EXECUTIVE RES. F. (May 2017), <http://www.policeforum.org/assets/refugeeoutreach.pdf>.

144. *American Beat: Cops and Refugees Join Forces in Boise*, INT'L RESCUE COMM. (Feb. 16, 2018), <https://www.rescue.org/announcement/american-beat-cops-and-refugees-join-forces-boise>.

145. Jason Margolis, *Refugees Don't Always Trust Cops, so Boise Has One Just to Help Them*, PRI (Oct. 19, 2016), <https://www.pri.org/stories/2016-10-19/refugees-don-t-always-trust-cops-so-boise-has-one-just-help-them>.

146. Alex Nowrasteh, *Missing the Point on Refugees and Welfare*, CATO INST. (July 2, 2015), <https://www.cato.org/blog/missing-point-refugees-welfare>. See Nima Sanandaji, SCANDINAVIAN UNEXCEPTIONALISM 92, 112 (2015) (noting that labor freedom has reduced in Sweden and that "many immigrants are trapped in long-term dependency on benefit payments").

humanity.<sup>147</sup> This criticism is earned primarily by Australia's strict entrance policies, demonstrating deliberate neglect and rejection of refugees who attempt to enter the country by boat.<sup>148</sup> Australia also has chosen to entirely exclude some populations from resettlement, running the risk of violating provisions ensuring non-discrimination on the country of origin.<sup>149</sup> The U.N. Human Rights Council issued a report that implicates Australia as violating the 1951 Convention, and condemned their policies of indefinite incarceration offshore as arbitrary and illegal.<sup>150</sup> While Australia's strong exclusionist approach may have prevented some of the discord that has arisen in European cities, it also does very little to advance the cause of providing refugees a sanctuary and blatantly violates international law.

### CONCLUSION

There are a myriad of steps that could be taken to improve and standardize the global regulatory approaches to refugee resettlement. Increasing international data collection and analysis from resettlement regimes, using the media to shed light upon the real level of risk inherent in the process and requiring the President to fulfill his statutory obligation of 'appropriate consultation' could all help to make resettlement strategies more effective and reflective of the risks. But comparing the U.S. approach to other countries shows that ORR and PRM have generally succeeded in building a successful regulatory regime. Despite a historically and comparatively large resettlement program, refugees in the United States have posed very low risks to the safety and wellbeing of American people and avoided many of the pitfalls that have been suffered by other third countries.

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147. Rebecca Hamilton, *Australia's Refugee Policy Is A Crime Against Humanity*, FOREIGN POL'Y (Feb. 23, 2017), <http://foreignpolicy.com/2017/02/23/australias-refugee-policy-may-be-officially-a-crime-against-humanity>.

148. Gavin Fernando, *Countries 'Unofficially' Excluded by Australia's Refugee Policy*, NEWS.COM.AU (Apr. 6, 2018), <http://www.news.com.au/lifestyle/real-life/news-life/countries-unofficially-excluded-by-australias-refugee-program/news-story/96e659312afadcc2b7b00a6778aab13f>.

149. *Id.*; see Recent Changes in Australian Refugee Policy, REFUGEE COUNCIL OF AUSTL. (July 7, 2018), <https://www.refugeecouncil.org.au/recent-changes-australian-refugee-policy/7/> (stating that Australia will not permit anybody who arrives by boat to apply for a visa except at the discretion of the Minister of Immigration); 1951 Convention, art. 3, *supra* note 9.

150. Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. Doc. A/HRC/37/50 (Feb. 26, 2018); Ben Doherty, *Scathing UN Migration Report Mars Australia's First Week on Human Rights Council*, THE GUARDIAN (Mar. 1, 2018), <https://www.theguardian.com/australia-news/2018/mar/02/scathing-un-migration-report-not-ideal-start-to-australias-human-rights-council-tenure>; Ben Doherty, *UN Body Condemns Australia For Illegal Detention of Asylum Seekers and Refugees*, THE GUARDIAN (July 7, 2018), <https://www.theguardian.com/world/2018/jul/08/un-body-condemns-australia-for-illegal-detention-of-asylum-seekers-and-refugees>.

Yet public perception remains fearful of the resettlement process. As the United States moves from being the largest resettling country by a wide margin to accepting only a tiny percentage of the individuals being resettled, we risk sacrificing economic gain and increased security and simultaneously incentivizing an increase in radicalism. The tendency to mischaracterize the risks of U.S. refugee regulation and utilize scare tactics and scapegoating undermines the value that refugee resettlement can bring to society both economically and by providing access to invaluable resources for increased national security.