

HOW THE FIRM RESETTLEMENT BAR DENIES MERITORIOUS REFUGEE AND ASYLUM CLAIMS*

I. INTRODUCTION

At the end of 2017, 68.5 million people worldwide had been forcibly displaced by conflict or persecution; 16.2 million people were newly displaced in 2017.¹ Of these forcibly displaced people, 22.5 million were refugees² and 2.8 million were asylum seekers.³ To put these numbers in historical context, one in every ten people is currently displaced, compared to only one in every 157 people ten years ago.⁴ Although the United States admitted the highest number of new individual asylum applicants for resettlement of any nation in 2017,⁵ it did not rank in the top ten countries by number of total refugees hosted.⁶ Of the ten countries that hosted the most refugees, nine are located in “developing regions.”⁷ In fact, four of the nations listed among the top ten refugee-hosting

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1. U.N. HIGH COMM’R FOR REFUGEES, GLOBAL TRENDS: FORCED DISPLACEMENT IN 2017, at 2 (2018) [hereinafter UNHCR, GLOBAL TRENDS], <http://www.unhcr.org/5b27be547.pdf> [<http://perma.cc/X5W3-EWZJ>]. These numbers translated into an average of 44,000 new displacements every day in 2017. *Id.*

2. *Id.*; see also 8 U.S.C. § 1101(a)(42)(A) (2018) (defining refugee as “any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion”).

3. UNHCR, GLOBAL TRENDS, *supra* note 1, at 2; see also 8 U.S.C. § 1158(a)(1) (“Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien’s status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.”); *id.* § 1158(b)(1)(A) (“The Secretary of Homeland Security or the Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Secretary of Homeland Security or the Attorney General under this section if the Secretary of Homeland Security or the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title.”).

4. See UNHCR, GLOBAL TRENDS, *supra* note 1, at 4. Many of these displacements occurred as a result of the Syrian conflict. *Id.* Conflict in regions including Burundi, the Central African Republic, the Democratic Republic of the Congo, Iraq, Myanmar, South Sudan, Sudan, Ukraine, and Yemen have contributed greatly to these totals as well. *Id.*

5. *Id.* at 3.

6. See *id.* at 15–18.

7. See *id.* at 15. The top ten refugee-hosting countries per number of refugees in 2017 were Turkey, Pakistan, Uganda, Lebanon, Iran, Germany, Bangladesh, Sudan, Ethiopia, and Jordan, in descending order. See *id.* at 17.

countries—Sudan, Bangladesh, Ethiopia, and Uganda—are labeled as “least developed countries,” with their own sets of challenges complicating the task of sustaining large refugee populations.⁸ It should be noted that an influx of refugees can put a “strain” on “first-port-of-entry” countries⁹ and has the potential to “destabilise a host country.”¹⁰ Despite these burdens associated with hosting refugees weighing heavily on developing regions, wealthy countries host only fourteen percent of the world’s refugees.¹¹ The United States should not exacerbate this disparity in aid by “pulling up the welcome mat” from those most in need of welcome.¹²

Protracted violence on a global scale has led to a steady outflow of people displaced by a civil war in Syria,¹³ a burgeoning genocide in South Sudan,¹⁴ atrocities committed against the Muslim Rohingya minority in Myanmar,¹⁵ and a number of other conflicts.¹⁶ Many have called for the United States to play a greater role in resettling some of these refugees, citing its considerable size (both in population and land area),¹⁷ a general moral obligation,¹⁸ and its long-standing

8. *Id.* at 18; see also Heather Horn, *The Staggering Scale of Germany’s Refugee Project*, ATLANTIC (Sept. 12, 2015), <http://www.theatlantic.com/international/archive/2015/09/germany-merkel-refugee-asylum/405058/> [<http://perma.cc/55J4-BHMV>] (“Any discussion of the number of refugees taken in by developed countries should probably note that developing countries host the vast majority of the world’s refugees.” (citation omitted)).

9. Horn, *supra* note 8.

10. Imogen Foulkes, *Global Refugee Figures Highest Since WW2, UN Says*, BBC NEWS (June 20, 2014), <http://www.bbc.com/news/world-27921938> [<http://perma.cc/F3WR-GDJC>].

11. *Id.*

12. See Scott Arbeiter, Opinion, *America’s Duty To Take in Refugees*, N.Y. TIMES (Sept. 23, 2016), <http://nyti.ms/2d7k9To> [<http://perma.cc/6SAY-VMTH>].

13. See UNHCR, GLOBAL TRENDS, *supra* note 1, at 6 (“As in previous years, the Syrian Arab Republic (Syria) continued to account for the largest forcibly displaced population globally.”). As of March 11, 2019, 5,681,093 Syrians had registered as refugees. *Syria Regional Refugee Response*, U.N. HIGH COMM’R FOR REFUGEES, <http://data.unhcr.org/syrianrefugees/regional.php> [<http://perma.cc/T9M5-SZHK>] (last updated Mar. 11, 2019).

14. As of February 15, 2019, more than two million individuals from South Sudan had registered as refugees or were currently awaiting registration as refugees, as a result of conflict in the area. *South Sudan*, U.N. HIGH COMM’R FOR REFUGEES, <http://data.unhcr.org/SouthSudan/regional.php> [<http://perma.cc/3V6N-GUSK>] (last updated Feb. 15, 2019).

15. See *Rohingya Emergency*, U.N. HIGH COMM’R FOR REFUGEES (Aug. 15, 2018), <http://www.unhcr.org/rohingya-emergency.html> [<http://perma.cc/2ZL2-2CJ8>]. As of August 2018, over 723,000 people had fled Myanmar—mostly to neighboring Bangladesh—after state-sanctioned violence against the Rohingya people, a stateless Muslim minority, broke out in August 2017. *Id.*

16. See PHILLIP CONNOR, PEW RESEARCH CTR., U.S. RESETTLES FEWER REFUGEES, EVEN AS GLOBAL NUMBER OF DISPLACED PEOPLE GROWS 3–4 (2017). “[A]ccording to a Pew Research Center analysis of United Nations High Commissioner for Refugees (UNHCR) and U.S. State Department data,” the “number of refugees annually resettled by the U.S. has not consistently grown in step with a worldwide refugee population that has expanded nearly 50% since 2013.” *Id.* at 3.

17. See, e.g., James Fallows, *Martin O’Malley Is Right: America Should Be Taking More Syrian Refugees*, ATLANTIC (Sept. 7, 2015), <http://www.theatlantic.com/international/archive/2015/09/martinomalley-is-right-the-united-states-should-be-taking-more-syrian-refugees/404131/> [<http://perma.cc/5SQY-5U84>] (“If Germany with its 80 million people can stand this disruption, so can the more-diverse United States, with four times as large a population and 25 times as big a land mass.”).

reputation as a sanctuary for displaced people.¹⁹ Opponents of opening the United States to refugees primarily argue that doing so would threaten national security, seeming to forget that “[c]ompassion and security can coexist.”²⁰

The Trump administration has continuously dismantled protections for refugees and asylum applicants to the United States, including halving the United States’ cap on refugees²¹ and blocking immigration from select countries altogether.²² More recently, the Trump administration has called for “draconian restrictions” on refugee protections, announcing regulations that would deny

18. See, e.g., David Wolpe, *The U.S. Has a Moral Obligation To Help Syrian Refugees*, TIME (Sept. 9, 2015), <http://time.com/4024901/the-u-s-has-a-moral-obligation-to-help-syrian-refugees/> [<http://perma.cc/SUG9-MEYQ>].

19. See, e.g., *Refugees Admissions*, U.S. DEP’T OF STATE, <http://www.state.gov/j/prm/ra/> [<http://perma.cc/G2LG-8FT2>] (last visited May 7, 2019) (“The United States is proud of its history of welcoming immigrants and refugees. The U.S. refugee resettlement program reflects the United States’ highest values and aspirations to compassion, generosity and leadership.”).

20. See Arbeiter, *supra* note 12 (“Some say we should be as fearful of refugees today, especially in an era of terrorist attacks. Yet since 2001, more than 800,000 refugees have been resettled in the United States, and none have been convicted of an act of domestic terrorism.”).

21. See U.S. DEP’T OF STATE, U.S. DEP’T OF HOMELAND SEC., U.S. DEP’T OF HEALTH & HUMAN SERVS., PROPOSED REFUGEE ADMISSIONS FOR FISCAL YEAR 2018 REPORT TO THE CONGRESS 6–7 (2017), <http://www.state.gov/j/prm/releases/docsforcongress/274613.htm> [<http://perma.cc/5MJX-JFX9>] (proposing a “ceiling” of 45,000 refugee admissions for 2018, as compared to 110,000 in 2017); see also Julie Hirschfeld Davis & Miriam Jordan, *Trump Plans 45,000 Limit on Refugees Admitted to U.S.*, N.Y. TIMES (Sept. 26, 2017), <http://nyti.ms/2yrlCuI> [<http://perma.cc/ZPV3-NBAW>] (comparing President Trump’s limit on refugee admissions to 45,000 people for 2018 to President Obama’s cap of 110,000 people and the minimum recommended cap of 75,000 people, which resettlement agencies claim is “necessary to begin to meet humanitarian needs around the world”). The future prospects for refugee and asylum applicants to the United States looks just as grim for 2019, with the Trump administration having set the cap for refugees even lower, at 30,000 refugees. Paige Winfield Cunningham, *The Health 202: The Trump Administration’s Refugee Policy Is Dismantling the Infrastructure That Cares for Them*, WASH. POST (Dec. 19, 2018), <http://www.washingtonpost.com/news/powerpost/paloma/the-health-202/2018/12/19/the-health-202-the-trump-administration-s-refugee-policy-is-dismantling-the-infrastructures-that-cares-for-them/5c193e8a1b326b2d6629d4e3/> [<http://perma.cc/8EEE-6AV6>].

22. See Exec. Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 9, 2017). After the expiration of two ninety-day travel bans, President Trump released Proclamation 9645 on September 24, 2017, which gave rise to an indefinite travel ban for nationals of six majority-Muslim countries and which the Supreme Court upheld in *Trump v. Hawaii*, 138 S. Ct. 2392 (2018). *Executive Order Entry Ban Litigation Updates*, NAFSA (June 26, 2018), http://www.nafsa.org/Professional_Resources/Browse_by_Interest/International_Students_and_Scholars/Executive_Order_Entry_Ban_Litigation_Updates/ [<http://perma.cc/8V9G-X4MF>]. In addition to implementing three travel bans on people from majority-Muslim countries, President Trump announced an “extreme vetting” policy targeted most severely at citizens and stateless residents of mainly majority-Muslim countries, requiring refugees to provide more detailed documentation while undergoing investigation prior to entering the country—effectively stalling or preventing their admission. Editorial Board, *Trump Spurns Refugees—Again*, WASH. POST (Oct. 27, 2017), http://www.washingtonpost.com/opinions/trump-spurns-refugees--again/2017/10/27/7c36ec22-ba90-11e7-a908-a3470754bbb9_story.html [<http://perma.cc/DP8Q-A7H7>]. Extreme vetting has contributed to the United States accepting only 3,000 Muslim refugees in 2018, compared to 40,000 Muslim refugees in 2016. David Bier, Opinion, *Trump Might Not Have Gotten His ‘Muslim Ban.’ But He Sure Got His ‘Extreme Vetting.’*, WASH. POST (Dec. 10, 2018), <http://www.washingtonpost.com/opinions/2018/12/10/trump-might-not-have-gotten-his-muslim-ban-he-sure-got-his-extreme-vetting/> [<http://perma.cc/9JHF-BECY>].

asylum applications by applicants who did not enter the country via legal border crossings.²³ In doing so, President Trump has ignored the United States' history as a "nation founded by immigrants, many of whom were themselves refugees fleeing religious persecution" and its crucial role in global "moral and political leadership."²⁴ The Trump administration has gone out of its way to distance the United States not only from the global refugee crisis²⁵ but so too has the U.S. asylum system itself through statutory bars that deny otherwise bona fide refugees asylum.²⁶

This Comment analyzes the firm resettlement bar—a statutory bar that denies asylum if the applicant received an offer of some type of permanent resettlement status in a third country that is not the United States or the applicant's country of origin²⁷—by exploring its history and jurisprudence. This Comment argues that to lessen the risk of denial of meritorious asylum and refugee claims, the list of exceptions to the firm resettlement bar must be expanded to encompass situations where (1) citizens of the third country²⁸—not just the third country's government—placed restrictive conditions on the asylum applicant, (2) fraudulent documents were used to gain entry into the third country, (3) the applicant has temporarily traveled from the third country back

23. Michael Posner, Opinion, *U.S. Should Not Abandon Leadership on Asylum*, FORBES (Nov. 9, 2018, 1:48 PM), <http://www.forbes.com/sites/michaelposner/2018/11/09/u-s-should-not-abandon-leadership-on-asylum/#18f618d0173d> [<http://perma.cc/76FM-ZNP4>].

24. *Id.*

25. See Colum Lynch, *Trump Boycotts U.N. Migration Talks*, FOREIGN POL'Y (Dec. 2, 2017, 10:30 PM), <http://foreignpolicy.com/2017/12/02/trump-boycotts-u-n-migration-talks/> [<http://perma.cc/66YG-JPY4>]. In December 2017 President Trump opted to boycott the United Nations' Global Compact on Migration. *Id.* Nikki Haley—then-U.S. Ambassador to the United Nations—released a statement explaining the decision: "[O]ur decisions on immigration policies must always be made by American [sic] and Americans alone." *Id.* She went on to say that the United Nations' "global approach in the New York Declaration is simply not compatible with U.S. sovereignty." *Id.* Some cited President Trump's reason for boycotting as evidence of the United States "abandon[ing] its role as the global leader in refugee resettlement" or "rejecting the very idea of a 'global refugee crisis'—instead taking it for granted that countries have a responsibility for the lives of their citizens, and that if those countries have failed, people who are similar to the displaced citizens ought to step up to help." Dara Lind, *The Trump Administration Doesn't Believe in the Global Refugee Crisis*, VOX (Dec. 4, 2017, 11:47 AM), <http://www.vox.com/policy-and-politics/2017/10/3/16379016/trump-refugees> [<http://perma.cc/LJ5Y-A5KL>].

26. See *infra* Section III for a discussion of how the firm resettlement bar and its narrow exceptions prevent the grant of asylum to qualified applicants due to the rigidity of the doctrine.

27. 8 U.S.C. § 1158(b)(2)(A)(vi) (2018).

28. "Third country" or "safe third country" in the context of immigration law refers to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.

Id. § 1158(a)(2)(A).

to the country of origin for good reason, or (4) the third country becomes dangerous *after* a formal offer of firm resettlement has been made.

Part II.A of this Comment explores the origins of the firm resettlement bar, explaining the justifications for its existence and tracing its incorporation into both international and U.S. law. Part II.B delves into how U.S. jurisprudence has shaped the firm resettlement bar, exploring the two former approaches to applying the bar and examining *Matter of A-G-G*,²⁹ which recently established the presently used framework for applying the bar. Next, Part II.C explores the two exceptions to the firm resettlement bar and discusses two cases that analyze these exceptions. Section III of this Comment illustrates select problems that arise from enforcing the firm resettlement bar, highlighting cases where application of the bar led to inconsistent or questionable results. Finally, Section III proposes an expansion of the current exceptions to the firm resettlement bar found in the Code of Federal Regulations, in order to prevent unjust denial of refugee and asylum applications.

II. OVERVIEW

Under U.S. immigration law, a refugee is a person outside of their country of nationality—or if stateless, the country of their last habitual residence—who is either “unable or unwilling to return” to their country of origin due to “persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”³⁰ A person is an asylee if they meet the definition of a refugee while already present in the United States or at a port of entry.³¹ An alien³² can apply for asylum³³ in the United States either affirmatively or defensively.³⁴ In the affirmative asylum process, the applicant has not been placed in removal proceedings and appears before a U.S. Citizenship and Immigration Services asylum officer in a nonadversarial interview.³⁵ In a defensive asylum process, the applicant appears before an immigration judge in an adversarial hearing in response to having been placed in removal proceedings.³⁶

29. 25 I. & N. Dec. 486 (B.I.A. 2011).

30. 8 U.S.C. § 1101(a)(42)(A).

31. *Refugees & Asylum*, U.S. CITIZENSHIP & IMMIGR. SERVICES, <http://www.uscis.gov/humanitarian/refugees-asylum> [<http://perma.cc/KAL7-FBDD>] (last updated Nov. 12, 2015).

32. See 8 U.S.C. § 1101(a)(3) (defining alien as “any person not a citizen or national of the United States”).

33. See *Refugees & Asylum*, *supra* note 31 (“Asylum status is a form of protection available to people who: [m]eet the definition of refugee[, a]re already in the United States[, and a]re seeking admission at a port of entry.”).

34. See *Obtaining Asylum in the United States*, U.S. CITIZENSHIP & IMMIGR. SERVICES, <http://www.uscis.gov/humanitarian/refugees-asylum/asylum/obtaining-asylum-united-states> [<http://perma.cc/LFZ7-MWY6>] (last updated Oct. 19, 2015).

35. See *id.*

36. *Id.*

If the asylum applicant satisfies the burden³⁷ of meeting the definition of “refugee” under 8 U.S.C. § 1101(a)(42),³⁸ then the “Secretary of Homeland Security or the Attorney General *may* grant asylum to an alien.”³⁹ Generally speaking, this language gives immigration judges and asylum officers broad discretion to make decisions on asylum applications.⁴⁰ A number of exceptions, however, bar a grant of asylum.⁴¹ One such bar to asylum eligibility is the *firm resettlement bar*, which applies when an “alien was firmly resettled in another country prior to arriving in the United States.”⁴² The definition of firm resettlement is different for refugees and asylees,⁴³ but in either case, an

37. 8 U.S.C. § 1158(b)(1)(B)(i) (“The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of section 1101(a)(42)(A) of this title. To establish that the applicant is a refugee within the meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant.”).

38. *Id.* § 1101(a)(42) (defining refugee as “any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion”).

39. *Id.* § 1158(b)(1)(A) (emphasis added).

40. See Kate Aschenbrenner, *Discretionary (In)Justice: The Exercise of Discretion in Claims for Asylum*, 45 U. MICH. J.L. REFORM 595, 596 (2012) (“Particular import has been given to the word ‘may’ in this section of the law. It means that the United States government is not required to grant asylum to a refugee within the United States; instead, the designated official has discretion to decide whether to do so.”).

41. See *id.* § 1158(b)(2). Exceptions to asylum include circumstances where

(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

(ii) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

(iii) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;

(iv) there are reasonable grounds for regarding the alien as a danger to the security of the United States;

(v) the alien is described in subclause (I), (II), (III), (IV), or (VI) of section 1182(a)(3)(B)(i) of this title or section 1227(a)(4)(B) of this title (relating to terrorist activity), unless, in the case only of an alien described in subclause (IV) of section 1182(a)(3)(B)(i) of this title, the Attorney General determines, in the Attorney General’s discretion, that there are not reasonable grounds for regarding the alien as danger to the security of the United States; or

(vi) the alien was firmly resettled in another country prior to arriving in the United States.

Id. § 1158(b)(2)(A).

42. *Id.* § 1158(b)(2)(A)(vi).

43. Compare 8 C.F.R. § 207.1(b) (2018) (“A refugee is considered to be ‘firmly resettled’ if he or she has been offered resident status, citizenship, or some other type of permanent resettlement by a country other than the United States and has traveled to and entered that country *as a consequence of his or her flight from persecution.*” (emphasis added)), with *id.* § 208.15 (“An alien is considered to be

immigration judge or asylum officer must deny an alien's application if the applicant received an offer of "resident status, citizenship, or some other type of permanent resettlement"⁴⁴ in a third country that is not the United States or the applicant's country of origin.⁴⁵

This Section first examines the history of the firm resettlement bar, looking to its origins in international law and subsequent incorporation into U.S. statutory law. Next, this Section explores how U.S. courts have interpreted the firm resettlement bar, focusing on cases where the application of the firm resettlement bar led to problematic results. Finally, this Section considers the two current exceptions to the firm resettlement bar—the restrictive conditions exception and the significant ties exception.

A. *History of the Firm Resettlement Bar*

This Part provides background on the origins of the firm resettlement bar, first by looking to the bar's origin in international agreements and then following its incorporation into U.S. statutory law. This Part also looks to the first Supreme Court case to analyze the congressional intent of the firm resettlement bar. Finally, this Part details some of the primary policy justifications for the existence of the firm resettlement bar.

1. International Law and the Origins of Firm Resettlement

The firm resettlement bar originated in the 1946 Constitution of the International Refugee Organization,⁴⁶ which stated that refugees or displaced persons "cease to be the concern" of the International Refugee Organization once they have become "firmly established" elsewhere.⁴⁷ Similar language surfaced again in the United Nations Convention Relating to the Status of Refugees in 1951, which established the principle of *non-refoulement*: the idea that no country "shall expel or return ('refouler') a refugee [against his or her will,] in any manner whatsoever . . . [to a] territor[y] where his life or freedom would be threatened."⁴⁸ Although the Convention established the principle of non-refoulement, it also emphasized the concept of a firm resettlement bar by defining when a person no longer falls under the protection of the Convention.⁴⁹

firmly resettled if, prior to arrival in the United States, he or she entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement . . .").

44. *See id.* §§ 207.1(b), 208.15.

45. *See id.* The language of both 8 C.F.R. § 207.1(b) and 8 C.F.R. § 208.15 does not require that the applicant actually accept any offer of permanent resettlement, making the existence of an "offer" alone enough to activate the bar. *See id.*

46. Matter of A-G-G-, 25 I. & N. Dec. 486, 489 (B.I.A. 2011).

47. Constitution of the International Refugee Organization and Agreement on Interim Measures To Be Taken in Respect of Refugees and Displaced Persons, annex I, pt. I, § D(c), Dec. 15, 1946, 18 U.N.T.S. 3.

48. United Nations Convention Relating to the Status of Refugees art. 33, ¶ 1, July 28, 1951, 189 U.N.T.S. 137, 176.

49. *See id.* art. 1, §§ C–D, 189 U.N.T.S. at 176.

Specifically, the Convention stated that a person shall not be considered a refugee when he “has acquired a new nationality [in the safe third country], and enjoys the protection of the country of his new nationality” or when he “is recognized by the competent authorities of the [safe third] country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.”⁵⁰

2. U.S. Adoption of the Firm Resettlement Bar

The origin of “firm resettlement” language in the United States can be traced to the Displaced Persons Act of 1948, which included a mandatory firm resettlement bar: it stated that a U.S. visa could be issued to a person only if they “had not been firmly resettled.”⁵¹ The first Supreme Court case to address firm resettlement was *Rosenberg v. Yee Chien Woo*,⁵² which discussed firm resettlement as just “one of the factors which the Immigration and Naturalization Service [(INS)] must take into account to determine whether a refugee seeks asylum in this country as a consequence of his flight to avoid persecution” rather than a statutory bar.⁵³

Later, the United States began to assume the obligations outlined in the United Nations Convention Relating to the Status of Refugees by enacting its own legislation, the Refugee Act of 1980, which established a statutory firm resettlement bar for refugees but not asylum seekers.⁵⁴ INS pushed to include a statutory firm resettlement bar for asylum cases in 1990,⁵⁵ and Congress codified this bar in 1996 when it passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.⁵⁶

3. Justifications for the Firm Resettlement Bar

In *Rosenberg*, the Court directly addressed the congressional intent behind the bar: “[The Fair Share Refugee Act of 1960] was never intended to open the United States to refugees who had found shelter in another nation and had begun to build new lives.”⁵⁷ To reach this conclusion, the Court explored

50. *Id.* art 1, §§ C(3), E, 189 U.N.T.S. at 154, 156.

51. Displaced Persons Act of 1948, Pub. L. No. 80-774, § 2(c)(1), 62 Stat. 1009, 1009 (codified in scattered sections of 50 U.S.C.).

52. 402 U.S. 49 (1971), *superseded by statute*, Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, tit. VI, sec. 604(a), 110 Stat. 3009, 3009-690 to -692 (current version at 8 U.S.C. § 1158). This case also speaks to the intent behind having a firm resettlement bar, emphasizing the idea that a firmly resettled person is one who has found a safe haven or refuge of sorts. *Rosenberg*, 402 U.S. at 56 (“It was never intended to open the United States to refugees who had found shelter in another nation and had begun to build new lives.”).

53. *See id.* at 56.

54. Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (codified in scattered sections of 8 U.S.C.).

55. *See* 8 C.F.R. § 208.14(c)(2) (2018).

56. *See* Illegal Immigration Reform and Immigrant Responsibility Act, div. C, tit. VI, sec. 604(a).

57. *Rosenberg*, 402 U.S. at 55-56.

Congress's use of the language "firmly resettled" throughout legislation in the 1950s and 1960s and explained that Congress intended its refugee legislation to speak to the theme of providing a "haven" to those fleeing persecution.⁵⁸ At the same time, the Court emphasized that such language was not meant to indicate that the United States wanted to completely abandon its firm resettlement bar and shoulder obligations to "fulfill American responsibilities in connection with the International Refugee Organization of the United Nations" alone.⁵⁹ The fact that the Fair Share Refugee Act still contained quotas limiting refugee numbers showed that Congress wanted "to provide a haven for homeless refugees" but only with the expectation for "other nations to do likewise."⁶⁰ Supporters of the firm resettlement bar also cite to the idea that other countries should share the responsibility of helping the world's refugee population as a justification for the bar.⁶¹

Additionally, supporters justify the firm resettlement bar by pointing to "durable solutions" as a preferable alternative to asylum in the United States because they provide refugees the lasting stability needed to "rebuild their lives and live in dignity and safety."⁶² According to the United Nations High Commissioner for Refugees, durable solutions to issues faced by displaced people include voluntary repatriation, resettlement to a third country, and local integration.⁶³ Under this reasoning, it follows that asylum applicants who have already firmly resettled in a third country do not need further assistance from the United States, given that they have already received a durable solution and can begin rebuilding their lives in the third country.⁶⁴

Another frequently cited justification is that the resettlement bar deters asylum applicants from subverting the purposes of asylum by "country shopping."⁶⁵ Many fear that asylum applicants use asylum as a "shortcut to citizenship," applying for asylum in the United States not because they need

58. *Id.* at 54–56 ("Both the terms 'firmly resettled' and 'fled' are closely related to the central theme of all 23 years of refugee legislation—the creation of a haven for the world's homeless people. This theme is clearly underlined by the very titles of the Acts over the years from the Displaced Persons Act in 1948 through the Refugee Relief Act and the Fair Share Refugee Act of 1960.").

59. *Id.* at 52.

60. *Id.* at 52, 56 (explaining that although the Fair Share Refugee Act of 1960 was meant "to help alleviate the suffering of homeless persons and the political instability associated with their plight," it was not meant to "encourag[e] resettled refugees to leave one secure haven for another").

61. *See, e.g., id.* at 56; *see also* Sarah Lynne Campbell, Note, *Give Me Your Tired, Your Poor, and Your Country Shoppers: Reevaluating the Firm Resettlement Requirement in U.S. Asylum Law After Maharaj v. Gonzales*, 21 *BYU J. PUB. L.* 377, 393–94 (2007) (explaining that without the firm resettlement bar to limit where an asylum seeker may apply for asylum, country shopping would run rampant and place an "undue burden" on the United States).

62. UNHCR, *GLOBAL TRENDS*, *supra* note 1, at 27.

63. *Id.*

64. *Id.*

65. *See* Rachel Gonzalez Settlege, *Indirect Refoulement: Challenging Canada's Participation in the Canada-United States Safe Third Country Agreement*, 30 *WIS. INT'L L.J.* 142, 150 (2012) (explaining that the logic behind fears of country shopping by asylum seekers stems from people questioning why an asylum seeker would seek asylum in a country other than the first one they flee to "if an asylum seeker was truly fleeing his country for fear of his life or safety").

protection from persecution but to bypass traditional paths to citizenship despite already safely residing in a third country.⁶⁶ Others justify the firm resettlement bar by pointing to the fact that denying asylum applications so long as that individual is sent back to a reasonably safe third country does not technically violate the Refugee Convention.⁶⁷ Finally, proponents of the firm resettlement bar justify it as a way to limit the economic costs of taking in refugees and asylees.⁶⁸

B. U.S. Jurisprudence

This Part analyzes how U.S. jurisprudence has shaped the firm resettlement bar by exploring the two main approaches to applying the bar—the *direct offer approach*⁶⁹ and the *totality of the circumstances approach*.⁷⁰ In addition, this Part examines *Matter of A-G-G-*, the case that recently established the current framework for applying the firm resettlement bar and combined elements of both approaches.⁷¹ This Part also traces some of the subsequent case law, which gave rise to the problematic applications of the firm resettlement bar analyzed in Part III.A.

Prior to 2011, federal courts of appeals employed two different methods for deciding whether an asylum seeker had been firmly resettled in a third country: the direct offer approach and the totality of the circumstances approach.⁷²

66. See Campbell, *supra* note 61, at 391–93 (arguing that the direct offer approach applied in *Maharaj v. Gonzales*, 450 F.3d 961 (9th Cir. 2006), makes it too easy for asylum applicants to country shop and gain entry into the United States for purely economic reasons, despite already residing in a third country).

67. See, e.g., Maria-Teresa Gil-Bazo, *The Practice of Mediterranean States in the Context of the European Union's Justice and Home Affairs External Dimension. The Safe Third Country Concept Revisited*, 18 INT'L J. REFUGEE L. 571, 595 (2006) (“[T]he conceptual foundation of the policies aimed at shifting responsibility for refugees to third countries often rests in the understanding that States are not obliged to process asylum applications or to grant asylum, as no such obligations appear in the letter of the Refugee Convention, and that, consequently, States may choose to remove individuals to third countries without considering their protection claims, provided that the principle of *non-refoulement* be respected.”); see also United Nations Convention Relating to the Status of Refugees, *supra* note 48, art. 33, ¶ 1 (defining *non-refoulement* to mean that “[n]o Contracting State shall expel or return (‘refouler’) a refugee in any manner . . . where his life or freedom would be threatened”).

68. See, e.g., Campbell, *supra* note 61, at 393–94.

69. See, e.g., *Maharaj*, 450 F.3d at 976 (concluding that, for the firm resettlement bar to apply, the Department of Homeland Security must “show[] that the government of the third country issued to the alien a formal offer of some type of official status permitting the alien to reside in that country indefinitely”).

70. See, e.g., *Mussie v. INS*, 172 F.3d 329, 331–32 (4th Cir. 1999) (looking to the totality of the circumstances of the applicant’s life in order to determine whether she is firmly resettled, including such factors as travel documentation; language; schooling; government assistance for transportation, rent, and food; and payment of taxes; and rental or ownership of an apartment).

71. *Matter of A-G-G-*, 25 I. & N. Dec. 486, 500–03 (B.I.A. 2011); see David Norris, Note, *Total[ity] Recall: Firm Resettlement Determinations After In re A-G-G-*, 26 GEO. IMMIGR. L.J. 425, 436–38 (2012) (discussing *Matter of A-G-G-*).

72. See *Matter of A-G-G-*, 25 I. & N. Dec. at 495.

1. The Direct Offer Approach

Under the direct offer approach, courts use the plain language of 8 C.F.R. § 208.15 to define firm resettlement, focusing on the language that states there must be “an offer of permanent resident status, citizenship, or some other type of permanent resettlement” in order for firm resettlement to bar an applicant from asylum.⁷³ Examination of circumstances outside of a formal offer from the third country—such as length of stay and employment in the third country—are generally disregarded as irrelevant.⁷⁴ In *Ali v. Ashcroft*,⁷⁵ the court applied the direct offer approach to determine whether an asylum applicant had been firmly resettled in Ethiopia after fleeing Somalia.⁷⁶ The court in *Ali* dismissed the immigration judge’s finding that the five-year duration of the applicant’s stay in Ethiopia constituted firm resettlement, holding instead that “the plain language of the regulation requires an offer of permanent residence.”⁷⁷

2. The Totality of the Circumstances Approach

Other firm resettlement determinations have followed the totality of the circumstances approach, which looks to the totality of the circumstances of an applicant’s life in the third country to determine whether the applicant was already firmly resettled.⁷⁸ In *Mussie v. INS*,⁷⁹ the court used the totality of the circumstances approach to determine whether a woman who had fled Egypt for Germany could be declared firmly resettled after staying in Germany for six

73. See, e.g., *Maharaj*, 450 F.3d at 976 (concluding that, for the firm resettlement bar to apply, the Department of Homeland Security must “show[] that the government of the third country issued to the alien a formal offer of some type of official status permitting the alien to reside in that country indefinitely”); *Diallo v. Ashcroft*, 381 F.3d 687, 693 (7th Cir. 2004) (“The primary and initial consideration [in determining firm resettlement], therefore, is a simple one—whether or not the intermediary country has made some sort of offer of permanent resettlement.”); *Abdille v. Ashcroft*, 242 F.3d 477, 487 (3d Cir. 2001) (“Absent some government dispensation, an immigrant who surreptitiously enters a nation without its authorization cannot obtain official resident status no matter his length of stay, his intent, or the extent of the familial and economic connections he develops. Citizenship or permanent residency cannot be gained through adverse possession.”); see also 8 C.F.R. § 208.15 (2018).

74. See, e.g., *Ali v. Ashcroft*, 394 F.3d 780, 790–91 (9th Cir. 2005) (holding that an applicant living and working in the third country of Ethiopia for five years did not constitute firm resettlement and a bar to asylum in the United States, given the absence of a direct, formal offer of permanent residency or citizenship from Ethiopia).

75. 394 F.3d 780 (9th Cir. 2005).

76. *Ali*, 394 F.3d at 790–91.

77. *Id.* at 789–90 (“[T]he fact that Ali fortuitously evaded detection by the government while living illegally in Ethiopia does not allow for a finding that Ali was firmly resettled in Ethiopia.”).

78. See, e.g., *Sall v. Gonzales*, 437 F.3d 229, 233 (2d Cir. 2006) (holding that the totality of the circumstances test should be used to determine if an applicant firmly resettled in a third country “regardless of whether a formal ‘offer’ of permanent settlement has been received”); *Mussie v. INS*, 172 F.3d 329, 332 (4th Cir. 1999) (finding that the circumstances of the applicant’s life can help determine if she is firmly resettled, including such factors as travel documentation; language; schooling; government assistance for transportation, rent, and food; employment; payment of taxes; and rental or ownership of an apartment).

79. 172 F.3d 329 (4th Cir. 1999).

years.⁸⁰ The court weighed such factors as travel documentation; language; schooling; government assistance for transportation, rent, and food; employment; payment of taxes; and rental or ownership of an apartment under the totality of the circumstances approach—leading the court to conclude she had been firmly resettled.⁸¹

3. Establishing a New Framework in *Matter of A-G-G-*

In response to a circuit split in the United States courts of appeals regarding the appropriate test to apply, the Board of Immigration Appeals (BIA or Board) addressed the question in *Matter of A-G-G-*.⁸² There, the Board established a four-step framework for determining whether an applicant was firmly resettled.⁸³

In the first step, the Department of Homeland Security (DHS) “bears the burden of presenting prima facie evidence of an offer of firm resettlement.”⁸⁴ The DHS meets this burden if it can “secure and produce direct evidence of governmental documents indicating an alien’s ability to stay in a country indefinitely,” which can include “evidence of refugee status, a passport, a travel document, or other evidence indicative of permanent residence.”⁸⁵

In the event that the DHS does not have direct evidence of an offer of firm resettlement, the DHS may present indirect evidence at the initial stage.⁸⁶ Indirect evidence of firm resettlement can include

the immigration laws or refugee process of the country of proposed resettlement; the length of the alien’s stay in a third country; the alien’s intent to settle in the country; family ties and business or property connections; the extent of social and economic ties developed by the alien in the country; the receipt of government benefits or assistance, such as assistance for rent, food, and transportation; and whether the alien had legal rights normally given to people who have some official status, such as the right to work and enter and exit the country.⁸⁷

It should be noted that under this umbrella of indirect evidence, even the mere existence of a legal mechanism for obtaining permanent resettlement status in the third country could establish the finding of a firm offer, regardless of whether the applicant attempted to apply for or received this permanent status.⁸⁸

80. *Mussie*, 172 F.3d at 330–31.

81. *Id.*

82. See *Matter of A-G-G-*, 25 I. & N. Dec. 486, 495 (B.I.A. 2011).

83. *Id.* at 501–03.

84. *Id.* at 501.

85. *Id.* at 501–502.

86. *Id.* at 502.

87. *Id.*

88. *Id.* at 502–03 (“*Matter of Soleimani*, 20 [I. & N.] Dec. 99 [(B.I.A. 1989)], would be decided differently if considered under the framework set forth today. The fact that the alien in that case did not apply for permanent resettlement in Israel through its Law of Return would not foreclose a firm resettlement determination, because the Law of Return would be considered as indirect evidence of an offer of firm resettlement. She would have been found firmly resettled . . .”).

In the second step, “the alien can rebut the DHS’s prima facie evidence of an offer of firm resettlement by showing by a preponderance of the evidence that such an offer has not, in fact, been made or that he or she would not qualify for it.”⁸⁹ It is not enough to rebut the DHS’s claim of an offer of firm resettlement if the applicant is found to have “refused to accept an offer of firm resettlement or failed to renew permanent residence, which was possible, for example, through the renewal of a residence permit.”⁹⁰

In the third step, the immigration judge then “consider[s] the totality of the evidence presented by the parties to determine whether an alien has rebutted the DHS’s evidence of an offer of firm resettlement.”⁹¹ After considering all of the evidence, “[i]f the Immigration Judge finds that the alien has not rebutted the DHS’s evidence, the Immigration Judge will find the alien firmly resettled.”⁹²

“In the final step, if the Immigration Judge finds the alien firmly resettled, the burden then shifts to the alien pursuant to 8 C.F.R. § 208.15(a) and (b) to establish that an exception to firm resettlement applies by a preponderance of the evidence.”⁹³ If the alien meets one of the exceptions discussed in Part III.C *infra*, then “the alien can be granted asylum.”⁹⁴ If none of the exceptions are met, then the alien “will be subject to the mandatory bar for asylum.”⁹⁵

The Board in *Matter of A-G-G-* reasoned that “[t]he framework is consistent with both the direct offer and totality of the circumstances approaches because, like these, it allows for the consideration of direct and indirect evidence.”⁹⁶ The Board, however, made sure not to give equal weight to direct and indirect evidence, reasoning that doing so would be “inconsistent with the fact that only the government of the intervening country can grant an alien the right to lawfully and permanently reside there [and that s]uch a right ‘cannot be gained through adverse possession.’”⁹⁷

4. Subsequent Application of the *Matter of A-G-G-* Framework

Although *Matter of A-G-G-* provided some finality to the debate over the direct offer and totality of the circumstances approaches, application of the four-step framework after this decision has raised new questions regarding how courts should apply the bar.

89. *Id.* at 503.

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.* Restrictive conditions—as discussed—may count as exceptions that would apply in this step of the framework, though it should be noted that continuing fear is not enough to constitute restrictive conditions on an asylum applicant, as the applicant must meet the burden of showing that the government of the third country is somehow imposing restrictive conditions by not providing the applicant with adequate protection. *See* 8 C.F.R. §§ 207.1(b), 208.15(b) (2018).

94. *Matter of A-G-G-*, 25 I. & N. Dec. at 503.

95. *Id.*

96. *Id.* at 501.

97. *Id.* (quoting *Abdille v. Ashcroft*, 242 F.3d 477, 487 (3d. Cir. 2001)).

Shortly after *Matter of A-G-G-*, the Board applied the framework and denied asylum to a couple who had fled to Belize from China⁹⁸ after the wife was forced to have an abortion due to China's one-child policy.⁹⁹ In *Matter of D-X- & Y-Z-*,¹⁰⁰ a couple had fraudulently obtained residence permits to stay in Belize, and the Board held that these documents constituted an offer of permanent resettlement from the government, barring them from asylum in the United States despite the fact that such resettlement would not be recognized by the government of Belize should it discover the fraud.¹⁰¹ As Part III.B explores further, this case raises questions about whether a direct offer based on fraudulent documentation is truly an offer of permanent resettlement.

C. *Exceptions to the Firm Resettlement Bar*

This Part considers the two exceptions to the firm resettlement bar—the restrictive conditions exception and the significant ties exception—looking to how these exceptions impact refugees and asylees differently. In doing so, this Comment highlights cases where the exceptions resulted in problematic outcomes in order to set the groundwork for further analyzing and questioning the usefulness of these exceptions in Section III.

To defend against the firm resettlement bar, an applicant can try to prove that one of the statutory exceptions applies: restrictive conditions or significant ties.¹⁰²

1. Restrictive Conditions

For both refugee and asylum applicants, an exception to the firm resettlement bar applies if restrictive conditions¹⁰³ in the third country prevented

98. *Matter of D-X- & Y-Z-*, 25 I. & N. Dec. 664, 665–69 (B.I.A. 2012).

99. Norris, *supra* note 71, at 446.

100. 25 I. & N. Dec. 664 (B.I.A. 2012).

101. *Matter of D-X- & Y-Z-*, 25 I. & N. Dec. at 669.

102. See *Matter of A-G-G-*, 25 I. & N. Dec. at 503. These exceptions are codified in 8 C.F.R. § 207.1(b) for refugees and 8 C.F.R. § 208.15 for asylum applicants. See 8 C.F.R. §§ 207.1(b), 208.15 (2018). For a refugee to successfully argue that he or she has not “firmly resettled in a foreign country [the refugee] must establish that the conditions of his or her residence in that country are so restrictive as to deny resettlement. In determining whether or not an applicant is firmly resettled in a foreign country, the officer reviewing the matter shall consider the conditions under which other residents of the country live” *Id.* § 207.1(b). It should be noted that the language in 8 C.F.R. § 207.1(b) asks the adjudicator to consider the conditions of the third country in relation to the conditions in the refugee’s origin country, rather than the conditions of the United States in relation to the refugee’s origin country. See *id.* § 207.1(b). For an asylum applicant to successfully argue that he or she has not firmly resettled, he or she must prove that

his or her entry into that country was a necessary consequence of his or her flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that country; or . . . [t]hat the conditions of his or her residence in that country were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled.

See *id.* § 208.15 (emphasis added).

true resettlement, though this exception is broader for refugee applicants than for asylum applicants.¹⁰⁴ Asylum applicants must show that these restrictive conditions were imposed on them “by the authority of the country of refuge,” both “substantially and consciously,”¹⁰⁵ whereas refugee applicants can establish restrictive conditions without a showing of a governmental actor’s involvement.¹⁰⁶

In *Mussie*, the court examined what conditions fell under the umbrella of restrictive.¹⁰⁷ The court applied the totality of the circumstances approach and concluded that an Ethiopian woman who had fled to Germany was firmly resettled after six years.¹⁰⁸ The court concluded that the circumstances of her life—her schooling, government assistance for transportation, payment of rent, and access to food—suggested that she had established herself as firmly resettled in Germany.¹⁰⁹

103. For asylum applicants, restrictive condition factors include

the type of housing, whether permanent or temporary, made available to the refugee; the types and extent of employment available to the refugee; and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation that includes a right of entry or reentry, education, public relief, or naturalization, ordinarily available to others resident in the country.

Id. § 208.15(b). For refugee applicants, restrictive condition factors include

- (1) Whether permanent or temporary housing is available to the refugee in the foreign country;
- (2) Nature of employment available to the refugee in the foreign country; and
- (3) Other benefits offered or denied to the refugee by the foreign country which are available to other residents, such as right to property ownership, travel documentation, education, public welfare, and citizenship.

Id. § 207.1(b).

104. Compare *id.* § 207.1(b) (setting forth considerations for determining whether a refugee who claims not to have been permanently resettled is actually firmly resettled in foreign country), with *id.* § 208.15 (providing two exceptions to the general rule that an alien is firmly resettled if he or she entered into a country with, or while there received, an offer of permanent resident status).

105. *Id.* § 208.15(b); see also Luis F. Mancheno, *Persecuted, Discriminated, and Rejected: The Firm Resettlement Bar to Colombian Refugees Living in Ecuador*, 19 ROGER WILLIAMS U. L. REV. 151, 170–71 (2014) (“Additionally, while the Ecuadorian Government has taken significant steps to provide protection to refugees, Colombian refugees struggle to access basic rights that their Ecuadorian counterparts enjoy: “[M]any recognized refugees expressed that their situations had not improved, or improved only slightly after a grant of refugee status. They complained of pervasive and systematic discrimination, lack of job opportunities, inability to find landlords willing to rent to Colombians, lack of educational opportunities for their children, inability to open bank accounts, police harassment and abuse, general deficiency of services and protection for recognized refugees, and a constant prejudice against Colombians.”) Furthermore, the barriers to basic rights were also related to the spread of discrimination against Colombians, discrimination that particularly affects Afro-Colombians and indigenous people. The integration process takes place in a context dominated by profound economic and ethnic segregation.” (second alteration in original) (footnotes omitted) (quoting HUMAN RIGHTS INST., GEORGETOWN UNIV. LAW CTR., UNINTENDED CONSEQUENCES: REFUGEE VICTIMS OF THE WAR ON TERROR 38 (2006)).

106. 8 C.F.R. § 207.1(b).

107. *Mussie v. INS*, 172 F.3d 329, 332 (4th Cir. 1999).

108. *Id.* at 331–32.

109. *Id.* at 332.

In response, the woman argued that she met an exception to the firm resettlement bar due to restrictive conditions in Germany.¹¹⁰ Her account of restrictive conditions that prevented her from being firmly resettled included numerous instances of “racial taunting and threats from neighbors, passers-by, and co-workers,” as well as an incident—reported to and ignored by the police—where a man in neo-Nazi garb threw her to the ground.¹¹¹ The court ultimately found her argument unpersuasive, reasoning that, though disturbing, the racism and violence she faced was perpetrated by private citizens rather than the government. As a result, the court barred her from protection by the exception,¹¹² which only covers restrictions imposed by the authority of the third country.¹¹³ For *Mussie* to be exempt from the firm resettlement bar, the German government itself would have had to place some restrictions on her residency.¹¹⁴ Looking to this outcome in *Mussie*, Section III analyzes whether it makes sense for the restrictive conditions to apply differently to asylees and refugees.

2. Significant Ties

A second exception to the firm resettlement bar applies to asylum applicants only and prevents a finding of firm resettlement if the applicant can prove that they did not stay in the third country long enough to establish “significant ties.”¹¹⁵ The language of the significant ties exception in 8 C.F.R. § 208.15 also speaks to the idea that an applicant must show that they remained in the third country only “as long as was necessary to arrange onward travel.”¹¹⁶

In *Matter of D-X- & Y-Z-*, the BIA concluded that the couple who had fled to Belize from China to avoid further persecution under China’s one-child policy did not show that they lacked significant ties in Belize and remained in Belize only long enough to arrange onward travel.¹¹⁷ Specifically, the immigration judge found unpersuasive the couple’s argument that they met the requirements of this exception given that they traveled in and out of Belize on visitor visas during their stay.¹¹⁸ Before applying for asylum in the United States, the husband traveled out of Belize to marry in China before returning to Belize, and the wife

110. *Id.* at 331.

111. *Id.*

112. *Id.* at 332.

113. 8 C.F.R. § 208.15(b) (2018) (stating that a finding of firm resettlement is questionable if an applicant establishes that “the conditions of his or her residence in [a third] country were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled” (emphasis added)).

114. *Mussie*, 172 F.3d at 332.

115. 8 C.F.R. § 208.15(a).

116. *Id.*

117. *See Matter of D-X- & Y-Z-*, 25 I. & N. Dec. 664, 664–65 (B.I.A. 2012); Norris, *supra* note 71, at 446.

118. *Matter of D-X- & Y-Z-*, 25 I. & N. Dec. at 665; *see also Vang v. INS*, 146 F.3d 1114, 1117 (9th Cir. 1998) (holding that an alien met the requirements of the firm resettlement bar, given that he used travel documents to travel abroad and return to the third country prior to applying for asylum in the United States, thus establishing that he did not meet the statutory exception of having remained in the third country only so long as it took to arrange onward travel).

visited the United States during their stay in Belize and then voluntarily returned.¹¹⁹ Looking to the couple's free travel in and out of the third country, the immigration judge found their efforts to show that they stayed only long enough to arrange onward travel unpersuasive, given that the husband "ha[d] not produced evidence that he could not have traveled to the United States sooner."¹²⁰ In the wife's case specifically, she argued that her lack of employment in Belize supported a lack of significant ties to Belize; the judge responded to this reasoning by pointing to the fact that she was not ineligible to work.¹²¹ Section III examines *Matter of D-X- & Y-Z-* in further detail, questioning whether fraudulent documents should ever count as evidence toward a finding of significant ties to a third country.

III. DISCUSSION

Presently, there is much debate over the United States' ability to accurately brand itself as a safe destination for asylum applicants.¹²² Many even accuse the United States of frequently violating the non-refoulement principle found in the United Nations Refugee Convention¹²³ due to cases of indirect refoulement resulting from application of statutory bars¹²⁴ in which asylum seekers are returned to third countries where they may continue to face further persecution.¹²⁵

Given its decades-long existence both internationally and domestically,¹²⁶ total elimination of the doctrine of firm resettlement seems unlikely to occur.¹²⁷

119. *Matter of D-X- & Y-Z-*, 25 I. & N. Dec. at 668.

120. *Id.* ("The female respondent had traveled to the United States a month earlier for a visit, and the male respondent did not establish that he could not have traveled with her at that time or even earlier.").

121. *Id.* at 667.

122. *See* Gonzalez Settlage, *supra* note 65, at 142 (criticizing Canada's participation in the Canada-United States Safe Third Country Agreement on the grounds that "U.S. laws and policies that result in the refoulement of bona fide asylum seekers to their country of feared persecution violate U.S. obligations under the UN Refugee Convention"). More specifically, Gonzalez Settlage argued that the United States' asylum laws are "overly broad or stringent" and claimed that "[i]f individualized assessments were to be done for each applicant as to his risk of refoulement if returned to the United States pursuant to the STCA, it would be clear that because of U.S. laws and practices, some returned asylum seekers would face refoulement." *Id.* at 186, 188.

123. United Nations Convention Relating to the Status of Refugees, *supra* note 48, art. 33, ¶ 1 ("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.").

124. *See* Gonzalez Settlage, *supra* note 65, at 157 ("In fact, the United States is the only party to the UN Refugee Convention that does not apply the principle of non-refoulement to all refugees.").

125. *See id.* at 146 (claiming that by participating in the Canada-United States Safe Third Country Agreement, "Canada is responsible for indirectly refouling that asylum-seeker and equally in violation of international refugee law").

126. *See supra* Section II for a discussion of the history of the firm resettlement bar and related jurisprudence.

127. *See* Gil-Bazo, *supra* note 67, at 595 ("[T]he conceptual foundation of the policies aimed at shifting responsibility for refugees to third countries often rests in the understanding that States are

So long as countries feel that they are not overtly violating the principle of non-refoulement found in the United Nations Refugee Convention, they will continue to force asylum applicants to return to third countries—even in spite of concerns that indirect refoulement is highly possible in many cases when an applicant is barred entry to the host country.¹²⁸

If the firm resettlement bar is to remain on the books, the list of existing statutory exceptions to its application must be expanded to prevent unjust denial of refugee and asylum applications. This Section focuses on the most problematic results stemming from application of the doctrine of firm resettlement to highlight the problems with its limited exceptions and emphasize the areas where existing asylum statutes could be improved. These suggested improvements better reflect the original intent of the bar, as articulated in *Rosenberg v. Yee Chien Woo*,¹²⁹ and they more clearly align with the non-refoulement principle from the United Nations Refugee Convention.¹³⁰

This Section identifies several inadequacies of the firm resettlement bar and proposes changes to its exceptions in order to prevent situations where application of the bar leads to denial of meritorious refugee and asylum claims. First, the restrictive conditions exception is too narrow for asylum applicants compared to the analogous exception for refugees. Asylum applicants should be afforded the same protections granted refugees. Next, the firm resettlement bar unfairly makes it possible to establish a finding of firm resettlement in a third country, even if resettlement relies on fraudulent documents that put the asylum applicants at risk of refoulement at any time. To address this problem, the DHS should add language to the firm resettlement bar exceptions¹³¹ that guarantees that fraudulent documentation not count as evidence toward a finding of firm resettlement in the third country. A third problem of the firm resettlement bar is that its application can lead to denial of an asylum applicant if they temporarily traveled from the third country to the country of origin, even if they returned for good reason. The exceptions to the firm resettlement bar should be expanded to address the scenarios where a return trip to the country of origin is necessary, such as for the death of an immediate family member or to receive lifesaving treatment. Last, the firm resettlement bar, as written, can wrongly bar an asylum applicant from finding refuge in the United States if the third country becomes unsafe after the asylum applicant has already accepted a firm offer. The list of

not obliged to process asylum applications or to grant asylum, as no such obligations appear in the letter of the Refugee Convention, and that, consequently, States may choose to remove individuals to third countries without considering their protection claims, provided that the principle of *non-refoulement* be respected.”).

128. See *id.* (“[T]he STC [Safe Third Country concept] has managed to ground itself so firmly in the discourse of governments, academics and even NGOs that the debate does not address the lawfulness of the practice itself, but rather—seemingly accepting it—focuses on the specific requirements that are to be met for a State to be considered a safe third country.”).

129. See *Rosenberg v. Yee Chien Woo*, 402 U.S. 49, 51 (1971), *superseded by statute*, Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, tit. VI, sec. 604(a), 110 Stat. 3009, 3009-690 to -692 (current version at 8 U.S.C. § 1158).

130. See *supra* note 48 and accompanying text.

131. See 8 C.F.R. §§ 207.1(b), 208.15 (2018).

exceptions to the firm resettlement bar should be expanded to cover a situation where an asylum applicant's circumstances changed after receiving a firm offer.

A. *Restrictive Conditions*

As discussed in Part II.C, both refugee¹³² and asylum applicants¹³³ can argue that they meet an exception to the firm resettlement bar if restrictive conditions prevented true resettlement in the third country. Although having an exception for restrictive conditions is helpful to accurately determine whether someone firmly resettled in a third country, it is problematic that asylum applicants bear the extra burden of showing that these restrictive conditions were imposed on them “by the authority of the country of refuge,” both “substantially and consciously,”¹³⁴ whereas any harm perpetuated by nongovernmental actors—even if more restrictive than actions taken by the government—does not fall under this exception.¹³⁵

Such a loophole arbitrarily provides asylum applicants inferior protection under the law compared to that afforded to refugee applicants who face no such requirements.¹³⁶ *Mussie* highlights how the restrictive conditions exception for asylum applicants often fails to protect the populations it seeks to safeguard: a showing of racially motivated violence by private citizens is not even enough to meet the statutory demands placed on refugee applicants.¹³⁷ Yet often private discrimination is just as insidious as government-sanctioned discrimination: minority populations are routinely denied access to employment, housing, or lifesaving medical treatment by private actors.¹³⁸ Essentially, the language of the exception as it stands now makes it possible to deny asylum applicants entry into the United States, even when lengthy campaigns of harassment, discrimination, and violence by private citizens in the third country would seemingly have

132. *Id.* § 207.1(b) (“Any applicant who claims not to be firmly resettled in a foreign country must establish that the conditions of his or her residence in that country are so restrictive as to deny resettlement. In determining whether or not an applicant is firmly resettled in a foreign country, the officer reviewing the matter shall consider the conditions under which other residents of the country live . . .”).

133. *Id.* § 208.15(b) (stating that a finding of firm resettlement is questionable if an applicant establishes that “his or her entry into that country was a necessary consequence of his or her flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that country; or . . . [t]hat the conditions of his or her residence in that country were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled”).

134. *Id.*

135. See *supra* Part II.C.1 for a discussion of the nongovernmental racism and harassment that the refugee applicant faced in *Mussie*.

136. Compare 8 C.F.R. § 207.1(b) (codifying exceptions for refugee applicants containing no requirements to show such restrictive conditions), with *id.* § 208.15(b) (codifying exceptions for refugee applicants requiring showing of restrictive conditions imposed “by the authority of the country of refuge” both “substantially and consciously”).

137. *Mussie v. INS*, 172 F.3d 329, 332 (4th Cir. 1999).

138. See *Discrimination, Inequality, and Poverty—A Human Rights Perspective*, HUMAN RIGHTS WATCH (Jan. 11, 2013, 7:01 PM), <http://www.hrw.org/news/2013/01/11/discrimination-inequality-and-poverty-human-rights-perspective> [<http://perma.cc/235M-V7MP>].

qualified as a restrictive condition on the applicant's resettlement efforts had they only been perpetrated by government actors.¹³⁹

In order to avoid unjust results like those seen in *Mussie*, the DHS should amend the restrictive conditions exception for asylum applicants to the firm resettlement bar in the Code of Federal Regulations¹⁴⁰ to include actions by non-governmental actors of the third country—not just the government of the third country—as able to create restrictive conditions placed on applicants. In other words, the DHS should amend the language of 8 C.F.R. § 208.15(b) to more closely mirror the broader language of 8 C.F.R. § 207.1(b), which provides the restrictive conditions exception for refugees.¹⁴¹ With this change, when the actions of nongovernmental entities in the third country cross the line so as to contribute to preventing the asylum applicant from firmly resettling in the third country, an applicant would be permitted to cite these circumstances as restrictive conditions. When applying for asylum, attacks by private actors can rise to the level of persecution required for asylum, if the “[d]iscrimination, harassment, and violence” is perpetrated by “groups that the government is unwilling or unable to control.”¹⁴² To mirror this language then, actions by private actors that a government is just unwilling to control should be covered by the restrictive conditions exception at a minimum.

B. *Fraudulently Obtained Documents*

Another egregious result of applying the firm resettlement bar using the current statutory exceptions and framework provided by *Matter of A-G-G-* is seen in the holding of *Matter of D-X- & Y-Z-*, discussed in Part II.B. In *Matter of D-X- & Y-Z-*, a married couple fled China for Belize and then later attempted to apply for asylum in the U.S.¹⁴³ The couple argued that their application should not be denied under the firm resettlement bar because the fraudulently obtained permits upon which they based their entry to Belize could not constitute a true offer of firm resettlement by the Belizean government, as they had no way of

139. See *Mussie*, 172 F.3d at 332.

140. See 8 C.F.R. § 208.15(b). The DHS is unlikely to spearhead such an amendment under the Trump administration, however, with policies like “zero tolerance” family separation and active U.S. military presence at the border marking the DHS’s agenda under former Homeland Security Secretary Kirstjen Nielsen. *Trump Is Preparing To Remove Kirsten Nielsen as Homeland Security Secretary, Aides Say*, WASH. POST (Nov. 12, 2018), http://www.washingtonpost.com/world/national-security/trump-is-preparing-to-remove-kirstjen-nielsen-as-homeland-security-secretary-aides-say/2018/11/12/77111496-e6b0-11e8-bbdb-72fdb9d4fed_story.html [https://perma.cc/F4R2-2RLD]. Even if Nielsen were to step down or be replaced, the likelihood of meaningful change to the Code of Federal Regulations under another secretary during the Trump presidency would still be slim, as White House sources have revealed the President would prefer a replacement who embraced and enforced his immigration ideas with greater zeal. *Id.*

141. See *id.* §§ 207.1(b), 208.15(b).

142. *Singh v. INS*, 94 F.3d 1353, 1359 (9th Cir. 1996) (citing *Arteaga v. INS*, 836 F.2d 1227, 1231 (9th Cir. 1988)).

143. *Matter of D-X- & Y-Z-*, 25 I. & N. Dec. 664, 664 (B.I.A. 2012).

knowing whether the permits they received from a middleman had been officially issued by the government.¹⁴⁴

While it is true that an alien's use of fraudulently obtained documentation when fleeing their country of origin is not automatic grounds for denial of asylum,¹⁴⁵ the BIA ultimately rejected the couple's argument, reasoning that the documents—though fraudulently obtained—were “facially valid.”¹⁴⁶ That the couple was permitted to reside in Belize indefinitely and travel freely in and out of the country was deemed enough to prevent the applicants from successfully rebutting the evidence of an offer for firm resettlement by the Belize government.¹⁴⁷

Such a ruling contravenes the non-refoulement principle found in the United Nations Refugee Convention.¹⁴⁸ By definition, unlawful documentation puts the asylum applicant at risk of deportation at the third country's whim, given that unlawful residency in a country is far from the permanent resettlement envisioned by the direct offer approach favored in *Matter of A-G-G*.¹⁴⁹ In this way, denying asylum on the grounds that fraudulently obtained documentation allows a finding of a firm offer from the third country misinterprets the purpose of the direct offer approach and makes the risk of refoulement extremely high.¹⁵⁰

To avoid an application of *Matter of A-G-G* like that seen in *Matter of D-X- & Y-Z-*, seemingly at odds with the non-refoulement principle, the list of exceptions to the firm resettlement bar should be expanded to specifically exclude fraudulent or fraudulently obtained travel documents and residence permits as a means of establishing evidence of a direct offer from the third country. Without any regulatory language specifying that fraudulent

144. *Id.* at 666.

145. *Matter of Pula*, 19 I. & N. Dec. 467, 474 (B.I.A. 1987), *superseded by regulation*, 8 C.F.R. §§ 208.13(d), 208.14(e).

146. *Matter of D-X- & Y-Z-*, 25 I. & N. Dec. at 666–67.

147. *Id.* at 666 (“[A]liens who have obtained an immigration status by fraud should not be permitted to disavow that status in order to establish eligibility for another type of relief.”).

148. See United Nations Convention Relating to the Status of Refugees, *supra* note 48, art. 33, ¶ 1 (defining non-refoulement to mean that no state “shall expel or return (‘refouler’) a refugee in any manner whatsoever” to a territory where he or she fears threat to “life or freedom”).

149. Norris, *supra* note 71, at 448 (“The fundamental reason that the Board adopted the direct offer approach over the totality approach was ‘the fact that only the government of the [third] country can grant an alien the right to *lawfully and permanently* reside there.’ But fraudulent documentation does not permit an applicant to reside ‘lawfully’ in that country. Moreover, since fraudulent documentation is not lawful, it does not entitle the asylum seeker to remain ‘permanently’ in the third country either.” (alteration in original) (footnote omitted) (quoting *Matter of A-G-G*, 25 I. & N. Dec. 486, 501 (B.I.A. 2011))).

150. *Id.* (“In failing to ensure that asylum applicants can ‘lawfully and permanently’ reside in another country before denying their applications on firm resettlement grounds, the Board has committed the same fundamental flaw that plagued the totality approach. An official offer of resettlement is so important because it ensures a durable solution has been achieved, the citizen-state relationship has been restored, and the refugee has a right to permanently reside in the other country. The totality approach’s primary flaw was the failure to ensure that relationship existed before barring the asylum application on firm resettlement grounds.”).

documentation should not rise to the level of an offer of firm resettlement, the United States effectively punishes the many aliens who must hastily leave their home countries either without proper travel documentation or documentation secured by fraud.¹⁵¹ In doing so, the United States effectively leaves the protection of the world's most vulnerable groups up to the third country in which they currently reside, knowing full well that the reason for the rejection of their asylum applications—their fraudulently obtained documents—could be the very same reason that third country also ceases to continue providing protections.¹⁵² More than anything else, a willingness to commit fraud to escape the country of origin provides further evidence of the desperation to flee persecution rather than strengthens a finding of firm resettlement in the third country.

C. *Right To Return to Country of Origin*

Strictly interpreting the exception to the firm resettlement bar that says an asylum applicant is not barred if they “remained in that [third] country only as long as was necessary to arrange onward travel”¹⁵³ also leads to the problematic assumption that an applicant should always be barred from asylum if they temporarily return to their country of origin, regardless of whether they only returned due to emergency circumstances.

In *Matter of D-X- & Y-Z-*, evidence that an asylum applicant had the time and ability to return to his origin country from which he had fled to marry his wife counted as evidence that he violated the requirement of the exception in 8 C.F.R. § 208.15 that he was in the third country “only as long as was necessary to arrange onward travel.”¹⁵⁴ The BIA in that case decided that a return to the country of origin to marry his wife showed a lack of urgency on the part of the applicant required to justify asylum in the United States.¹⁵⁵ But there is an issue in how the regulatory language fails to provide a distinction for scenarios in which an asylum applicant may need to return to their country of origin under

151. Again, use of false or fraudulent documentation by aliens fleeing persecution in their countries of origin is not itself a bar to asylum in the United States. *See, e.g., Singh v. Holder*, 638 F.3d 1264, 1271 (9th Cir. 2011); *Gulla v. Gonzales*, 498 F.3d 911, 917 (9th Cir. 2007).

152. Norris, *supra* note 71, at 447–48 (“Fraudulent and falsified documents are commonly used by refugees, not to resettle in another country, but in order to gain access to the United States. In fact, this is exactly how D-X- and Y-Z- used their fraudulent permits. Thus, it is contradictory for the Board to use the fraudulent documents as evidence that D-X- and Y-Z- firmly resettled in Belize. . . . [F]raudulent documentation does not permit an applicant to reside ‘lawfully’ in that country. Moreover, since fraudulent documentation is not lawful, it does not entitle the asylum seeker to remain ‘permanently’ in the third country either.” (footnotes omitted)).

153. 8 C.F.R. § 208.15(a) (2018) (stating that a finding of firm resettlement is questionable if an applicant establishes that “his or her entry into that country was a necessary consequence of his or her flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that country; or . . . [t]hat the conditions of his or her residence in that country were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled” (emphasis added)).

154. *See supra* Part II.C.2 for a discussion of *Matter of D-X- & Y-Z-* and the significant ties exception of 8 C.F.R. § 208.15.

155. *Matter of D-X- & Y-Z-*, 25 I. & N. Dec. 664, 668–69 (B.I.A. 2012).

extenuating circumstances, such as in the event of a relative's death or for purposes of receiving lifesaving treatment for himself, available only in the country of origin. In such circumstances, unlike the nonurgent circumstances surrounding the applicant's return to his country of origin in *Matter of D-X- & Y-Z-*, it stands to reason that an asylum applicant should be permitted to make an argument that this return trip to the country of origin does not in fact conflict with the language of 8 C.F.R. § 208.15(a). That is, even with this return trip, they still stayed in the third country only "as long as was necessary to arrange onward travel."¹⁵⁶

The list of exceptions to the firm resettlement bar should be expanded to cover emergency situations in which the asylum applicant had to make a return trip to their country of origin due to extenuating circumstances, despite risk to their personal safety. This exception is proposed with extreme scenarios of necessity in mind, such as instances where a close relative falls deathly ill or where one can receive a certain necessary medical treatment only in the country of origin from which one fled.

Such an expansion to the firm resettlement bar exceptions could not supersede the requirement under 8 U.S.C. § 1101(a)(42)(A)–(B) that a refugee be an individual

who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country [of origin] because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.¹⁵⁷

Thus, any addition to the list of exceptions to make allowances for asylum applicants returning temporarily to their countries of origin under emergency circumstances would still require language specifying that the applicant must provide evidence that there is still a danger of persecution to themselves in the country of origin, despite their return.¹⁵⁸

D. *Danger Arises After Firm Offer*

A fourth weakness of the firm resettlement bar is that it fails to account for situations in which the third country makes an offer of firm resettlement to the refugee or asylee, but the third country suddenly becomes unsafe for the person after this offer is affirmatively accepted. Under the current *Matter of A-G-G-* framework,¹⁵⁹ the firm resettlement bar effectively functions as a permanent bar, such that once evidence of the offer is established, subsequent developments—unless they fall squarely within the bounds of the existing

156. 8 C.F.R. § 208.15(a).

157. 8 U.S.C. § 1101(a)(42)(A)–(B) (2018).

158. *Id.*

159. *Matter of A-G-G-*, 25 I. & N. Dec. 486, 503–05 (B.I.A. 2011).

exceptions¹⁶⁰—would not remove an asylum applicant from the reach of the firm resettlement bar.¹⁶¹

Though the case law appears silent as to this matter, it is not difficult to imagine scenarios where this problem might surface and would not be covered by the existing exceptions after already accepting an offer of firm resettlement. For example, an asylum applicant could become a target of assassination by a nongovernmental group or the political climate of a country could change drastically, such that the applicant now would face persecution in the third country as a result of some aspect of their identity. In a scenario like either of these examples, even if the individual applicant were to become endangered to the point of no longer being safe in the third country, they would no longer qualify for asylum in the United States if a firm offer had already been made by the government of the third country—or even if the third country merely had in place a mechanism for obtaining permanent resettlement status.¹⁶²

Thus, the statutory language of the firm resettlement bar in its current form fails to consider the likely common situation in which circumstances of a third country change and suddenly become unsafe only after an asylum applicant has already received a firm offer from that third country. In this sense, the firm resettlement bar's ability to effectively deny an asylum applicant entrance into the United States despite the possibility of danger if they remained in the third country directly contravenes the non-refoulement principle espoused in the United Nations Refugee Convention.¹⁶³

The list of exceptions to the firm resettlement bar should be expanded to include language allowing those who face danger after already accepting a firm offer to not face a permanent bar to asylum. Looking to the language of *Rosenberg* discussed in Part II.A, amending the list of exceptions to the firm resettlement bar to cover such a scenario would be wholly consistent with the congressional intent behind the bar.¹⁶⁴

160. 8 C.F.R. §§ 207.1(b), 208.15(b).

161. Neither *Matter of A-G-G* nor the plain language of the firm resettlement bar, which bars asylum if an applicant was “firmly resettled in another country prior to arriving in the United States,” 8 U.S.C. § 1158(b)(2)(A)(vi), give any express indication that an applicant could still apply for asylum upon a finding of firm resettlement.

162. Unless one of the exceptions to firm resettlement applies under 8 C.F.R. § 207.1(b) or 8 C.F.R. § 208.15, the plain language of the firm resettlement bar does not provide an opportunity for one to apply for asylum once an applicant is found “firmly resettled in another country prior to arriving in the United States.” 8 U.S.C. § 1158(b)(2)(A)(vi).

163. United Nations Convention Relating to the Status of Refugees, *supra* note 48, art. 33, ¶ 1 (“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.”).

164. *Rosenberg v. Yee Chien Woo*, 402 U.S. 49, 56 (1971) (“It was never intended to open the United States to refugees who had found *shelter* in another nation and had begun to build new lives.” (emphasis added)), *superseded by statute*, Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, tit. VI, sec. 604(a), 110 Stat. 3009, 3009-690 to -692 (current version at 8 U.S.C. § 1158).

If the intent of the bar was to deny asylum to refugees who had already found *shelter* and begun to build new lives in a third country,¹⁶⁵ then simply making it clear that those facing newly arisen danger are eligible seems entirely compatible with the firm resettlement bar's intent. After all, one confronted with extreme danger—even having previously accepted an offer of firm resettlement—can hardly be said to have found the “shelter” articulated in *Rosenberg*.¹⁶⁶

IV. CONCLUSION

In its present form, the firm resettlement bar unfairly bars refugee and asylum applicants from entry into the United States. Specifically, the statutory bar lacks enough clearly enumerated exceptions, which leads to the denial of many applicants whose circumstances in the third country have prevented true firm resettlement. In order to prevent the denial of additional meritorious asylum and refugee claims under this statutory bar, the firm resettlement bar should be amended to expand the list of exceptions.

165. *Id.*

166. *See id.*