REFUGEES IN THE U.S.: PROTECTED FROM PERSECUTION, OR VULNERABLE TO UNJUST REMOVAL?

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INTRODUCTION

Since its founding, the United States has had a complicated relationship with foreigners who find themselves wandering onto its soil.¹ On the one hand, this country was built, quite literally, by the hands of persons from many different nations; without them, we surely would not be the World Superpower that we are today.² On the other hand exists what has been called an “almost schizophrenic” immigration policy, which over the last few hundred years has been at times shamefully discriminatory, unnecessarily harsh, and painfully confusing.³ We do, in fact,

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² See MICHAEL LEMAY & ELLIOTT ROBERT BARKAN, U.S. IMMIGRATION AND NATURALIZATION LAWS AND ISSUES xxix (1999). In the early days of the United States, there was an “obvious need” for labor to build up cities and to clear land on the frontier for farms. Id. The growing cities were also in need of cheap labor, which immigration provided. Id. at xxx. This continued after the civil war, when the “countries desire for immigrants seemed insatiable.” Id.; ALEINIKOFF ET AL., supra note 1, at 162. This was especially due to the building of railroads across the nation. Id.; see Sarah Paoletti, Human Rights for All Workers: The Emergence of Protections for Unauthorized Workers in the Inter-American Human Rights System, 12 HUM. RTS. BRIEF 5 (2004).

³ GABRIEL J. CHIN ET AL., IMMIGRATION AND THE CONSTITUTION: THE ORIGINS OF CONSTITUTIONAL IMMIGRATION LAW 228 (2001). Although the United States has one of
have one of the most generous and open immigration policies in the world; as we know, Lady Liberty proudly calls from New York harbor, "[G]ive me your tired, your poor, [y]our huddled masses, yearning to breathe free...I lift my lamp beside the golden door." Despite this seemingly warm and open welcome, the persons most desperate to "breathe free" (namely, thousands of refugees who are fortunate enough to even make it to our borders) are finding themselves in a sort of immigration limbo, imposed by the United States failure to provide them the protection which it has agreed to provide as a member of the United Nations.

the most generous and open immigration policies in the world, and though early Americans welcomed immigrants as necessary to a growing nation, concerns regarding certain groups lead to contrary views. Id. Racism, and "un-American" attitudes fed immigration policies, which have reflected those attitudes. Id. These views, however, did little during the colonial period and thereafter to curb immigration. Id. The Chinese Exclusion Act of 1882 marked the first racist, restrictionist immigration law. Id.; see ALENIKOFF ET AL., supra note 1 at 153-55. At the end of the 19th century, attitudes towards immigrants became particularly harsh because of changes in the country as a whole (namely the closing of the U.S. frontier) increased industrialization and city growth, the maintaining of traditions by eastern and southern European immigrants, and galvanized the Catholic or Jewish religion of most new immigrants. Id. at 154. These attitudes were reflected in immigration policies which began excluding certain persons who were seen as undesirable—starting with prostitutes and convicts, and reaching so far as any male who could not read or write. Id. at 154-55. See generally Andrew Stevenson, Dreaming of an Equal Future for Immigrant Children: Federal and State Initiatives to Improve Undocumented Students' Access to Postsecondary Education, 46 ARIZ. L. REV. 551, 552 (2004). While many illegal immigrants provide cheap labor, pay taxes, and have children enrolled in local schools, they continue to struggle for the benefits of legal residency. Id. In addition, the backlash that has resulted from September 11th manifests itself in "the spread of cultural prejudice to increased border security[,]" thus attaining legal status becomes even more difficult. Id.

4 See ALENIKOFF ET AL., supra note 1, at 146. "The United States has accepted more refugees for permanent settlement than any other country in the world. The U.S. currently accepts for permanent residence more than three-quarters of a million non-citizens a year." Id.; see Melinda Smith, Criminal Defense Attorneys and Noncitizen Clients: Understanding Immigrants, Basic Immigration Law & How Recent Changes in Those Laws May Affect Your Cases, 33 AKRON L. REV. 163, 165 (1999). The United States has long been known as the "nation of immigrants," where every family, with the exception of Native Americans, has transplanted from another country. Id. But see Cox, supra note 1, at 336. Although the United States is a member to the Protocol Relating to the Status of Refugees, comments by high ranking officials suggest the United States may be less willing to accept refugees in the future. Cox, supra note 1, at 336.

5 CHIN ET AL., supra note 3, at 228; see ALENIKOFF ET AL., supra note 1, at 146 (reflecting on the "darker side" of American immigration history, and stating "the image of the golden door...is a tarnished one").

For persons entering the United States as refugees, becoming a Lawful Permanent Resident (LPR) of the U.S. is a crucial step on the road to becoming a naturalized citizen, the most privileged status a person not born here may enjoy. However, LPRs are not afforded the same protections as U.S. citizens - the most crucial difference being the fact that an LPR may be removed from the U.S. based on grounds enumerated in the Immigration and Naturalization Act ("INA"). In contrast, according to international law, a person with what is termed "refugee status," may only be removed in very limited circumstances.

A Case to Keep In Mind:

In Matter of V-S-, the Respondent is a native and citizen of Belarus who was admitted to the United States as a refugee on February 13, 1990. He adjusted to LPR status on June 18, 1991. In 2002, the Respondent was convicted of conspiracy to commit extortion in violation of 18 U.S.C. § 1951, and a 24-month prison sentenced was imposed. He received a Notice to Appear


7 See Immigration and Naturalization Act §316(a), 8 U.S.C.A. § 1427 (2003). Section 316 sets forth the requirements for naturalization. Id. The first requirement, titled "residence," states that immediately preceding the filing an application for naturalization, and being lawfully admitted for permanent residence, an alien must reside in the United States for five years. Id. The residency requirement is relaxed to three years for a person married to a U.S. citizen. Id at §319(a). See generally Kerry E. Doyle & John J. Gallini, Naturalization - The Final Frontier With The U.S. Citizenship and Immigration Services, IMMIGRATION PRACTICE MANUAL, VOLUME II, CHAPTER 23 (2004).


10 Id.
11 Id.
from the Immigration and Naturalization Service, (now the Department of Homeland Security), charging him with removability pursuant to §237(a)(2)(A)(iii)\textsuperscript{12} as an alien who has been convicted of an aggravated felony under INA § 101(a)(43) of the INA.\textsuperscript{13}

In support of his motion to terminate proceedings, the Respondent argued that his status as a refugee was not properly terminated before he was placed in removal proceedings - in other words, that he retained his refugee status when he adjusted to that of LPR, and that the refugee status remained, even if his LPR status was divested.\textsuperscript{14} He further argued that international refugee law, as interpreted by the United Nations High Commissioner for Refugees ("UNHCR"),\textsuperscript{15} should prevent Refugee status from terminating upon becoming an LPR.\textsuperscript{16}

The judge denied the motion to terminate, and in a footnote argued that to implement such a policy would undermine United States' immigration policy, and have a "chilling effect" on U.S. acceptance of refugees.\textsuperscript{17} The Respondent's case remains pending.

In opposition to what was asserted by the Immigration Judge in Matter of V-S, to deport a person still deemed a refugee under international law would contradict U.S. immigration policy in that it would cheapen the validity of international agreements to which the U.S. explicitly agreed.\textsuperscript{18} It is quite clear that the

\textsuperscript{12} Id.

\textsuperscript{13} Id.

\textsuperscript{14} Id. at 4.


\textsuperscript{16} Id at 4.

\textsuperscript{17} Id. at 5 n.4. The Immigration Judge here specifically referenced the UNHCR, stating that he rejects the position that refugee status should be permanent. Id. He further stated that to implement the position of the UNHCR would mean a refugee was not deportable for any reason. Id.

United States has already adopted a policy that sets refugees apart from other aliens residing in this country, and affords them privileges unavailable to traditional immigrants and non-immigrants alike. This country has an obligation to comply with the provisions to which it agreed.

This Note will argue that upon becoming a LPR, a person's refugee status does not terminate unless one of the narrow terminating circumstances provided in the 1951 Convention to the Status of Refugees, and its subsequent 1967 Protocol, occurs. This Note will first discuss International Refugee law, its definition of the term “refugee” and the international regulation of such laws. It will then looks at the United States approach to Refugees — both statutorily in the Immigration and Naturalization Act (“INA”), and through case-law. The United States' obligation to comply with international refugee laws to which it is a Party is integrated throughout. This Note will further discuss the exacerbating problem of increasingly harsh deportation provisions of the INA, and its particularly detrimental effect on LPR's who entered as refugees.

I. HISTORY OF INTERNATIONAL REFUGEE LAW

A. What is a Refugee?

Under international law, the refugee is in a unique position, in that the term “refugee” implicates a person “among the world’s

pattern of defensive strategies designed to avoid international legal responsibility toward involuntary migrants”).

19 INA § 241(b)(3), 8 U.S.C.S. § 1231; INA § 101(a)(42)(A), 8 U.S.C.S. § 1101. The INA provides refugees protection through the refugee definition in §101(a)(42)(A), and basing one restriction on removal in §241(b)(3) of Article 1 of the 1951 Convention as modified by the 1967 Protocol. Id. The restriction on removal states that the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion. Id. at §101(a)(42)(A). This restriction mirrors the requirements of being designated a refugee, as well as the prima-facie requirements for being granted asylum in the United States. Id. Obtaining “refugee” status has its benefits, including permanent residence, access to state benefits and immunity from deportation. See Jacqueline Bhabha, Boundaries in the Field of Human Rights: Internationalist Gatekeepers?: The Tension Between Asylum Advocacy and Human Rights, 15 HARV. HUM. RTS. J. 155, 159 (2002).

most unfortunate," while status as a refugee in theory affords privileges not enjoyed by other types of immigrating or displaced persons. As a recognized refugee, such a person has the benefit of specialized programs for relief and assistance. International treaties, to which over 140 nations have become party to, set forth extensive and specific protections for refugees. However, the international attempt to protect persons designated as refugees is plagued with problems and inconsistencies. At the center of these problems is a tension between a nation’s sovereignty and basic humanitarian principles, which attempt to assist those who have been affected by human rights abuses, collapse of government, or aggression. Unfortunately, refugees

21 See ALEINIKOFF ET AL., supra note 1, at 783. Refugees can be victims of persecution, war, or natural disaster, and so forced to leave their native countries because of that oppression or destruction. Id. This “ordinary, social perception” of refugee status is different from the “Convention definition” which is at issue here. Id.; see Hathaway, supra note 18, at 116. A Convention refugee, in sum, is a person who is outside his or her country because she believes “her civil or political status puts her at risk of serious harm in that country, and her own government cannot or will not protect her.” Id.; see United Nations High Commissioner for Refugees, Basic Facts, at www.unhcr.ch (last visited February 2, 2005). A refugee has the right to safe asylum, as well as the right to “the same rights and basic help as any other foreigner who is a legal resident, including freedom of thought, of movement, and freedom from torture and degrading treatment.”


23 See ALEINIKOFF ET AL., supra note 1, at 783 (discussing United Nations High Commissioner for Refugees and its protective role towards refugees); see also Hathaway, supra note 18, at 157 (stating “some states erroneously believe that they are free to determine what rights will be granted to temporarily protected refugees,” when in fact refugee rights under 1951 Convention actually apply); cf. Fitzpatrick, supra note 18, at 280 (noting various international refugee protection efforts).

24 See United Nations Treaty Collection, States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, available at http://www.unhcr.ch/cgi-bin/texis/vtx/home+zwwBmeim_g_wwwmwwwwwwxFqzwqXsK69s6mFqA72Z0RGZNhFqA72Z0rgRZNTFqrpGbnnqBzFqmRbZFaqA72Z0rgRZNDzmwwwww1FqmrBZ/opendoc.pdf (last visited Feb. 2, 2005) (listing participants of 1967 Convention and their accession or succession dates); see also ALEINIKOFF ET AL., supra note 1, at 783 (stating two most important treaties are 1951 Convention and 1967 Protocol); cf. Ugarkovic, supra note 1, at 540 (noting provisions being developed to assist refugees).

25 See Hathaway, supra note 18, at 115 (stating international refugee law is in crisis, and that many governments are withdrawing from their legal obligations to provide protection, despite growing international crisis); see also Bhabha, supra note 19, at 156 (noting that many human rights violations take place while refugees are migrating to foreign countries). See generally Ugarkovic, supra note 1, at 539 (discussing individual obstacles to obtaining refugee status).

26 See GOODWIN-GILL, supra note 22, at V (introducing concept of refugee status as a legal principle); see also Khan, supra note 6, at 57 (asserting that persecution based
may still be denied even temporary protection, a safe return to their homes or compensation.27 As recently recognized by the President of the General Assembly of the United Nations, the world’s refugee problem has become a “tragedy of global scope” encompassing all regions of the globe.28 This problem is exacerbated when a refugee is not only a victim of persecution and suffering at the hands of her native country and government, but is a victim of violations of “principles underpinning the United Nations Charter.”29


The international community began to assume responsibility for protecting and assisting refugees early in the twentieth century with the formation of the League of Nations.30 After World War II, a need for an international definition of what constituted a refugee led to the 1951 Convention relating to the Status of Refugees (“1951 Convention”).31
Arguably the most influential and important document in defining and discussing the international treatment of refugees resulted from the 1951 Convention. The 1951 Convention provided a detailed framework of how to handle the overwhelming refugee dilemma that plagued the world. However, in order for the Convention's purposes and goals to be accomplished, the cooperation and compliance by Party states was, and is, obviously required. For example, as stated in the "Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol," ("the Handbook"), the determination of refugee status is "incumbent upon the Contracting State in whose territory the refugee applies.

*International Refugee Protection Regime, 5 WASH. U. J.L. & POL’Y 129, 131 (2001).* After the rise of Nazism and communism, millions of refugees fled their countries to escape persecution. In response, the 1951 Convention became the first, and remains the only, "binding refugee protection instrument of a universal character." *Id.*

189 U.N.T.S. 137 (1951). The Convention, as well as the 1967 Protocol contains three different types of provisions. *Id.; see Handbook, supra* note 30, at ¶ 4. Most important to this discussion is the basic definition of who is and who is not a refugee, and who, having been a refugee, ceases to be one. *Id.* The legal status of refugees and their rights and duties in their country of refuge is also determined in the 1951 Convention and 1967 Protocol, as well as the implementation of those instruments. *Id.; see Daniel J. Steinbock, Interpreting the Refugee Definition 45 UCLA L. REV. 733, 735 (1998).* For over the past fifty years, the 1951 Convention has served as the cornerstone for international understanding and response to the problem of refugees. *Id.; Guy S. Goodwin-Gill, Refugees and Responsibility in the Twenty-First Century: More Lessons Learned From the South Pacific 12 PAC. RIM L. & POL’Y J. 23 (2003).* The Convention and Protocol remain the central features in today's regime of refugee protection. *Id.*

32 See 189 U.N.T.S. 137 (1951). The 1951 Convention and the 1967 Protocol contain three types of provisions: one giving the basic definition of who is, and who ceases to be, a refugee; the legal status, rights, and duties of refugees in their country of refuge; and the implementation of the above administratively and diplomatically. *Id.; see Handbook, supra* note 30, at ¶ 12. The *Handbook* explains the three main provisions of the 1951 Convention and the 1967 Protocol. *Id.; see also Feller, supra* note 31, at 131–32. The 1951 Convention was drafted to instill baseline principles that would protect the many refugees fleeing their countries. *Id.*


34 See Handbook, supra note 30, at Forward ¶ V. The *Handbook* was created in order to provide guidance to governments in regards to procedures and criteria for determining refugee status. *Id.* It breaks down and explains the various components of the definition of refugee set out in the 1951 Convention. *Id.*
for recognition of refugee status." In other words, the implementation of the Convention's regulations lies with the government of party states.

In order to qualify as a refugee under the 1951 Convention, and the 1967 Protocol as enforced by the UNHCR, a person must:

[a]s a result of events occurring before 1 January 1951 and owing to a 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; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, unwilling to return to it.

The Handbook clarifies each element of the definition and provides a framework as to who meets such criteria. However, while both the 1951 Convention and the 1967 Protocol provide legal redress that was previously not available to victims of human rights abuses, there is still much debate as to the actual meanings of the terms of the definition.

36 See Handbook, supra note 30, at Forward ¶ II.
37 See DEBORAH E. ANKER, LAW OF ASYLUM IN THE UNITED STATES 2 (Paul T. Lufkin, ed. 1999) (stating Convention in essence requires state party to provide protection and to guarantee specific rights to persons who face serious violations of their human rights based on certain grounds); Feller, supra note 31, at 132 (highlighting that state cooperation is essential to ameliorate problem of refugees); Teresa L. Peters, International Refugee Law and the Treatment of Gender Based Persecution: International Initiatives as a Model and Mandate for National Reform, 6 TRANSNAT'L L. & CONTEMP. PROBS. 225, 230 (1996) (noting that Convention established mores and norms governing refugee rights).
39 See Handbook, supra note 30, at Forward ¶ V. As stated here, the explanations in the Handbook are based on information accumulated by the UNHCR. Id.; see also Peters, supra note 37, at 231. The handbook, as published by the UNHCR, interprets the Protocol and the Convention. Id.; Adams, supra note 34, at 807. The Convention defines the term "refugee," describes their rights, and outlines the legal obligations of the United Nations member States." Id.
40 See Steinbock, supra note 32, at 735 (discussing ambiguity in interpreting the definitions); see also Peters, supra note 37, at 230 (noting that 1951 Convention marked United Nations effort to formalize rights and protections for refugees). But see Feller, supra note 31, at 130 (stating international community was aware of providing protections to refugees beginning in 1920s).
41 See Steinbock, supra note 32, at 736 (focusing on purpose and objectives of refugee definition is probably most beneficial); see also Feller, supra note 31, at 136 (suggesting that 1951 Convention continues to complicate current migration); Garrett, supra note 34, at 757 (hinting that over-broadening social group categorization may negatively affect refugee protection).
On November 6, 1968, President Lyndon B. Johnson issued a Proclamation entitled “Multilateral Protocol and Convention Relating to the Status of Refugees.” This proclamation set out what the United States explicitly agreed to in accepting the 1967 Protocol. Most important to this discussion is the general definition of refugee as listed in Article I of the Convention, the co-operation of the National Authorities with the United Nations, the Exemption from Reciprocity provisions in Article 7, Expulsion provisions in Article 32, and Prohibition of Expulsion or Return (“Refoulement”) of Article 33.

Article 7’s “Exemption from Reciprocity” states that a Contracting State shall afford to refugees the same treatment as is afforded to aliens generally except where this Convention contains more favorable provisions. In the case of a refugee who has been granted LPR status, this provision should prevent the court from deporting them from the United States as a non-refugee LPR would be deported, on the theory that the provisions of the 1951 Convention and 1967 Protocol contain more favorable provisions protecting such persons. Additionally, the Article 32
provisions, read in conjunction with the Article 33 provisions, state that a lawfully present refugee cannot be expelled save on grounds of national security or public order. Furthermore, no contracting state shall expel or return ("refouler") a refugee in any manner to a place where his life or freedom would be threatened on one of the grounds listed in the 1951 Convention and the 1967 Protocol.

It is important to note that contracting states are not without recourse against a refugee who is becoming a danger to society — the Protocol states that the protective provisions do not apply to refugees against whom a State has "reasonable grounds" for regarding as "dangerous to the security of the country" or who "after being convicted of a particularly serious crime," "constitutes a danger to the community of that country."

However, the INA deportation provisions which apply to traditional immigrants and non-immigrants reach far beyond those persons who may reasonably be considered a danger to the security of the United States. As discussed below, the blanket provision of Convention theoretically affords substantial safeguards and rights to refugees).

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50 See LEMAY & BARKAN, supra note 2, at 268. Article 32 also provides that expulsion of a refugee shall only be in pursuance of a decision in accordance with due process, and that refugees should be allowed a reasonable time to seek legal admission into another country. Id.; see also Fitzpatrick, supra note 18, at 296. Exceptions to Article 32 of the Convention can only be made for reasons of national security. Id.; Hathaway, supra note 18, at 160. The UNHCR's commitment to non-refoulement is an essential element of temporary protection, as embodied by Article 33. Id. Pursuant to Article 32, refugees lawfully in a territory may not be expelled, except for reasons of public order or national security. Id.

51 See Protocol, supra note 45, at Art. 1. In defining "refugee", Article 1 outlines the social or political circumstances necessary for consideration. Id.; see LEMAY & BARKAN, supra note 2, at 268. As stated later on, this includes those fearing persecution based on account of race, religion, nationality, membership in a particular social group, or political opinion. Id. See generally Fitzpatrick, supra note 18, at 284–85. The UNHCR is committed to expanding the definition of refugee, as individuals subject to persecution, found in the 1951 Convention, to include refugees from armed conflict and war. Id.

52 LEMAY & BARKAN, supra note 2, at 268; see Hathaway, supra note 18, at 160. Hathaway points out that pursuant to Article 32 of the Convention, refugees who are lawfully in the territory of an asylum state cannot be expelled at all, "except for reasons of national security, or public order." Id.

53 See INA §237(a)(2)(A)(iii)(stating that "any alien who is convicted of an aggravated felony [defined in INA §101(a)(43)] at any time after admission is deportable"); see, e.g., INA § 101(a)(43)(G), 8 U.S.C.S. § 1101(a)(43)(G) (defining theft or burglary (including receipt of stolen property) for which the term of imprisonment at least one year [sic] as "aggravated felony"); INA § 101(a)(43)(J), 8 U.S.C.S. § 1101(a)(43)(J) (including offenses related to gambling for which sentence of one year or more may be imposed); INA § 101(a)(43)(R), 8 U.S.C.S. § 1101(a)(43)(R) (including "an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year").
application of Section 237 to all aliens has the effect of deporting LPR's, many with numerous long-term ties to this country, for crimes which posed no physical danger to anyone, and would generally be considered "minor" to the population as a whole. When balanced against the danger of sending a refugee back to a place in which he has established a well founded fear of returning to, this is clearly a violation of the principles established in the 1951 Convention and Protocol, and results in grossly disproportionate punishment to the LPR-refugee.54

The fact that the United States is one of the many states that are parties to the Convention or Protocol is critically important when reviewing the rights of a person who has been granted refugee status in the United States.55 Besides the actual act of accession in which the United States took part 1968, the U.S. has several times recommitted itself to complying with the 1967 Protocol, and is bound to comply with the instruments and organizations which uphold it.56

54 See Coonan, supra note 49, at 607 (concluding that United States has never fully complied with definition of what constitutes danger to the country); Jacqueline P. Ulin, A Common Sense Reconstruction of the INA's Crime-Related Removal System: Eliminating the Caveats from the Statue of Liberty's Welcoming Words, 78 WASH. U. L.Q. 1549, 1551 (2000) (writing that INA reaches far past serious crimes but also to "those who have committed only minor offenses as well"); see, e.g., Mojica v. Reno, 970 F. Supp. 130, 137 (E.D.N.Y. 1997) (finding that conviction of "two misdemeanor petty theft or public transportation fare evasion charges -- turnstile jumping in the New York City subway system" can equal crimes of moral turpitude and result in deportation).

55 See Ministerial Meeting, supra note 28. According to the "Ministerial Meeting" held in Geneva in December of 2001, 141 states are party to the original 1951 Convention and 139, including the United States, are party to the 1967 Protocol. Id. See generally Jenny-Brooke Condon, Asylum Law's Gender Paradox, 33 SETON HALL L. REV. 207, 213 (2002). The Protocol, which presently has 139 signatory countries, incorporates the Convention, eliminates its temporal restrictions, and extends its coverage beyond Europe. Id.; Beate Anna Ort, International and U.S. Obligations Toward Stowaway Asylum Seekers, 140 U. PA. L. REV. 285, 324 (1991). As a party to the Protocol, the United States has agreed to cooperate with the UNHCR and to supervise in the application of the Protocol. Id.

ii. Cooperation with UNHCR

A specialized office of the United Nations, the United Nations High Commissioner for Refugees ("UNHCR") was established by the General Assembly of the United Nations to "provide protection and seek permanent solutions for the problem of refugees." The UNHCR assists both governments and private organizations to meet its goals, a responsibility that it considers an "international protection mandate." The statute of the UNHCR, written in 1950, states the organization will accomplish its goals by "[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto." The supervisory responsibility of the UNHCR was reiterated in Article II of the Protocol. President Johnson's proclamation adopting the Protocol specifically "undertook to cooperate with the Office of the United Nations High Commissioner for Refugees... and shall in particular facilitate


See Interpreter Releases: Report and Analysis of Immigration and Nationality Law, Becoming an LPR Does Not Terminate Refugee Status, UNHCR Says, Vol. 80, No. 11, Appendix III, 423 (Mar. 17, 2003) [hereinafter UNHCR Opinion Letter]. The UNHCR was established in 1950 as one of several attempts by the international community to protect refugees. Id. Although originally given a three-year mandate to help resettle 1.2 million European refugees left homeless after World War II, its mandate was extended every five years thereafter as the international refugee crisis grew. Id.; see also United Nations High Commissioner for Refugees, What is UNHCR?, at http://www.unhcr.org/ (last visited February 10, 2005). The UNHCR asserts, "international protection is the cornerstone of the agency's work." Id.

UNHCR Opinion Letter, supra note 58, at 423 (quoting statute of UNHCR, from Annex 1, at ¶ 1.6, U.N. Doc. A/RES/428(V) (1950)).

its duty of supervising the application of the provisions of the present Protocol.\textsuperscript{61}

Today, the UNHCR remains one of the world's principal humanitarian agencies.\textsuperscript{62} Its programs and protections are approved by an Executive Committee of sixty-four member states that meet annually in Geneva.\textsuperscript{63} The UNHCR aims to ensure "respect for a refugee's basic human rights and ensuring that no person will be returned involuntarily to country where he or she has reason to fear persecution."\textsuperscript{64} Also, the UNHCR is responsible for monitoring government compliance with international refugee laws.\textsuperscript{65} By accepting the terms of the Protocol, the U.S. agreed to comply with the UNHCR's recommendations and authority in regulating the treatment of refugees.\textsuperscript{66}

\textsuperscript{61} UNHCR Opinion Letter, supra note 58, at 423 (citing 19 U.S.T. 6223, 189 U.N.T.S. 150).

\textsuperscript{63} See What is UNHCR?, supra note 62 (describing staff of UNHCR); see also Jennifer Moore, Restoring the Humanitarian Character of U.S. Refugee Law Lessons from the International Community, 15 BERKELEY J. INT'L L. 51, 53 (canvassing composition and importance of executive committee); Keith D. Nunes, Detentions of Political, Racial and Religious Persecutees and Dissenters: Asylum and Human Dignity, 16 N.Y.L. SCH. HRTS. 811, 854-55 (2000) (discussing make up and functions of executive committee in matters such as, approving the "annual assistance programs of the High Commissioner" and advising "the High Commissioner, in exercising statutory functions, especially international protection").

\textsuperscript{64} See What is UNHCR?, supra note 62. The two basic aims of the organization are "to protect refugees and to seek ways to help them restart their lives in a normal environment." Id.

\textsuperscript{65} See What is UNHCR?, supra note 62 (stating UNHCR's job is to lead and coordinate international action to protect refugees and resolve refugee problems worldwide); see also Rachel Bien, Nothing to Declare but Their Childhood: Reforming U.S. Asylum Law to Protect the Rights of Children, 12 J.L. & POL'Y 797, 803 n.24 (2004) (stating that 1951 Convention and 1967 Protocol give UNHCR power to supervise member compliance); Ralph Wilde, Quis Custodiet Ipos Custodes?: Why and How UNHCR Governance of "Development" Refugee Camps Should be Subject to International Human Rights Law, 1 YALE H.R. & DEV. L. J. 107, 114-15 (1998) (noting UNHCR's role in governing state compliance with international refugee law).

\textsuperscript{66} See Protocol, supra note 45, at Art. 2 (stating that all parties to Protocol have duty to assist UNHCR in supervising Protocol's application and to supply all information requested regarding refugees); see also Elizabeth Kay Harris, Economic Refugees:
iii. Cancellation and Cessation of Refugee Status under the Convention and Protocol

As there are specific criteria for determining who may be recognized as a refugee, there are also specific instances that must be met in order to revoke that status. Generally, once refugee status has been determined, it remains in effect until ended either because one of the cessation clauses of the 1951 Convention applies, or on the basis of one of the exclusion provisions of Article 1F(a) or (c) of the 1951 Convention.

On March 17, 2003, the Interpreter Releases immigration law publication reproduced a UNHCR letter written to immigration law practitioner Robert Pauw who had asked for advice on the issue of whether refugee status “ceases” or “terminates” once a refugee becomes a lawful permanent resident. His client, Mr. Simonvskiy, had appealed to the United States Court of Appeals for the Ninth Circuit, arguing that removal proceedings were procedurally flawed because the Immigration Judge lacked the authority to conduct the hearing, given there had been no prior termination of his refugee status under section 207(c)(4) of the


67 See Sibylle Kapferer, Cancellation of Refugee Status, DEPT OF INT’L PROTECTION, UNHCR at 1, available at http://www.unhcr.ch/protect (2003) (discussing issue of cancellation as arising when recognized refugee by state under 1951 Convention is subsequently found not to have been entitled to that benefit); see also Joan Fitzpatrick et al., Current Issues in Cessation of Protection Under Article 1C of the 1951 Refugee Convention and Article I.4 of the 1969 OAU Convention, UNHCR at 1, available at http://www.unhcr.ch (June 2001) (discussing cessation clauses and their lack in addressing many contemporary issues which arise in context of termination of refugee status); Fitzpatrick, supra note 18, at 284 n.42 (2000) (explaining amount of proof required under 1951 Convention to terminate person’s refugee status).

68 19 U.S.T. 6259 (1951). Although the 1951 Convention does not directly address cancellation, a ground for cancellation as provided by in the law of a state must exist for cancellation to occur. Id.; see Kapferer, supra note 67, at 1. In contrast, the cessation clauses are explicitly listed in the Convention and Protocol, although they were “long neglected” as a subject of refugee law. Id. But see Fitzpatrick, supra note 68, at 1. Despite the multifaceted framework provided in the Conventions, cessation of refugee status remains a subject of confusion for states dealing with issues of termination of international protection. Id.

INA. The Court never reached the issue at hand, because it held the Petitioner's failure to raise the issue in proceedings below removed its jurisdiction, and so the court dismissed the petition.

The UNHCR reiterates much of what has already been stated in the Protocol and Handbook, but points out the specific portions of the Protocol and Convention Cessation clause into which an LPR would have to fall in order for refugee status to be revoked. Pointing first to the Handbook for guidance, the UNHCR notes that the application of the six cessation clauses is to be applied restrictively. It goes on to state that the cessation clauses are not penal in nature and are not meant to be used for the purpose of "punishing" a refugee otherwise found to meet the refugee definition. The first four cessation clauses consist of situations where the refugee has voluntarily done something that

70 See Simonovskiy v. Ashcroft, 71 Fed.Appx. 620, 621 (9th Cir. 2003). The court later held that failure to raise issues below constituted failure to exhaust administrative remedies and deprived the Court of jurisdiction. Id.; see also INA § 207, 8 USCA § 1157(c)(4) (2004); INA § 209, 8 USCA § 1159 (2004).

71 See Simonovskiy, 71 Fed. Appx. at 621 (dismissing Petitioner's case for lack of jurisdiction); see also 8 USCA § 1252 (2004) (explaining grounds for Court's dismissal); Farhoud v. INS, 122 F.3d 794, 796 (9th Cir. 1997) (stating "[f]ailure to raise an issue below constitutes failure to exhaust administrative remedies and 'deprives this court of jurisdiction to hear the matter'") (quoting Vargas v. United States Dep't of Immigration and Naturalization, 831 F.2d 906, 907 (9th Cir. 1987)).

72 See UNHCR Opinion Letter, supra note 58, at 424–25 (listing and explaining cessation clauses). See generally Lindsay A. Franke, Not Meeting the Standard: U.S. Asylum Law & Gender-Related Claims, 17 ARIZ. J. INT'L & COMP. LAW 605, 607 (2000) (maintaining that UNHCR urges a case-by-case analysis regarding whether someone has or will suffer persecution); Kathleen Marie Whitney, There is No Future for Refugees in Chinese Hong Kong, 18 B.C. THIRD WORLD L. J. 1, 11 (1998) (explaining UNHCR's prohibition of contracting states against expelling or returning refugees to countries where their lives or freedom are at risk).

73 See UNHCR Opinion Letter, supra note 58, at 424 (stating "[g]iven that the application of such clauses results in the loss of refugee status, they are to be applied restrictively"); Handbook, supra note 30, at ¶ 116 (stating "[t]he cessation clauses are negative in character and are exhaustively enumerated... they should therefore be interpreted restrictively, and no other reasons may be adduced by way of analogy to justify the withdrawal of refugee status"); Susan M. Akram and Terry Rempel, Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees, 22 B.U. INT'L L. J. 1, 9–10 (2004) (describing one cessation clause and noting UNHCR's intent for restrictive interpretation of the clause).

74 See UNHCR Opinion Letter, supra note 58, at 424 (stating that cessation clauses are not penal or meant to punish refugees); see also Joan Fitzpatrick, The End of Protection: Legal Standards for Cessation of Refugee Status and Withdrawal of Temporary Protection, 13 GEO. IMMIGR. L.J. 343, 348–50 (1999) (explaining purpose behind cessation clauses and when they should be used); Jeremy R. Tarwater, Analysis and Case Studies of the "Ceased Circumstances" Cessation Clause of the 1951 Refugee Convention, 15 GEO. IMMIGR. L.J. 563, 564–69 (2001) (stating that changed conditions in refugee's country of origin are required in order to invoke last two cessation clauses of 1951 Refugee Convention).
would redact the status, and the remainder deal with conditions in the home country which no longer warrant international protection.\textsuperscript{75}

According to the UNHCR letter, the most relevant clause to the LPR situation is clause 1C(3), which ceases refugee status when a person "has acquired a new nationality, and enjoys the protection of the country of his new nationality."\textsuperscript{76} The UNHCR further states that once a refugee naturalizes,\textsuperscript{77} he or she should in theory be in a position to enjoy the protection afforded by the country to its citizens.\textsuperscript{78} Importantly, the granting of such status

\textsuperscript{75} UNHCR Opinion Letter, supra note 58, at 425; Protocol, supra note 45, at General Provisions art. 1. The cessation clauses are as follows:
(1) He has voluntarily re-availed himself of the protection of the country of his nationality, or
(2) Having lost his nationality, he has voluntarily re-acquired it; or
(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to a fear of persecution; or He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality . . .
(5) being a person who has no nationality, he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence . . .

\textit{Id.}; see Tarwater, supra note 74, at 563–64. The first four clauses relate "to a change in the personal circumstance of the refugee brought about by the refugee's own act, and which result in national protection so that international protection becomes unnecessary." \textit{Id.}; see Fitzpatrick, supra note 68, at ¶ 13. The second set includes the last two clauses "which relate to a change in the objective circumstances surrounding a refugee in such a way that international protection is no longer justified." \textit{Id.} Since refugee status is premised upon a lack of national protection against prosecution or danger, cessation logically ends when these risks are eliminated. \textit{Id.}

\textsuperscript{76} See UNHCR Opinion Letter, supra note 58, at 425 n.8 (quoting to analogous provision to Article 1(C)(3) in INA § 208(c)(2)(E)). See generally David A. Martin, \textit{Graduated Application of Constitutional Protections for Aliens: The Real Meaning of Zadvydas v. Davis, 2001 SUP. CT. REV. 47, 48–49 (2001)} (arguing aliens should be afforded due process rights on par with citizens).

\textsuperscript{77} See Fitzpatrick, supra note 68, at ¶ 17 n.14. After a period of lawful permanent residence, former refugees can become eligible for naturalization. \textit{Id.}; see INA § 316, 8 U.S.C.A. § 1427 (West 2003). A refugee may naturalize pursuant to the traditional means under § 316 of the INA, after adjusting status to Lawful Permanent Resident pursuant to INA §209. \textit{Id.} See generally Arnold Rochvarq, \textit{Reforming the Administrative Naturalization Process: Reducing Delays While Increasing Fairness, 9 GEO. IMMIGR. L.J. 397, 397–98 (1995)} (arguing that refugees should be afforded due process rights on par with citizens).

\textsuperscript{78} See UNHCR Opinion Letter, supra note 58, at 425 (noting that international protection would no longer be necessary once naturalization has occurred); see also Fitzpatrick, supra note 68, at ¶ 32–33 (suggesting that when refugees naturalize in state of refuge, they gain protection against persecution in state of origin). See generally Martin, supra note 76, at 48 (explaining that certain categories of aliens enjoy stronger measures of constitutional protection than others).
is not enough to trigger cessation under the convention. In the United States, naturalization will likely lead to this protection, but it is not guaranteed.\footnote{See UNHCR Opinion Letter, supra note 58, at 425–26. The letter notes that UNHCR's Guidelines on the Application of Cessation Clauses states that: two conditions therefore must be fulfilled in order to consider that a person who has acquired a new nationality enjoys the protection of new nationality: (1) the new nationality must be effective, in the sense that it must correspond to a genuine link between the individual and the State; and (2) the refugee must be able and willing to avail himself or herself of the protection of the government of his or her new nationality. Only with effective national protection has a durable solution to the refugee's situation been achieved. Id.; see Note on the Cessation Clauses, U.N. Doc. EC/47/SC/CRP.30, at ¶ 15 (May 1997), available at http://www.unhcr.ch. For the refugee to be considered as having acquired protection, the refugee must secure all the rights and benefits entailed by possession of the nationality of the country. Id.; see Fitzpatrick, supra note 75 at 352 n.50. However, in the United States, changed conditions in a refugee's state of origin is an inadequate basis for stripping her of citizenship through denaturalization. Id.}

More specifically, the UNHCR points out that LPR status is clearly not a sufficient basis for the cessation of refugee status.\footnote{See UNHCR Opinion Letter, supra note 58, at 426 (basing this contention on text of 1951 Convention); see also Fitzpatrick, supra note 75, at 352 n.50 (noting that in United States, elimination of a risk of persecution is not lawful grounds for deportation of refugee who has adjusted her status to LPR). See generally INA § 237, 8 U.S.C.S § 1227 (2004) (outlining general classes of deportable aliens).} Given the exhaustive nature of the cessation clauses, there is no way to justify the withdrawal of refugee status upon adjustment of status to that of an LPR.\footnote{See UNHCR Opinion Letter, supra note 58, at 426. The UNHCR further provides an example to demonstrate that the Convention drafters were quite purposeful in their drafting, stating that a proposal to cease refugee status based on a lengthy residence was withdrawn. Id. They further note that some refugees may be hesitant to naturalize for various reasons. Id.; see Note on the Cessation Clauses, supra note 79, at ¶ 6. Since the cessation clauses are exhaustive, a refugee's status is maintained until one of the cessation clauses can be invoked; in any case, refugees should not be subjected to constant or regular reviews of their refugee status. Id.; see Fitzpatrick, supra note 68, at ¶ 17 n.14. However, in the United States, adjustment of status operates as cessation, but without any examination on the grounds set out in Article 1C. Id.}

Furthermore, within the INA, there is nothing in the text of the statutes to suggest that refugee status ceases upon a grant of adjustment of status.\footnote{See INA § 209(a), 8 U.S.C.A. § 1158 (West 2003). The statute merely provides that after inspection or hearing, if found admissible, an immigrant under the Act will be regarded as lawfully admitted for permanent residence as of the date of such alien's arrival into the United States. Id.; see Fitzpatrick, supra note 68, at ¶ 17 n. 14. However, once the refugee adjusts his status to Lawful Permanent Resident, he no longer possesses legal status as a refugee. Id. Yet, he may remain eligible for certain social benefits unavailable to other Lawful Permanent Residents. Id.; see 8 U.S.C.A. § 1613 (West 2003). These benefits include Federal-means tested public benefits. Id.} Importantly, the UNHCR supports the position that LPR status does not confer the degree of protection that is necessary to ensure that international protection — i.e. that granted to
“refugees” — is no longer necessary. LPR status does not ensure protection from deportation, expulsion, or extradition. This vulnerability is especially relevant in the context of the 1996 Act, which substantially increased the number of crimes which fall under the term “aggravated felony,” and thus deemed many more aliens deportable.

As stated earlier, in order for a refugee to remain legally in the U.S., he or she must become a Lawful Permanent Resident. If an individual was to lose her refugee status upon becoming an LPR, she would become subject to removal according to Section 237 of the INA, titled “deportable aliens.” Given the commitment of the United States to uphold the provisions of the 1967 Protocol (which is inherently a commitment to protect persons deemed to credibly fear return to the native countries) placing recognized refugees in the same category as otherwise

83 See UNHCR Opinion Letter, supra note 58, at 426 (stating that while there are many benefits to LPR status, it is not equivalent to citizenship). See generally William McKay Bennett, Reentering the Golden Door: Waiving Goodbye to Exclusion Grounds for Permanent Resident Aliens, 69 WASH. L. REV. 1073 (1994) (suggesting that even permanent resident aliens who are not deportable can leave the country and be excluded at the border upon return); Martin, supra note 76, at 48 (noting that LPR’s are not immune from deportation).

84 See UNHCR Opinion Letter, supra note 58, at 426 (explaining that for purposes of cessation of refugee status, this distinction is critical); see also Laurie A. Levin, Deportation: Procedural Rights of Reentering Permanent Resident Aliens Subjected to Exclusion Hearings, 51 FORDHAM L. REV. 1339, 1340–41 (1983) (noting that despite constitutional protections of permanent residents, they are still subject to INS deportation). See generally INA § 335, 8 U.S.C.A. § 1225 (West 2004) (providing methods for which inadmissible aliens are expedited).


86 See Ulin, supra note 54, at 1556 (explaining that the Act reduced both monetary thresholds and sentencing requirements of enumerated “aggravated felonies” and other offenses); see also Gabrielle M. Buckley, Immigration and Nationality, 32 INT’L LAW. 471 (1998) (suggesting that now almost any felony may be considered an aggravated felony resulting in deportation); Coonan, supra note 49, at 602–4 (noting that alien smuggling has become an aggravated felony except for first-timers who attempt to smuggle specific members of their family).

87 See INA § 209(a)(2), 8 U.S.C.A. § 1159 (West 2003). This occurs at the end of one year, when the refugee returns to the custody of INS for inspection and examination for admission as an immigrant. Id. Thereafter, if they are determined to be admissible, they are to be regarded as an immigrant lawfully admitted. Id.; see also Nora V. Demleitner, The Fallacy of Social “Citizenship,” or the Threat of Exclusion, 12 GEO. IMMIGR. L. J. 35, 41–42 (1997). Although these immigrants are lawfully admitted, the distinction between an illegal alien and a lawful permanent resident from the perspective of American citizens has eroded over time. Id.; see Capt. George L. Hancock, Jr., Legal Assistance and the 1986 Amendments to the Immigration, Nationality, and Citizenship Law, 1987 ARMY LAW. 11, 13 (1987). Permanent resident aliens, however, can live in the United States forever without becoming full citizens, as long as they are not deported. Id.

deportable aliens is clearly erroneous. Since the adjustment to LPR status is mandatory within one year of being deemed a refugee in order to remain in the US legally as outlined in INA §209, and because LPRs are obviously not afforded the same privileges and protections as U.S. citizens, the granting of adjustment of status cannot be considered to fit in any of the cessation clauses in the Protocol.

The risk of deportation to LPRs is most evident in Section 237(a)(2), titled “Criminal Offenses” which includes, among other offenses, aggravated felonies: “any alien who is convicted of an aggravated felony at any time after admission is deportable.” The Anti-Drug Abuse Act of 1988 introduced the concept of an “aggravated felony” and made the commission of such crimes grounds for deportation. Since the term “aggravated felony” first became a familiar term in Immigration Law, it has come to encompass crimes ranging from those listed in section 101(a)(43)(A), “murder, rape, or sexual abuse of a minor,” to those listed in 101(a)(43)(G), “a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at least one year [sic].” For a person convicted of a minor crime, the effects are obviously devastating. To a

92 See id.; see also 8 U.S.C.S. § 7344 (including aggravated felony convictions as grounds for deportation); Bennett, supra note 8, at 1696–99 (detailing aggravated felony provisions and their implications in light of Constitution’s Naturalization Clause); Melissa Cook, Banished for Minor Crimes: The Aggravated Felony Provision of the Immigration and Nationality Act as a Human Rights Violation, 23 B.C. THIRD WORLD L.J. 293, 298 (2003) (noting wide range of crimes encompassed by aggravated felony provision and how such range has only further expanded upon enactment of Anti-Drug Abuse Act).
95 See Cook, supra note 92, at 298 (recognizing consequences of offenses under aggravated felony provision are incredibly harsh, but that such crimes “need neither be ‘felonies’ nor ‘aggravated’ in the commonly understood sense of the words”); Robert James McWhirter, Hell Just Got Hotter: The Rings of Immigration Hell and the Immigration Consequences to Aliens Convicted of Crimes Revisited, 11 GEO. IMMIGR. L.J. 507, 512–13 (1997) (indicating that even mere addiction to any narcotic is grounds for deportation).
person granted LPR status on any grounds these consequences are escalated due to increased family ties, length of time in the U.S. and established lives in the United States. Furthermore, to apply this provision to a recognized refugee who has fled his home country for fear of persecution, reestablished himself in the U.S., and adjusted successfully to LPR status, the consequences are magnified. Hence, the UNHCR's contention that LPR status does not afford the same protections as required to invoke cessation clause 1(C)(3) is obvious.

Cancellation of Refugee Status, on the other hand, requires circumstances that demonstrate a person should have never been granted such status in the first place and may lead to a revocation of the status. This has the effect of rendering refugee status "null and void from the date of initial determination." This is distinguished from cessation of refugee status pursuant to Article 1(C) of the 1951 Convention, which revokes refugee status

Nancy Morawetz, Understanding the Impact of the 1996 Deportation Laws and the Limited Scope of Proposed Reforms, 113 HARV. L. REV. 1936, 1940–41 (2000) (noting that individuals with two drug possession convictions may be treated as aggravated felons even if such convictions are considered misdemeanors under state law).

See Cook, supra note 92, at 302–03 (stating that in cases of LPR's, deportation is similar to banishment from one's home country); Coonan, supra note 49, at 612 (commenting that equities accrued by LPR's, such as years of residence, steady work records, families members who are United States citizens, and strong military records mean nothing when considered aggravated felons facing deportation); Morawetz, supra note 95, at 1940 (conveying situation of LPR who lived in United States for thirty-nine years and faced mandatory deportation for seemingly minor conviction).

See Kari Converse, Criminal Law Reforms: Defending Immigrants in Peril, 21 CHAMPION 10, *12 (1997) (explaining that refugees removed to their home country due to aggravated felony conviction could result in death). See generally Hathaway, supra note 18, at 164 (discussing "basic dignity" that international law attempts to restore by requiring respect for rights of non-discrimination, family unity, freedom of movement and association, and freedom of religion); Michael J. Parrish, Redefining the Refugee: The Universal Declaration of Human Rights as a Basis for Refugee Protection, 22 CARDOZO L. REV. 223, 258 (2000) (commenting that refugees should obtain right to asylum where, in contrast to home nation, human rights will be upheld by states receiving them).

See Handbook, supra note 30, at ¶ 116 (detailing that explicit reasons must exist to justify removal of refugee status); UNHCR Opinion Letter, supra note 58, at 426 (stating that such approach is significant since constant review of refugee status is improper); see also Peter H. Schuck, The Re-Evaluation of American Citizenship, 12 GEO. IMMIGR. L. J. 1, 15 (1997) (observing that United States citizens differ from LPR's in that LPR's are subject to deportation while citizens are not).

See Handbook, supra note 30, at ¶ 117 (stating that "[c]ircumstances may . . . come to light that indicate that a person should never have been recognized as a refugee in the first place . . . "); UNHCR Opinion Letter, supra note 58, at 429 (explaining assessment of cancellation to refugee status); see also Kapferer, supra note 67, at 2 (stating that such cancellation situations apply to final determinations neither subject to appeal nor review).

Kapferer, supra note 67, at 2 (noting further that persons not eligible for protection at time they were recognized cannot claim to be prejudiced by cancellation of status that ought not to have been granted).
because it is either no longer justified or necessary due to voluntary acts by the refugee,\textsuperscript{101} or because there has been a "fundamental change in the situation prevailing in the country of origin."\textsuperscript{102} Most important with regards to cancellation is that those persons who \textit{were} rightly recognized as having an actual well-founded fear of persecution under the 1951 Convention "must be protected from cancellation of their refugee status in an arbitrary or discriminatory manner."\textsuperscript{103} In order for an administrative act to justify cancellation of refugee status, one of several specific grounds must be present. These include: (1) substantial fraud on the part of the applicant with regard to core aspects relating to his or her eligibility for protection; (2) other misconduct affecting eligibility, such as threats or bribery; (3) applicability of an exclusion clause\textsuperscript{104} with or without fraud on the part of the applicant; or (4) an error of law and/or fact by the determining authority, relating to inclusion or exclusion criteria.\textsuperscript{105} The termination provision of Section 207 of the INA falls into the category of cancellation.\textsuperscript{106} Obviously, becoming a LPR is not included in the list of cancellation circumstances because it does not constitute a discovery of fraud or misconduct in the refugee status determination. Cancellation of a refugee

\begin{footnotesize}
\textsuperscript{101} See UNHCR Opinion Letter, supra note 58, at 425 (reviewing cessation clauses of Article 1(C) and how certain clauses reflect changes brought about by refugees themselves or by change in country where persecution was possible); Fitzpatrick, \textit{supra} note 75, at 348-49 (explaining two types of developments under cessation clauses); Kapferer, \textit{supra} note 67, at 2 (detailing cessation clauses of Article 1(C) resulting 1951 Convention).

\textsuperscript{102} Kapferer, \textit{supra} note 67, at 2.

\textsuperscript{103} Id. (noting that State cannot simply cancel refugee status whenever initial determination of such status is deemed flawed).

\textsuperscript{104} See Handbook, \textit{supra} note 30, at ¶ 117 (indicating that fraud by applicant can justify cancellation of refugee status); UNHCR Opinion Letter, \textit{supra} note 58, at 429 (listing circumstances that may require exception to \textit{res judicata} in cancellation determination); see also Kapferer, \textit{supra} note 67, at 5 (observing that cancellation basically is re-assessment of eligibility for refugee protection "at the time of the original determination . . . ").

\textsuperscript{105} See Kapferer, \textit{supra} note 67, at 4–5 (listing variety of reasons administrative decision might be faulty); see also UNHCR Opinion Letter, \textit{supra} note 58, at 429 (naming three circumstances that are exceptions to final status determination). See generally Smriko v. Ashcroft, 387 F.3d 279, 284 (3d Cir. 2004) (stating that, per Convention, 6 events can lead to cancellation of "refugee" status).

\textsuperscript{106} INA § 207, 8 U.S.C.S. § 1157(c)(4) (West 2004) (stating that refugee status of any alien may be terminated by Attorney General if he determines that the alien was not in fact a refugee); see also Simonovskiy v. Ashcroft, 71 Fed.Appx. 620, 621 (9th Cir. 2003) (noting party's argument that he was still a refugee because immigration judge lacked authority to conduct removal proceedings and there had been no cancellation of his status under §207 of the INA); see also Kapferer, \textit{supra} note 67, at 13 (discussing cancellation of refugee status because of mistakes on the part of authorities).  
\end{footnotesize}
II. THE UNITED STATES APPROACH

After reviewing the international laws that must be followed by the U.S. in accordance with its accession to the 1967 Protocol, it is necessary to review how the United States has approached the refugee dilemma in its own laws and regulations. From this, US case law suggests that US immigration courts have no authority to deport a person who entered as a refugee and adjusted to LPR status without first terminating the refugee status.108 However, changes to the Immigration and Nationality Act over the last several years have complicated matters and made it more difficult for immigrants to remain in the U.S.109 In 1996, Congress passed the Illegal Immigration Reform and Immigration Responsibility Act (“TIRIRA”)110, which in conjunction with the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”),111 expanded the criminal grounds of deportation and restricted the availability of discretionary relief to non-citizens in removal proceedings.112 For example, once an

107 See Kapferer, supra note 67, at 5–6. The author notes that, in the United States, cancellation on the basis of fraud on the part of the applicant is seen as discretionary. Id.

108 See Smrko, 387 F.3d at 284 (noting UN High Commissioner’s position that acquiring LPR status is no basis for cessation of refugee status); see also UNHCR Opinion Letter, supra note 58, at 423 (stating that refugee status is not usurped by acquisition of LPR status). But see In re Bahta, 22 I. & N. Dec. 1381, 1382 n.2 (2000) (suggesting that “former” refugee status of a LPR is no basis for canceling removal proceedings.)


112 E.g. U.S. v. Galvan-Munoz, 44 Fed.Appx. 875, 876–77 (9th Cir. 2002); see INS v. St. Cyr, 533 U.S. 289, 297 (2001). As the court in St. Cyr, stated: Three statutes enacted in recent years have reduced the size of the class of aliens eligible for such discretionary relief. In 1990, Congress amended § 212(c) to preclude from discretionary relief anyone convicted of an aggravated felony who had served a term of imprisonment of at least five years. § 511, 104 Stat. 5052 (amending 8 U.S.C.
alien is deemed an “aggravated felon,” s/he becomes ineligible to apply for asylum, adjustment of status, voluntary departure, and cancellation of removal.\textsuperscript{113}

\section*{A. Defining Refugees and Providing Asylum}

After World War II, admissions of persons as refugees changed several times, mainly because Congress struggled to find a balance between establishing a clear method of determining and regulating refugee status, and allowing flexibility to respond to new crises.\textsuperscript{114} The Refugee Act of 1980 ("1980 Act")\textsuperscript{115} created "a relatively stable framework for accommodating these... ends."\textsuperscript{116} The 1980 Act adopts most of the 1967 Protocol definition, which today is codified in the Immigration and Nationality Act.\textsuperscript{117} The INA extends the term refugee to "any

\section*{\textsection 1182(c)). In 1996, in \textsection 440(d) of AEDPA, Congress identified a broad set of offenses for which convictions would preclude such relief. See 110 Stat. 1277 (amending 8 U.S.C. \textsection 1182(c)). And finally, that same year, Congress passed IIRIRA. That statute, \textit{inter alia}, repealed \textsection 212(c), see \textsection 304(b), 110 Stat. 3009-597, and replaced it with a new section that gives the Attorney General the authority to cancel removal for a narrow class of inadmissible or deportable aliens, see \textit{id. }at 3009-594 (creating 8 U.S.C. \textsection 1229b). So narrowed, that class does not include anyone previously "convicted of any aggravated felony." \textsection 1229b(a)(3) (1994 ed., Supp. V).

\textit{Id. }at 297. While the IIRIRA expanded the definition of "aggravated felony" to include a "theft" offense, the AEDPA similarly enlarged the category of criminal convictions that would prohibit an alien from seeking relief from deportation. \textit{Id.}; Ryan Moore, \textit{Reinterpreting the Immigration and Nationality Act's Categorical Bar to Discretionary Relief for "Aggravated Felons" in Light of International Law: Extending Beharry v. Reno, 21 ARIZ. J. INT'L & COMP. LAW 535, 537 (2004). Given the expansive definition of "aggravated felon" in the Act, and the lack of relief available to such persons, the consideration of a person's refugee status becomes critical. An aggravated felony pursuant to the INA can encompass crimes that are under criminal standards "misdemeanors" as a crime of violence. \textit{Id.}

\textsuperscript{113} See INA \textsection 240A, 8 U.S.C.A. \textsection 1229(b)(a)(3) (West 2000) (excluding aliens convicted of aggravated felonies from cancellation of removal); see also INA \textsection 240A, 8 U.S.C.A. \textsection 1229(c)(a)(1) (West 2000) (excluding aggravated felons from applying for voluntary departure); INA \textsection 240A, 8 U.S.C.A. \textsection 1158(b)(1) (West 2000) (stating that, for the purpose of asylum laws, aliens who have been convicted of an aggravated felony shall be considered to have been convicted of a "particularly serious crime," rendering them ineligible for asylum).

\textsuperscript{114} See ALENIKOFF ET AL., \textit{supra} note 1, at 795. Today, there exist several forms of protection to persons fleeing persecution: asylum, withholding of removal, refugee status, and Torture Convention relief. \textit{Id.}; see ANKER, \textit{supra} note 37, at 2. Asylum status, withholding of removal, and refugee status are all based on provisions from the 1951 Convention and the 1967 Protocol ratified by the US in 1968. \textit{Id.} Immigration laws are typically employed to respond to domestic threats. Johnson, \textit{supra} note 109, at 834–35.


\textsuperscript{116} ALENIKOFF ET AL., \textit{supra} note 1, at 795.

\textsuperscript{117} INA \textsection 101(a)(42)(A), 8 U.S.C.A. \textsection 1101 (West 2000). The Refugee Act of 1980 adopted the obligation of protection against return, or non-refoulement that formed the basis of statutory withholding of removal protection in INA \textsection 241(b)(3), which restricts removal to a country where a non-citizen's life or freedom would be threatened. \textit{Id.; see}
person” outside a country of nationality or one habitually resided in, 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.” In the second part of the definition, the President is given authority to specify persons within their country of nationality or habitual residence as eligible for refugee status — in other words, before fleeing the persecuting circumstances. The language of the statute is therefore pertinent to both overseas refugee programs, and the political asylum system that exists within U.S. borders. In fact, the refugee definition as adopted in the 1980 Act serves as prima facie eligibility for asylum in the U.S.

Section 207 of the INA governs the annual admission of refugees and admission of emergency situation refugees. It also explains when refugee status may terminate:

ANKER, supra note 37, at 3–4. One of the primary congressional purposes behind the 1980 Act was to align it with the Convention. Id.; see Chang v. INS, 119 F.3d 1055, 1061 (3d Cir. 1997). The court noted the Congressional intent to harmonize the 1980 Act with the Protocol. Id. For example, Congress specifically defined “refugee” in accordance with the Protocol. Id. The language of the statute is therefore pertinent to both overseas refugee programs, and the political asylum system that exists within U.S. borders. In fact, the refugee definition as adopted in the 1980 Act serves as prima facie eligibility for asylum in the U.S.

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The refugee status of any alien (and of the spouse or child of the alien) may be terminated by the Attorney General pursuant to such regulations as the Attorney General may prescribe if the Attorney General determines that the alien was not in fact a refugee within the meaning of section 101(a)(42) at the time of the aliens admission.123

The required termination of refugee status, before deportation is permitted, was addressed by the Board of Immigration Appeals in Matter of Garcia-Alzugaray.124 This case involved a 39-year-old native and citizen of Cuba, who was admitted to the United States pursuant to section 207.125 The refugee was convicted in Texas on January 31, 1981 of burglary, and was sentenced to three years in prison.126 He was placed in exclusion proceedings, which were later terminated by the Immigration Judge on the grounds that the court did not have jurisdiction.127 The Board affirmed the termination, stating there was no evidence showing that his status as a refugee was terminated in accordance with the Act and regulations,128 and noted that section 207 is the sole basis of terminating the status.129 Clearly, to state that refugee status terminates upon becoming an LPR is contrary to any statutory provision found in the INA. Unfortunately, the Board of Immigration Appeals has not been consistent in applying the principles outlined in Garcia-Alzugaray.130

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125 Id. at 407 (using § 207 as it then existed).
126 Id. (noting that imposition of sentence was suspended and defendant was placed on probation).
127 Id. at 408 (noting that termination proceedings were properly ceased but tribunal disagreed with lower immigration judge's reasoning).
128 Id. at 409 (noting that termination of his status was deficient as to notice, which was "factually inaccurate and legally deficient"); see 8 C.F.R. § 209.1 (1986) (noting that compliance with provisions of this section are the sole method to adjust basis of refugee status); 8 C.F.R. § 207.9 (1986) (providing that an alien must be found to be a refugee at his time of admission).
129 Matter of Garcia-Alzugaray, 19 I. & N. Dec. at 409 (explaining that refugee's status may be terminated if there is a finding that he was not a refugee at time of his admission into the country); see 8 C.F.R. § 207.8 (1986) (stating necessary steps to terminate refugee's status); 8 C.F.R. § 209.1 (1986) (stating that "[t]he provisions of this section shall provide the sole and exclusive procedure for adjustment of status by a refugee admitted under section 207 of the Act whose application is based on his or her refugee status").
130 See Matter of U-M., 20 I. & N. Dec. 327, 333 (BIA 1991) (stating that prosecuting authority has complete authority to decide whether to commence deportation
B. Arguments Against Required Termination

In *Matter of Awat Mengisteab Bahta*, the Board sustained an appeal by the INS from the Immigration Judge’s decision, which found that the respondent’s conviction for attempted possession of stolen property was not a conviction for an aggravated felony and terminated removal proceedings. While the main issue on appeal revolved around whether the respondents conviction fit within the definition of an aggravated felony in 101(a)(43)(G) of the Act, the opinion highlights the Board’s overall attitude regarding the required termination of a refugees status before subjecting them to deportation. The IJ below had found that the respondent’s conviction was not an aggravated felony as defined in the Act, and terminated proceedings. However, in a brief footnote, the Board recognized that:

The Immigration Judge also terminated the proceedings on the ground that the Service failed to demonstrate that the respondent’s refugee status has been terminated after notice and hearing. The record indicates, however, that the respondent adjusted his status to that of a lawful permanent resident on November 4, 1982. The respondent’s former status as a refugee, therefore, does not provide a basis for terminating the proceedings.

This brief recognition and dismissal of respondent’s refugee status provides a clear demonstration of the attitude being taken toward this issue. It also demonstrates the lack of reasoning or consideration given to explain why the Board believes that adjusting to LPR status erases the protections afforded to refugees.

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132 Id. at 1382 (outlining reason for Board review).
133 Id. at 1391–92 (discussing the availability of prosecutorial discretion of the I.N.S. to consider the equities of individual cases in pursuing removal cases, as an avenue to combat the expansive classification of criminal aliens for whom no statutory relief is available).
134 Id. at 1381 (noting that appeal ruling of Immigration and Naturalization Judge’s decision, from July 1, 1999, found that respondent’s conviction for attempted possession of stolen property was not an aggravated felony).
135 Id. at 1382 n.2.
Interestingly, the Board also discussed the issue of "prosecutorial discretion," and the fact that the INS has the discretion to decide whether or not to institute deportation or removal proceedings.\(^{136}\) It pointed out that the INS may "address the equities of individual cases" in a way that applying the broad statutes may not allow.\(^{137}\) The Board also stated that the Service retained this discretion even after the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA").\(^{138}\) In answer to Congressional questioning as to the existence of prosecutorial discretion after IIRIRA, the Attorney General's Office responded "the exercise of such discretion can be the only means for averting the extreme hardship associated with certain removal cases."\(^ {139}\) However, this hardly provides an alien with an adequate means of protection. As recognized by the Board, neither the Immigration Judge nor the Board may review a decision by the Service to institute removal proceedings.\(^{140}\)

What this amounts to is an almost complete lack of review as to whether removal proceedings were justly instituted. In conjunction with the extremely broad (and expanding) definition of "aggravated felony", this leads to tragic consequences.\(^ {141}\)

In a dissenting opinion, Mr. Bahta's factual background is discussed.\(^ {142}\) Mr. Bahta was admitted to the U.S. as a refugee


\(^{137}\) *Id.* at 1391 (stating that "the United States Supreme Court recently reaffirmed the Service's continuing prosecutorial discretion").

\(^{138}\) *Id.* (citing Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), 104 P.L. 208, 110 Stat. 3009-546 (1996) and noting how IIRIRA expanded classifications of criminal aliens for whom no statutory relief exists).

\(^{139}\) *Id.* at 1392 (illuminating that discretion must exist because IIRIRA does not necessarily protect all criminal aliens from removal).

\(^{140}\) See id. at 1391; **Matter of U-M**, 20 I. & N. Dec. 327, 333 (BIA 1991) (noting that "the decision to institute deportation proceedings involves the exercise of prosecutorial discretion and is one which neither the immigration judge nor this Board reviews"); **Matter of Marin**, 16 I. & N. Dec. 581, 589 (BIA 1978) (stating that decision to institute deportation proceedings is "vested in the discretion of the District Director").


\(^{142}\) **Matter of Bahta**, 22 I. & N. Dec. at 1393 (Rosenberg, Board Member, dissenting).
when he was four years old, and had been a LPR since 1982.\textsuperscript{143} Fifteen years later, in 1997, he was found guilty of “willfully, unlawfully\ldots, for his own gain, [to] possess property\ldots [he] knew, or had reason to believe, had been stolen.”\textsuperscript{144} As stated earlier, no action was taken by the Service to terminate his refugee status. In effect, that status and its protections were ignored, solely because of his adjustment to LPR status—a mandatory action for every refugee.\textsuperscript{145}

In January of 2003, the Board in \textit{Matter of J- L-V-F}.\textsuperscript{146} rejected the respondent’s argument that his refugee status could only be terminated in accordance with Section 207.\textsuperscript{147} Stating only that the validity of respondent’s refugee status at the time of entrance was not at issue, the Board saw “no merit to the respondent’s argument that his refugee status must first be terminated before the Immigration Judge has jurisdiction to conduct a removal hearing” and that the record showed the INS “changed” the respondent’s refugee status when he was granted adjustment to that of a Lawful Permanent resident.\textsuperscript{148} Again, there is no statutory basis for this conclusion, and when interpreting the INA in conjunction with the provisions of the 1967 Protocol, there is clearly no validity to the statement that refugee status terminates upon adjustment.\textsuperscript{149}

\textsuperscript{143} Id. at 1319.  
\textsuperscript{144} Id. at 1393 (stating that criminal case was ended by plea bargain).  
\textsuperscript{146} Respondent’s Motion to Reopen Proceedings, Matter of J- L-V- F- (BIA Jan. 6, 2003) (No. A19-627-851) [Hereinafter “Respondent’s Motion”] (denying respondent’s motion to reopen).  
\textsuperscript{147} Respondent’s Motion, \textit{supra} note 146, at 1. The respondent sought to reopen proceedings in order to seek relief under the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment. \textit{Id}. Besides arguing that his refugee status had not terminated, the Respondent argued he was a national of the United States. \textit{Id}.  
\textsuperscript{148} Respondent’s Motion, \textit{supra} note 146, at 1. The Board directly pointed to the sole provision within the INA that would allow termination, 8 C.F.R. § 207.9 (2002). \textit{Id}. The Board claimed that the termination provision only applied to those persons who are found to have not been refugees at the time of entrance, instead of reading the provision as meaning the only way of terminating is if the refugee’s initial granting of the status was faulty. \textit{Id}.  
\textsuperscript{149} INA § 209(a)(2), 8 U.S.C. § 1159(a)(2) (2004). The adjustment statute does not state whether refugee status is terminated upon adjustment to LPR status, only that the
C. How Many Immigrants are Affected By This Problem?

The above cases are demonstrative of cases in which the termination issue was directly addressed. Unfortunately, it is difficult to precisely determine how many individuals who entered as refugees and adjusted to LPR status are deported each year without having had their LPR status terminated. However, it is arguable that any person who entered as a refugee, adjusted to lawful permanent resident status, and was later convicted of a crime subjecting them to removal proceedings is highly disadvantaged when the government simply assumes the refugee status is no longer relevant. For example, Matter of H-M-V. involved a native and citizen of Iran, who entered the United States in 1985 as a refugee. Five years later, the respondent was convicted in U.S. District Court, Central District of California, of conspiracy to possess with intent to distribute heroin and possession with intent to distribute heroin. He was sentenced to 95 months in prison, which was later reduced to 70 months. In 1994, respondent was issued an Order to Show Cause and Notice of Hearing charging him with deportability under 241(a)(2)(A)(iii) of the INA as an alien convicted of an aggravated felony. After respondent’s application for relief was

refugee is admitted to the United States on a permanent resident basis. Id. In fact, there are very precise circumstances under which refugee status may be revoked, none of which include adjustment. See 8 C.F.R. § 208.24 (2004); see also Rebecca Kidder, Administrative Discretion Gone Awry: The Reintroduction of the Public Charge Exclusion for HIV-Positive Refugees and Asylees, 106 YALE L. J. 389, 417 (1996). The statutes are also at times unclear as to when asylum status may be revoked. Id. In fact, revocation is only allowed in limited circumstances directly related to a refugee’s current or former asylum status. Id.

See Mark Figueiredo, Immigration Law: Butros v. INS: The Folly of Finality as an Absolute Bar to Seeking Section 212(c) Relief from Deportation, 24 GOLDEN GATE U.L. REV. 607, 641 (1994) (explaining that an alien’s LPR status can “unwisely” remain valid after the alien is deported, making it difficult to ascertain an exact percentage); David A. Martin, On Counterintuitive Consequences and Choosing the Right Control Group: A Defense of Reno v. AADC, 14 GEO. IMMIGR. L. J. 363, 381 (2000) (noting that percentage of criminal aliens deported that are LPR’s is unknown, but is probably around 25 per cent). See generally Susan Sachs, The Nation: Second Thoughts; Cracking the Door for Immigrants, N.Y. TIMES, July 1, 2001, at p. 3 (discussing that LPR status is no longer secure).


Id. at 257.

Id. (stating respondent was convicted of violating 21 U.S.C.S. § 841(a)(1) and § 846).

Id.

Id. As an application for relief, the respondent applied for the then available “Section 212(c) relief,” 8 U.S.C. § 1182(c) (1994). Id. This relief was denied because respondent had served in excess of five years imprisonment. Id.
denied by the Immigration Judge, an appeal was taken to the Board of Immigration Appeals, which was also denied. In a motion to reopen the case to the Board, the respondent argued in part that the 1968 Protocol required an individual determination of whether the respondent represented a "danger to the community." The Board held that he was not deserving of an individual determination prior to finding him ineligible for withholding of deportation. In a dissent by another Board member, the essence of what should be considered in the case of a refugee or a person seeking relief pursuant to the UN Convention Against Torture is discussed: "the prohibited conduct — be it persecution or torture — must be assessed; the assessment is made based on the consideration of evidence pertaining to the individual's personal circumstances and the treatment he or she has experienced or fears...." Such considerations should be made in all cases involving refugees, in varying contexts.

157 Matter of H-M-V-, 22 I. & N. Dec. 256, 257 (BIA 1998). The respondent's other application for relief was pursuant to Article 3 of the Torture Convention, which prohibits the return of an individual to a country where there are "substantial grounds of believing that he or she would be in danger of being subjected to torture." Id. The Board, in its decision, rejected this claim by the respondent, stating that there had not been any specific implementing legislation of Article 3. Id.
158 Id. at 260. Here, the respondent was barred from applying for withholding of deportation because that relief is only available to those aliens who have been sentenced to an aggregate of less than five years in prison and the Attorney General determines, in his discretion, that the alien's crime is not particularly serious. Id.
159 Id. at 279.
160 There are not many cases that actually discuss the termination issue. However, there are numerous occasions on which the termination of refugee status, if required, would protect a refugee from being unjustly returned to a country he feared. See e.g. Setharatsomphou v. Ashcroft, 2003 U.S. Dist. LEXIS 10211 (N.D. Ill. 2003) (unpublished opinion). That case involved a refugee who entered in 1986 and became an LPR in 1987. Id. at *3. He was convicted of aggravated assault in 1992 and was sentenced to three years imprisonment. Id. The court dismissed Setharatsomphou's petition for a writ of mandamus and habeas corpus relief because, although at the time of his conviction his crime did not constitute an aggravated felony, the retroactive application of IIRIRA's new definitions applying to 212(h) waivers precluded the relief. Id. at *7-8. United States ex rel. Zhelyatdinov v. Ashcroft, 2002 U.S. Dist. LEXIS 26531 (E.D. Pa. 2002) involved an alien who entered the United States as a refugee from his native Kazakhstan. Id. at *1. He became an LPR but was subject to a deportation order as a result of a conviction for conspiracy to commit theft. Id. Zhelyatdinov claimed that the Immigration Judge erred in finding that he was removable as an aggravated felon. Id. at *11. Due to the fact that he was convicted of an aggravated felony, he was not eligible for asylum in the United States. Id. at *12. Although his habeas corpus petition was ultimately granted, and he was eligible for CAT relief, had a termination of refugee status hearing been required, he may not have been forced to litigate up to the District Court. Id. at *1. In Matter of Phat Dinh Truong, 22 I. & N. Dec. 1090 (BIA 1999), the Board of Immigration Appeals dismissed the appeal of a refugee from Vietnam who adjusted to LPR status, holding him
Furthermore, the INA provides, in Section 209, that any alien who has been admitted to the United State as a refugee, and has been present in the United States for at least one year, must be presented to Immigration officials for inspection and examination for admission as an immigrant. In other words, those persons deemed refugees, and offered such protection, are subject to mandatory adjustment of status in order to remain legally within the United States. Nowhere in the provisions governing adjustment of status of refugees does it state that the refugee status terminates. Additionally, the discretionary provision of Section 209(c) allowing the Attorney General to waive almost all of the inadmissibility grounds on the basis of humanitarian, family unity, or public interest grounds confirms the commitment of the legislature in preserving the protective purpose of refugee status. This discretionary provision should be utilized by the Immigration Courts when an LPR entered as a refugee is placed before them in removal proceedings.

In context of the issue at hand, if the U.S. refuses to recognize the weight of international agreements, and incorrectly interprets the INA to mean refugee status terminates upon being granted lawful permanent residence, as early as one year after ineligible for relief after being sentenced to six years confinement, and applying IIRIRA's aggravated felony definition to his case. \(\text{Id.}\) at 1098. Finally, in Matter of Phon Nguyen Tran, 21 I. & N. Dec. 291 (BIA 1996), the Board of Immigration Appeals sustained an appeal by the INS, contesting an Immigration Judge's termination of deportation proceedings of Respondent, who was convicted of two crimes of moral turpitude. \(\text{Id.}\) at 291. Respondent had entered the U.S. as a refugee and adjusted to LPR status several years before being convicted. \(\text{Id.}\)

\(\text{Id.; see e.g.}\) Gorza v. INS, 30 F.3d 814, 816 (7th Cir. 1994). See generally Smriko v. Ashcroft, 387 F.3d 279, 287–88 (3d Cir. 2004). The court has determined that one who "has not had his refugee status terminated ... under INA \(\text{§}\) 207, 8 U.S.C.S. \(\text{§}\) 1157, and who has not been determined to be inadmissible following his examination by an immigration officer under INA \(\text{§}\) 209(a)(1), 8 U.S.C.S. \(\text{§}\) 1159(a)(1), is not properly placed in exclusion proceedings." \(\text{Id.}\)

\(\text{Id.; see e.g.}\) Gorza v. INS, 30 F.3d 814, 816 (7th Cir. 1994). See generally Smriko v. Ashcroft, 387 F.3d 279, 287–88 (3d Cir. 2004). The court has determined that one who "has not had his refugee status terminated ... under INA \(\text{§}\) 207, 8 U.S.C.S. \(\text{§}\) 1157, and who has not been determined to be inadmissible following his examination by an immigration officer under INA \(\text{§}\) 209(a)(1), 8 U.S.C.S. \(\text{§}\) 1159(a)(1), is not properly placed in exclusion proceedings." \(\text{Id.}\)

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fleeing their country of nationality, a refugee could be deported back to the place that they were found to have a well-founded fear of persecution.\textsuperscript{165} This is clearly inconsistent with the 1951 Convention and Protocol as discussed above. As stated by the UNHCR, refugee status can co-exist with other forms of immigration status.\textsuperscript{166} In the United States, several years of lawful permanent residence is required before naturalizing.\textsuperscript{167} In the interim, a refugee should be protected according to the 1951 Convention and 1967 Protocol, maintaining refugee status until he or she fully enjoys the benefits and protections of citizenship.\textsuperscript{168}

\textbf{D. The Supreme Court's View}

The Supreme Court has several times commented on the interpretation of the 1980 Act and the 1967 Protocol.\textsuperscript{169} Overall,

\textsuperscript{165} See Ulin, supra note 54, at 1561 (questioning United States legislation and policies which allow for deportation of aliens living in nation for years if they commit small misdemeanor crime); see also INA § 316(a), 8 U.S.C.A. § 1427(a) (stating that a person does not receive protection of U.S. naturalization until after five years, if s/he has lived continuously in country and is of "good moral character"); Buckley, supra note 86, at 474–75 (noting change in U.S. policies and court decisions which deport refugees for single conviction of crime of "moral turpitude").

\textsuperscript{166} See UNHCR Opinion Letter, supra note 58, at 426 (explaining protections nations should afford refugees); see also INA § 316(a), 8 U.S.C.A. § 1427 (stating different requirements for immigrants, refugees and naturalized persons than United Nations' requirements). See generally Lauren Gilbert, The Impact of Reproductive Subordination on Women's Health: Rights, Refugee Women & Reproductive Health, 44 AM. U.L. REV. 1213, 1220 (1995) (stating that "UNHCR seeks to ensure that those who qualify for refugee status are granted asylum and legal status that takes into account their particular situation and needs...and are treated in accordance with recognized international standards").

\textsuperscript{167} See INA § 316, 8 U.S.C.A. § 1427 (stating that generally, five years of residence is required for naturalization, three years if an alien is married to U.S. citizen); see also Buckley, supra note 86, at 473 (explaining that United States has increased its requirements, including years of residence, for those seeking asylum and naturalizing); Cook, supra note 92, at 294 (discussing burdens of refuge living in nation for many years while being at risk for deportation).

\textsuperscript{168} See UNHCR Opinion Letter, supra note 58, App. at 426 (discussing importance of maintaining refugee status until person becomes full-fledged citizen); see also Ulin, supra note 54, at 1567–68 (explaining disparity of rights between citizens and refugees who can be permanently removed from the country); Gilbert, supra note 166, at 1220–21 (stating that Convention and Protocol are designed to ensure that refugees are afforded the "same economic and social rights as nationals of the country in which they have been granted asylum").

\textsuperscript{169} See Steinbock, supra note 32, at 743 (discussing four instances in which the Supreme Court has addressed such refugee provisions in past fifteen years). See generally INS v. Aguirre-Aguirre, 526 U.S. 415, 426–27 (1999) (noting that Refugee Act was passed to implement principals in agreement with 1967 Protocol); Joan Fitzpatrick, The International Dimension of U.S. Refugee Law, 15 BERKELEY J. INT'L L. 1, 13 (1997) (noting
the Court generally applies a plain meaning approach to interpreting the INA's refugee provisions. This can be problematic because it tends to undermine the overall purpose behind having a refugee definition, and more specifically, international agreements to which the U.S. is party. However, reading the above provisions in the context of international refugee law will both satisfy the explicit language of the Act, and will comply with international standards.

In *INS v. Cardoza-Fonseca*, the Supreme Court specifically stated that:

If one thing is clear from the legislative history of the new definition of ‘refugee’ and indeed the entire 1980 Act, it is that one of Congress’ primary purposes was to bring United States refugee law into conformance with the [Protocol], to which the United States acceded in 1968.

The Court further pointed out that in the Conference Report, which explains the various provisions adopted, states that in regards to asylum and withholding of deportation, a House provision was adopted “with the understanding that it is based directly upon the language of the Protocol and it is intended that the provision be construed consistent with the Protocol.”

Inherent in the actual definition of the word “refugee” is the application of those protective provisions that accompany it, such as the limited circumstances where cessation or cancellation of refugee status may occur. In fact, the Court used the

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170 See Steinbock, *supra* note 32, at 743 (declaring that U.S. Supreme Court has applied plain meaning analysis to refugee laws and provisions); see also Fitzpatrick, *supra* note 169, at 13 (stating that UNHCR *Handbook* is used to supplement the Court’s understanding when interpreting substantive Protocol provisions). But see Kahn, *supra* note 6, at 60 (concluding that when interpreting INA’s undefined statutory terms, courts look to statute’s legislative history).

171 See Steinbock, *supra* note 32, at 743 (concluding that plain meaning approach has come to disregard 1967 Protocol’s and Refugee Convention’s provisions); see also Kahn, *supra* note 6, at 60 (arguing that legislative history of Refugee Act suggests Congress intended to adopt United Nation’s definition of “refugee”); Pistone, *supra* note 109, at 4 (criticizing United States approach and interpretation of rules regarding refugees).

172 INS *v. Cardoza-Fonseca*, 480 U.S. 421, 436–37 (1987) (holding that “to show a ‘well-founded fear of persecution,’ an alien need not prove that it is more likely than not that he or she will be persecuted in his or her home country”).

173 *Id.* at 436–37.

174 *Id.* at 437 (citing S. Rep No. 96-590, p. 20 (1980)).

175 See Tarwater, *supra* note 74, at 565 (noting that, due to high stakes, UNHCR encourages cessation clause to be interpreted in a restrictive way); see also Pistone, *supra*
Committee reports statement regarding the Protocol to support its own decision to construe the meaning of "well-founded fear" in terms of the Protocol's provisions. The Cardoza-Fonseca Court's statement regarding the 1980 Refugee Act is extremely important when considered in conjunction with the UNHCR's position concerning the interpretation of the 1951 Convention and 1967 Protocol.

The Supreme Court in Cardoza-Fonseca further recognized that "[d]eportation is always a harsh measure; it is all the more replete with danger when the alien makes a claim that he or she will be subject to death or persecution if forced to return to his or her home country." When these statements are read along with the requirements of the 1967 Protocol, it becomes clear that not only is the United States obligated to comply with international regulations concerning refugees, but the Supreme Court has implicitly recognized this obligation. Even further, Cardoza-Fonseca specifically recognized the importance of UNHCR guidelines in interpreting the 1951 Convention and its refugee definition, and notes that the UNHCR's analysis is not 109, at 3 (stressing importance of INS in protecting refugees, especially from being deported). See generally Kahn, supra note 6, at 57-8 (arguing that determination of definition and rights of refugees should be within legislative, and therefore not judicial, branch).

Cardoza-Fonseca, 480 U.S. at 437 (using Conference Committee Report in decision regarding Protocol's provisions); see James Hathaway & Anne Cusick, Refugee Rights Are Not Negotiable, 14 GEO. IMMIGR. L.J. 481, 523 (2000) (arguing that U.S. Supreme Court has failed to take into account that the language of the Act's "well founded fear" was drafted to comply with the Convention and not the reverse); see also Pistone, supra note 109, at 8 (explaining American asylum law as necessitating very detailed narrative to prove "well-founded fear" of prosecution).

Cardoza-Fonseca, 480 U.S. at 452 (discussing compliance with UNHCR); see UNHCR Opinion Letter, supra note 58, at 426 (announcing United Nation's position on protecting refugees in all nations); see also Pistone, supra note 109, at 7 (discussing the incorporation into American law of 1967 Protocol through 1980 Refugee Act).


Id. at 453 (refusing to use legislative intent to bypass U.S.' obligations); see A. Roman Boed, Past Persecution Standard for Asylum Eligibility in the Seventh Circuit: Bygones are Bygones, 43 DEPAUL L. REV. 147, 157 (1993) (noting that U.S. Supreme Court has observed that the Protocol establishes "obligations"). See generally Moore, supra note 112, at 569 (arguing that U.S. regulations are limited by international law).

Cardoza-Fonesca, 480 U.S. at 439 n.22 (stating that even though Handbook explanations are not binding on the INS, it "provides significant guidance" in construing the Protocol, and it is widely considered useful in giving context to obligations that the Protocol establishes); see Arthur C. Helton, The Mandate of U.S. Courts to Protect Aliens and Refugees under International Human Rights Law, 100 YALE L.J. 2335, 2342 n.47 (1991) (noting that U.S. Supreme Court has cited the "Handbook" as a source of 'significant guidance' for adjudicators); Linda Dale Bevis, "Political Opinions" of Refugees: Interpreting International Sources, 63 WASH L. REV 395, 399 (1988) (highlighting that Handbook provides guidance in determining refugee status to governments, such as U.S.,
consistent with the "origins of the Protocol definition." Though the discussion in Cardoza-Fonseca does not directly address the issue at hand (in that they do not discuss the termination of a refugee's status) it is pertinent in that it recognizes the authority of international agreements and Congress's intent to follow those agreements in the context of refugees.

III. IMPORTANCE OF RECOGNITION OF INTERNATIONAL AGREEMENTS BY U.S. COURTS

There is clearly a divide in opinion as to the effects of international agreements on domestic courts. For example, United States v. Aguilar found that the Protocol was not intended to be self-executing. As such, it held that it does not have the force of law and can only be used as a guide to Congress' statutory intent in enacting the 1980 Refugee Act. This

that have signed onto Convention or Protocol and that although Handbook is not binding, it is a persuasive guide).


183 See Matter of H-M-V-, 22 I. & N. Dec. 256, 259 (BIA 1998) (stating "several courts have held that international treaty provisions generally do not attain the force of law until the United States has enacted legislation or promulgated regulations to implement such provisions"); see also Richard B. Lillich, Invoking International Human Rights Law in Domestic Courts, 54 U. Cin. L. Rev. 367, 369 (1985) (arguing that under dualist approach to international law, federal law will prevail when there is a conflict between federal laws passed subsequent to adoption of conventional and customary international law); Steven M. Karlson, International Human Rights Law: United States' Inmates and Domestic Prisons, 22 New Eng. J. On Crim. & Civ. Confinement 439, 443 (1996) (stating that although the "Constitution states that treaties are the supreme law of the land, courts have developed a theory that, in the absence of implementing legislation, only self-executing clauses in treaties are judicially enforceable in domestic courts").


sentiment was mirrored in several other cases, however, *certiorari* was denied, leaving the question unanswered by the Supreme Court.\(^{186}\)

In contrast, in *Beharry v. Reno*\(^{187}\) Senior District Court Judge Jack B. Weinstein emphasized the importance of U.S. Court’s honoring, recognizing, and upholding those agreements made between nations.\(^{188}\) The alien petitioner in this case was not a refugee, he was a long time lawful permanent resident.\(^{189}\) He was convicted of robbery in the second degree for an alleged theft of $714 from a coffee shop cash register with the help of a friend who worked at the shop.\(^{190}\) Deportation proceedings followed while petitioner was incarcerated.\(^{191}\) Under the INA, he did not qualify for relief from removal because he was classified as an aggravated felon.\(^{192}\) However, Judge Weinstein held that because of treaty and international law requirements, the INA provisions applied in this case should be interpreted to require that the petitioner be granted a hearing, where he could show the effect of his deportation on his family members, such as his U.S. citizen daughter and sister, as well as his LPR wife.\(^{193}\) Further, Judge

\(^{186}\) See Bertrand v. Sava, 684 F.2d 204, 218–19 (2d Cir. 1982) (holding provisions of Protocol were not a source of right under our laws until Congress implemented them); see also Haitian Refugee Center, Inc. v. Baker, 949 F.2d 1109, 1110 (11th Cir. 1991) *cert* denied, 502 U.S. 1122 (1992) (concluding that Article 33 of U.N. Protocol is not self executing, thus providing no enforceable rights); Fitzpatrick, *supra* note 169, at 10 (arguing that U.S. Supreme Court has avoided deciding whether U.N. Protocol is self executing, which has resulted in poorly reasoned decisions by lower courts).


\(^{188}\) *Beharry*, 183 F.Supp.2d at 591; Moore, *supra* note 112, at 542 (arguing that Judge Weinstein rested his decision solely on international law grounds); Cook, *supra* note 92, at 324 (discussing Judge Weinstein’s use of international legal concepts in overturning deportation order).

\(^{189}\) *Beharry*, 183 F.Supp. 2d at 586 (stating Petitioner entered U.S. at age 7 from Trinidad with his family).

\(^{190}\) *Id.* at 586 (noting these facts were presented at his deportation hearing).

\(^{191}\) *Id.* at 586–87 (stating record was not clear as to whether force was used).

\(^{192}\) *Id.* at 587 (stating INS commenced deportation proceedings in February of 1997, and in September 1997 he admitted deportability as an aggravated felon).

\(^{193}\) *Beharry* v. Reno, 183 F.Supp.2d 584, 586 (E.D.N.Y. 2002) *rev’d on other grounds*, 329 F.3d 51 (2d Cir. 2003) (stating that hardships should be weighed against danger of his remaining in U.S.).
Weinstein held that treaties and international law overrode the statutes and required a hearing anyway. 194

Judge Weinstein touched upon the Treaty Power in his argument, noting the Constitution explicitly states in Article VI; sec. 2, 195 that "the United States may enter into treaties under the Constitution" and further that "all treaties made" by the United States, along with federal law and the Constitution, are the "supreme law of the land." 196 Even non-ratified treaties are often used as aids in statutory construction. 197

As stated previously, the United States acceded to the 1967 Protocol in 1968, and continues to formally recognize its accession by participating in meetings and conventions concerning the implementation and continued applicability of its provisions. 198 Judge Weinstein reiterated in his opinion that "this nation's credibility would be weakened by non-compliance with

194 Id. at 604-05; Mojica v. Reno, 970 F.Supp. 130, 147 (E.D.N.Y. 1997). In 1997, Judge Weinstein discussed the importance of complying with Human Rights Obligations in the case Mojica v. Reno, 970 F.Supp. 130, 147 (E.D.N.Y. 1997). In particular, he discussed the right to stay of a lawfully present long-term resident alien. Id. He also referenced the European Convention for the Protection of Human Rights and Fundamental Freedoms, which recognizes the length of residence in a country increases the weight of an alien's right to stay. Id.; see Moore, supra note 112, at 540. Judge Weinstein held that in order for U.S. law to conform to international law there must be a waiver hearing. Mojica, 970 F.Supp. at 136–38.

195 U.S. CONST. art VI, § 2; see Beharry, 183 F.Supp.2d at 593 (noting roots of U.S.' treaty power in Constitution).

196 U.S. CONST. art. VI, § 2. The Constitution states:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or the Laws of any State to the Contrary notwithstanding.

197 See Beharry,183 F.Supp.2d at 593 (pointing out many cases in which non-ratified treaties were used in statutory construction); Ralph G. Steinhardt, The Role of International Law as a Canon of Domestic Statutory Construction, 43 VAND. L. REV. 1103, 1180 (1990) (distinguishing "preemptory from customary obligations" as a result of doctrine of jus cogens, but noting that courts often have an obligation "to refrain from acts that would defeat the object and the purpose of [that] treaty"). But see Moore, supra note 112, at 541 (noting uncertainty concerning application of international treaties to domestic law).

198 See Goodwin-Gill, supra note 32, at 23 n.1 (2003) (noting that United States was one of 144 nations that were signatories to both 1951 Convention and 1967 Protocol to the Convention regarding status of refugees); see also Steinbock, supra note 32, at 735 (noting that United States has adopted refugee definition in Protocol as the "basis of asylum eligibility"). See generally Protocol Relating to the Status of Refugees, supra note 46, at 1 (stating that United States acceded to Protocol in 1968, and noting that nations subject to 1951 Convention and 1967 Protocol are those that have acceded to Protocol).
treaty obligations, or with international norms." Especially in a time when the government of the U.S. is requesting international support and compliance with international measures to fight and combat terrorism, it is surely hypocritical to ignore obligations which we have undertook to comply. Judge Weinstein eloquently stated this reality:

The United States cannot expect to reap the benefits of internationally recognized human rights- in the form of greater worldwide stability and respect for people-without being willing to adhere to them itself. As a moral leader of the world, the United States has obligated itself not to disregard rights uniformly recognized by other nations.

Judge Weinstein also relied on international laws in the case *Mojica v. Reno* which preceded *Beharry*. Here, in the context of LPRs seeking discretionary relief from deportation according to the former 212(c), Judge Weinstein discussed the history of U.S. immigration law, and the international Human Rights obligations of the United States. Interestingly, he noted that in the passage of the INA in 1965 in replacing the national origins system, Lyndon B. Johnson declared that the INA:

Repairs a deep and painful flaw in the fabric of American justice, it corrects a cruel and enduring wrong in the conduct of the American nation. It will make us truer to ourselves as a country and as a people.

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200 Beharry, 183 F.Supp.2d at 601 (stating obligations United States has due to its moral role in global politics).


202 Id. at 143, 151 (analyzing tension between progressive and oppressive trends throughout history of United States in defining citizenship).

203 Id. at 146 (arguing that President Johnson's statement ushered in a new regime based on principle that "immigrants deserved to be treated fairly"); see Michael R. Currin, *Flickering Lamp Beside the Golden Door: Immigration, the Constitution, & Undocumented Aliens in the 1990's*, 30 CASE W. RES. J. INT'L L. 58, 100 (1998) (noting that President Johnson's sentiments were shared by growing civil rights movement, as well as many church and civic organizations).
This wrong that was so prevalent were discriminatory “xenophobic” policies that existed prior to the INA.204 In theory, the INA was to change policy so that “the issue was no longer whom we shall welcome, but how many, and how they could be treated with dignity, due process and equality as legal residents once they arrived.”205 Were we to follow the underlying premise behind adopting the INA, refugees would be afforded the protections that are required under the 1951 Convention and Protocol.206 In Mojica, Judge Weinstein focused on the Universal Declaration of Human Rights207 as a guide in statutory construction—and again pointed out the responsibility Congress has to create laws in accordance with international agreements, in that Congress is “the lawmaker of the leading proponent of international human rights law.”208 The Universal Declaration of Human Rights, similar to the 1951 Convention and Protocol, is an agreement to which the United States is bound—especially considering the high expectations the U.S. places on other


205 Mojica, 970 F.Supp. at 146 (noting growth of non-discriminatory immigration system in United States since the end of World War II).

206 See Gretchen Bortchelt, The Safe Third Country Practice in the European Union: A Misguided Approach to Asylum Law and a Violation of International Human Rights Standards, 33 COLUM. HUMAN RIGHTS L. REV. 473, 474–75 (2002) (proposing that nations depart from the Convention’s standard because they disregard the distinction between refugees and immigrants); Fitzpatrick, supra note 169, at 3 (noting that divergence of U.S. refugee law from international standards results from an inconsistent treatment of international norms in determining the meaning of “persecution”, and in following views of the UN High Commissioner for Refugees). See generally Harris, supra note 66, at 271–72 (stating that INA used the definition of “refugee” used by the 1951 Convention and that Congress further attempted to meet the UN standard in the Refugee Act of 1980).


208 Mojica, 970 F.Supp. at 147 (arguing that Congress is aware that it is bound to follow international law without an “overriding national policy”).
nations to comply with human rights standards. Judge Weinstein pointed to two provisions in his discussion, which directly apply to the obligation of the U.S. to terminate an LPR's refugee status before placing him in deportation proceedings: Article 9, which provides that no one shall be subjected to arbitrary . . . exile, and Article 10, "everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations . . . ."210

While Judge Weinstein is referring to the Declaration of Human Rights provisions in this case as being construed to reflect the right to stay of a lawfully present long term alien, it certainly has application to refugee LPR's, regardless of the length of time they have been present in the United States.211 Subjecting a person who enters as a refugee to deportation, without first evaluating whether the circumstances creating the refugee's situation still exist, can certainly be considered arbitrary.212 Furthermore, Article 10's requirement of a fair and public hearing to determine rights and obligations of an alien

209 See Filartiga v. Pena-Irala, 630 F.2d 876, 883 (2d Cir. 1980) (stating that Universal Declaration of Human Rights is one that creates an "expectation of adherence", and is one of the few documents that provides "an authoritative statement of the international community"); Igartua-De La Rosa v. United States, 386 F.3d 313, 318 (1st Cir. 2004) (Toruella, J., dissenting) (illustrating circumstances under which the Court has referred to Universal Declaration of Human Rights). But see Sosa v. Alvarez-Machain, 124 S. Ct. 2739, 2767 (2004) (stating that U.S. has ratified the Declaration as an international standard rather than enforceable law).

210 Mojica, 970 F. Supp. at 147.

211 See Mojica, 970 F. Supp. at 147–49 (suggesting that rights of due process should be applied to aliens to avoid potential for arbitrary expulsion). See generally Parrish, supra note 97, at 258 (concluding that the "final step in the development of international refugee law should then be to identify refugee law completely with the human rights that are internationally recognized"); Oscar Schachter, United Nations Law, 88 AM. J. INT'L L. 1, 17 (1994) (stating that Universal Declaration of Human Rights has made it so human rights is "treated as a major factor in extending UN activity, for example, in regard to refugees and migration").

212 See generally Lucy Halatyn, Political Asylum and Equal Protection: Hypocrisy United States Protection of Gay Men and Lesbians, 22 SUFFOLK TRANSNAT'L L. REV. 133, 149 (1998) (arguing that while the Constitution "declares a treaty shall be considered the supreme law of the land", United States has treated international treaties, like the Universal Declaration of Human Rights, as non-self-executing); Hathaway, supra note 18, at 116 (discussing problem of States failing to comply with international human rights obligations); see Lory Diana Rosenberg, International Association of Refugee Law Judges Conference: The Courts and Interception: The United States’ Interdiction Experience and Its Impact on Refugees and Asylum Seekers, 17 GEO. IMMIGR. L.J. 199, 216–17 (noting that critics of United States’ policy of expedited removal claim that such policies serve to frustrate fundamental human rights of asylum seekers as guaranteed by the Universal Declaration of Human Rights).
suggests that a hearing is necessary to determine the status of a refugee before subjecting them to deportation.\textsuperscript{213} The refugee has a right under international law to be protected from return to a place they fear according to the Convention refugee definition, and deserves to be evaluated under the provisions of the Convention and Protocol to see if they meet the criteria for either cancellation or cessation of the status before being placed in deportation proceedings.\textsuperscript{214} If their refugee status cannot be terminated, then the United States is obligated to allow the refugee to remain in the U.S.\textsuperscript{215} In essence, they may be stripped of their LPR status, but they will revert back to their refugee status.

These statements take on particular meaning, when considering that the U.S. recently joined other state signatories


\textsuperscript{214} See Matter of Pula, 19 I. & N. Dec. 467, 473–74 (BIA 1987) (interim decision) (suggesting that “[j]ust as it is not a favor to the court, it is not a favor to the alien, and it is not the interest of the Government to allow an alien to remain in this country without further investigation”) (citation omitted); Coonan, supra note 49, at 607 (noting that in acceding to 1967 Protocol, United States bound itself to Article 33 of the 1951 Convention by incorporation which provides that signatory nations not return any refugee to a country where their life or freedom would be threatened). See generally Karen Musalo, United States Department of Justice Executive Office of Immigration Review Board of Immigration Appeals, Falls Church, Virginia, 7 S. CAL. REV. L. & WOMEN’S STUD. 373, 404 (1998) (arguing that “because the denial of political asylum to a refugee could result in the return of that person to a situation of persecution, legitimate bases of denial should be somewhat circumscribed”).

\textsuperscript{215} See Megan Anitto, Asylum for Victims of Domestic Violence: Is Protection Possible After In Re R-A-?, 49 CATH. U. L. REV. 785, 817 (2000) (stating that under present authority, “governments are obligated to protect victims who face persecution or torture in their own countries”); Lori A. Nessel, “Willful Blindness” to Gender-Based Violence Abroad: United States’ Implementation of Article Three of the United Nations Convention Against Torture, 89 MINN. L. REV. 71, 162 n.34 (2004) (acknowledging “pursuant to the Refugee Convention, the United States is obligated not to return a person to a country in which her life or freedom would be threatened”); see also Boed, supra note 179, at 152–53 (asserting that “unless the alien’s status as a refugee has been terminated within the one-year period...the alien is eligible for an adjustment of status from refugee to lawful permanent resident,” thus enjoying the privileges of remaining in United States and qualifying for naturalization).
to the 1951 Convention and 1967 Protocol in reaffirming the adherence to its provisions in December of 2001.\footnote{See Ministerial Meeting, supra note 28, at Annex 1, Operative ¶ 1 (unanimously stating that countries “reaffirm our commitment to implement our obligations under the 1951 Convention and/or its 1967 Protocol fully and effectively in accordance with the object and purpose of these instruments”). See generally Smith, supra note 216, at 148 (noting agreement by states that Convention “should be further developed and strengthened”).} Within the structure of the meeting, a Declaration of the States Parties to the 1951 Convention and/or its 1967 Protocol was adopted by consensus.\footnote{See Ministerial Meeting, supra note 28, at Annex 1, Operative ¶ 8 (explaining need for respect of rights and freedoms of refugees and international cooperation with UNHCR to resolve the plight of refugees). See generally Smith, supra note 216, at 148 (noting that parties agreed to engage in coordinated efforts to uphold principals of Convention and Protocol).} The U.S. being a party reaffirmed its commitment to implementing the 1967 Protocol, and committed to uphold the values it instills.\footnote{See Ministerial Meeting, supra note 28, at Annex IX (stating that “Delegations at this Ministerial Meeting have unanimously declared that the Convention and its Protocol are key for the Protection of refugees, and they have reaffirmed their desire to continue with it”).} The authority of the UNHCR, as the institute with the mandate to protect refugees, and the obligation of state parties to cooperate with UNHCR was also reiterated.\footnote{See Ministerial Meeting, supra note 28, at Annex 1, Operative ¶ 8 (seeking to “reaffirm the fundamental importance of UNHCR as the multilateral institution with the mandate to provide international protection to refugees and to promote durable solutions, and recall our obligations as State Parties to cooperate with the UNHCR in the exercise of its functions”). See generally Smith, supra note 216, at 148 (acknowledging continuing importance of Convention and Protocol).} In his concluding remarks, Mr. Ruud Lubbers, the Commissioner of the UNHCR, firmly stated that the meeting and declarations made there within confirm “the 1951 Refugee Convention and its Protocol remain fully relevant and valid.”\footnote{See Ministerial Meeting, supra note 28, at Annex 1, Operative ¶ 8 (seeking to “reaffirm the fundamental importance of UNHCR as the multilateral institution with the mandate to provide international protection to refugees and to promote durable solutions, and recall our obligations as State Parties to cooperate with the UNHCR in the exercise of its functions”). See generally Smith, supra note 216, at 148 (acknowledging continuing importance of Convention and Protocol).}
Keeping Matter of V-S- In Mind . . .

In Matter of V-S-, the Respondent in removal proceedings discussed above, was convicted of conspiracy to commit extortion. While this is not an acceptable form of behavior for any resident—citizen or alien—the respondent is clearly not a danger to society. His presence in the United States, now over ten years time, is certainly not a threat to national security. His subjection to deportation proceedings is based on harsh changes to the INA that render aliens who committed non-violent, fairly non-serious crimes deportable. The risks to the respondent’s safety and his fear of return likely outweigh any burden on the United States that his continued presence may cause. If the government does not allow for an evaluation of these circumstances, and determine whether his refugee status has terminated, they are directly violating international regulations of refugees under the 1951 Convention and Protocol.

CONCLUSION

The United States is obligated, as a State Party to the 1967 Protocol, to protect those persons deemed refugees to the fullest extent provides in the international agreement. Except when

222 See Joni Andrioff, Note, Providing the Existence of Persecution in Asylum and Withholding Claims, 62 CHI.-KENT. L. REV. 107, 114 (1985) (noting that “well-founded fear standard allowed for the consideration of subjective factors, such as the alien’s opinions and statements, as well as objective factors in assessing the likelihood that an alien would face persecution if deported”). But see Holinka, supra note 89, at 425 (noting sentiment of some critics “that adhering to the standards of the Protocol would require an individualized evaluation for every crime and an individualized assessment of dangerousness to the community”); Christopher M. Kozoll, Poisoning the Well: Persecution, the Environment, and Refugee Status, 15 COLO. J. INT’L ENVTL. L. & POL’Y 271, 275–76 (2004) (asserting that “[w]hile the Convention and the Protocol define and govern international standards for the evaluation and processing of refugee claims, any individual attempting to claim asylum in the U.S. must do so under U.S. laws; the treaties have been interpreted as not self-executing treaties, and have also been analyzed as providing an applicant no further rights than U.S. domestic laws”).
223 See Bien, supra note 65, at 802–03 (stating that “the 1951 United Nations Convention Relating to the Status of Refugees (1951 Convention) and in its 1967 Protocol (1967 Protocol), impose on countries the obligation to protect any individual, outside her country of origin, found to have a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion”); Josh Briggs, Sur Place Refugee Status In The Context of Vietnamese Asylum Seekers in Hong Kong, 42 AM. U.L. REV. 433, 444 (1993) (clarifying the “doctrine of non-refoulment does not prohibit a state from expelling a refugee from its territory, but it forbids the refoulement or return of a refugee to any country or territory where the refugee’s life or freedom would be endangered”); Suzanne Gluck, Intercepting Refugees At Sea: An
refugee status ceases to exist because of the application of a Cessation clause, or circumstances in which fraud or misconduct in the finding of refugee status justify cancellation, a refugee remains a refugee and should enjoy all of the protections as such when s/he adjusts status to that of a Lawful Permanent Resident. It is imperative that we formally adopt the contention that refugee status does not cease to exist upon adjusting to Lawful Permanent Resident Status so that Courts may uniformly apply the statutory refugee laws of this county. To allow Courts to deport refugees to countries to which they will be faced with persecution based on race, religion, nationality, membership in a social group, or political opinion violates humanitarian principles that the U.S. undertook to follow. It is time that the U.S. rectify the inconsistencies between its own immigration practices and its human rights expectations of other nations.

Analysis of the United States' Legal and Moral Obligations, 61 FORDHAM L. REV. 865, 866 (1993) (concluding “the United States is required to protect those aliens who possess individual, well-founded fears of persecution on account of their race, religion, nationality, social group, or political opinion”).

224 See April Adell, Fear of Persecution for Opposition to Violations Of the International Human Right to Found a Family as a Legal Entitlement to Asylum for Chinese Refugees, 24 HOFSTRA L. REV. 789, 816 (1996) (advancing proposition that courts should depart from prior precedent and “interpret the statutory Refugee Act phrase ‘persecution on account of political opinion’ consistently with legislative purpose, international treaty law, and international human rights law”); Abigail D. King, Interdiction: The United States' Continuing Violation Of International Law, 68 B.U.L. REV. 773, 792–93 (1988) (noting UNHCR has been “consistently emphasizing the necessity for states to observe humanitarian principles toward refugees”); Parrish, supra note 97, at 258 (noting that Declaration of Human Rights has been “almost universally accepted and repeatedly reaffirmed” and further arguing that no state can legitimately argue that the Declaration is not valid, at least as an aspiration for its citizens).