

# FRAGMENTED IMMIGRATION IN THE UNITED STATES: SANCTUARY AS RESISTANCE

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I am deeply grateful to my friend S. who allowed me a glimpse into her world, who experienced war and tragedy at such an early age, without whom I would have never pursued such an important direction of my career.

## ABSTRACT

This discussion will directly address the problem of the disregard for human rights principles within a fragmented US immigration system. Existing knowledge and analysis of these laws reveal that exclusionary language and laws of undocumented people are tactful in the goal of shrinking legal pathways and demonstrating the deliberate use of citizenship to maintain systemic inequality and disregard human rights principles. No matter the legal status of someone, the state must protect those within its territory from refoulement, or deportation back to “the frontiers of territories where his life or freedom would be threatened.”<sup>1</sup> This threat, known more broadly as persecution is arguably one of the greatest threats to human rights (HRs) protection, through its ability to take away life and liberty itself. Underscoring this point, my discussion will also analyze scholars studying citizenship who suggest that it is a system used to employ racism, thus the US purposefully uses it as a tactic to exclude through legalized means as well as a justification to disregard internationally held HRs principles. I will make clear that the country’s approach to immigration policy has been that of deterrence through its fragmented and stop-gap nature, as exemplified by recent presidential actions that make requesting asylum impossible. Findings emphasize the dehumanization of persons seeking asylum is harmful in the perpetuation of marginalization of non-citizens and policies driving the legal *right to remain* as unattainable. This research highlights the need for comprehensive immigration policy reform that moves towards inclusivity within US institutions through the use of sanctuary policies and practices.

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<sup>1</sup> United Nations General Assembly, “1951 Convention Relating to the Status of Refugees and 1976 Protocol Relating to the Status of Refugees,” Resolution 2198 (XXI) § (1951), art. 33, <https://www.unhcr.org/media/28185>. The basis on which one’s life is threatened references the five grounds of “race, religion, nationality, membership of a particular social group or political opinion.”

## ABBREVIATIONS

CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBP	US Customs and Border Protection
DC	District of Columbia
DHS	Department of Homeland Security
DHHS	Department of Health and Human Services
EU	European Union
FBI	Federal Bureau of Investigation
GOP	Republican Party
HRs	Human Rights
ICE	Immigration and Customs Enforcement
ICCPR	International Covenant on Civil and Political Rights
IL	International Law
IHRs	International Human Rights
IHRL	International Human Rights Law
PSA	Person Seeking Asylum
QNI	Quality of Nationality Index
TPS	Temporary Protected Status
UDHR	Universal Declaration of Human Rights
UNGA	UN General Assembly
UNHCR	United Nations High Commissioner for Refugees
USCIS	US Citizenship and Immigration Services

## 1. Introduction

An alarming event circulated in the US news in September of 2022, sparking outrage as hundreds of Venezuelans seeking asylum are fleeing persecution, economic insecurity, and generalized violence was made into a political ploy by Ron DeSantis and other prominent GOP governors leading up to the US primary elections.<sup>2</sup> After admittedly spending millions of tax dollars to transport Venezuelan migrants to various sanctuary cities without notifying local authorities of their arrival, DeSantis's arrangements dropped them off in the middle of the night without access to basic resources.<sup>3</sup> In addition to being promised housing, expedited work permits, and legal status, persons seeking asylum signed consent forms with false information about their destination city and the assistance they would receive.<sup>4</sup> In the effort to effectuate a more socio-legal human rights approach, this study acknowledges there is no comprehensive consensus on whether the term "asylum seeker" is neutral as it is a widely used legal term. For the purposes of this discussion, I have alternatively opted to use a more human-first determination through the use of "person seeking asylum" as to put the person ahead of their status.

This maneuver attempted to protest the inadequacy and expose the hypocrisy of sanctuary cities, which are almost always Democrat-run municipalities. Despite what was expected, sanctuary cities sprang to action, providing immediate relief and services for the persons seeking

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<sup>2</sup> Edgar Sandoval et al., "The Story Behind DeSantis's Migrant Flights to Martha's Vineyard," *The New York Times*, October 2, 2022, <https://www.nytimes.com/2022/10/02/us/migrants-marthas-vineyard-desantis-texas.html>.; This present Capstone was published in the midst of the first Biden presidency from 2020-2024 and analyses the policies started under the Trump administration from 2016-2020 but continued to have effect and have been directly prolonged during the course of the Biden administration.

<sup>3</sup> Venezuelan migrants were at first dropped off at the homes of prominent Democratic leaders' homes such as Vice president Kamala Harris's residence in Washington D.C., as well as in other prominent Democrat-led cities such as Denver, New York City and Chicago.

<sup>4</sup> Ibid.

asylum, and connected migrants to free transportation to family members, a feature of the US immigration system that had not allocated any funds towards. It turned this dehumanizing political stunt on its head. Venezuelan migrants reportedly received far more social assistance and support after moving out of border towns.

This event will help inform the discussion of sanctuary cities, more commonly understood as places with “immigrant-friendly legislation”<sup>5</sup>, and how these policies have been used in the US context as a source of power and resistance against the fragmented immigration policies and international human rights principles that the US refuses to follow. I will discuss the current status of sanctuary within the US domestic system, how they operate, and how such policies can be used on the local level to ensure that undocumented people can live without the constant threat of deportation, which leads to enhanced community engagement and a broader sense of “belonging” that transforms communities.

In my study, I will bring into conversation various critical debates on US fractured governmental policies in recent years that preclude individuals from seeking asylum at the US-Mexico border, critical studies of citizenship as the basis for these legalized methods of exclusion, as well as a baseline understanding of the how sanctuary operates in the US jurisdiction. Lastly, I will demonstrate the shrinking legal pathways of international protection recognition as a refugee make sanctuary policies one of the most important forms of resistance against this exclusionary system. I will propose that sanctuary from within the US is the most important tool in the maintenance of IHRs that the federal government cannot guarantee.

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<sup>5</sup> Marta Ascherio, “Do Sanctuary Policies Increase Crime? Contrary Evidence from a County-Level Investigation in the United States | Elsevier Enhanced Reader,” *Social Science Research* 106, no. 102743 (May 19, 2022): 2, <https://doi.org/DOI: 10.1016/j.ssresearch.2022.102743>.

The sections of this discussion will build on the following observations about asylum processes in the US jurisdiction: (1) US immigration policy ignores international human rights standards laid out in the treaties it is a party to, (2) efforts to allow for more legal migration are more like stop-gap measures aimed at deterring people from formally seeking international protection and (3) sanctuary is an ongoing process that works every day to ensure that irregular migrants can remain within their communities. Although conservative political leaders have disparaged the true impact and aim of sanctuary, I have found that sanctuary policies have done far better for our community belonging to US communities that are quantified by crime statistics, and undocumented communities are better able to access public institutions and the job market without the fear of deportation.

The country's ever-changing approach to immigration policy, however, seemingly changes from one administration to another, but what remains a constant trend is the shrinking legal pathways to citizenship and to international protection more broadly. Policies, legal frameworks, and the development of new forms of technology are unequipped to handle the ever-changing immigration policies in the country. There are broader deficiencies in the US Immigration and Refugee Relief system that have not seen substantial reform in over 4 decades however I will limit the scope of the policies in effect during the Trump and Biden Administrations from 2016 to May of 2023.

My purpose here is to analyze the fragmented US immigration system on asylum specifically through a sociolegal lens while bringing into the conversation the role of citizenship status in giving legal or political rights to noncitizens. I will emphasize that the use of sanctuary policies in US municipalities can address the non-inclusion of undocumented people, but rather a



form of on-the-ground resistance against a criminalizing and inhumane approach to immigration policy.

Lastly, my practical component will take on the form of a call for change addressed to the Secretary of the DHS and the Office of the White House that calls on the Biden Administration to make significant changes to immigration policies and not carry on the mistakes of the Trump administration with different policies for the same names. The Statement along with a business cover letter for postal services can be found in the Appendices of this Capstone Project.

## 2. International Norms

The *Glossary on Migration* makes very clear the definition of “asylum,” stating that it is a status conferred “to a person who is unable to seek protection in his or her country of nationality and/or residence.”<sup>6</sup> The basis of international refugee law is laid out in Article 14 (1) of the 1948 Universal Declaration of Human Rights, which stipulates that “everyone has the right to seek and to enjoy in other countries asylum from persecution.”<sup>7</sup>

Although the US has shown it is not too keen on passing IHRs treaties, it is nonetheless a party to the following consequential human rights instruments that establish the minimum requirements for international protection —the 1967 Protocol which incorporates major provisions of the 1951 Geneva Convention Relating to the Status of Refugees<sup>8</sup>, the ICCPR, as well as the CAT.<sup>9</sup>

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<sup>6</sup> Alice Sironi, Céline Bauloz, and Milen Emmanuel, eds., “Glossary on Migration,” in *Glossary on Migration* (Geneva, Switzerland: International Organization for Migration, June 2019), [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://publications.iom.int/system/files/pdf/iml\\_34\\_glossary.pdf](chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf), 13; Donald Kerwin, “From IIRIRA to Trump: Connecting the Dots to the Current US Immigration Policy Crisis,” *Journal on Migration and Human Security* 6, no. 3 (September 1, 2018): 196, <https://doi.org/10.1177/2331502418786718>.

<sup>7</sup> UN General Assembly, “Universal Declaration of Human Rights,” United Nations (United Nations, December 10, 1948), <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

<sup>8</sup> The US solely ratified the 1967 Protocol, which for some states would mean that the international treaty becomes binding, in the US jurisdiction this Covenant and Protocol are not in themselves “self-executing,” evoking the dualist relationship the US has to its international human rights instruments, that these instruments are not in themselves incorporated into US domestic law after signature and ratification. United States Department of Justice Office of Legal Counsel, Opinions of the Office of Legal Counsel of the United States Department of Justice (1998), 89. Despite the ratification of the Protocol, the US’s intention to abide by international covenants cannot be enforced by domestic courts pursuant to the following Memorandum by the Acting Assistant Attorney General Office of Legal Counsel: Timothy E. Flanigan, footnote 2. “See, e.g., S. Exec.Doc K, 90th Cong., 2nd Sess. III (1968) (message from Pres. Johnson) (“most refugees in this country already enjoy the protection and rights which the Protocol seeks to secure for refugees in all countries”); (“[Article 33] is comparable to Section 243(h) of the Immigration and Nationality Act... and it can be implemented within the administrative discretion provided by existing regulations”) (“refugees in the United States have long enjoyed the protection and the rights which the protocol calls for”).

<sup>9</sup> United Nation, “View the Ratification Status by Country or by Treaty,” UN Treaty Body Database, accessed June 6, 2023, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN).

One of the most important IHRs doctrines that the majority of countries use to establish the definition of a *refugee* is established by the 1951 Geneva Convention.<sup>10</sup> It specifies that a person seeking asylum is simply someone who is applying to be recognized as a *refugee*, who is an individual who is outside of her or his country of nationality who has a well-established fear that they will be victimized or excluded by either state or nonstate actors on one of the five grounds of persecution—“race, religion, nationality, membership of a particular social group or political opinion.”<sup>11</sup>

The establishment of the definition of *refugee* and the concept of *non-refoulement* are inextricably intertwined. Once it is established that an asylum seeker has fulfilled the credible fear of persecution and the state has officially recognized that person as a refugee making them eligible for international protection, those seeking asylum are to not be sent back to a country or territory where there is a “likely chance” that they will face “threat to life or freedom” upon returning to their country of nationality.<sup>12</sup> This is something more or less referred to as a determination of well-founded fear in the more general international law (IL) context and the American jurisdiction is less commonly known as Credible Fear Determination for persecution<sup>13</sup> or torture. The US standard does use international standards laid out in the 1951 Convention

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<sup>10</sup> United Nations General Assembly, 1951 Convention Relating to the Status of Refugees and 1976 Protocol Relating to the Status of Refugees.

<sup>11</sup> 1951 Convention. See the following for a more comprehensive discussion on refugee determination as an important and integral mechanism of refugee recognition:

<sup>12</sup> United Nations General Assembly, “1951 Convention Relating to the Status of Refugees and 1976 Protocol Relating to the Status of Refugees,” Resolution 2198 (XXI) § (1951), see Introductory Note by the Office of the United Nations High Commissioner for Refugees, 3.

<sup>13</sup> Persecution here being determined for reasons of race, religion, nationality, political opinion, or membership of a particular social group. International norms call for those asylum seekers who suffer from compounding human rights violations in their home countries severe enough would sufficiently prove persecution.

Relating to the Status of Refugees the how to determine such a probability of a fear that persecution will occur upon return to one's country.<sup>14</sup>

Likewise, for a more binding right to asylum, the US is a party to the Convention Against Torture<sup>15</sup> whose article 3(1) makes clear that any state who knowingly sends back an individual or "refouls" a person to a State where they are likely to be tortured is in direct breach of this IHRL. In addition, Section 2 of the same provision states that it is up to the refouling state to ensure that the individual is not being sent to a situation known to have current mass human rights violations.<sup>16</sup>

In other words, it is necessary to grant to a person outside of their country of nationality because, for one reason or another, their country of residence is unwilling or unable to give them protections to the level that states are obligated in terms of the safety or security of the rights of the individual. There exists a situation in which the individual does not believe they are safe in the country in which they fled, therefore the state in which they first enter to "seek asylum" should either take their claims seriously and lodge a proper asylum procedure or make arrangements for this individual to remain someone safely while they are taken to a safe third country.

Furthermore, not guaranteeing the right to asylum, the US frequently makes it a point that those who do not come into the US through one of the few established legal pathways are criminals, despite that illegal entry into the country is merely a civil offense that does not warrant

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<sup>14</sup> *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987). See for discussion on how "well-founded" fear. Calling the fear "well-founded" does not change the evident significance of the individual's lived experience on the matter, nor does it change the threshold to "more likely than not" but it is an understanding that if there is less than a 50% possibility of an event occurring, one might undoubtedly have a well-founded the persecution occurring.

<sup>15</sup> "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," OHCHR, accessed June 6, 2023, [https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading-.](https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading-.,), Article 3(1).

<sup>16</sup> *Ibid.*, Article 3, Section 2.

jail time.<sup>17</sup> Additionally, UNHCR has officially recognized that the right to asylum is not contingent on the mode by which someone entered the country<sup>18</sup>, especially given that asylum claims require that an individual physically present in the country can make a claim.<sup>19</sup>

Although there is no explicit mention of asylum, refugee, or non-refoulement within the text of the ICCPR, there are provisions that can be applied to those seeking international protection, thus indirectly safeguarding rights relating to such concerns.<sup>20</sup> Such provisions first include Article 2 which states that all individuals within a territory or jurisdiction must be treated in accordance with the rest of the rights within the Covenant, regardless of several factors including national origin or other status.<sup>21</sup> Following these provisions, the Article 6 (the “right to life”) and Article 7 (protection against torture or other “inhuman treatment”)<sup>22</sup> taken altogether construct the overall right to the preservation of the protection of life and against heinous treatment. The last provisions related to this discussion include Article 17<sup>23</sup> stating that no one is subject to “interference” of the family, and Article 23 that the state has the obligation to protect the family unit.<sup>24</sup>

### Guarantee Against Refoulement

An individual is also protected against an international principle known as non-refoulement, which “prohibits States from returning refugees in any manner whatsoever to

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<sup>17</sup> Department of Homeland Security, “Obtaining Asylum in the United States | USCIS,” March 15, 2023, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/obtaining-asylum-in-the-united-states>.

<sup>18</sup> United Nations General Assembly, 1951 Convention Relating to the Status of Refugees and 1976 Protocol Relating to the Status of Refugees, sec. see Introductory note by UNHCR.

<sup>19</sup> Ibid.

<sup>20</sup> United Nations General Assembly, “International Covenant on Civil and Political Rights.pdf,” Pub. L. No. Resolution 2200A (XXI) (1966), <https://www.ohchr.org/sites/default/files/ccpr.pdf>.

<sup>21</sup> ICCPR, Article 2(1).

<sup>22</sup> ICCPR, Article 6-7.

<sup>23</sup> ICCPR, Article 17.

<sup>24</sup> ICCPR, Article 23.

countries or territories in which their lives or freedom may be threatened.”<sup>25</sup> Not only are these concepts important for establishing the minimum standards for those seeking international protection, but it is also important to acknowledge why we do not just make people wait in another territory while waiting for their asylum claims to be processed.

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<sup>25</sup> United Nations General Assembly, “1951 Convention Relating to the Status of Refugees and 1976 Protocol Relating to the Status of Refugees,” Resolution 2198 (XXI) § (1951), <https://www.unhcr.org/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html>., Article 33: prohibition of expulsion or return (“refoulement”).

### 3. US Domestic Immigration Policies Under Trump and Biden Administrations

In order to see how such standards come into play US immigration system, it is necessary to point out that the broader government agency tasked with the management of asylum and citizenship claims—the Department of Homeland Security as well as CBP and ICE, are more on-the-ground agents tasked with enforcing US immigration policy. According to the DHS website, a series of rules govern the process that individuals should follow for their asylum claims to be processed, however, there are inherent flaws within this system affecting the lives of people who have attempted to submit claims in recent years.

One can see, however, that the US government portrays how it views asylum as something completely different from a legal right. The UNHCR USA website describes asylum as not seen as a right in itself, but something to be “won” or “granted” to an asylee.<sup>26</sup> This implies there is a lottery or merit system in places that allow very few to possess it and all others to keep trying for their lucky chance to be protected from persecution from their home countries.<sup>27</sup> This alone exemplifies the experience of attempting to submit asylum claims in the current moment at the US-Mexico border

#### 3.1 “Family Separation Policy” or Zero Tolerance

Under the Trump administration's "zero tolerance" policy, families attempting to seek asylum by crossing the border extralegally were prosecuted, resulting in the separation of children from their parents or legal guardians as justified under Section 1325 of Title 8 of the

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<sup>26</sup> “What Is Asylum? -,” UNHCR USA, accessed May 4, 2023, <https://help.unhcr.org/usa/applying-for-asylum/what-is-asylum/>.

<sup>27</sup> “What Is Asylum?”

U.S. Code.<sup>28</sup> Although the law did not explicitly order family separations, it occurred as a result of the Trump administration's attempt to use criminal prosecution on the parents as a form of deterrence from seeking asylum, without understanding legal structures that do not allow for children to remain with their parents being criminally prosecuted to remain in the same facilities for the welfare of the child. In any event, such actions contravened protections for children written into the ICCPR, protecting the family as the “fundamental”<sup>29</sup> and guaranteed protections from “arbitrary or unlawful interference.”<sup>30</sup> Without having the interagency competence of DHS with DHHS or infrastructure in place to humanely care for the children and track families to their children. Some children were reportedly turned over to foster care facilities despite having family members present in the US.<sup>31</sup> In the roughly short 1 month and a half that the cruel policy was in place, it upended the lives of thousands as the Biden Administration created a task force to pick up the pieces of about 1,000 families that still have not been unified more than 5 years later.<sup>32</sup> Here one can see that a lack of citizenship status not only had the power to divide along family lines, but the US made sure that children (a vulnerable group that is not yet had criminality put upon them) were allowed to remain, while their parents were processed and expelled.

### 3.2 “Turnback Policy” or Evocation of Title 42

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<sup>28</sup> Catherine Goetze, “When the State Shatters Families. The US Family Separation Policy of 2018, Cruelty and Patrimonial Sovereignty,” *Global Studies Quarterly* 2, no. 2 (April 1, 2022): ksab050, <https://doi.org/10.1093/isagsq/ksab050>.

<sup>29</sup> United Nations General Assembly, International Covenant on Civil and Political Rights.pdf, art. 23.

<sup>30</sup> Ibid., Article 17.

<sup>31</sup> Ibid.

<sup>32</sup> Goetze, “When the State Shatters Families. The US Family Separation Policy of 2018, Cruelty and Patrimonial Sovereignty”; “Hundreds of Migrant Children Remain Separated from Families despite Push to Reunite Them,” PBS NewsHour, February 6, 2023, <https://www.pbs.org/newshour/show/hundreds-of-migrant-children-remain-separated-from-families-despite-push-to-reunite-them>.



The US takes the path of most resistance through its first requirement that asylum seekers must be “physically present” on U.S. soil as a first step to claiming asylum.<sup>33</sup> This policy is not the normal procedure in the majority of countries in the world this procedure ensures that only certain individuals can claim asylum, those that are privileged enough to buy a flight to the US, or those taking a life-threatening journey by land can make a claim. Although this policy, however, most likely did not fare well with CPB’s internationally unlawful “turnback policy” that violated one of the most coveted principles of IHRL of non-refoulement, in not allowing persons to formally submit their asylum claims. The premise of this fundamental principle of IHRL is that sending back people to extremely dangerous situations in which a government does not have the infrastructure to provide protection, could also lead to the deprivation of liberty.<sup>34</sup> This not only affected the literal submission process but resulted in inflated numbers of encounters that led to repeated attempts by the same persons (called “encounters”) without which there was any way to verify they had already attempted to seek asylum in those years (March 2020-May 2023).

The Trump administration had no qualms about this unlawful policy until a judge finally struck this practice down.<sup>35</sup> Regardless, this Title 42 was not necessarily eradicated given the existence of Title 42, which was more of a health measure dating back to 1944 having the effect of being able to send back asylum seekers within hours of their arrival at the border using the

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<sup>33</sup> Department of Homeland Security, “Obtaining Asylum in the United States | USCIS.”

<sup>34</sup> OAS Assistant Secretary General Ramdin argues for the expansion of who should be recognized to receive international protection to include other forms of insecurities at a humanitarian level, like including environmental catastrophe, indiscriminate gang violence, and critical food supply shortages, and knowingly sending individuals back to such conditions could merit international protection.

<sup>35</sup> This is not to say that this practice has been eradicated simply because a judge ruled against this. This procedure most likely had the effect of teaching many migrants that the legal pathway to asylum was not an option and therefore the only next option would be through entry from an illegal entry point.

pretext of the pandemic to secure the health and safety of the population.<sup>36</sup> The Biden administration was highly criticized for continuing the evocation of this public health measure long after all other COVID-19 health measures were discontinued in 2022. Policies like Title 42 are more indicative of US immigration's fragmented system that not only seek to further limit the right to asylum but exemplifies that regardless of which political party is in power, the administration will inevitably kick the can down the road.

Currently, there are no particular minimum requirements for the treatment and rights of asylum seekers or how the proceedings shall be governed. Though there is a general framework here, it remains to be seen how effective these processes are in ensuring the equal treatment of individuals arriving in the country when there is no legal right for legal assistance, no right to asylum case workers formally trained for cultural sensitivities and well as specified training for the nuances of other minority groups during the interview stage of asylum processes for instances, unlike the directives and regulations for the minimum standard of treatment that asylum seekers and refugees would receive, that which exist in the EU jurisdiction.<sup>37</sup>

Since immigration and border controls were a relatively new development from the last 100 years, this may point to evidence that refugee and asylum procedures are not necessarily based on morally creating pathways for those seeking refuge, but present strict impediments to

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<sup>36</sup> "DHS Continues to Prepare for End of Title 42; Announces New Border Enforcement Measures and Additional Safe and Orderly Processes | Homeland Security," accessed April 21, 2023, <https://www.dhs.gov/news/2023/01/05/dhs-continues-prepare-end-title-42-announces-new-border-enforcement-measures-and>. John Gramlich, "Key Facts about Title 42, the Pandemic Policy That Has Reshaped Immigration Enforcement at U.S.-Mexico Border," *Pew Research Center* (blog), accessed May 11, 2023, <https://www.pewresearch.org/short-reads/2022/04/27/key-facts-about-title-42-the-pandemic-policy-that-has-reshaped-immigration-enforcement-at-u-s-mexico-border/>.

<sup>37</sup> Lieneke Slingenberg, "Research Handbook on EU Migration and Asylum Law," in *Reception Conditions for Asylum Seekers: Inherent Duality* (Edward Elgar Publishing, 2022), 200, <https://www.elgaronline.com/edcollchap/book/9781786439635/book-part-9781786439635-15.xml>.

the asylum procedure, placing individuals on a continuum of more or less deserving of protection.

Persecution is an important distinction within international refugee law and policy. Some scholars have argued persecution has always existed throughout history and throughout the time before the drafting of the 1951 Geneva Convention, however, there was no need for formal refugee and asylum processes since persecuted people could simply migrate elsewhere to the closest country that would allow them to settle. At this time, passports and entry permits were not strictly relied on as they are today.<sup>38</sup> This reliance on citizenship, however, gives the state a legitimate way of discriminating against groups it does not want to belong to the borders of its country.

In a surprising display of the explicit recognition of IHRs jurisprudence, the USCIS website that outlines the process for formally seeking asylum status also acknowledges that if an individual is denied recognition of international protection of an asylum seeker that there will be another assessment of whether an individual can be removed in accordance with the standards laid out in the Convention Against Torture that the US is a party.<sup>39</sup>

Kochenov's research on the use of citizenship as a tool of legalized discrimination helps to shed some light on the connection between what citizenship claims to promise is inclusion, but it is paradoxically a way to exclude certain groups from gaining full recognition of personhood.<sup>40</sup> Since asylum seekers do not hold documentation to stay in the country, i.e., a passport or green card, we say that they do not have the right to remain in a territory and are thus not legally

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<sup>38</sup> Boldizsár Nagy, "History Concepts, Orders of Magnitude" International and European Refugee Policy and Law 2023 Winter, 12 January 2023, Central European University, Vienna Austria. Lecture.

<sup>39</sup> United Nation, "View the Ratification Status by Country or by Treaty," UN Treaty Body Database, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN).

<sup>40</sup> Ibid.

allowed within the borders of this country. Yet, when federal agents send individuals back to the dangerous conditions from which they fled where there is likely a chance of violence and persecution, it is knowingly sending back individuals to face the likely instance of danger, it not only breaks the IHRs norm of non-refoulement, but it ruins the sanctity of *jus cogens* norms that states cannot deviate or opt out of for any reason because they are so quintessential for sanctitude of human rights principles more broadly, and such inalienable responsibilities are owed to the rest of the international community.<sup>41</sup>

In an assessment of “Rights” from *Citizenship*, Kochenov explains why traditional understandings of citizenship fail to articulate the most important right of citizenship which allows an asylum seeker to work and live without the threat of being sent back to a country that may not only be foreign to us but whose opportunities may be negligible, thus impeding our personal desires and aspirations.<sup>42</sup> Citizenship, scholars argue, functions as a “tool” employed by states to create a system of difference backed by the rule of law to divide groups in society and justify discrimination.<sup>43</sup> It is argued that it is somewhat random in nature and that passports are not a basis by which merit should be quantified.<sup>44</sup>

Fearmongering of immigrants was a purposeful and deliberate platform decision not only to maintain immigration measures that act to subvert an active security threat but to justify any and all exclusionary immigration measures that contravene well-established HRL.<sup>45</sup>

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<sup>41</sup> Ilias Bantekas and Lutz Oette, “International Human Rights Law and Practice (3rd Ed.),” in *EBooks.Com* (Cambridge University Press, 2020), 52, 57, <http://ebookcentral.proquest.com/lib/centraleurope-ebooks/detail.action?docID=6185977>.

<sup>42</sup> Dimitry Kochenov, ‘Rights’, in *Citizenship*, Cambridge MA, MIT Press, 2019, 121.

<sup>43</sup> Ibid. Kochenov, “Chapter 1: Key Elements of the Concept,” 8.

<sup>44</sup> Ibid., 15.

<sup>45</sup> Kaila C. Randolph. “Executive Order 13769 and America’s Longstanding Practice of Institutionalized Racial Discrimination Towards Refugees and Asylum Seekers | Stetson Law Review,” accessed June 9, 2023, <https://www2.stetson.edu/law-review/article/executive-order-13769-and-americas-longstanding-practice-of-institutionalized-racial-discrimination-towards-refugees-and-asylum-seekers/>.

This can be directly disproved in Hausman's findings reveal that in sanctuary versus non-sanctuary jurisdictions, there has been a reduction of crime. Irregular migrants fear deportation in the country making them less likely to report crimes or seek help in their communities. Sanctuary jurisdictions were found to be safer than non-sanctuary jurisdictions because undocumented folks trusted local governments were able to aid in reporting crime. By creating more stable and secure communities for everyone, sanctuary policies can foster trust and cooperation between law enforcement and community members, leading to improved public safety outcomes. This study directly proves that undocumented people who do not fear the constant threat of deportation can help fight crime in their smaller communities, which can lead to safer neighborhoods. Enhanced communication and trust between local authorities and immigrants, can also strengthen legislation as sanctuary cities will often go in the direction of safeguarding immigrant interests.<sup>46</sup> As long as “the right to stay” or the status is constantly under threat, all communities will suffer from this approach to bringing crime levels down.

Previous research of a scholar who similarly studied the messiness and seeming disconnectedness of immigration policy helps to paint a similar picture I have shown. Kerwin succinctly exemplified a prospering nation struggling to enact anything close to resembling a methodical immigration policy. He lays out a series of efforts of the governmental tough-on-immigration policies to scapegoat and deters immigrants from staying in the country even by legal means. The policies he analyzes are the Anti-Drug Abuse Act of 1986, the Anti-Drug Abuse Act of 1988, and the 1990 Immigration Act all of which expanded the offenses that were deportable immigrants without citizenship.<sup>47</sup> Kerwin’s research not only paints the picture that

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<sup>46</sup> Daniel E. Martínez, Ricardo D. Martínez-Schuldt, and Guillermo Cantor, “Providing Sanctuary or Fostering Crime? A Review of the Research on ‘Sanctuary Cities’ and Crime,” *Sociology Compass* 12, no. 1 (2018): 6, <https://doi.org/10.1111/soc4.12547>.

<sup>47</sup> Kerwin, “From IIRIRA to Trump.” 192.

policies regarding immigration are disjointed, establishing a pattern that existed prior to the two administrations being scrutinized in this Capstone. within the American system. Additionally, the author adds to the present discussion by highlighting the following recommendations for the immigration system that lead to the effect of what sanctuary policies accomplish. Among the recommendations are the following:

Community outreach to ‘rebuild trust between police and citizens’; Policies ... not to ask victims or witnesses about their immigration status; Federal and civil oversight...to ensure nondiscrimination by law enforcement; Monitoring arrest rates of different groups for minor crimes...<sup>48</sup>

The recommendations listed create a perfect segue into the topic of sanctuary as practice.

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<sup>48</sup> Ibid., 202.

#### 4. Discussion of Sanctuary and Citizenship

Sanctuary<sup>49</sup> cities were born in the US as safe havens for persistent objectors during the Vietnam War in Berkeley, California.<sup>50</sup> In the US and as is the case with any country, there is an ebb and flow that exists with times of welcoming immigrants the subsequent tightening of immigration as a scapegoat reaction to times when the country appears to be struggling. Although there is no set definition for a sanctuary city, I will use this term as a concept referring to the level of cooperation that exists between a municipality, state, or institution towards the federal government in matters of immigration deportation procedure.<sup>51</sup> Moreover, it is the degree to which a local government will actively work with ICE agents to aid in a deportation procedure, which can range from a simple exchange of information, as required by law to holding a detainee longer than due process requires to make deportation proceedings easier for federal employees, but still comply with federal requirements to ensure that there is (a) adequate local government communication with federal authorities in regards to a detainee's legal status, (b) exchange of information with immigration authorities, as well as (c) the obligation to respond to inquiries regarding these 2 processes.<sup>52</sup>

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<sup>49</sup> "Sanctuary cities" is a colloquialism used to denote more broadly all levels of sanctuary that operate in the American jurisdiction including but not limited to specific cities, states, and counties. An updated list of sanctuary municipalities can be found here: Jessica M. Vaughan and Bryan Griffith, "Map: Sanctuary Cities, Counties, and States," CIS.org, March 22, 2021, <https://cis.org/Map-Sanctuary-Cities-Counties-and-States>.

It is important to note that although in the international system, the church was the first institution to provide a form of protection for individuals seeking refuge for individuals who were not wanted by authorities for serious crimes, though places of worship are not inherently sanctuaries in the US jurisdiction. Britannica, T. Editors of Encyclopedia. "Sanctuary." Encyclopedia Britannica, January 21, 2015.

<https://www.britannica.com/topic/sanctuary-religion>. Current federal law states that even religious leaders who knowingly harbor individuals who are otherwise undocumented or irregular migrants are subject to criminal codes are subject to "8 U.S. Code § 1324 - Bringing in and Harboring Certain Aliens," LII / Legal Information Institute, 1994, <https://www.law.cornell.edu/uscode/text/8/1324>.

<sup>50</sup> Serin Houston, "Conceptualizing Sanctuary as a Process in the United States," *Geographical Review* 109, no. 4 (October 1, 2019): 564, <https://doi.org/10.1111/gere.12338>.

<sup>51</sup> Martínez, Martínez-Schuldt, and Cantor, "Providing Sanctuary or Fostering Crime?" 3.

<sup>52</sup> "8 U.S. Code § 1373 - Communication between Government Agencies and the Immigration and Naturalization Service," Pub. L. 104–208, div. C, title VI, § 642, Sept. 30, 1996, 110 Stat. 3009–707, LII / Legal Information Institute, <https://www.law.cornell.edu/uscode/text/8/1373>.

Sanctuary policies would be a form of resistance to the over-policing and criminalizing treatment of persons without legal status. For example, it is a common ICE practice to request that local authorities detain an undocumented person for 48 hours beyond their normal processing procedure required by the 14<sup>th</sup> Amendment guaranteeing equal protection under the law.<sup>53</sup> For local authorities to prioritize the federal interests of ICE authorities to unconstitutionally prolong a detainee is not within the interests of local authorities to go against due process standard requirements, and arbitrary detention.<sup>54</sup> Additionally, based on Section 1373, there is no obligation of local authorities to comply with any “requests” regardless of a detainee’s legal status.<sup>55</sup> Thus, sanctuary cities that do not do more than the law requires, are not in breach of any federal or local laws, but will not actively work with ICE to deport undocumented persons.

There is data to suggest these policies may have a positive impact on crime and belongingness. David K. Hausman's research uses empirical data taken from the FBI and ICE deportation data on areas of the country that have implemented sanctuary policies to shed light on the public narrative that there is somehow an obvious link between strict immigration enforcement and public safety.<sup>56</sup> He demonstrates that there are underlying benefits to reducing deportations of undocumented immigrants without an increase in crime rates, proving that xenophobia and the fearing of *the other* may be the only thing fueling the trope of immigrants as criminals. Thus, the rise of immigration does not result in any more crime, especially when

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<sup>53</sup> “14th Amendment,” LII / Legal Information Institute, <https://www.law.cornell.edu/constitution/amendmentxiv>.

<sup>54</sup> United Nations General Assembly, International Covenant on Civil and Political Rights.pdf, art. 9(1).

<sup>55</sup> Adi Daniels, “What Are Sanctuary Cities and Why Do They Exist?” LIRS, July 13, 2021, <https://www.lirs.org/what-are-sanctuary-cities-why-do-they-exist/>; U.S. Code. Title 8, Section 1373, <https://www.govinfo.gov/content/pkg/USCODE-2011-title8/pdf/USCODE-2011-title8-chap12-subchapII-partII-sec1182.pdf>.

<sup>56</sup> David K. Hausman, “Sanctuary Policies Reduce Deportations without Increasing Crime,” *Proceedings of the National Academy of Sciences of the United States of America* 117, no. 44 (November 3, 2020): 27262–67, <https://doi.org/10.1073/pnas.2014673117>.



considering that one's only crime is often being undocumented and crossing border. By limiting cooperation between local law enforcement and federal immigration authorities, sanctuary policies foster trust between local authorities and undocumented members of the community incentivizing them to report instances of crime as well as seek assistance from governmental authorities without constant fear of ICE deportations disrupting their communities.

Community building, the feeling of safety and personal security, and the likelihood assist in the reporting of crimes that actually act to help combat crime are all strong reasons for the separation of local and federal levels. Sanctuary policies have a socially harmonizing effect on communities as a result.<sup>57</sup>

Overall, after looking at the studies on sanctuary cities versus other cities, there is no evidence that more crime is perpetuated in these areas, but rather there is more trust in local authority governance and crime rates prove the opposite as one may perceive through just media portrayals that aim to paint sanctuary cities as places where undocumented individuals can live without fear of deportation or separation from loved ones. Crime rates are not any higher in sanctuary cities as media portrayal might suggest. Hausman's study shows through empirical data that areas with sanctuary policies saw a significant reduction in the number of deportations of those with specifically no violent or criminal convictions.

Schools, in recent years, have become vehicles for sanctuary policies to ensure that children can receive equal access to education regardless of citizenship status. The US Department of Education states that schools have the obligation to ensure that all students can obtain a K-12 education regardless of the citizenship status of them or their guardians.<sup>58</sup>

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<sup>57</sup> Ascherio, "Do Sanctuary Policies Increase Crime?"

<sup>58</sup> Office for Civil Rights. "Fact Sheet - Information on the Rights of All Children to Enroll in School," Letters (Correspondence) (US Department of Education (ED), January 10, 2020), <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201101.html>.

Within this context, one can see that schools embrace certain elements of sanctuary, as school districts cannot require disclosure of proof of residency status, social security numbers, nor birth certificates from students enrolled.<sup>59</sup> By adhering to inclusive enrollment policies, schools with sanctuary policies are increasingly refraining from requesting information on legal status demonstrating that educational institutions can act as vehicles for sanctuary-like procedures to uphold the rights of all students and ensure citizenship status should not be a basis for the right to access such an important institution for all.

#### 4.2 Citizenship Scholarship and Overall Analysis

This once again echoes a theme asserted by many scholars critical of citizenship such as Kochenov, Jopke, as well as Arendt, that citizenship is all often utilized to discriminate against and exclude certain groups from receiving the same status, privileges, and rights as those of its citizens.<sup>60</sup> After all, sovereign nations have the power to create legal pathways for those it wants to allow, while all the rest will traverse mountain ranges and deadly rainforest treks to reach a legal entry point such individuals will still be turned away on a technical administrative rule designed to exclude certain persons arriving from certain countries.<sup>61</sup>

An economist Branko Milanović-draws from data that suggesting one's citizenship by birth results in income inequalities over the course of a lifetime will determine or hinder

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<sup>59</sup> Office for Civil Rights. "Fact Sheet - Information on the Rights of All Children to Enroll in School."

<sup>60</sup> Dimitry Kochenov, *Citizenship* (The MIT Press, 2019), 210, <https://doi.org/10.7551/mitpress/11351.001.0001>; Despite the theorists concluding the system of citizenship to be flawed at its core, Arendt's criticisms of citizenship focused on the increasing statelessness as a grave human rights failure, this contrasts from Kochenov's and Jopke's points about citizenship. This point is less relevant to the expansive issues that pervade the US asylum system. In the US context, stateless persons cannot be deported because they technically do not have citizenship elsewhere.

<sup>61</sup> International Organization for Migration for UN Migration, "Recent Migration Trends in the Americas" (Buenos Aires and San José: IOM, 2022), [https://rosanjose.iom.int/sites/g/files/tmzbd11446/files/documents/recent-migration-trends-in-the-americas\\_en.pdf](https://rosanjose.iom.int/sites/g/files/tmzbd11446/files/documents/recent-migration-trends-in-the-americas_en.pdf), 11.

success.<sup>62</sup> His main contribution to this discussion is that instances of global inequality that make one's country unlivable beyond the threat of persecution as one of the main causes for seeking asylum, however the way that the US handles its asylum claims exemplifies that it does not want for certain groups to be recognized as refugees because this would require official recognition and must be treated on an equal footing or as favorable as any other legal person within those same borders.<sup>63</sup> Additionally, he also tries to claim that he believes one of the best ways to combat global poverty and is through migration.<sup>64</sup> However, it remains mostly unclear what criteria allow for the recognition of the legal right to stay.

But it is important to question how the conferral of citizenship, or even the legal status of a refugee is employed by immigration law. Achiume, the former UN Special Rapporteur on contemporary forms of racism, describes how Western countries form their citizenry by “employ[ing] racialized, religious, and even gendered preferences” when deciding who can even lay claim to such legal status,<sup>65</sup> which they have ample discretion by which to apply such criteria under the guise of a security threat that immigration poses.

An important consideration must be made, of whether efforts to deport and expel individuals is a measure that brings actual safety to our communities, which can be measured at looking at crime rates in jurisdictions that actively work with ICE to aid in deportation. ICE raids

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<sup>62</sup> Branko Milanovic, "3. Inequality among Countries: From Karl Marx to Frantz Fanon, and Then Back to Marx?" in *Global Inequality: A New Approach for the Age of Globalization* (Harvard University Press, 2016), <https://doi.org/10.4159/9780674969797>.

<sup>63</sup> Arcot Krishnaswami and UN Subcommission on Prevention of Discrimination and Protection of Minorities Special Rapporteur on the Study of Discrimination in the Matter of Religious Rights and Practices, “Study of Discrimination in the Matter of Religious Rights and Practices /: By Arcot Krishnaswami, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities” (UN, 1960), <https://digitallibrary.un.org/record/611819>.

<sup>64</sup> *Ibid.*, 149.

<sup>65</sup> E. Tendayi Achiume, “Chapter 2: Race, Refugees, and International Law,” in *The Oxford Handbook of International Refugee Law*, ed. Cathryn Costello, Michelle Foster, and Jane McAdam (Oxford University Press, 2021), 16, <https://doi.org/10.1093/law/9780198848639.003.0003>.

not only instill fear into migrant communities of color, but they also operate as a way to ensure that certain individuals are not able to have peace within their communities and are less likely to seek help from any governmental institutions, putting them severely vulnerable to be victims of crime, exploitation, and the like. The presence of ICE in US communities does not provide safety but rather serves as a constant and blaring reminder that there will continue to be symbolic persecution as long as racist tactics to expel so-called “aliens”<sup>66</sup> from the countries and so long that human rights-based municipal practices are threatened in this country.

This question here focuses on a debate that is not central to the point that is being made here. I posit that there is an increasing need to allow people to freely move throughout the world where they can safely reside. Notwithstanding the foregoing, citizenship still acts as a racialized and exclusionary system that creates borders where people with a certain country of origin are increasingly only allowed to make claims “to remain”, thus effectively denying them the right to live at all.

One may perhaps point to the work of Hannah Arendt, a political scholar who extensively studied citizenship and rights, and argued that citizens must not only have legal status to be part of the polity, but that political engagement and recognition are required to have full access to human rights.<sup>67</sup> However, my literature suggests that undocumented immigrants are already part of American culture and polity, though my case for sanctuary would benefit the lives of those who already call America home but that do not yet have full access to personhood in the sense that the threat of deportation is almost nonexistent. My case for sanctuary has shown there already exists a system for undocumented people to not only seek refuge in the US but that the

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<sup>66</sup> “8 U.S. Code § 1324 - Bringing in and Harboring Certain Aliens.”

<sup>67</sup> Hannah Arendt, *The Human Condition*, 2nd ed. (The University of Chicago Press, 1998), [https://monoskop.org/images/e/e2/Arendt\\_Hannah\\_The\\_Human\\_Condition\\_2nd\\_1998.pdf](https://monoskop.org/images/e/e2/Arendt_Hannah_The_Human_Condition_2nd_1998.pdf).

country as a whole can benefit as American institutions will become strengthened through sanctuary not just being policy but also into practice.

Joseph Carens argues in “Aliens and Citizens: The Case for Open Borders” the current system of immigration control violates the free movement in order to search for a better life.<sup>68</sup> Additionally, the current system of immigration control that one can see in the US restricts movement based on arbitrary factors such as citizenship<sup>69</sup>, race, class, as well as perceived deservingness, is morally unacceptable under IHRL. Carens acknowledges that implementing open borders is not without challenges, but he proposes a gradual approach to implementation, beginning with a relaxation of restrictions on certain groups of migrants, such as refugees and asylum seekers, and eventually moving towards an open borders policy.<sup>70</sup> Although it is difficult to envision this reality in the context of the US jurisdiction because of the rise of xenophobia, this use of sanctuary policies in certain cities with large immigrant communities can be a starting point for the relaxation of the restriction of immigrant groups that Carens proposed.

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<sup>68</sup> Joseph H. Carens, “Aliens and Citizens: The Case for Open Borders,” *The Review of Politics* 49, no. 2 (1987): 251–73.

<sup>69</sup> Carens, “Aliens and Citizens.”

<sup>70</sup> Ibid.

## 5. Conclusion

Renowned scholar-activist Angela Davis argues that by examining societal factors that function to exclude groups, we can challenge the current immigration system for asylum and refugee relief to envision a new one altogether. Drawing a parallel with slavery, Davis's metaphor famously emphasizes how the idea of abolition seemed inconceivable until it was eventually achieved. Similarly, she believes that we can imagine a better system in which new citizenship and immigration are not necessary to receive equal treatment. Along these lines, it is helpful to think about the fundamental flaws of the US immigration system more broadly through radical thinkers on the topic.

I have argued that states will continue to use this system that reproduces systems of inequality if we so allow it to be used in such a way. However, I have argued that “sanctuary” is more than just a series of policies that should be implemented, it is a mechanism to counteract the further inequalities that the system of citizenship and international protection promise, but do not deliver. Therefore, sanctuary policies could be more broadly used as a tool of relief for those who live full lives within US borders without residency status.

The discussion of citizenship and sanctuary in the US begs us to envision a future in which receiving international protection is not an insurmountable endeavor. Yet, the current system of attempting to gain US legal recognition looks like family separation, waiting for months to years in dilapidated border towns and suffering every day trying to access refugee relief. The effect of such a poor asylum system disallows individuals to seek a better life and *determines* arbitrarily the extent to which their suffering can even be recognized.

Citizenship status aims to exclude foreign nationals from accessing institutions to make their lives miserable, under the guise of a system of equality. Deliberative steps have been taken

to ensure that refugee relief remains difficult and convoluted through disconnected executive actions, incentivizing extralegal crossings that are far too prevalent in the US context. Kochenov is suspicious about the rights that citizenship promises "...[including] the possibility of living in one's country without the risk of deportation, freedom from...discrimination...[and] the right to work in the country."<sup>71</sup> Indeed, for those who face imminent persecution, with the constant threat of refoulement, one may find solace in living an undocumented life in the US. In sanctuary cities where opportunities can be far greater for those without a legal status, despite the dangers of such a task. Once inside the borders, one can live in sanctuary jurisdictions with the same exact protections that Kochenov has previously laid out, making citizenship unserviceable in this respect.

For further research on the discussion, another consideration for the expansion of knowledge on the country's attempts to subdue asylum and citizenship claims from those fleeing persecution, it may be interesting to expand the scope from persons seeking asylum to persons from 16 countries that the Biden administration has allocated to expand Temporary Protected Status in light of current and subsiding wars as of June 2023.<sup>72</sup> Such further research would continue to interrogate the different ways that US administrations avoid conferring citizenship status and create and expand different designations to ensure that non-nationals *remain foreign* under the law.

I have suggested one alternative to the years of suffering that can result from the process of seeking international protection. Here, sanctuary can be a helpful mechanism to effectuate

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<sup>71</sup> Kochenov, "Chapter 1: Key Elements of the Concept," 12.

<sup>72</sup> Of the countries' nationals eligible to receive TPS in light of recent war or conflict include but are not limited to include Afghanistan, Ethiopia, Ukraine, Somalia, South Sudan, and Syria. Mohamad Moslimani, "How Temporary Protected Status Has Expanded under the Biden Administration," Pew Research Center, April 21, 2023, <https://www.pewresearch.org/short-reads/2023/04/21/biden-administration-further-expands-temporary-protected-status-to-cover-afghanistan-cameroon-ukraine/>.

change within our communities without breaking laws or calling for constitutional or federal changes that may be difficult to implement. Cities and communities that provide sanctuary reject the random administrative policies that continue to pervade the immigration system that dehumanizes and excludes specific identities. By offering sanctuary, cities assert their commitment to inclusivity, justice, and the recognition of the inherent worth and dignity of every individual. They stand as a powerful manifestation of solidarity and resistance against immigration policies that claim to only enforce a racist and wayward system of citizenship. Sanctuary policies move in the direction of progress, rejecting borders and demonstrating an unwavering refusal to take the system as is.



## 6. Appendix I

16 June 2023

Sanctuary & Asylum



**Support Initiative**

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Sanctuary & Asylum Support Initiative's<sup>73</sup>  
Statement to The Honorable Secretary of the  
Department of Homeland Security, Alejandro Mayorkas and  
The White House of the United States of America  
Re: Insufficient and Inhumane Asylum Procedures at the U.S.-Mexico Border

In this present statement, I will call upon fundamental issues regarding the lingering effects of Trump-era policies such as Remain in Mexico and the evocation of Title 42 expulsions during the COVID-19 pandemic as well as the development of the Biden CBP One App and urge you to make certain considerations and implement certain human rights-focused changes to policy and practice:

Despite Title 42's expiration, its impacts continue to be felt, raising concerns about the fulfillment of President Biden's campaign promises to swiftly end inhumane actions initiated by the previous administration. Additionally, it is impossible to not mention that the DHS has not yet taken steps to ensure that conditions in Mexico meet standards allowable under international human rights law, especially with the "Remain in Mexico" policy still in place under the Biden Administration.<sup>74</sup> It is necessary to ensure the standards of the principle of "safe third country" of asylum must recognize all relevant and well-established human rights records of countries that governmental officials will inevitably send back persons seeking asylum.

While I acknowledge the recent orders to end the Title 42 policy, it is disheartening to note that during President Biden's tenure, he renewed this measure a staggering nine times, contrary to the expectation that his administration would depart from the approach of the Trump administration. This repetition of such a human rights failure raises questions about the administration's commitment to upholding international human rights obligations and fulfilling its promises to enact meaningful change.

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<sup>73</sup> This refers to a fictitious Non-Governmental Organization created solely for the purposes of the Capstone Project.

<sup>74</sup> Despite attempts to stop the policy at the start of the Biden Administration, the policy more formally known as Migrant Protection Protocols (MPP), the reversal was struck down in the courts. "Biden Vowed to Fix America's Immigration System. Here's What He Achieved in His First Year," PBS NewsHour, January 20, 2022, <https://www.pbs.org/newshour/show/biden-vowed-to-fix-americas-immigration-system-heres-what-he-achieved-in-his-first-year>.

The effects of Title 42 have been devastating, depriving individuals of their right to seek asylum and exposing them to further persecution and harm after expelling persons to other such dangerous situations, **contravening the protection against refoulement**. Despite the termination of the policy, many asylum seekers continue to face significant obstacles and barriers to accessing the protection they are entitled to under US laws and international conventions.

Therefore, I implore you, as one of the acting Head of a Department tasked with obliging its policies and procedures should align with Human Rights standards there be accountability and transparency from the Biden administration regarding the fragmented efforts that the government has taken to ensure that persons seeking asylum are countries away waiting in dangerous situations to seek protection. At this rate, protection from an outside entity will become impossible if you ask already vulnerable individuals to remain in a place where they face imminent persecution. It is essential that they provide a comprehensive explanation for the repeated extensions of a policy that they vowed to end, as it undermines their commitment to breaking away from the previous administration's approach.

I urge you to take the following recommendations into consideration:

1. Investigation into the decision-making process behind the renewals of Title 42 and allowing individuals who have been maltreated under the turnback policy to make complaints and have their asylum claims officially processed
2. The more direct and lawful implementation of international human rights law enshrined in the International Covenant on Civil and Political Rights, the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, and the Convention Against Torture, and other Cruel, Inhuman or Degrading Treatment and ending inhumane immigration policies that do not align with the described treaties.
3. Swift and effective measures to address the lingering effects of Title 42, ensuring that individuals seeking asylum are provided with fair and just treatment, access to due process, and protection under US laws
4. Serious reform to ICE and deportations that waste money and do not deter irregular immigration
5. Massive funding efforts to quell the increasing asylum backlog that has overloaded and crippled the entire system

It is imperative that we hold our government accountable and insist on the immediate rectification of policies that perpetuate suffering and disregard human rights. I trust that you will take a strong stance in demanding transparency and change, ensuring that the Biden administration lives up to its promises and creates an immigration system rooted in compassion, fairness, and respect for human dignity.

Next, we must address the development of the new mobile application launched around the end of Title 42.

The CBP One App is a misinformed attempt to streamline asylum claims and misses the mark in so many respects. The effect of the online application contradicts the right to seek asylum forcing migrants to remain in dangerous conditions from which they need to flee and conflicting with his campaign promises to end the inhumane treatment of persons seeking asylum. Mere adjustments to

the ban's technicalities and the addition of a mobile application cannot rectify its fundamental flaws. The reliance on a smartphone application to schedule asylum claims has seen the following shortcomings<sup>75</sup>:

- Effectively excludes individuals who do not have a secure internet or mobile connection
- Effectively excludes individuals who do not have a smartphone or smartphone that is able to support the app
- Severe problems with the user interface through navigational bugs, frequent crashes, and timeout errors
- Worse than a lottery system with appointments filling up within the first 5 minutes of the opening of appointments each day
- The facial recognition software does not detect darker skin tones or lower levels of lighting
- The app's design does not allow families to apply as a family unit, only as individuals, **threatening to have the same effect as Trump's "zero tolerance" policy** that unjustifiably stripped children from their families, causing other forms of torture than those being experienced in their home countries<sup>76</sup>

It is clear that the compounding issues with the CPB One App, along with conditions persisting at all stages of administrative asylum procedures ultimately reproduce the same problems that cause persons seeking asylum to cross borders extralegally in the first place.

Despite President Biden's promise to repeal Trump's unforgiving immigration policies made during the campaign, the order evoking Title 42 has still been renewed several under his own presidency. When Biden did attempt to finally stop the measure, it was found that the claims to strike down the law went did not fulfill administrative procedural requirements. There has been no acknowledgment that this failure to perpetuate the millions of expulsions, effectively robbing the guarantee to have asylum claims examined on a case-by-case basis, as established by international refugee law principles.

Please take note, President Biden must be informed that seeking asylum is a right. The current policy implemented by the Biden administration will unlawfully deprive individuals seeking international protection at the southern border by making them first wait to apply for asylum in Mexico or other Northern Triangle countries they have passed through, without adequate safeguards to ensure these countries qualify as a "safe third country." It is important to acknowledge that sometimes the longer that persons seeking asylum lay in wait, in danger, the more likely their threat to life and liberty.

This newly imposed ban on asylum mirrors the bans implemented by the previous administration, thus subjecting the most vulnerable individuals to a situation reminiscent of Trump's policies. They will be exposed to risks and unjustly denied the asylum protection they urgently require.

<sup>75</sup> "App Glitches Stand between Desperate Asylum Seekers and Entry to U.S. - The Washington Post," accessed March 11, 2023, <https://www.washingtonpost.com/nation/2023/03/11/asylum-seekers-mexico-border-app/>.

<sup>76</sup> Matthew Haag, "Thousands of Immigrant Children Said They Were Sexually Abused in U.S. Detention Centers, Report Says," *The New York Times*, February 27, 2019, sec. U.S., <https://www.nytimes.com/2019/02/27/us/immigrant-children-sexual-abuse.html>.

Thank you for your attention to this urgent matter. I look forward to seeing your unwavering commitment to justice and accountability in addressing the effects of Title 42, the inadequacies of the CBP One Application, and the remaining work to be done for family reunification.

Thank you for your consideration on this matter of great importance.

Sanctuary & Asylum Support Initiative

## 7. Appendix II

Desiree Driscoll c/o Central European University  
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16 June 2023

The White House  
1600 Pennsylvania Avenue,  
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To Whom It May Concern:

I hope this letter finds you in faith. My name is Desiree Driscoll, and I am a Human Rights graduate student at Central European University in Vienna, Austria. I am writing to you to enclose a project for my Master's Thesis Project for the purpose of highlighting the flaws in the current asylum and immigration system in light of international human rights standards that have not been wholly implemented. Please find the enclosed statement in which I recommend such appropriate changes for reform.

Once again, I want to emphasize that your commitment to making a positive impact on the humane treatment of persons seeking asylum must continue to outlast your presidential term and I request that meaningful progress be made to the CBP One App as well as through the enactment of sweeping immigration reform implementing human rights principles as a priority.

Thank you for taking the time to consider the points made in my Statement. Please feel free to contact me at Driscoll\_desiree@student.ceu.edu or at +1 (949) 324-8788 at your convenience.

With utmost respect,

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