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ESSAY

REFUGEE RECEPTION AND PERCEPTION: US DETENTION CAMPS AND GERMAN WELCOME CENTERS

*Valeria Gomez & Karla Mari McKanders**

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*“At a minimum, the seeking of asylum is not an unlawful act. This compels governments to institute open and humane reception conditions, including safe, dignified and human rights-compatible treatment.”*¹

INTRODUCTION

Over the past year, the reception of refugees became one of the most critical global issues as countries in the Global North² received a record number of refugees.³ Various countries implemented different policies that have abrogated in some instances, and in others worked to safeguard refugees and asylum seekers’ basic right to refuge when fleeing persecution. While the 1951 Convention Relating to the Status of Refugees (“Refugee Convention”) provides a solid legal framework for protection,⁴ the ways in which countries initially receive asylum seekers and restrict their freedom of movement can be instructive in reforming existing systems to protect the human rights of forced migrants. The UN High Commissioner for Refugees explains that:

Reception conditions refer to the treatment given by a country to asylum-seekers from the moment they apply for asylum, and include access to information at the border, humane conditions in refugee centres, legal counselling, education, medical care,

1. Alice Edwards, *Back to Basics: The Right to Liberty and Security of the Person and ‘Alternatives to Detention’ of Refugees, Asylum-Seekers, Stateless Persons, and Other Migrants*, ¶11, U.N. Doc. PPLA/2011/01.Rev.1, (Apr. 2011) (citing Rep. of the Exec. Comm. of the Programme of the U.N. High Comm’r for Refugees, ¶ 22, U.N. Doc. A/57/12/Add.1 (Oct. 4, 2002)). Edwards is an expert consultant for the UN High Commissioner for Refugees.

2. North–South categorizations depend on both the socioeconomic and the political divide between regions. In existing literature, the Global North includes North America, Western Europe, and developed parts of East Asia, whereas the Global South includes Africa, Latin America, and developing parts of Asia, including the Middle East. *See, e.g.*, Jean-Philippe Therien, *Beyond the North-South Divide: The Two Tales of World Poverty*, 20 *THIRD WORLD Q.* 723, 726 (1999).

3. Tim Gaynor, *2015 Likely to Break Records for Forced Displacement – Study*, U.N. HIGH COMM’R FOR REFUGEES (Dec. 18, 2015), <http://www.unhcr.org/5672c2576.html> (“2015 is likely to exceed all previous records for global forced displacement, the U.N. Refugee Agency warned in a new report today.”).

4. James C. Hathaway, *Why Refugee Law Still Matters*, 81 *MELB. J. INT’L L.* 89, 94 n.29 (2007) (citing UNHCR Executive Committee Standing Committee, 33rd mtg., *Local Integration and Self Reliance*, U.N. Doc. EC/55/SC/CRP.15 (June 2, 2005)).

employment, timely asylum procedures, and freedom of movement. According to international and regional laws, states have a responsibility to respect and ensure the human rights of everyone on their territory. Where asylum-seekers are concerned, they must provide adequate reception conditions in line with international standards.⁵

The world has experienced the most forced migration in its recent history.⁶ In the summer of 2014, the United States experienced a surge of children from the Northern Triangle (the countries of Honduras, El Salvador, and Guatemala) fleeing persecution and attempting to enter through the southern border. The US government characterized the influx of children as an “urgent humanitarian situation” on the border.⁷ Similarly, last year Germany welcomed approximately 1.1 million asylum seekers—a record number.⁸

This essay examines the treatment of asylum seekers at reception in the United States and Germany through each country’s freedom and restriction of movement laws related to asylum seekers. This comparative analysis is based on Valeria Gomez’s volunteer experience in the South Texas Family Residential Center and Karla McKanders’ exploratory trip to Germany to learn more about the processing of refugees. When we came back together after our trips, we were prompted to write this essay as we were captivated by the contrast between the German and American legal systems for reception, detention, and freedom of movement of asylum seekers. We then became intellectually curious about the implications of the varied policies and their applications for the ways in which signatories to the 1951 Refugee Convention approach creating laws on the reception of refugees.

5. *Overseeing Reception Conditions: Standards for Living Conditions*, U.N. HIGH COMMISSIONER FOR REFUGEES, <http://www.unhcr-centraleurope.org/en/what-we-do/overseeing-reception-conditions.html> (last visited May 11, 2016).

6. See Karla McKanders, *Responding to the Refugee Crisis, Can Lawyers Help?*, JURIST: ACAD. COMMENT. (Oct. 5, 2015), <http://www.jurist.org/forum/2015/10/karla-mckanders-Syrian-refugees.php>.

7. Letter from President Barack Obama to Speaker of the House of Representative John Boehner, Senate Majority Leader Harry Reid, Senate Minority Leader Mitch McConnell, and House Democratic Leader Nancy Pelosi (June 30, 2014), <https://www.whitehouse.gov/the-press-office/2014/06/30/letter-president-efforts-address-humanitarian-situation-rio-grande-valle>.

8. Patrick Donahue & Arne Delfs, *Germany Saw 1.1 Million Migrants in 2015 as Debate Intensifies*, BLOOMBERG (Jan. 6, 2016, 3:27 AM), <http://www.bloomberg.com/news/articles/2016-01-06/germany-says-about-1-1-million-asylum-seekers-arrived-in-2015>.

This essay explores the differences between the United States and Germany in three parts. Part I provides an overview of the Refugee Convention and its application to the rights of asylum seekers in receiving countries at their reception. Part II then provides an overview of the US laws for detaining asylum seekers in connection with Valeria Gomez's account of volunteering in the South Texas Family Residence Center. Part III next provides an overview of Germany's laws for reception of asylum seekers along with Professor Karla McKanders' personal account of traveling to Germany with a delegation from the University of Tennessee on an exploratory trip to learn more about how Germany is processing and receiving record numbers of asylum seekers. Part IV analyzes our varied experiences at the center of humanitarian crisis and explores the reasons behind the drastically different detention and reception models in each country. We end with an analysis of the impact of what the varied systems may portend for asylum seekers in the future.

The 1951 Refugee Convention and Reception of Asylum Seekers

A migrant is an individual who, either temporarily or permanently, moves from one place to another.⁹ A refugee is considered a forced migrant.¹⁰ According to the 1951 Refugee Convention, a refugee is someone who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.¹¹

The United States signed the 1967 Protocol to the Refugee Convention in 1968 and ratified the Refugee Convention in 1980,¹² while Germany ratified the Convention in 1953 and immediately ratified the Protocol to the Convention in 1967.¹³

9. *Migration*, BLACK'S LAW DICTIONARY (10th ed. 2014).

10. *Refugee*, BLACK'S LAW DICTIONARY (10th ed. 2014).

11. G.A. Res. 429 (V), annex, Draft Convention Relating to the Status of Refugees, at ch. 1, art. 1, § A.2 (Dec. 14, 1950).

12. 8 U.S.C. §§ 1158(b)(1)(A), 1101(a)(42) (2012).

13. See Asylverfahrensgesetz [AsylVfG] [Asylum Procedure Act], July 27, 1993, BUNDESGESETZBLATT, Teil I [BGBL I] at 1361, § 3(a), last amended by Gesetz [G], Dec. 23, 2014, BGBL I at 2439, art. 2, http://www.gesetze-im-internet.de/englisch_asylvfG/ (Ger.) [hereinafter Asylum Procedure Act]; see also *State Parties to the 1951 Convention Relating to*

A migrant typically has to adhere to specific legal procedures to be designated as a refugee. Throughout the world, most legal procedures include making a demand for asylum and then submitting an application for asylum through a Nation State's refugee status determination process ("RSD").¹⁴ RSD is a legal process that involves a judge or officer listening to the individual's story and evidence they present in support of their claim to refugee status, and then making a determination as to whether the individual fits within the Refugee Convention's definition of a refugee. In addition, a Nation State can categorically recognize a group of individuals as refugees without going through an individualized legal process.¹⁵ Accordingly, an asylum seeker is an individual who claims to be a refugee but who awaits individual legal determination by a Nation State or the UN High Commissioner for Refugee's ("UNHCR") RSD process.¹⁶ Until there is a legal determination that an individual or group of asylum seekers are refugees, the asylum seeker is not entitled to lawful status that protects her right to not be removed back to the country where she fears persecution.¹⁷ Furthermore:

Article 31(1) of the 1951 Convention stipulates that refugees having come directly should not be penalised for their illegal entry or stay if they present themselves to the authorities without delay and show good cause for their illegal entry or stay. Depriving asylum-seekers or refugees of their liberty for the mere reason of having entered or stayed illegally, would amount to a penalty under Article 31(1)64 [and is, in any event, contrary to the right to liberty and security of person . . .]. Article 31(1) should also be interpreted to mean that the act of entering a country for the purposes of seeking asylum should not be considered an unlawful act. Automatically detaining asylum-seekers or stateless persons for the sole reason of their status as such would amount to an arbitrary deprivation of liberty.¹⁸

the Status of Refugees and/or its 1967 Protocol, U.N. HIGH COMMISSIONER FOR REFUGEES, <http://www.refworld.org/docid/51d3dad24.html> (last visited May 11, 2016).

14. *Refugee Status Determination*, U.N. HIGH COMMISSIONER FOR REFUGEES, <http://www.unhcr.org/pages/4a16b1d06.html> (last visited May 16, 2016).

15. *See infra* note 40 (categorically recognizing groups as refugees).

16. *Id.*

17. *See generally* Sir Elihu Lauterpacht & Daniel Bethlehem, *The Scope and Content of the Principle of Non-Refoulement: Opinion*, in *REFUGEE PROTECTION IN INTERNATIONAL LAW: UNHCR'S GLOBAL CONSULTATIONS ON INTERNATIONAL PROTECTION* 87 (Erika Feller et al. eds., 2003).

18. Edwards, *supra* note 1, at 11 (alteration in original).

Unlawful Entry and the South Texas Family Residential Center

In 2014, the United States experienced a surge of migrants enter through its southern border. According to US Customs and Border Patrol (“CBP”) reports, the United States apprehended 479,371 individuals along the US–Mexico border during the 2014 fiscal year¹⁹—an increase of approximately 60,000 apprehensions from the previous year.²⁰ For the first time in recent history, the CBP apprehended more non-Mexicans than Mexicans along the US–Mexico border; of these, 66,638 were nationals from El Salvador, 81,116 were nationals from Guatemala, and 91,475 were nationals from Honduras.²¹ Of the total individuals detained at the US–Mexico border, 68,541 were children who arrived in the United States without a parent or guardian.²² Cited factors for this increased migration include high violent crime rates associated with the presence of transnational criminal organizations, poor economic conditions fueled by low economic growth rates, and family violence.²³ A close look at US policy and actions in response to the surge of migrants along the southern border—including the resurrection of the practice of family detention—calls into question the country’s commitment to upholding its obligations under the 1951 Refugee Convention and the 1967 UN Protocol Relating to the Status of Refugees (“Refugee Protocol”).²⁴

Laws and Processing of Asylum Seekers in the United States

The Immigration and Nationality Act (“INA”) and the accompanying federal regulations promulgated by the Department of Homeland Security (“DHS”) and the Department of Justice (“DOJ”)²⁵

19. U.S. BORDER PATROL, TOTAL ILLEGAL ALIEN APPREHENSIONS BY FISCAL YEAR – FISCAL YEAR 2014 1 (2014), available at <https://www.cbp.gov/sites/default/files/documents/USBP%20Stats%20FY2014%20sector%20profile.pdf>.

20. *Id.* at 1–3.

21. U.S. DEP’T OF HOMELAND SECURITY, CBP BORDER SECURITY REPORT 1 (Dec. 19, 2014), available at https://www.cbp.gov/sites/default/files/documents/FINAL%20Draft%20CBP%20FY14%20Report_20141218.pdf.

22. U.S. BORDER PATROL, *supra* note 19, at 2.

23. See WILLIAM A. KANDEL ET AL., CONG. RESEARCH SERV., R43628, UNACCOMPANIED ALIEN CHILDREN: POTENTIAL FACTORS CONTRIBUTING TO RECENT IMMIGRATION 3 (July 3, 2014), available at <https://fas.org/sgp/crs/homesecc/R43628.pdf>.

24. See generally Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150; Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

25. The INA is codified in the United States Code at Title 8. The corresponding regulations are incorporated into Title 8 of the Code of Federal Regulations.

govern US asylum law.²⁶ The INA authorizes any noncitizen arriving in the United States to apply for asylum,²⁷ subject to certain exceptions enumerated in the law.²⁸ Noncitizens who are not otherwise barred from applying may apply for asylum regardless of whether they have entered through a designated point of arrival, and without regard to the noncitizens' current immigration status.²⁹ The procedure through which a noncitizen may apply for asylum varies, however, depending on whether the noncitizen (a) has valid authorization to be in the country (such as a person who is in the country with a valid student visa or a person who has entered on a tourist visa), (b) is already present in the country without a valid status or authorization (such as a person who entered the country without inspection or a person who has overstayed or violated the terms of a previous visa), or (c) is apprehended by DHS officials at a port-of-entry and is determined to not have proper admission documents or is otherwise not authorized to enter the country, or is apprehended by DHS officials without having been admitted or paroled into the United States, and cannot affirmatively show that the alien has been physically present in the United States continuously for a two-year period.³⁰

The INA mandates that noncitizens in the last category be removed from the United States without a hearing or other form of judicial or administrative review. The exception to this rule occurs when an individual indicates upon apprehension that they have an intention to apply for asylum or otherwise express a fear of returning to their country of origin.³¹ When an individual states that he or she has a fear, DHS regulations refer to this accelerated deportation

26. Domestic US asylum law largely incorporates provisions from the 1967 Refugee Protocol, international treaties which the United States ratified in 1968. *See supra* note 24.

27. 8 U.S.C. § 1158(a)(1) (2012).

28. *See id.* § 1158(a)(2) (providing five specific exceptions).

29. *Id.* at § 1158(a)(1).

30. *See* 8 U.S.C. § 1225(b)(1)(A)(i)-(iii)(II) (2012) (listing categories of aliens subject to expedited removal); 8 C.F.R. § 208.2(a) (2016) (stating that the Refugee, Asylum, and International Operations office ("RAIO")—an office within the Department of Homeland Security—has initial jurisdiction over asylum applications filed by noncitizens, except those who are in expedited removal or are in removal proceedings); *id.* § 208.2(b) (stating that the immigration courts have exclusive jurisdiction over asylum applications for those who are in removal proceedings or who are subject to expedited removal); *see also* P-L-P-, 21 I&N. Dec. 887, 888 (U.S. Bd. of Immigration Appeals Mar. 13, 1997).

31. 8 U.S.C. § 1225(b)(1)(A)(i); *see also* 8 C.F.R. § 235.3 (2016).

proceeding as “expedited removal” and the individual is given a credible fear interview.”³²

To determine whether an asylum seeker has a sufficient basis for seeking asylum in the United States—thus entitling her to a hearing before an immigration judge and allowing her to avoid expedited removal—the asylum seeker must establish that she has a credible fear of suffering persecution in her home country.³³ The “credible fear” determination is initially made by a DHS asylum officer through a “credible fear interview,” a non-adversarial process designed to determine whether the asylum seeker can establish a significant possibility that he or she will be able to establish a claim for asylum in immigration court.³⁴ If the asylum seeker can convince the asylum officer that he or she has a significant possibility of succeeding on an asylum claim in immigration proceedings, the asylum seeker’s expedited removal order will be suspended, and he or she will instead be placed in removal proceedings for a full consideration of the claim before an immigration judge.³⁵ However, an immigration judge can still review an asylum officer’s negative credible fear finding in a credible fear review hearing.³⁶

Pursuant to the INA, asylum seekers must remain detained while they work through the credible fear process.³⁷ The first step in this process is having a credible fear interview to determine if the individual has a fear of persecution. Once an asylum seeker establishes a credible fear of persecution, she is placed in (non-expedited) removal proceedings before an immigration judge. At this point, she can become eligible for release, either through parole at the discretion of DHS or through a bond redetermination hearing conducted before an immigration judge. Bond is a legal agreement where the individual is released upon payment of a sum of money, typically up to US\$25,000, which acts as security to incentivize the individual to show up for removal proceedings.³⁸

32. 8 C.F.R. § 235.3(b).

33. 8 C.F.R. § 208.30(e)(2).

34. *Id.* § 208.30(d).

35. *Id.* § 208.30(e)(2).

36. 8 U.S.C. § 1225(b)(1)(B)(iii)(III).

37. *Id.* § 1225(b)(1)(B)(ii), (b)(1)(B)(iii)(IV). Exceptions may be made to meet medical emergencies or to further legitimate law enforcement objectives. *See* 8 C.F.R. § 235.3(b)(2)(iii).

38. *See* X-K-, 23 I&N Dec. 731, 735–36 (U.S. B.I.A. May 4, 2005) (citing 8 C.F.R. § 1236.1(d) (2004) and holding that an asylum seeker placed in removal proceedings after a

Detention of Asylum Seekers

From 2009 to 2014, DHS, as a matter of practice, released arriving noncitizens from detention under appropriate conditions after they passed credible fear screening and did not otherwise pose a danger to the community or to national security.³⁹ However, in 2014 the Obama Administration shifted practices, particularly when it announced, as a matter of policy, that all noncitizens arriving without prior authorization on or after January 1, 2014—including unaccompanied children and women arriving with children—constituted a border security threat.⁴⁰

In response to the so-called “surge” of immigrants arriving from the Northern Triangle, the Obama Administration opened three new detention facilities: in June 2014, a 700-bed facility in Artesia, New Mexico;⁴¹ in August 2014, a 500-bed facility in Karnes, Texas;⁴² and finally, in December 2014, a 2,400-bed facility in Dilley, Texas.⁴³

positive credible fear determination is eligible for a custody redetermination hearing before an immigration judge unless the individual falls within the listed categories of noncitizens specifically excluded from the jurisdiction of the immigration court); Patel, 15 I&N Dec. 666, 666 (U.S. B.I.A. May 7, 1976) (“[A]n alien is not and should not be detained or required to post bond except on a finding that he is a threat to the national security, or that he is a poor bail risk.”); see also 8 C.F.R. § 1003.19 (2016).

39. See U.S. IMMIGRATION & CUSTOMS ENF’T, PAROLE OF ARRIVING ALIENS FOUND TO HAVE A CREDIBLE FEAR OF PERSECUTION OR TORTURE ¶ 6.2 (Dec. 8, 2009), https://www.ice.gov/doclib/dro/pdf/11002.1hdparole_of_arriving_alien_found_credible_fear.pdf (directing that, “when an arriving alien found to have a credible fear establishes . . . his or her identity and that he or she presents neither a flight risk nor danger to the community,” DHS should parole the individual on the basis that continued detention is not in the public interest).

40. See Memorandum from Jeh C. Johnson, Secretary, U.S. Dep’t of Homeland Sec., Policy for the Apprehension, Detention and Removal of Undocumented Immigrants 3–4 (Nov. 20, 2014), https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.

41. *Fact Sheet: Artesia Temporary Facility for Adults with Children in Expedited Removal*, U.S. DEP’T HOMELAND SEC. (June 20, 2014), <https://www.dhs.gov/news/2014/06/20/fact-sheet-artesia-temporary-facility-adults-children-expedited-removal>. The Artesia detention center served as a federal law enforcement training center. *Id.* As this DHS Fact Sheet states, the Department converted the federal enforcement training center into a family detention center with the purpose of quickly pushing arriving noncitizens through the expedited removal process and deterring future noncitizens. *Id.*

42. DHS had operated the detention facility in Karnes, Texas since 2012, housing primarily adult men. See *ICE Opens its First-Ever Designed-and-Built Civil Detention Center*, U.S. IMMIGRATION & CUSTOMS ENF’T (Mar. 13, 2012), <https://www.ice.gov/news/releases/ice-opens-its-first-ever-designed-and-built-civil-detention-center>. In August 2015, the Department modified its contract with Karnes County, Texas, in order to repurpose the Karnes County Civil Detention Center from an immigration detention facility holding adults to a “residential facility” to hold adults with children. See *South Texas ICE Detention Facility to House Adults With Children*, U.S. DEP’T HOMELAND SEC. (July 31, 2014),

These detention facilities, notorious for their seclusion and distance from major cities, made access to legal representation for those detained a considerable challenge.⁴⁴ The detention centers—particularly the detention facility in Artesia, New Mexico—were referred to as “deportation mills” by immigration practitioners and the media,⁴⁵ due to the swiftness with which DHS processed detainees through the credible fear interview process and deported the women and children. Furthermore, comments made by executives of the Obama Administration suggested that the US government did not consider those noncitizens from Honduras, Guatemala, and El Salvador to be asylum seekers, and expressed the Administration’s plans to summarily process and deport those the noncitizens entering through the southern border.⁴⁶ Following public outcry, volunteer efforts organized primarily by the American Immigration Lawyers Association (“AILA”) and the American Immigration Council (“AIC”),⁴⁷ and lawsuits filed against DHS for the manner in which it housed, cared for, and processed the women and children detained in

<https://www.dhs.gov/news/2014/07/31/south-texas-ice-detention-facility-house-adults-children>. Rebranding it the “Karnes County Residential Center,” DHS designed the detention center to accommodate up to 532 adults with children. *Id.*

43. *ICE’s New Family Detention Center in Dilley, Texas to Open in December*, U.S. IMMIGRATION & CUSTOMS ENF’T (Nov. 17, 2014), <https://www.ice.gov/news/releases/ices-new-family-detention-center-dilley-texas-open-december>.

44. ABA COMM’N ON IMMIGRATION, FAMILY IMMIGRATION DETENTION: WHY PAST CANNOT BE PROLOGUE 38–39 (July 31, 2015), available at https://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/FINAL%20ABA%20Family%20Detention%20Report%208-19-15.authcheckdam.pdf.

45. See, e.g., Wil S. Hylton, *The Shame of America’s Family Detention Camps*, N.Y. TIMES MAG. (Feb. 4, 2015), <http://www.nytimes.com/2015/02/08/magazine/the-shame-of-americas-family-detention-camps.html>; Lauren Carasik, *The American “Deportation Mill,”* BOS. REV. (Sept. 9, 2014), <https://bostonreview.net/us/lauren-carasik-artesia-fletc-immigrant>; Cindy Carcamo, *Immigrant Rights Groups Sue U.S. Over Fast-Tracked Deportations*, L.A. TIMES (Aug. 22, 2014, 4:43 PM), <http://www.latimes.com/nation/nationnow/la-na-nn-immigration-lawsuit-new-mexico-20140822-story.html>; Julia Preston, *As U.S. Speeds the Path to Deportation, Distress Fills New Family Detention Centers*, N.Y. TIMES (Aug. 5, 2014), <http://www.nytimes.com/2014/08/06/us/seeking-to-stop-migrants-from-risking-trip-us-speeds-the-path-to-deportation-for-families.html>.

46. See, e.g., Vice President Joe Biden, Remarks to the Press with Q&A by Vice President Joe Biden in Guatemala (June 20, 2014), available at <https://www.whitehouse.gov/the-press-office/2014/06/20/remarks-press-qa-vice-president-joe-biden-guatemala>.

47. This collaborative effort became known as the AILA-AIC Artesia Pro Bono Project. For more information on how the AILA-AIC Artesia Pro Bono Project recruited volunteer immigration lawyers, organized volunteer efforts, and represented the women and children detained in Artesia in credible fear interviews, credible fear redetermination hearings, and bond hearings, see Stephen Manning, *Ending Artesia*, INNOVATION LAW LAB, <https://innovationlawlab.org/the-artesia-report-story> (last visited May 13, 2016).

the Artesia, New Mexico facility,⁴⁸ DHS closed the Artesia detention facility.⁴⁹ Rather than release many of the women and children remaining in detention in Artesia, however, DHS simply transferred these detainees to its large new facility, euphemistically named the “South Texas Family Residential Center,” in Dilley, Texas.⁵⁰

With the opening of a new large-scale detention facility in Dilley, Texas and the closing of the detention facility in Artesia, New Mexico, organizations remobilized volunteer immigration law practitioners to provide pro bono legal assistance to the women and children detained in Dilley. In December 2014, the Catholic Legal Immigration Network, Inc. (“CLINIC”), the Refugee and Immigration Center for Education and Legal Services (“RAICES”), AIC, and AILA joined forces to create the CARA Family Detention Pro Bono Project (“CARA Pro Bono Project”) to recruit, coordinate, and support immigration attorneys, law students, and paralegals volunteering to provide legal orientation and representation to the families detained in Dilley, Texas.⁵¹ Against this backdrop, Valeria Gomez traveled to Dilley in December 2015 to join the CARA Pro Bono Project in its efforts to provide legal representation to the women and children in detention.

Week at Dilley Detention Camp

The following section gives Valeria Gomez’s personal recounting of her experience volunteering with the CARA Pro Bono Project. After receiving an email from AILA seeking volunteers to join the Project the weeks before and after Christmas, I decided to volunteer at the Dilley detention facility. This work was extremely

48. See *Groups Sue U.S. Government over Life-Threatening Deportation Process Against Mothers and Children*, AM. IMMIGR. COUNCIL (Aug. 22, 2014), <http://www.americanimmigrationcouncil.org/newsroom/release/groups-sue-us-government-over-life-threatening-deportation-process-against-mothers>.

49. *ICE’s New Family Detention Center in Dilley, Texas to Open in December*, *supra* note 43.

50. *Id.* DHS contracted with Corrections Corporation of America (“CCA”) for the oversight and management of the South Texas Family Residential Center. *South Texas Family Residential Center*, CORRECTIONS CORP. AM., <https://www.cca.com/facilities/south-texas-family-residential-center> (last visited May 13, 2016). CCA, which rebranded as CoreCivic on October 28, 2016, has managed the family detention facility in Dilley, Texas since its inception. See *id.*

51. *CARA Family Detention Pro Bono Project*, AM. IMMIGR. LAW. ASS’N (Apr. 5, 2016), <http://www.aila.org/practice/pro-bono/find-your-opportunity/cara-family-detention-pro-bono-project>.

important as DHS planned to continue conducting credible fear interviews during the holidays. Thus, on December 20, 2015, I found myself at “the Ranch” in Dilley, Texas, along with twelve other volunteers.

The Ranch was a house on a ranch in Dilley that CARA leased for the on-the-ground team—coordinators and attorneys hired by CARA to coordinate and represent the women on a day-to-day basis. The volunteers that week included licensed attorneys, seasoned paralegals, and academics well-versed in immigration law and the issues of family detention, all of whom represented various cities across the United States. The CARA Pro Bono Coordinator and CARA On-the-Ground attorney provided an overview of the detention facility’s rules and procedures, the universal representation model, and the relevant asylum laws and regulations pertaining to asylum and credible fear interview preparation. The orientation meeting lasted several hours and did not end until well into the night. The on-the-ground CARA employees emphasized one rule in particular: we were not, under any circumstances, to take any photographs on the premises of the facilities. This included photographs within the visitation trailer, where we would be working, as well as photographs of the outside of the facility and the parking lot.

While DHS may refer to the Dilley facility as a “residential center,” the secured, jail-like nature of the family detention facility became evident as soon as we entered the premises of the detention center. The design and location of the detention center made it clear that this facility was crafted in order to remain secluded and hidden. The South Texas Family Residential Center is located approximately seventy miles from San Antonio, the closest major city, and is not readily visible from the nearest road. In fact, one would need to turn onto the long driveway leading off the road for several yards before even seeing the signs identifying the building. In addition, the detention facility is built low into the ground, so that even if passersby know where to look, they will not see much indication that a detention facility is present, absent perhaps the large outdoor lighting structures looming over the receded building.

CoreCivic, a private company that owns correctional facilities, manages the South Texas Family Residential Center.⁵² CoreCivic also manages and operates correctional facilities (i.e., prisons) and detention facilities under contracts with the federal government and various state and local governments.⁵³ As such, access to the facility is strictly controlled. Before we could be approved by the detention facility, the volunteers had to provide the volunteer coordinator with a copy of state-issued photo identification at least a week before the visit to the facility; volunteer attorneys also had to provide copies of their bar cards. The detention center prohibited visitors from bringing cellular phones into the facilities, and any laptops we used to draft documents, open cases, and update files had to be pre-approved by the facility.

Upon entry, all belongings were passed through an x-ray machine and the volunteers had to walk through metal detectors. Attorneys turned in our bar cards and photo identification with a CoreCivic⁵⁴ employee at the front desk, where we were issued numbered ID badges and were directed to the visitor's trailer. CoreCivic allowed the CARA Pro Bono Project two rooms within the visitor's trailer in which to hold files, printers, scanners, Wi-Fi hotspots, and other supplies crucial to the representation of the women and children of the facility. The detention center only allowed the CARA volunteers and staff access to the "courtroom" trailer (where credible fear redetermination and bond hearings took place via a video teleconference with an immigration judge located in a different city) and the visitor's trailer. All other areas of the 2,400-bed facility were strictly off-limits to non-DHS and non-CoreCivic personnel.⁵⁵

52. On October 28, 2016, the company Corrections Corporation of America changed its name to CoreCivic. *See Corrections Corporation of America Rebrands as CoreCivic*, CORRECTIONS CORP. AM., <http://www.cca.com/insidecca/corrections-corporation-of-america-rebrands-as-corecivic> (last visited Feb. 28, 2017).

53. *See About CCA*, CORRECTIONS CORP. AM., <https://www.cca.com/about-cca> (last visited Feb. 28, 2017).

54. In December 2015, CoreCivic still operated under the name Corrections Corporation of America. *See Corrections Corporation of America Rebrands as CoreCivic*, *supra* note 52. For the sake of simplicity, this essay will refer to the company's employees as CoreCivic employees, regardless of whether they were employed while CoreCivic still operated under the name CCA.

55. While I was unable to see the residential facilities firsthand, several media sources have reported that families live in trailers, where up to twelve people from unrelated families may live in a single room. *See* Molly Hennessy-Fiske, *Immigrant Families in Detention: A Look Inside One Holding Center*, L.A. TIMES (June 25, 2015, 3:00 AM), <http://>

The representation model provided for universal legal representation for all women and children detained at the detention facility, regardless of their country of origin or apparent relief available. Before arriving in Dilley, volunteers participated in conference calls and video training to ensure they were proficient in the case management software that the CARA Pro Bono Project used to keep track of the thousands of women it represented. New volunteers arrived each week, using the detailed notes and action ticklers entered by previous volunteers to ensure that all open cases did not fall through the cracks.

Shortly before my visit to Dilley, in a class action lawsuit filed on behalf of children detained at the South Texas Family Residential Center, a federal district judge in the Central District of California ruled that DHS had violated a binding settlement agreement by holding children in a facility that was secured and not licensed as a childcare facility by the state.⁵⁶ As a result of this ruling, DHS could no longer detain children for weeks and months on end while they waited for credible fear interviews, credible fear redetermination hearings, bond hearings, and, for those unable to pay bond, removal proceedings.⁵⁷ While this was a favorable result insofar as it spared families from months of detention, it also led to even more rushed processing, interviewing, and deportations.

Despite this legal order, DHS continued to detain the women and children in record numbers; during the week I volunteered at Dilley, it was estimated that DHS was detaining close to 1,000 women and children, the substantial majority of whom were from El Salvador, Guatemala, and Honduras. Therefore, on our first day on the ground, half of the volunteers handled a staggering eighty-four women at the

www.latimes.com/nation/la-na-dilley-detention-20150625-story.html. Carl Takei, a staff attorney with the ACLU National Prison Project, has likened the conditions within the South Texas Family Residential Center to the conditions within the Japanese internment camps built to house US families of Japanese descent during World War II. Carl Takei, *The 'South Texas Residential Center' Is No Haven: It's an Internment Camp*, ACLU: SPEAK FREELY (May 21, 2015, 3:30 PM), <https://www.aclu.org/blog/speak-freely/south-texas-family-residential-center-no-haven-its-internment-camp>. Takei compares the residential trailers to the barracks where Japanese families were held and notes that the South Texas Family Residential Center housing-unit trailers do not have showers or restrooms inside them. *Id.*

56. *Flores v. Johnson*, No. 2:85-cv-04544-DMG-AGR, slip. op. at 24–25 (C.D. Cal. July 24, 2015), available at <http://graphics8.nytimes.com/packages/pdf/us/FloresRuling.pdf>.

57. *See id.*

intake stage, during which the volunteers led intake *charlas*,⁵⁸ or talks. In these talks, the attorney and paralegal volunteers provided an overview of general information regarding detention, the asylum process, the detainees' rights during detention, the CARA Pro Bono Project, and the nature of the legal representation the CARA Pro Bono Project could provide. The volunteers then answered related questions from the detained women, collected and scanned their detention and deportation paperwork into the case management system, and assisted as they filled out retainer agreements, questionnaires regarding the conditions of their detention upon apprehension, authorizations of release, and legal representation documents.

For those women who had already had their intake *charlas*, the remaining volunteers—generally consisting of attorneys already relatively well-versed in asylum law—conducted credible fear interview preparation talks for the group of women scheduled for credible fear interviews the next day, or in some cases, later that day. The talks generally explained the elements of asylum claims, described what the women could expect during their credible fear interviews, and provided helpful techniques for the women to use as they related their fear of persecution to the asylum officers conducting the credible fear interviews. After the general talk, volunteers met one-on-one with the detained women for as much time as they could, listening to their stories of fear and persecution, and offering legal advice on how they could most effectively relay their stories in a way that fit the asylum framework. On that first day alone, the CARA volunteers prepared over sixty-five women for their credible fear interviews. This meant that, for the most part, the volunteers provided the credible fear speeches to groups of twelve or more detained women at a time, and then met individually with each woman for approximately twenty-five minutes or less.

Because the women and children in the Dilley detention facility are not free to leave the facilities until they are released, detained families are at the mercy of the medical services of the detention center to tend to the families' health. As the waves of women and children filled the visitor's trailer seeking legal assistance, volunteers saw countless numbers of crying, fevered babies and children

58. "*Charla*" is a Spanish word that roughly translates to "chat" or "talk" in English. See *Charlar*, SPANISH-OXFORD LIVING DICTIONARIES, <https://es.oxforddictionaries.com/translate/spanish-english/charlar> (last accessed Dec. 5, 2016).

coughing violently into washcloths or with watery and crusty eyes as a result of conjunctivitis. Many of the women seemed similarly ill. The detainees told varying accounts of the quality of healthcare they received at the detention facility, with some women reporting that the standard of care and the availability of necessary medicine were woefully inadequate.⁵⁹

Due to the high number of detainees in need of assistance that last week of December 2015, volunteers were not able to accompany the women to their credible fear interviews. Generally, the asylum officers issued credible fear interview decisions within a week after the interviews. A substantial majority of the women detained during the last week of December 2015 were able to establish a credible fear of persecution in their home countries, which is the preliminary step in the asylum process and is essential to release from detention.

Because DHS could no longer hold the women and children in detention until their final removal proceedings hearing, the Department offered those detainees who had “passed” their credible fear interviews two options for release: either they could leave free of cost on the condition that they wear an ankle monitor (an electronic device that tracks every movement) and check in regularly at their local Immigration and Customs Enforcement (“ICE”) office, or they could leave on a bond set by an immigration judge during a bond hearing. Each came with disadvantages and the need for legal counsel at each stage.

The first option, to be released with an ankle monitor, was particularly demeaning for the women as they would have to live, as if they committed a crime, being constantly monitored. Further, most of the women do not have the money or the resources to pay the large amount to be released—thus leaving them with only option of the ankle monitor. The ankle monitor contains a GPS device that tracks the released detainee’s every movement and location and must be recharged every six to eight hours. For the most part, the ankle monitors cannot be removed until after the released detainee’s removal proceedings conclude. Since there is a backlog of immigration cases proceeding through immigration courts nationwide, if the detainee selected this option, her every move would

59. CARA volunteers often become sick with what is informally referred to as the “Dilly cold” or “Dilley crud” upon leaving the facility. I certainly fell within the group of Dilley-sick volunteers upon my return home from the facility.

be monitored and she would be required to attend regularly scheduled meetings with an ICE officer at her nearest ICE office for an undetermined period of time.

The second option, to select a bond hearing, required legal assistance to help the detainee navigate through the proceeding and compile the required evidence in support of her request. This required the pro bono attorneys to seek remote volunteer bond attorneys. The remote bond attorneys were responsible for contacting family and friends of detainees, collecting the required supporting documentation and affidavits, and sending these materials to on-the-ground attorney volunteers prior to the bond hearings.

The CARA volunteers also represented those detainees who “failed” their credible fear interviews in a credible fear review hearing before an immigration judge. Thus, as soon as the CARA staff learned of a negative credible fear determination, volunteer attorneys mobilized to call the detained woman into the visitor’s trailer and prepare her for her credible fear review hearing with the judge. In between credible fear interview preparation sessions or at the end of the day, attorneys with a working familiarity of asylum law would sit with the detained woman—often for several hours—to develop a detailed declaration that relayed the persecution the client had suffered and that she feared she would suffer again upon her return to her country; explained the reason the client had been subject to persecution; and provided enough details to convince the immigration judge that the client had a colorable claim for asylum. Working from a bank of country conditions research, expert affidavits, and news articles, these declarations and any corroborating evidence available would be presented to the immigration judge via the teleconferenced credible fear review hearing.

After the first full day of work in the South Texas Family Residential Center, the CARA volunteers all congregated for a post-mortem meeting. We all shared our initial impressions of the work, offered suggestions for issues presented, and, in short, collectively processed the incredibly draining experience of listening to hours of tragic stories that too often involved brutal violence, murder, kidnapping, sexual assault, torture, and impunity. By the end of the first workday, we had worked over fifteen hours.

The rest of the workweek continued in a similar fashion, the looming Christmas holiday notwithstanding. The CARA volunteers continued to represent up to 140 women a day at various stages of

their cases. While some of the volunteers left just in time for the Christmas holiday (including me), the majority of volunteers worked through Christmas Eve and Christmas Day to assist the women and children that DHS continued to detain and schedule for credible fear interviews. Some of the volunteers even stayed a second week into 2016.

Welcoming Asylum Seekers in Germany

Over the last year, the German asylum system has been overtaxed in processing record numbers of asylum seekers. Germany is receiving high numbers of refugees from Eritrea, Somalia, and recently, Syria. The German response to the current forced migration flows presents very unique social issues given the country's role in the creation of refugee flows that facilitated the passage of the 1951 Refugee Convention,⁶⁰ creation of the UN High Commissioner for Refugees, and adoption of the subsequent 1967 Refugee Protocol removing temporal and geographic restrictions on who constitutes a refugee.⁶¹

Laws Regulating Reception of Asylum Seekers in Germany

The Asylum Procedure Act ("APA") governs the substance and procedure of Germany's implementation of the 1951 Refugee Convention and the 1967 Refugee Protocol.⁶² The German asylum system has many legal procedural provisions similar to that of the United States in implementing the Refugee Convention. There are, however, marked differences in the ways in which the system is constructed in terms of the treatment of asylum seekers, freedom of movement, and preliminary access to social services.

In Germany, the Federal Office for Migration and Refugees ("FOMR") makes the initial decision as to whether an individual qualifies for designation as a refugee.⁶³ The Minister of the Interior has oversight power over FOMR. The APA provides that an individual can make a request for asylum in writing, orally, or in an "otherwise expressed desire."⁶⁴ An individual can express her desire

60. Convention Relating to the Status of Refugees, *supra* note 24.

61. Protocol Relating to the Status of Refugees, *supra* note 24.

62. *See generally* Asylum Procedure Act, *supra* note 13, BGBl I at 2439, art. 2.

63. *See id.* § 5(1).

64. *Id.* § 13(1).

to be protected from removal or deportation to a country where she would face persecution at the German border. If an applicant is already in Germany, he can request asylum from the foreigner's authority or the police of the Länder (State), who will then refer the individual to a Reception Center.⁶⁵

After the request for asylum is made, the applicant is sent to one of several FOMR branch offices called Central Reception Facilities ("Reception Centers") for asylum applicants.⁶⁶ The sixteen German federal States, called Länder, work closely with FOMR to process asylum seekers,⁶⁷ however the Länder run the Reception Centers.⁶⁸ Accordingly, the APA provides:

The Länder shall be required to set up and maintain reception centers necessary to accommodate persons requesting asylum and to provide the necessary number of places in the reception centers for newly arrived persons requesting asylum per month allocated to them on the basis of their respective admission quotas, (2) The Federal Ministry of the Interior or the authority designated by it shall inform the Länder each month of the number of newly arrived persons requesting asylum, the prospective trend and the prospective need for accommodation.⁶⁹

The Reception Centers are complexes, usually old army facilities and sometimes old hospitals, that are repurposed to house asylum seekers. These centers are refurbished into apartments and dormitory rooms to house asylum seekers while they await the processing of their asylum applications.⁷⁰ Asylum seekers are permitted to enter and exit the facilities as they wish with minimal security.⁷¹ At the Reception Centers, preliminary biographical information, photographs, and

65. *See id.* § 19(1); *see also id.* § 19(2) (noting that once identified the authority and the police shall record biographic information on the asylum seeker).

66. *See id.* §§ 5(3), 13(3).

67. *See* Jan Schneider, *The Organisation of Asylum and Migration Policies in Germany* 12–13 (Ger. Fed. Office for Migration & Refugees, Working Paper No. 25, 2012), http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/migration-policies/10a_germany_national_report_organisation_of_asylum_and_migration_policies_en.pdf; *see also* Asylum Procedure Act, *supra* note 13, BGBl I at 1361, § 5(4) (stating that FOMR and the Länder may make arrangements "to supply the necessary material and personnel resources" to run the branch offices).

68. Asylum Procedure Act, *supra* note 13, BGBl I at 1361, § 44.

69. *Id.*

70. Germany Visit Field Notes of Karla McKanders, Associate Professor of Law, University of Tennessee College of Law (Dec. 2015) [hereinafter McKanders Field Notes] (on file with author).

71. *Id.*

fingerprints are recorded.⁷² This process is formally called “registration.”⁷³ In addition, the Reception Centers contain housing for the asylum seekers while initial processing is taking place, and the International Red Cross is present to give medical care.

Under the APA, asylum applicants are “required to live for a period of up to six weeks, but no longer than three months, in the reception center responsible for receiving them” unless the FOMR has initial jurisdiction over the application.⁷⁴ Under certain circumstances, such as when the Reception Center cannot within six months decide the asylum application or the Administrative Court grants an appeal, the government will release the asylum applicant from the reception center and will place them within the “Länder.”⁷⁵ The 2015 Asylum Acceleration Act changed the maximum period in which an applicant could be required to stay at a reception center from three to six months.⁷⁶ The asylum applicant is required to stay in the assigned Land until a decision has been made regarding the application.⁷⁷

After registration at the Reception Center, the center gives the individual a date to appear to file a formal written asylum application.⁷⁸ The applicant can have a legal representative present.⁷⁹ Once the application is filed, FOMR “clarif[ies] the facts of the case and compile[s] the necessary evidence.”⁸⁰ FOMR is charged with informing applicants about the asylum procedures and their rights and obligations in regard to deadlines and failing to appear. FOMR has the statutory authority to grant an application for asylum based on the

72. Asylum Procedure Act, *supra* note 13, BGBL I at 1361, § 22(1).

73. *Id.* § 22(2).

74. *Id.* § 47(1); *see also id.* § 14(2) (providing that FOMR has initial jurisdiction where the asylum applicant: “1. holds a residence title with an overall validity of more than six months; 2. is under arrest or other official custody, in a hospital, a sanatorium or an asylum, or in a youth welfare institution; or 3. is not yet 16 years of age and his legal representative is not required to live in a reception centre”).

75. *Id.* § 50(1).

76. *See* Asylverfahrensbeschleunigungsgesetz [Act on the Acceleration of Asylum Procedures], Oct. 20, 2015, BGBL I, at 1722, art. 4 (Ger.) (though enacted in October 2015, most provisions of the act went into force in November 2015); *see also id.* art. 15.

77. Asylum Procedure Act, *supra* note 13, BGBL I, at 1361, § 50.

78. *Id.* § 23(1).

79. *See* GER. FED. OFFICE FOR MIGRATION & REFUGEES, THE GERMAN ASYLUM PROC. 4–7 (2014), https://www.bamf.de/SharedDocs/Anlagen/EN/Publikationen/Flyer/ablauf-asylverfahren.pdf?__blob=publicationFile.

80. Asylum Procedure Act, *supra* note 13, BGBL I, at 1361, § 24(1).

application alone or can request that the applicant come in for an interview.⁸¹ In the interview, the applicant:

shall present the facts justifying his fear of political persecution or the risk of serious harm he faces and provide the necessary details. The necessary details shall include information concerning residences, travel routes, time spent in other countries and whether a procedure aimed at obtaining recognition as a foreign refugee or as a beneficiary of international protection . . . has already been initiated or completed⁸²

The interviews are private but can be attended by UNHCR representatives or representatives of FOMR.⁸³ After receiving evidence, FOMR will issue a written decision as to whether an applicant qualifies for refugee status.⁸⁴

When an asylum application is denied, the applicant has one week to leave Germany,⁸⁵ or in the alternative, within one week of the decision, the applicant can appeal the denial under the Administrative Court Procedure.⁸⁶ The Administrative Court then decides to grant or deny the appeal, which if granted makes the warning ineffective.⁸⁷ A grant of the appeal extends the deadline for removal from Germany for thirty days.⁸⁸

Three working days after filing an asylum application, the applicant is given a certificate of permission to reside.⁸⁹ In Germany, this right to stay is called *Aufenthaltsgestattung*, which gives the asylum seeker various rights while her application is pending.⁹⁰ An asylum applicant can move freely within the Länder and can request permission to leave the assigned Länder.⁹¹

Germany's implementation of the Refugee Convention is also impacted by its status as a member of the European Union.⁹² As an

81. *Id.*

82. *Id.* § 25(1).

83. *Id.* § 25(6).

84. *Id.* § 24(3); *see id.* § 36.

85. *Id.* § 36(1).

86. *Id.* § 36(3).

87. *Id.* § 37(1).

88. *Id.* § 37(2).

89. *Id.* § 63(1).

90. *See id.* § 56.

91. *See generally id.* §§ 56-57.

92. *See* Regulation 604/2013 of the European Parliament and of the Council Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in one of the Member States by a Third-

EU member, Germany is required to adhere to the Schengen Agreement and the Dublin Regulation.⁹³ The Schengen Agreement is a treaty that created the area in Europe in which there are not internal border checks that facilitates freedom of movement between member countries.⁹⁴ The Dublin Regulation provides that if an individual enters from a safe third country, a country where she had the ability to apply for asylum, or if the individual poses a threat to the general public, border agents can refuse the individual entry.⁹⁵ The Dublin Regulation also establishes a hierarchy of criteria used to identify the specific Member State responsible for the examination of an asylum claim in Europe.⁹⁶ The Dublin Regulation further:

provides a system wherein a[n] asylum seeker may select where to travel predominantly on the basis of family links followed by responsibility assigned on the basis of the state through which the asylum seeker first entered, or the state responsible for their entry into the territory of the EU member states[.]⁹⁷

In addition, EU members must comply with the Directive on the Reception of Asylum Seekers, revised in 2013,⁹⁸ which contains elaborate rules on the detention of asylum seekers. Specifically,

Country National or a Stateless Person (recast), 2013 O.J. L 180/31, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF> [hereinafter Dublin Regulation]; see also ECRE, THE ROAD OUT OF DUBLIN: REFORM OF THE DUBLIN REGULATION, EUROPEAN COUNSEL ON REFUGEES AND EXILES (2016), <http://www.ecre.org/wp-content/uploads/2016/10/Policy-Note-02.pdf> (last accessed Dec. 5, 2016) (“It aims to regulate the Member State responsible for processing an application for international protection so that refugees are not left ‘in orbit’ with no Member State accepting responsibility for their application. It should also ensure that only one Member State examines each application to discourage multiple applications. It uses a hierarchy of criteria to guide Member States as to who is responsible for an asylum application: from family considerations, to recent possession of visa or residence permit in a Member State, to whether the applicant has entered the EU irregularly or regularly.”).

93. See Convention Implementing the Schengen Agreement, 2000 O.J. L 239/19 (implementing the Schengen Agreement, which abolished the EU’s internal borders and enabled passport-free movement across most of the bloc); see also Dublin Regulation, *supra* note 92.

92. See Dublin Regulation, *supra* note 92.

95. See Asylum Procedure Act, *supra* note 13, BGBL I, at 1361, § 18.

96. See Dublin Regulation, *supra* note 92; see also MICHELE NICOLETTI, COUNCIL OF EUR., AFTER DUBLIN: THE URGENT NEED FOR A REAL EUROPEAN ASYLUM SYSTEM 7–9 (2014).

97. Karla McKanders, *1951 Refugee Convention: Moral Aspiration or Legal Obligation*, JURIST: ACAD. COMMENT. (Sept. 28, 2015), <http://www.jurist.org/forum/2015/09/karla-mckanders-refugee-convention.php>.

98. Directive 2013/33 of the European Parliament and of the Council Laying Down Standards for the Reception of Applicants for International Protection, 2013 O.J. L 180/96.

Article 8(1) prohibits detention “for the sole reason” of applying for international protection. Detention is permissible only “when it proves necessary and on the basis of an individual assessment of each case,” and if less coercive alternatives cannot be applied.⁹⁹ Member States are required to adopt national legislation laying down rules concerning alternatives to detention.¹⁰⁰

In light of the mass influx of migrants and refugees into the European Union, the systems for processing refugees were being overtaxed and emergency measures were adopted. The European Union created two programs, entitled hotspots and relocation measures, to address the unprecedented increase of migrants and refugees.¹⁰¹ Migration scholar Francesco Maiani, Visiting Fellow with the Migration Policy Centre, posits that, “[t]he spontaneous arrival of approximately one million persons in 2015, 90% from the top refugee-producing countries of the world, has cruelly exposed their paradoxes and set in motion centrifugal forces that appear to threaten their very existence.”¹⁰² For example, the “hotspot” programs were an initiative to “assist” frontline States “to swiftly identify, register and fingerprint incoming migrants”—or more enticingly as “comprehensive and targeted support by the EU Agencies to frontline Member States.” As per the official definition of the Commission, a “hotspot” is a section of external borders characterized by “specific and disproportionate migratory pressure, consisting of mixed migratory flows.”¹⁰³

Further, temporary relocation schemes were a departure from the Dublin Regulation.¹⁰⁴ The Dublin Regulation’s temporary relocation scheme provided that “applicants may only be relocated after

97. *Id.*

100. Vladislava Stoyanova, *Recasting Detention of Asylum Seekers in Bulgaria: The Good and Bad about EU Asylum Law*, REFLAW.COM (May 14, 2016), <http://www.reflaw.org/recasting-detention-of-asylum-seekers-in-bulgaria-the-good-and-bad-about-eu-asylum-law>.

101. Francesco Maiani, *Hotspots and Relocation Schemes: The Right Therapy for the Common European Asylum System?*, REFLAW.COM (May 14, 2016), <http://www.reflaw.org/hotspots-and-relocation-schemes-the-right-therapy-for-the-common-european-asylum-system>.

102. *Id.*

103. *Id.*

104. *See id.* (“Established by the two Decisions of 14 and 22 September 2015 as temporary emergency measures under Art. 78(3) TFEU, relocation schemes constitute a derogation from Dublin: until September 2017, the responsibility for a number of applicants (66,400 from Greece and 39,500 from Italy) is to be transferred to other Member States.”).

applying for protection [in frontline States], after being properly fingerprinted, and after the responsibility of Italy and Greece under Dublin has been established.”¹⁰⁵

During the surge of migrants into the European Union in August 2015, FOMR suspended compliance with the Dublin Regulation for Syrian refugees, which required the German government to return asylum seekers to the EU State where they first entered.¹⁰⁶ At the time, Germany was “the only EU State that [did] not send Syrian refugees back to their first point of contact, such as Italy or Greece.”¹⁰⁷ Germany’s open refugee policies created tensions within the European Union in that Germany’s willingness to accept millions of Syrian refugees differs from many EU Member States, but impacts all States within the union. To address issues of compliance with the Dublin Regulation in light of the mass influx of refugees, Germany enacted a new law in August 2015 that allows an asylum seeker to be detained when the individual enters from another EU country in violation of the Dublin Regulation.¹⁰⁸

In November 2015, the number of asylum applications in Germany increased by 135.7 percent, prompting the legislature to pass the Asylum Acceleration Act.¹⁰⁹ With the increase in asylum applications, the German government estimated “that there will be around 800,000 applicants for asylum, with an average processing time of five months, and around 400,000 denied applications.”¹¹⁰

105. *Id.* (citations omitted).

106. Andrea Dernbach, *Germany Suspends Dublin Agreement for Syrian Refugees*, EURACTIV.COM (Samuel Morgan trans., Aug. 26, 2015), <http://www.euractiv.com/section/global-europe/news/germany-suspends-dublin-agreement-for-syrian-refugees>.

107. *Id.*

108. *See* Pro Asyl, *Bundestag Passed the New Asylum Law. What Will Change?*, REFUGEE MOVEMENT (July 7, 2015), <http://oplatz.net/in-english-latest-changes-in-the-asylum-law> (“[Under the new law] an arrest on Dublin grounds [is] possible ‘when a foreigner leaves a member state before the conclusion of the asylum application process or the application for international protection.’”); *see also id.* (“This acts against the Dublin III Regulation, where it is stated that one cannot be arrested because of the Dublin-procedure.”).

109. Jenny Gesley, *Germany: Parliament Adopts Legislative Package on Asylum and Refugees*, GLOBAL LEGAL MONITOR (Nov. 2, 2015), <http://www.loc.gov/law/foreign-news/article/germany-parliament-adopts-legislative-package-on-asylum-and-refugees>.

110. *Id.* (citing Gesetzentwurf der Fraktionen der CDU/CSU und SPD, Entwurf eines Asylverfahrensbeschleunigungsgesetzes [Draft Act on the Acceleration of the Asylum Procedure], Sept. 29, 2015, DEUTSCHER BUNDESTAG: DRUCKSACHEN [BT] 18/6185, at 57, (Ger.) <http://dip21.bundestag.de/dip21/btd/18/061/1806185.pdf>).

Exploratory Visit to Germany in the Midst of a Crisis

The following section details Karla McKanders' personal recounting of her visit to Germany to learn more about the processing of Syrian refugees. Accordingly, in October 2015, McKanders' colleague in the University of Tennessee Anthropology Department contacted me regarding an exploratory trip to Germany to learn more about how Germany was managing its humanitarian crisis with the influx of record numbers of refugees. Our host, the Felsberg Institute, recognized the historical challenges presented and wanted to collaborate with forced migration and refugee scholars to learn about and respond to the influx.

In December 2015, I traveled to Germany.¹¹¹ Over the course of the trip, we had the opportunity to speak with German administrative law judges handling asylum appeals from FOMR, learn from German civil servant volunteers who staff the Reception Centers, attend town hall meetings with German citizens interested in learning about the root causes of forced migration to Germany, and visit refugee camps and Reception Centers within the Länder. Through this visit, I gained both an understanding of how the asylum system operates in practice and a new perspective on the possibilities that exist for structuring the reception of asylum seekers.

The name "Reception Center" demonstrates a markedly different orientation to asylum seekers who enter Germany than that of the United States. The Welcome Centers and the places where asylum seekers reside while waiting for a decision on their asylum applications for refugee status are often referred to as "camps." We visited the Gießen Welcome Center and the Jägerkaserne camp. The Welcome Center I visited were old military housing facilities and old housing facilities for prisoners. The families are housed in apartments and rooms, depending on the facility.¹¹²

Germany adheres to a general rule that asylum seekers should not be detained.¹¹³ This rule is based on the idea that asylum seekers need protection, in contrast to protecting its citizens from asylum seekers through detention. This also stems from attempting to not re-

111. *US Delegation from University of Tennessee/Knoxville Visits Refugee Camps in Hessen*, FELSBERGER INST. (May, 15, 2016), <http://www.fibw.eu/en/current-issues/92-us-delegation-from-university-of-tennessee-knoxville-visits-refugee-camps-in-hessen>.

112. See McKanders Field Notes, *supra* note 70.

113. See generally Asylum Procedure Act, *supra* note 13.

traumatize asylum seekers who are often victims of persecution and torture in the country from which they are fleeing. In November 2015, however, the German government adopted a law that provided that an asylum seeker may be detained if he enters the country in violation of the Dublin Regulation.¹¹⁴

While in Germany, I visited Hessen's Central Reception Center for Asylum Seekers in Gießen in the Länder Hessen.¹¹⁵ Gießen has a warehouse reception area staffed by volunteers who leave their jobs to work for the government alongside the International Red Cross.¹¹⁶ During summer 2015, Gießen received around 5,500 asylum seekers. In November 2015, they received around 1,000 asylum seekers per day. The volunteer civil servants are typically given one day's notice prior to the arrival of a group of asylum seekers. There were approximately 300 staff members within the facility at the time of our visit.¹¹⁷ The civil servants were civil engineers, public relations professionals, lawyers, and technology transfer professionals who expressed that it was their duty to contribute and help their country welcome asylum seekers.¹¹⁸

At Gießen, the volunteers register the asylum seekers by taking their biographical information. They speak a multiplicity of languages and come from a wide variety of backgrounds.¹¹⁹ All of the civil servant volunteers dress in plain clothes—in contrast to being in police like uniforms like a prison. Many of the civil servant volunteers articulated that the decision of whether refugees should enter is a moral decision, while as civil servants they have the duty to implement the political decisions of the country's leaders.¹²⁰ If they disagree with their leaders, then society must act against the political leaders, not the vulnerable refugees.

The camps are relatively open access facilities. There are no jails, bars, metal detectors, handcuffs, or uniforms for the asylum seekers and volunteer staff members at Gießen.¹²¹ A contracted security company was hired to ensure safety within the facility and

114. Gesley, *supra* note 109.

115. See McKanders Field Notes, *supra* note 70.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

retired German military and police officers also provided security.¹²² No identification was needed for us to enter the facility.

Asylum seekers are permitted to move freely in and out of the facility as long as they remain within the Länder to which they are assigned. While in the registration area, we were approached by two children wandering freely through the facility without their parents who wanted to play with the toys in the reception area. The staff searched for an Arabic speaker, who happened to be in our group, to advise the children that they should be with their parents.¹²³ To facilitate freedom of movement after registering, asylum seekers are given an identification card that indicates the Länder to which they are assigned.¹²⁴ When they are given this card, there is no formal monitoring of asylum seekers' movements. They can, however, obtain permission to leave their Länder for specific statutory reasons.

Jägerkaserne is another camp in Kassel we had the opportunity to visit. This camp hosts both refugees and migrants. The city of Kassel has about 195,000 residents and hosts around 1,800 refugees. At the Jägerkaserne camp, there is a mixed population of Syrian, Iranian, Iraqi, Eritrean, and Somalian migrants and refugees. To facilitate the freedom of movement of the camp's residents throughout the city, the camp collects and refurbishes old bicycles. The camp's residents have started a bike repair shop so that individuals can work, while at the same time providing an essential service for the asylum seekers by facilitating freedom of movement around the city of Kassel.

Not all asylum seekers follow the rule that they must permanently stay in the Länder to which they are assigned. On the train ride to the Gießen facility, it was obvious that there were some immigrants who were drifting between Länder without paying for their ticket. Ticket collectors will ask for payment and sometimes identification, but most of the time will simply ask the individual to pay or else exit at the next stop.¹²⁵

Once the asylum seekers are registered, and sometimes moved to camps within the German states, the German government immediately begins the process of integration. Prior to the Asylum Acceleration Act of 2015, each asylum applicant was given

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

approximately 140 euros per month.¹²⁶ In response to the influx of migrants, the legislature changed this law to replace the cash with in-kind benefits to keep migrants from coming to Germany based on a false attraction to the cash benefits.¹²⁷ One of the main concerns with the Asylum Acceleration Act from the advocacy organization ProAsyl is that:

[N]on-cash benefits will inevitably lead to more bureaucracy and therefore more cost to the state, and will further serve to hinder the integration of refugees. Refugees will have to go the center administration every time they need money for anything—a new mobile SIM card, a public transport ticket.¹²⁸

Asylum seekers from Iraq, Syria, and Somalia are given free German language courses prior to the adjudication of their asylum applications.¹²⁹ This is a new policy in connection with a German law passed within the November 2015 Asylum Acceleration Act that requires certain migrant groups to take a minimum of 660 hours of German language courses at approximately twenty hours a week.¹³⁰ Many migrants enroll in the course because they want to learn German so they can work.¹³¹

The “Welcome to Germany” guidebook for immigrants places an emphasis on migrants learning German, stating:

If you wish to live in Germany, you should try to learn German as quickly as possible. It is important to do so to meet new people, to make yourself understood in everyday life, and to find work. If you learn German in a language course then you know

126. Gesley, *supra* note 109.

127. Ben Knight, *New German Asylum Law ‘Will Slow Down Process,’* DEUTSCHE WELLE (Oct. 15, 2015), <http://www.dw.com/en/new-german-asylum-law-will-slow-down-process/a-18785551>.

128. *Id.*

129. See McKanders Field Notes, *supra* note 70.

130. See Knight, *supra* note 127 (“One positive aspect of the new law is the expansion of integration courses (German language and ‘living in Germany’ courses) to take in not just recognized asylum seekers, but all refugees (as long as they’re not from ‘safe countries of origin’). ‘That has been a demand for a long time—of course it’s good, but it doesn’t make up for all the other tighter restrictions in the law,’ said Seidler. ‘That’s what all the refugees want—they all say they want to learn German so they can work. The main reason why refugees come to Germany is because of the job market, because they see that unemployment is low, so they come because they want a job.’”).

131. *See id.*

that you are learning to speak properly right from the beginning.¹³²

Upon completion of the government-subsidized language course and passing the requisite test, an “Integration Course Certificate” (*Zertifikat Integrationskurs*) is awarded.¹³³ The incentive for taking the course and obtaining a certificate is that a migrant is permitted to apply for citizenship within seven, instead of eight, years after obtaining lawful status.¹³⁴ The socialization of asylum seekers also continues with the German law that provides that children under eighteen years old are required to attend school.¹³⁵

Social Perceptions of Asylum Seekers

United States: Asylum Seekers from the Northern Triangle

The United States’ treatment of the recent wave of asylum seekers along its southern border is a complex issue affected by a number of factors. Apprehensions at the southern border of the United States increased by roughly 60,000 in 2014, totaling approximately 500,000 migrants and leading the United States to launch a response characterized by its strong emphasis on deterrence.¹³⁶ Proposed factors related to the US response to asylum seekers apprehended along the US–Mexico border include the perception by Americans that migrants from Central America are economic migrants rather than refugees, the increasing anti-refugee sentiments in the United States, and the limited economic recovery of the United States since the Great Recession.

The United States largely perceives Central American immigrants as economic migrants and hesitates to treat them as refugees. Even while acknowledging the violent and tumultuous circumstances in the Northern Triangle, the United States nonetheless has sent mixed signals regarding its views on the refugee status of Central Americans. While the UN High Commissioner for Refugees

132. GER. FED. OFFICE FOR MIGRATION & REFUGEES, WELCOME TO GERMANY: INFORMATION FOR IMMIGRANTS (5th ed. 2014), available at <http://www.bamf.de/EN/Willkommen/willkommen-node.html>.

133. *Id.* at 14.

134. *Id.*

133. *Children’s Rights: Germany*, LIBRARY CONG. (July 2, 2015), <https://www.loc.gov/law/help/child-rights/germany.php>.

136. See *supra* Part II.

has labeled Northern Triangle nationals escaping the violence and terrorization of criminal armed groups as “refugees,” the Obama Administration consistently has referred to the migrants’ entries into the United States as illegal migration,¹³⁷ despite the fact that the seeking of asylum is not an illegal act. Since November 2014, DHS has focused its removal and enforcement efforts on “new immigration violators,” defined as individuals who cannot establish their presence in the United States before January 1, 2014 without any reference to possible claims to relief, including asylum.¹³⁸

Certain programs implemented by the United States since the 2014 surge seem to suggest that some of the Central American migrants should be classified as refugees, although the United States has kept these programs limited. For example, in an effort to curb the migration of unaccompanied minor children from the Northern Triangle, the United States launched the Central American Minor Refugee/Parole program (“CAM”) in December 2014. The CAM program provided for in-country processing of certain Central American children’s asylum claims.¹³⁹ The program was never intended to process or admit a large amount of children, however; the US government, from the outset of the project, did not anticipate admitting many children.¹⁴⁰ The existence of the CAM program suggests that certain children could meet the definition of a “refugee” under US law, but even so, CAM in-country refugee processing is only available to children with a parent in the United States under lawful status or under protection from deportation, a factor not required under current US asylum law.¹⁴¹ By requiring that the child have a parent lawfully present in the United States, the US government essentially filtered a majority of the children from relief.

137. See, e.g., Jeh C. Johnson, Secretary, *Know the Facts About the Dangers of Illegal Migration*, U.S. DEP’T HOMELAND SEC. (Aug. 25, 2015, 5:46 PM), <https://www.dhs.gov/blog/2015/08/25/know-facts-about-dangers-illegal-migration>; Press Release, U.S. Dep’t of Homeland Sec., Statement by Jeh C. Johnson on Southwest Border Security (Jan. 4, 2016), <https://www.dhs.gov/news/2016/01/04/statement-secretary-jeh-c-johnson-southwest-border-security>.

138. Memorandum from Jeh C. Johnson, *supra* note 40.

139. *Media Note: Launch of In-Country Refugee/Parole Program for Children in El Salvador, Guatemala, and Honduras with Parents Lawfully Present in the United States*, U.S. DEP’T HOMELAND SEC. (Dec. 3, 2014), <http://www.state.gov/r/pa/prs/ps/2014/12/234655.htm>.

140. See *Launch of In-Country Refugee/Parole Program for Children in El Salvador, Guatemala, and Honduras with Parents Lawfully Present in the United States*, U.S. DEP’T HOMELAND SEC. (Nov. 14, 2014) (on file with author).

141. See *id.*

Eleven months after its inception, the United States had yet to admit a single child under the CAM program, despite receiving close to 6,000 applications from Guatemala, Honduras, and El Salvador.¹⁴² Eventually, in late November 2015, the United States admitted its first Central American children under the CAM program.¹⁴³ In January 2016, the United States announced an expansion of its Refugee Admission Program, in coordination with the UN High Commissioner on Refugees, to identify Northern Triangle Central Americans eligible for refugee status.¹⁴⁴

The American public, and the current political climate, have seen an increase in xenophobic and anti-refugee sentiments. US President Donald J. Trump famously made headlines when he announced his candidacy by declaring, in part, that the United States was the “dumping ground” for the world’s problems, and that Mexicans and other Latin American countries were sending rapists, drug-addicts, and other undesirables.¹⁴⁵ As extreme as his statements may sound, however, Trump’s popularity suggests that some voting citizens of the United States harbor animosity generally towards immigrants.¹⁴⁶

The growing anti-immigrant animus of some Americans can be seen in the shifting US attitudes regarding the admission of Syrian refugees into the United States. In the summer of 2015, the US consensus seemed to be in favor of the admission of Syrian refugees,¹⁴⁷ particularly after the photograph of Aylan Kurdi, a three-

142. Dan Turkel, *Not a Single Child Has Entered the U.S. Through Obama’s Program to Help Central American Children Flee Violence*, BUS. INSIDER (Nov. 5, 2015, 11:17 PM), <http://www.businessinsider.com/no-children-have-successfully-used-the-us-program-to-help-central-american-children-2015-11> (noting that while over 5,400 children had applied for admission into the United States via the CAM program, only 90 children had been interviewed by the US government).

143. *Central American Migrant Program Reunites First Teens with Families in U.S.*, GUARDIAN (Nov. 17, 2015, 3:53 PM), <http://www.theguardian.com/us-news/2015/nov/17/central-american-minors-program-children-immigration>.

144. *Fact Sheet: The United States and Central America: Honoring Our Commitments*, WHITE HOUSE OFF. PRESS SEC’Y (Jan. 14, 2016), <https://www.whitehouse.gov/the-press-office/2016/01/15/fact-sheet-united-states-and-central-america-honoring-our-commitments>.

145. See, e.g., *Here’s Donald Trump’s Presidential Announcement Speech*, TIME (June 16, 2015), <http://time.com/3923128/donald-trump-announcement-speech>.

146. See Michael Tesler, *How Anti-Immigrant Attitudes Are Fueling Support for Donald Trump*, WASH. POST (Nov. 24, 2015), <https://www.washingtonpost.com/news/monkey-cage/wp/2015/11/24/how-anti-immigrant-attitudes-are-fueling-support-for-donald-trump>.

147. See, e.g., Tanya Somanader, *What You Need to Know About the Syrian Refugee Crisis and What the U.S. is Doing to Help*, WHITE HOUSE BLOG (Sept. 15, 2015, 6:08 PM),

year-old Syrian migrant who drowned attempting to reach Greece, rocketed through social media.¹⁴⁸ These sentiments, however,¹⁴⁹ changed rapidly after the attacks in Paris, France, on November 13, 2016.¹⁵⁰

After the Paris attacks, public opinion in the United States shifted. Every Republican presidential candidate campaigning after the Paris attacks opposed accepting Syrian refugees to some extent, with candidates Ted Cruz and Jeb Bush supporting exceptions to the broad policy for Christian Syrians.¹⁵¹ Following Donald Trump's call to ban all Muslims from the United States, the Obama White House proclaimed that Trump's proposed Muslim travel ban disqualified him from being President, as such a ban would go against the presidential oath "to preserve, protect and defend the Constitution of the United States."¹⁵² Less than a week after the Paris attacks, thirty-one governors proclaimed that Syrian refugees were not welcome in their states.¹⁵³ As of the writing of this article, two states—Alabama

<https://www.whitehouse.gov/blog/2015/09/15/what-you-need-know-about-syrian-refugee-crisis-and-what-us-doing-help>; Holly Yan, *Refugee Crisis: Pressure Builds for U.S. to Welcome More Syrians*, CNN (Sept. 9, 2015, 10:16 AM), <http://www.cnn.com/2015/09/09/politics/us-syrian-refugees-pressure>.

148. Anne Barnard & Karam Shoumali, *Image of Drowned Syrian, Aylan Kurdi, 3, Brings Migrant Crises into Focus*, N.Y. TIMES (Sept. 3, 2015), <http://www.nytimes.com/2015/09/04/world/europe/syria-boy-drowning.html>; Joe Parkinson & David George-Cosh, *Image of Drowned Syrian Boy Echoes Around World*, WALL ST. J. (Sept. 3, 2015, 7:28 PM), <http://www.wsj.com/articles/image-of-syrian-boy-washed-up-on-beach-hits-hard-1441282847>.

147. *After Paris Attacks, Vilifying Refugees*, N.Y. TIMES (Nov. 17, 2015), <http://www.nytimes.com/2015/11/17/opinion/after-paris-attacks-vilifying-refugees.html>.

150. The November 13, 2016, attacks on Paris killed approximately 129 people and left 352 injured. The Islamic State of Iraq and the Levant ("ISIS" or "ISIL") accepted responsibility for carrying out the attacks. Mariano Castillo et al., *Paris Suicide Bomber Identified; ISIS Claims Responsibility for 129 Dead*, CNN (Nov. 16, 2015), <http://www.cnn.com/2015/11/14/world/paris-attacks>. ISIS is also commonly referred to as the Islamic State ("IS"), or Daesh. Faisal Irshaid, *ISIS, ISIL, IS, or Daesh? One Group, Many Names*, BBC NEWS (Dec. 2, 2015), <http://www.bbc.com/news/world-middle-east-27994277>.

151. Thomas Kaplan & Wilson Andrews, *Presidential Candidates on Allowing Syrian Refugees in the United States*, N.Y. TIMES (Nov. 17, 2015), <http://www.nytimes.com/interactive/2015/11/17/us/politics/presidential-candidates-on-syrian-refugees.html>.

152. Press Briefing by Press Secretary Josh Earnest, White House Office of the Press Secretary (Dec. 8, 2015), available at <https://www.whitehouse.gov/the-press-office/2015/12/08/press-briefing-press-secretary-josh-earnest-12815>.

153. Ashley Fantz & Ben Brumfield, *More than Half the Nation's Governors Say Syrian Refugees Not Welcome*, CNN (Nov. 19, 2015, 3:20 PM), <http://www.cnn.com/2015/11/16/world/paris-attacks-syrian-refugees-backlash>. The states opposing the resettlement of Syrian refugees in their states were Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina,

and Texas—have sued the federal government over the resettlement of refugees in their respective states,¹⁵⁴ with Tennessee threatening similar action.¹⁵⁵ In June 2016, the district court dismissed Texas' lawsuit finding that the state has no authority over resettlements handled by the federal government, which has authority over immigration policy,¹⁵⁶ while Tennessee continued its threats to sue the federal government to prevent the resettlement of refugees within the state on November 2016.¹⁵⁷

The growing anti-refugee sentiment continued with President Trump's Executive Order 13769 Protecting the Nation From Foreign Terrorist Entry Into the United States.¹⁵⁸ The lawsuits challenge the parts of the Executive Order that halt the processing immigrant and nonimmigrant visas from specific countries and the refugee resettlement program.¹⁵⁹ Specifically, section 3(c) of the Executive Order places a ninety-day ban on the immigrant and nonimmigrant entry of aliens from 212(f) designated countries (INA, 8 U.S.C. 1182(f)), which include Iraq, Iran, Libya, Somalia, Sudan, Syria and

North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Wisconsin, and Wyoming.
Id.

154. See Camila Domonoske, *Texas, Federal Government Face Off in Court Over Syrian Refugees*, NAT'L PUB. RADIO (Dec. 4, 2015, 1:03 PM), <http://www.npr.org/sections/thetwo-way/2015/12/04/458466055/texas-federal-government-face-off-in-courts-over-syrian-refugees>; *Governor Bentley Files Suit Charging Federal Government as Non-Compliant with Refugee Act of 1980*, OFF. ALA. GOVERNOR (Jan. 7, 2016), <http://governor.alabama.gov/newsroom/2016/01/governor-bentley-files-suit-charging-federal-government-non-compliant-refugee-act-1980>.

155. See, e.g., *Resolution Ordering Refugee Lawsuit Advances in Tennessee House*, TIMES FREE PRESS (Mar. 16, 2016), <http://www.timesfreepress.com/news/politics/state/story/2016/mar/16/resolution-ordering-refugee-lawsuit-advances-tennessee-house/355645>; see also Rebecca Hersher, *Court Dismisses Texas Lawsuit To Block Syrian Refugees*, NAT'L PUB. RADIO (June 16, 2016), <http://www.npr.org/sections/thetwo-way/2016/06/16/482342990/court-dismisses-texas-lawsuit-to-block-syrian-refugees>.

156. See *Texas Health & Human Servs. Comm'n v. United States*, No. 3:15-CV-3851-N, 2016 WL 6677886 (N.D. Tex. June 15, 2016) (holding specifically that Texas did not have a cause of action under the Refugee Act and the Administrative Procedures Act); Hersher, *supra* note 155.

157. Tom Humphrey, *Tennessee Legislators to Pursue Lawsuit Blocking Refugee Resettlement*, KNOXVILLE NEWS SENTINEL (Nov. 21, 2016), <http://www.knoxnews.com/story/news/politics/2016/11/21/tenn-legislators-pursue-suit-blocking-refugee-resettlement/94132962/>.

158. Executive Order: Protecting the Nation from Foreign Terrorist Entry into the United States, 82 Fed. Reg. 20 (Jan. 27, 2017).

159. Civil Rights Litigation Clearinghouse, *Civil Rights Challenges to President Trump's Executive Orders on Immigration and Refugees*, U. MICH. L. SCH. (Jan. 28, 2017), <https://www.clearinghouse.net/featuredCase.php?id=40>.

Yemen.¹⁶⁰ In addition, the Executive Order suspends the refugee resettlement program for all countries for 120 days (section 5(a)), and indefinitely for Syria (section 5(c)).¹⁶¹ This order halts and bars entry of more than 218 million nations from the seven countries from entering the United States.¹⁶² Numerous lawsuits have been filed challenging the President's authority and alleging that the halt on processing refugees is a step towards his campaign promise of a Muslim ban.¹⁶³

Asylum Seekers in Germany

There are many factors that underlie Germany's response and willingness to admit record numbers of asylum seekers—an estimated 476,000¹⁶⁴ in 2015, in comparison to the 10,000 Syrian refugees the United States has committed to accepting.¹⁶⁵ Some proposed factors include the leadership of Angela Merkel, Germany's past history of creating refugee flows, and its aging population.

The leadership of Chancellor Angela Merkel has had a large impact on the world and the manner in which German citizens welcome asylum seekers. Chancellor Angela Merkel, coined the Chancellor of the Free World, has taken the lead in the worldwide charge to protect refugees fleeing persecution.¹⁶⁶ She has repeatedly criticized other EU Member States for closing their borders, thus placing a disproportionate burden on a small number of EU States to host refugees and asylum seekers.¹⁶⁷ She has also pushed for the

160. Executive Order: Protecting the Nation from Foreign Terrorist Entry into the United States, 82 Fed. Reg. 20.

161. *Id.*

162. Jeremy Diamond & Steve Almasy, *Trump's Immigration Ban Sends Shockwaves*, CNN (Jan. 30, 2017), <http://www.cnn.com/2017/01/28/politics/donald-trump-executive-order-immigration-reaction/> (citing World Bank statistics on the populations of the seven countries).

163. *Washington v. Trump*, No. 2:17-cv-00141-JLR, 2017 WL 443297 (W.D.Wash. Jan. 30, 2017).

164. Phillip Oltermann, *Germany Unveils Integration Law for Refugees*, *GUARDIAN* (Apr. 14, 2016), <https://www.theguardian.com/world/2016/apr/14/germany-unveils-integration-law-for-refugees-migrants>.

165. Allie Malloy, Elise Labott & Laura Koran, *US Welcomes its 10,000 Syrian Refugees Ahead of Schedule*, CNN (Aug. 29, 2016), <http://www.cnn.com/2016/08/28/politics/syrian-refugees-resettling-us-obama-administration/>.

166. Karl Vick, *Angela Merkel TIME Person of the Year*, *TIME* (2015), <http://time.com/time-person-of-the-year-2015-angela-merkel/>.

167. Simon Lewis, *German Chancellor Angela Merkel Condemns Closure of the Balkan Route to Refugees*, *TIME* (Mar. 10, 2016), <http://time.com/4255038/germany-merkel-refugees-balkan-route/>.

twenty-eight EU Member States to reach an agreement to find a solution to the influx of forced migrants.¹⁶⁸ Domestically, “Chancellor Angela Merkel has resisted domestic pressure to introduce a formal cap on the numbers, repeating her ‘[w]e can do this’ mantra to Germans.”¹⁶⁹ Underlying Merkel’s policies is her continual stance that welcoming refugees and being open to Muslim integration underlies Christian values, in line with her Christian Democratic Union party.¹⁷⁰ Her push is interesting in light of the fact that Germany is increasingly becoming a secularized country.¹⁷¹

Germany’s history plays a large role in its reception of asylum seekers and its new policies. Many Germans view their country as having a special relationship with refugees and individuals forced to flee their countries because of their connection to the first and second World Wars. In December 1944, Winston Churchill announced to the House of Commons what became known as the largest forced migration in the history of the world.¹⁷² During this time period:

Millions of civilians living in the eastern German provinces that were to be turned over to Poland after the war were to be driven out and deposited among the ruins of the former Reich, to fend for themselves as best they could.¹⁷³

By mid-1945, approximately twelve to fourteen million Germans, “the overwhelming majority of them women, children and the elderly,” had been forcibly displaced.¹⁷⁴

As we traveled to the different refugee camps, there was a sense of responsibility that guided our conversations with German

168. *See id.*

169. *Germany Weighs Deportations After Sexual Assaults*, AL JAZEERA (Jan. 9, 2016), <http://www.aljazeera.com/news/2016/01/germany-considers-deportations-sexual-assaults-160108051236452.html> [hereinafter *Germany Weighs Deportations*].

170. *See* Tom Heneghan, *Merkel Urges Germans: Stand Up for Christian Values*, REUTERS (Nov. 16, 2010, 12:45 AM), <http://in.reuters.com/article/us-germany-cdu-christianity-idINTRE6AE3K520101115> (“Chancellor Angela Merkel urged Germans debating Muslim integration to stand up more for Christian values, saying Monday the country suffered not from ‘too much Islam’ but ‘too little Christianity.’”).

171. *See* Guthrie Graves-Fitzsimmons, *American Christians Could Take a Lesson From Angela Merkel*, RELIGION NEWS SERV. (Dec. 10, 2015), <http://religionnews.com/2015/12/10/the-faith-of-angela-merkel-gop-republican-candidates-evangelical-conservative>.

172. R.M. Douglas, *The Expulsion of the Germans: The Largest Forced Migration in History*, HUFFINGTON POST BLOG (June 25, 2012, 4:07 PM), http://www.huffingtonpost.com/rm-douglas/expulsion-germans-forced-migration_b_1625437.html.

173. *Id.*

174. *Id.*

volunteers involved in welcoming refugees. Many people with whom we met in the camps and reception centers repeatedly stated words like, “this is our duty” or “it is our responsibility.” We did not probe further, but one wonders whether this sense of duty and responsibility towards refugees stems from the country’s sense that history cannot repeat itself and that Germany will not be a part of excluding vulnerable migrants fleeing persecution.

*The aging population and need for a young work force also play a role in the reception of asylum seekers.*¹⁷⁵ The other side of the asserted perspective is the positive impact that refugees can have on the German economy and in replacing the aging German workforce. In admitting approximately one million refugees last year, the German government spent approximately fourteen billion euros (US\$15 billion), or one percent of its gross domestic product.¹⁷⁶ In the opinion of Herbert Brucker, an economist with the Institute of Employment Research in Nuremberg, he states that “while refugees get much of the government money for food and clothing, German workers get a good bit of it, too Fifty-five percent will be spent for social work, for construction, for housing, for bureaucracy.”¹⁷⁷ In 2015, one in ten refugees in Germany were able to obtain their work permit, which means that the refugees who work will be paying taxes back to the German government.¹⁷⁸

This welcoming attitude is tempered in areas of Germany with slow economic growth and high unemployment. In these areas, many Germans are resistant to accepting migrants and refugees, viewing them as competition.¹⁷⁹ Still, “[a] sizeable majority of Germans today think of their country as a land of immigrants, who are vital to

175. Susanna Capelouto, *In Germany, Aging Companies Look to Refugees*, NAT’L PUB. RADIO: ALL THINGS CONSIDERED (Mar. 1, 2016, 4:20 PM), <http://www.npr.org/2016/03/01/468751729/in-germany-aging-companies-look-to-refugees>.

176. *Id.*

177. *Id.*

178. *Id.*

179. Soraya Sarhaddi Nelson, *Germany’s Warm Welcome to Migrants Marks Shift in Attitudes*, NAT’L PUB. RADIO: ALL THINGS CONSIDERED (Sept. 21, 2015, 4:35 PM), <http://www.npr.org/2015/09/21/442308384/germanys-warm-welcome-to-migrants-marks-shift-in-attitudes>. Reiner Klingholz, head of the Berlin Institute for Population and Development, states: “Clearly, in this situation, people from other countries—immigrants—could be seen as competitors of the labor market. So for that reason, in areas in Germany where the unemployment rate is higher than average, we might see—and we actually do see—more people who are reluctant to this kind of immigration in high numbers.” *Id.*

keeping it strong as the traditional population ages and shrinks.”¹⁸⁰ For example, “the Forsa polling firm in Berlin says roughly 9 out of 10 Germans see their country as a land of immigrants and perceive that as a good thing.”¹⁸¹

Shift in the perception of asylum seekers and refugees. At the beginning of the 2016 new year, public opinion in Germany shifted with the sexual assault incident in Cologne. Notably, “[s]ome 121 women are reported to have been robbed, threatened, or sexually molested by gangs of men of foreign descent as revelers partied near the city’s twin-spired Gothic cathedral.”¹⁸² Amongst this number, “[a]t least 22 asylum seekers have been identified from among 32 suspects in connection with robberies and assaults. They were believed to be among a group of up to 1,000 people in front of Cologne’s main railway station on New Year’s Eve.”¹⁸³ This incident caused many Germans to begin questioning their open reception of record numbers of refugees out of fear that there are criminals and terrorists within the group of individuals seeking asylum.¹⁸⁴

Global Collaboration to Ensure Humane Processing of Asylum Seekers

Migration laws give sovereign nations the ability to select individuals perceived as worthy or unworthy of inclusion.¹⁸⁵ The 1951 Refugee Convention provides an exception where signatories agree that individuals forced to leave their countries of origin enjoy the human right of refuge when fleeing. How a Nation State restricts or grants access to freedom of movement upon entry, and while the asylum application is pending, demonstrates how social and historical conditions impact the enactment and enforcement of laws. This is because the creation and implementation of laws do not occur in a vacuum.

180. *Id.*

181. *Id.*

182. *Germany Weighs Deportations*, *supra* note 161.

183. *Id.*

184. Justin Huggler, *Germany Admits 130,000 Asylum Seekers 'Lost' Raising Fears Over Crime and Terrorism*, TELEGRAPH (Feb. 26, 2016), <http://www.telegraph.co.uk/news/worldnews/europe/germany/12174803/Germany-admits-130000-asylum-seekers-lost-raising-fears-over-crime-and-terrorism.html>.

185. See Angela M. Banks, *The Normative and Historical Cases for Proportional Deportation*, 62 EMORY L.J. 1243, 1248–51 (2013).

Unfortunately, in various countries, the Refugee Convention has become an extension of migration laws to exclude individuals who are not deemed worthy of inclusion. In both Germany and the United States, the labeling of a migrant as economic has been used as a shield to exclude access to protections under the Convention.¹⁸⁶ Further, in the United States, entry via the southern border carries a presumption of illegality, which facilitates the laws and procedures that require detention in jails until asylum seekers can establish that they have a credible fear and make arguments for their release. Conversely, in Germany, entrance from specific countries, namely Syria and Iraq, carries the presumption of warranting protection, permission to access restricted forms of freedom of movement prior to being granted any lawful status, and access to social benefits furthering the assumption that the asylum seeker will be able to establish that he or she is a refugee. Comparing these approaches demonstrates how, based on the country implementing the Refugee Convention, migration laws can be used as systems of exclusion or migration control instead of furthering the original principles that underline the Convention. It is important to examine and compare both systems as they provide different viewpoints for Nation States to consider in addressing contemporary issues that arise under the Refugee Convention. The contrasting methods for processing refugees in Germany and the United States demonstrate how collaboration and dialogue between Nation States is necessary to dispel assumptions and perceptions about those who seek asylum, and how the presumption of illegality impacts one's freedom of movement as an asylum seeker enters a country and applies for refugee status.

186. See Karla McKanders, *The Unspoken Voices of Indigenous Women in Immigration Raids*, 14.1 J. GENDER, RACE & JUST. 1 (2010) (critiquing US policies wherein migrants are categorized as "economic" without detailed consideration being given to the complex reasons, push and pull factors, and why individuals flee their countries of origin); see also, Jose Riera, *Migrants and Refugees: Why Draw a Distinction?*, 43 U.N. CHRON. 31, 31-32 (2006).