

LESSONS FROM VIETNAM: INFORMING REFUGEE POLICY IN HAITI AND AFGHANISTAN FROM POST-VIETNAM UNITED STATES POLICY

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I. INTRODUCTION

On August 30, 2021, the United States ended its longest-ever war, which lasted for more than twenty years, when C-17 Globemaster military cargo planes completed their final evacuation mission from Kabul International Airport in Afghanistan's capital.¹ The C-17 Globemaster cargo planes had not only been a familiar sight during those brief days in Kabul, but they had also gained international infamy through a series of viral videos. In "a scene that has come to symbolize the chaotic end to America's 20 years of war in Afghanistan," grainy video footage captures several people, who had been filmed clinging to the plane as it took off, falling from the plane at an altitude of thousands of feet in the air, being crushed to death as they landed.² The images garnered international attention, with one report calling the scenes "[t]ragic" and "[d]istressing,"³ and another calling it "[s]triking."⁴

Meanwhile, tens of thousands of miles away, more distressing scenes were being played out at the United States' border with Mexico. As thousands of Haitian migrants were pouring over the border in September, several photos

* I am a third-year law student at Notre Dame Law School. I would like to thank my sponsor, Professor Rodolfo Monterrosa, and all of my *Journal of Law, Ethics & Public Policy* peers for their support throughout this process. Please note that this Note was conceptualized before the advent of the ongoing war in Ukraine, and thus the Ukrainian conflict is beyond the scope of this Note. It is my hope that scholarship may continue on this topic to apply these lessons to aid Ukrainian refugees and victims of war.

1. See Amanda Macias, *U.S. Ends 20-Year War in Afghanistan with Final Evacuation Flights Out of Kabul*, CNBC, <https://www.cnbc.com/2021/08/30/afghanistan-update-last-us-troops-leave-kabul-ending-evacuation.html> (last updated Aug. 31, 2021, 6:52 PM).

2. Kathy Gannon, *After Afghans Fell from Plane, Families Live with Horror*, AP NEWS (Sept. 21, 2021), <https://apnews.com/article/soccer-sports-afghanistan-middle-east-kabul-58a4e0a9c6343ab78a1985df31e2d729>. Reportedly, some of the people who fell out of the plane were hiding in the wheels. As the landing gear retracted upon takeoff, the stowaways faced the choice of being either crushed to death or jumping. They chose the latter. *See id.*

3. Ahmad Seir et al., *Tragic Scenes as Afghans Fall from Plane While Attempting to Flee Kabul*, 7NEWS, <https://7news.com.au/news/middle-east/tragic-scenes-as-afghans-fall-from-plane-while-attempting-to-flee-kabul-c-3698374> (last updated Aug. 16, 2021). One particularly tragic profile that garnered this international attention was the story of Zaki Anwari, a soccer player on Afghanistan's national team, who was one of the people who fell from the planes. This story comes after Khalida Popal, the Afghanistan women's soccer team's captain, "urged players to delete social media, erase public identities and burn their kits for safety's sake now that the country is again under Taliban rule." *Afghan National Team Player Dies in Fall from U.S. Plane – Afghan News Agency*, ESPN (Aug. 19, 2021), <https://www.espn.com/soccer/afghanistan/story/4457354/afghan-national-team-player-dies-in-fall-from-us-plane-says-afghan-news-agency>.

4. *Afghanistan: Striking Image Captures Kabul Exodus*, BBC NEWS (Aug. 17, 2021), <https://www.bbc.com/news/world-asia-58242733>.

were taken of United States Border Patrol agents whipping Haitian migrants, with one “agent menacingly swing[ing] his reins like a whip, charging his horse toward the [migrants] in the river who were trying to return to an encampment under the international bridge in Del Rio.”⁵ Just as with the images of Afghans falling out of planes, the images of Haitian migrants being whipped at the border “spread like wildfire” and received international scrutiny and criticism.⁶ Although the White House condemned this attack on Haitian migrants as “horrific,”⁷ some have questioned whether or not the Biden administration has truly brought positive change from the controversial immigration tactics employed by former president Donald Trump and why mistreatment of migrants at the border continues to occur.⁸

Both of these incidents, arguably caused or facilitated by the United States, brought back memories of another international incident in which the United States was involved approximately fifty years in our past: the end of the Vietnam War. In fact, some of the United States’ most prominent political figures, including United States Senator Mitch McConnell, “have compared [the United States’] present retreat from Afghanistan to the ‘humiliating’ withdrawal from Saigon in 1975 at the end of the Vietnam War.”⁹ Between April 29, 1975, and April 30, 1975, images captured United States helicopters evacuating approximately 7,000 South Vietnamese refugees from Saigon as the North Vietnamese military was knocking on the door of Saigon.¹⁰ These images captured the moments when “desperate South Vietnamese citizens [were] swarming” the gates of the American Embassy in Saigon,¹¹ in a manner similar to the way in which Haitian migrants were swarming the border at the Rio Grande and in which Afghan refugees were swarming the C-17 Globemasters at the Kabul airport.

5. Elvia Díaz, *Border Patrol Agents Are Using Reins like Whips to Round Up Haitian Immigrants. How Is That OK?*, ARIZONA REPUBLIC, <https://www.azcentral.com/story/opinion/oped/elviadiaz/2021/09/20/border-patrol-using-whips-del-rio-round-up-haitian-immigrants/5789596001/> (last updated Sept. 22, 8:32 AM) (quoting Martha Pskowski, *Haitian Migrants face Tough Choices in Del Rio amid Crackdown at Texas-Mexico Border*, EL PASO TIMES (last updated Sept. 21, 2021, 2:01 PM) (internal citations omitted)).

6. Enrique Limón, *US Border Patrol Said Their ‘Whips’ in Pictures of Haitian Migrants Were Reins – So I Asked for More Details*, INDEPENDENT (Sept. 23, 2021, 7:33 PM), <https://www.independent.co.uk/voices/haiti-migrants-reins-whips-border-patrol-b1925873.html>.

7. Nick Niedzwiadek, *White House: Possible Use of Whips on Haitian Migrants Is ‘Horrific’*, POLITICO (Sept. 20, 2021, 2:43 PM), <https://www.politico.com/news/2021/09/20/psaki-whipping-haitian-migrants-horrific-513106>.

8. See Díaz, *supra* note 5.

9. Pia Krishnankutty, *Fall of Saigon – The Vietnam War Moment Being Compared to US’ Evacuation from Afghanistan*, PRINT (Aug. 13, 2021 2:48 PM), <https://theprint.in/theprint-essential/fall-of-saigon-the-vietnam-war-moment-being-compared-to-us-evacuation-from-afghanistan/714449/>.

10. See *id.*

11. Dave Roos, *How the End of the Vietnam War Led to a Refugee Crisis*, HISTORY CHANNEL (Sept. 1, 2021), <https://www.history.com/news/vietnam-war-refugees>.

In the next twenty years following the swarming of the gates at Saigon, more than three million refugees fled Vietnam, Laos, and Cambodia to find refuge abroad.¹² However, with the harrowing scenes captured in Kabul and at the border, it is apparent that twenty years is too long of a time to fix an increasingly desperate situation. Therefore, this Note will attempt to answer important questions related to how it is possible to use lessons from our past from the fall of Saigon, including by looking at policy and legal decisions, to inform how best to solve this next refugee crisis. In Part II of this Note, I will examine the factual context of the current refugee crisis, including the circumstances surrounding the crises in Haiti and Afghanistan, comparing them to the circumstances regarding Vietnam, and how the United States has contributed to – and tried to resolve – each of these situations. In Part III, this Note will examine the relevant legal issues and policy decisions regarding asylum-seeking and the resettlement of Vietnamese refugees. In Part IV, I will analyze the legal and statutory issues in Part III and apply them to the situation in Haiti and Afghanistan. In Part V, I will examine how, if all else fails, the international community can help—and has been helping—to alleviate this crisis. Finally, in Part VI, this Note will examine the challenges facing the future regarding the refugee crisis and what obstacles the United States, the international community, and the refugees impacted by the crisis will face going forward. In sum, this Note will suggest compassionate and practical solutions to inform how best to handle the refugee crisis in Haiti and Afghanistan using lessons from Vietnam.

II. THE FACTS: THE REFUGEE CRISIS IN HAITI AND AFGHANISTAN AND HOW THE UNITED STATES HAS EXACERBATED THE PROBLEM

This section will discuss the factual background to the crises in Haiti and Afghanistan, their comparison with the situation in Vietnam fifty years ago, and how the United States' involvement, especially with respect to Vietnam and Afghanistan, leads to a moral responsibility for the United States to help address the problem.

In Haiti, serious problems have doomed the country politically, naturally, and economically recently to a point where thousands of Haitian migrants are fleeing the country. Economically, it is no secret that Haiti is one of the poorest countries in the world, but Haiti is the poorest country in all of Latin America and the Caribbean, ranking in the bottom twenty of all countries in the World Bank's Human Development Index in 2020.¹³ Not only that, but Haiti has had rotten luck when it comes to natural disasters, with the country's 2010 earthquake killing 250,000 people and destroying a significant portion of Haiti's infrastructure, while Hurricane Matthew in 2016 reportedly destroyed

12. *See id.*

13. *See Overview: The World Bank in Haiti*, WORLD BANK, <https://www.worldbank.org/en/country/haiti/overview#1> (last visited Nov. 14, 2021). Haiti is also socioeconomically unequal, with “the richest 20 percent of the population holding more than 64 percent of the total income of the country, compared to less than 2 percent held by the poorest 20 percent.” *Id.*

approximately 32% of the country's GDP.¹⁴ Perhaps the straw that has broken the camel's back with regards to the migration crisis in Haiti is the assassination of their president, Jovenel Moïse.¹⁵ As soon as President Moïse was assassinated on July 7, 2021, it was predicted that a "migrant surge" would result from Haiti: "The assassination of Haiti's president will further destabilize the country, leading to an increase in Haitian economic migrants and asylum seekers looking for refuge in neighboring countries and France."¹⁶ In fact, this prediction appeared to come true, as one Haitian migrant, Stelin Jean, reported that he and his family decided to flee their home country of Haiti just five days after the assassination.¹⁷ These disasters, sparked by President Moïse's assassination, led to the eventual build-up of thousands of refugees at the Del Rio bridge at the United States' border with Mexico.¹⁸

Similarly, the situation in Afghanistan was volatile but for different reasons. Prior to the attacks on New York and Washington, D.C., on September 11, 2001, the Taliban, an "Islamic fundamentalist group," served as the form of government in Afghanistan from 1996 until the United States invaded the country after 9/11.¹⁹ In 1996, the Taliban, after taking over the country in a war that started in 1994, began to "impose their rule, forbidding most women from working, banning girls from education and carrying out punishments including beatings, amputations and public executions."²⁰ After approximately twenty

14. See *id.* Additionally, "[m]ore than 96% of the population is exposed to these types of [natural disasters]." *Id.*

15. On July 7, 2021, Haiti's president, Jovenel Moïse, was assassinated in his home because of a massive conspiracy, with a group of approximately twenty-eight armed gunmen breaking into his home, shooting and killing him and wounding his wife, Martine, who eventually survived the attack. See Edwidge Danticat, *The Assassination of Haiti's President*, NEW YORKER (Jul. 14, 2021), <https://www.newyorker.com/news/news-desk/the-assassination-of-haitis-president>. Moïse's presidency was not without controversy, either. Moïse spent the last few years of his presidency ruling by decree after a constitutional crisis as armed criminal gangs began to take over the streets of Haiti. See *id.*

16. *The Assassination of Haiti's President Portends a Migrant Surge*, RANE, (Jul. 7, 2021, 9:53 PM), <https://worldview.stratfor.com/article/assassination-haiti-s-president-portends-migrant-surge>.

17. See Uriel J. García & Jolie McCullough, *Thousands of Haitian Migrants Fleeing Disaster and Unrest Seek Asylum at Del Rio Bridge*, TEXAS TRIBUNE, <https://www.texastribune.org/2021/09/17/texas-border-del-rio-migrants/> (last updated Sept. 17, 2021, 7:00 PM). Jean was further quoted as saying "[t]here's people killing each other in Haiti, there's just no justice I just want to live a calm life without any problems, I want to live somewhere where I know there's justice." *Id.*

18. See *id.*

19. See Lindsay Maizland, *The Taliban in Afghanistan*, COUNCIL ON FOREIGN RELATIONS, <https://www.cfr.org/background/taliban-afghanistan> (last updated Aug. 17, 2022, 5:15 PM).

20. Hannah Bloch, *A Look at Afghanistan's 40 Years of Crisis – From the Soviet War to Taliban Recapture*, NPR, <https://www.npr.org/2021/08/19/1028472005/afghanistan-conflict-timeline> (last updated Aug. 31, 2021, 5:25 PM). One of those brutal executions was of Afghanistan's captured president, Mohammad Najibullah. He was reportedly brought out of the United Nations compound and killed, and his body was hung from a lamppost. See *id.* Crimes such as "preaching Christianity" were capital offenses. *Id.*

years of American rule discussed *infra*, in April of 2021 United States President Joe Biden announced the withdrawal of United States troops from Afghanistan.²¹ However, in just a ten-day period, the Taliban, who were now facing “little resistance” from both United States troops and Afghan troops, “swiftly overtook” the entire country, and “the Afghan government collapsed.”²² In scenes that were marked by their “intensity” and “urgency,” Afghan refugees, fearful of the Taliban, rushed Kabul International Airport in Afghanistan’s capital to escape.²³ Within the first week of Taliban control, 17,000 people were reported to have left the country, while 14,000 were crammed into the airport in Kabul at one time.²⁴ As time went on and more and more people could not get out, and the crowd became “more desperate.”²⁵ The evacuations finally ended on August 30, 2021.²⁶

The end of the Vietnam War in April of 1975 led to a similar mass panic and evacuation of migrants from Vietnam as to what happened in Haiti and Afghanistan. On April 29, 1975, the day before Saigon fell to the North Vietnamese Army, an immediate evacuation of certain personnel, including United States government and military and South Vietnamese military occurred outside of the U.S. embassy in Saigon.²⁷ Just as what happened in Kabul, the collapse of South Vietnam came very quickly, as it was described that the curtain “fell quickly.”²⁸ Images of “desperate” South Vietnamese crowding the gates of the U.S. embassy in Saigon were broadcast as the world watched on.²⁹ Over the next twenty years, more than three million refugees would end up fleeing Vietnam, Cambodia, and Laos as a result of this conflict.³⁰ Unfortunately, many thousands died at sea, as “boat people” fled the country in makeshift vessels, some falling victim to pirates who committed brutal atrocities including sexual assaults, while others succumbed to overcrowding and were forced overboard.³¹ Over 2.5 million of these three million refugees

21. See *Afghanistan War*, HISTORY CHANNEL, <https://www.history.com/topics/21st-century/afghanistan-war> (last updated Aug. 20, 2021) [hereinafter *Afghanistan War*].

22. *Id.*

23. Lyse Doucet, *Afghanistan: People at Kabul Airport Flee Taliban with Just a Suitcase*, BBC NEWS (Aug. 23, 2021), <https://www.bbc.com/news/world-asia-58300386>.

24. See *id.* The packed conditions in the crowd were so compressed that “several women [were] known to have lost their lives as the people surged forward.” *Id.*

25. *Id.*

26. See Adam Nossiter & Eric Schmitt, *U.S. War in Afghanistan Ends as Final Evacuation Flights Depart*, N.Y. TIMES, <https://www.nytimes.com/2021/08/30/world/asia/afghanistan-us-occupation-ends.html> (last updated Oct. 5, 2021).

27. See Roos, *supra* note 11.

28. John Ruwitch, *U.S. Evacuations in Afghanistan Evoke Memories Of Saigon’s Fall*, NPR (Aug. 20, 2021, 5:07 AM), <https://www.npr.org/2021/08/20/1029582430/u-s-evacuations-in-afghanistan-evoke-memories-of-saigons-fall>. One Vietnamese refugee, Do Hoang Duyet, noted the striking similarities between the power alliances in Vietnam and Afghanistan: “Why do you expect another country, another government[,] to fight the war for you?” *Id.*

29. Roos, *supra* note 11.

30. See *id.*

31. *Id.*

were eventually resettled around the world, with one million in the United States; most ended up in either Singapore or Hong Kong.³²

The United States has the responsibility to deal with the incoming refugee crises in Afghanistan and Haiti because of their involvement in those two countries. In fact, a similar rationale had been made with regard to the situation in Vietnam nearly fifty years ago. The United States first became involved in Vietnam in the late 1950s after the communist North and the capitalist South broke out in civil war in approximately 1958.³³ The United States involvement escalated in 1963, as President John F. Kennedy sent approximately 16,000 “advisers” in the context of the overthrow of the oppressive government of South Vietnamese President Ngo Dinh Diem, who was assassinated in 1963.³⁴ However, the true escalation of the Vietnam conflict came upon the passage of the Gulf of Tonkin Resolution of 1965, which permitted President Lyndon B. Johnson to wage war against North Vietnam after the attack on the USS *Maddox* in the Gulf of Tonkin.³⁵ The war escalated to unprecedented levels; within a few years, the United States was spending nearly \$77 billion per year on the war and had nearly half a million personnel in Vietnam.³⁶ The United States used tactics that were described as “brutal” in Vietnam, using napalm and search and destroy methods that killed innocent civilians.³⁷ The most blatant example of American misdeeds in Vietnam came with the My Lai Massacre, when American soldiers killed over 500 innocent civilians in the village of My Lai in Vietnam in 1968, “sparking a firestorm of international outrage.”³⁸ At the end of the conflict, “the USA’s reputation had been tarnished. . . . [T]he media had shown the world how brutal American tactics were.”³⁹ This strongly suggests American responsibility for the refugee crisis in Vietnam.

The United States bears similar responsibility for the events in Afghanistan. In October of 2001, United States and British troops began attacks on Afghanistan in Operation Enduring Freedom.⁴⁰ Although Secretary of Defense Donald Rumsfeld declared an end to “‘major combat’ operations” in 2003, President Obama increased troops in Afghanistan by 17,000 in 2009,

32. *See id.*

33. *See The Vietnam War*, BBC: BITESIZE: THE COLD WAR, <https://www.bbc.co.uk/bitesize/guides/zv7bkqt/revision/2> (last visited Dec. 20, 2021) [hereinafter *The Vietnam War*].

34. *See id.* Although one intent of Kennedy’s increase in advisers was to “intensify the struggle” in South Vietnam, he also said in his last press conference before his own assassination that the objective was to “bring Americans home and permit the South Vietnamese to maintain themselves as a free and independent country.” Helmer Reenberg, *November 14, 1963 – Clip from President John F. Kennedy’s Last News Conference*, YOUTUBE (Dec. 6, 2012), <https://www.youtube.com/watch?v=Djbqo158oaY>.

35. *See The Vietnam War*, *supra* note 33.

36. *See id.*

37. *Id.*

38. *My Lai Massacre*, HISTORY CHANNEL, <https://www.history.com/topics/vietnam-war/my-lai-massacre-1> (last updated Apr. 17, 2020).

39. *The Vietnam War*, *supra* note 33.

40. *See Afghanistan War*, *supra* note 21.

subsequently reducing the number of troops by 2014 after the killing of Osama Bin Laden.⁴¹ In the Trump administration, President Trump deployed the “Mother of All Bombs” (MOAB), decimating ISIS yet causing much collateral damage.⁴² However, as mentioned above, President Biden, after announcing a withdrawal of troops from Afghanistan, presided over a massive collapse in Afghanistan, seeing the Taliban gain back control over Afghanistan in a little under two weeks and rendering much of the United States’ involvement in Afghanistan in the preceding twenty years useless.⁴³ Because of this, some have suggested that the United States now bears responsibility to take in Afghan refugees and supply humanitarian aid to the Afghan people because of the twenty-year involvement in Afghanistan and role in allowing the current refugee crisis to unfold.⁴⁴

Although less obvious than the conflicts in Afghanistan and Vietnam, the United States has certainly had a sinister involvement in Haiti as well. In 1915, the United States invaded Haiti, occupying the country for nearly twenty years until 1934.⁴⁵ During this occupation, “U.S. forces executed political dissidents and implemented a system of forced labor that ravaged Haiti’s peasant population,” while U.S. conglomerates bought large portions of Haitian land for their own gain.⁴⁶ Before President Moïse’s assassination, despite his controversial ruling by decree as described in Footnote 16 and accusations of “turning Haiti’s democracy into a self-serving dictatorship,” the United States still backed President Moïse.⁴⁷ With the United States border agents whipping Haitian migrants trying to cross the border, a portrait of hypocrisy is painted as the United States refuses to permit Haitians to enter after having contributed to Haiti’s problems.

In Haiti and Afghanistan, recent incidents have led to a migrant crisis. Because of the United States’ involvement, as compared to what happened at the end of the Vietnam War, the United States has a moral responsibility to help the Haitian migrants. In the next section, this Note will examine the relevant legal and policy issues regarding asylum in the United States that these new migrants would face, should the United States accept its moral duty.

41. *Id.*

42. *See id.*

43. *See id.*

44. *See* Ali Harb, *US Has Moral Obligation to Aid Afghanistan, Afghan Americans Say*, AL JAZEERA (Aug. 31, 2021), <https://www.aljazeera.com/news/2021/8/31/us-has-moral-obligation-to-aid-afghanistan-afghan-americans-say>.

45. *See* David Suggs, *The Long Legacy of the U.S. Occupation of Haiti*, WASH. POST (Aug. 6, 2021, 7:29 AM), <https://www.washingtonpost.com/history/2021/08/06/haiti-us-occupation-1915/>. Ironically, this occupation came in the wake of an assassination of a Haitian president. *See id.*

46. *Id.* One Haitian-American writer says that the United States still effectively occupies Haiti in what he calls a “désoccupation” that has “yet to come.” *Id.*

47. Keka Araújo, *Haitians Continue to Denounce U.S.-Backed President, and Now They Have the Diaspora’s Ear #FreeHaiti*, BLACK ENTER. (Mar. 14, 2021), <https://www.blackenterprise.com/haitians-continue-to-denounce-u-s-backed-president-and-now-they-have-the-diasporas-ear-freehaiti/>.

III. RELEVANT LEGAL AND POLICY ISSUES CONCERNING ASYLUM IN THE UNITED STATES

In this section, this Note will address the relevant legal and policy issues surrounding asylum claims in the United States. Here, this section will address cases that set the foundation for the stance of the United States on refugee policy, examine the rules governing asylum claims, and evaluate the current administration's stance on prosecutorial discretion.

In reality, the context for the United States' treatment of foreign nationals dates back to the late 1800s with the introduction of Congress's plenary power to govern the entry of aliens⁴⁸ into the United States. In *Chae Chan Ping vs. United States*, Ping, a Chinese national living in San Francisco, left the United States to visit China and possessed the necessary paperwork to return.⁴⁹ However, while en route back to the United States, Congress passed a bill nullifying the type of paperwork that Ping already possessed.⁵⁰ Although Ping filed a writ of habeas corpus, the Court held that, because Ping was not a citizen of the United States, Congress had plenary power to exclude aliens as a matter of national security based on the concept of sovereignty.⁵¹ The Court in *Fong Yue Ting vs. United States* went even further, upholding removal on claims of sovereignty based on its reasoning in *Chae Chan Ping*, even when Congress required Chinese laborers to apply for a certificate of residence or face expulsion unless a "credible white witness" could vouch that they were a citizen of the United States.⁵² Even though the plaintiff was deprived of due process, the Court held that removal was not a punishment, although the dissent disagreed with this analysis.⁵³ These cases remain good law even today, elucidating the notion that "Congress can do anything it wants [with regard to] immigration, Constitution be damned."⁵⁴

However, not all is lost with regard to asylum seekers attempting to enter the United States, especially for those with a valid claim to asylum, despite the controversial rulings in *Chae Chan Ping* and *Fong Yue Ting*. In fact, asylum seekers have certain protections in the United States that aliens without these claims do not have. First, however, it is important to define key terms regarding

48. According to the Immigration and Nationality Act § 101(a)(3), "the term 'alien' means any person not a citizen or national of the United States." Immigration and Nationality Act § 101(a)(3), 8 U.S.C. § 1101(a)(3). The term, although offensive in certain contexts, is a term of art legally and will be used as such in this Note.

49. *Ping v. United States*, 130 U.S. 581, 582 (1889).

50. *See id.*

51. *See id.* The concept of sovereignty, though relevant to the refugee crisis, is beyond the scope of this paper. For more information, see Samuel Gregg, *National Sovereignty and the Challenge of Immigration*, PUB. DISCOURSE (Aug. 22, 2017), <https://www.thepublicdiscourse.com/2017/08/19911/>.

52. *See Fong Yue Ting v. United States*, 149 U.S. 698, 731 (1893).

53. *See id.* at 730, 739–40.

54. Garrett Epps, *The Ghost of Chae Chan Ping*, ATL. (Jan. 20, 2018), <https://www.theatlantic.com/politics/archive/2018/01/ghost-haunting-immigration/551015/>.

refugees according to United States law. According to the Immigration and Nationality Act (“INA”) § 101(a)(42), a “refugee” is defined as the following:

any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a *well-founded fear of persecution* on account of *race, religion, nationality, membership in a particular social group, or political opinion*.⁵⁵

Therefore, according to the statute, an applicant must show a well-founded fear of persecution as described above and membership in one of five protected groups: racially persecuted groups, religiously persecuted groups, groups persecuted based on national origin, socially persecuted groups, and groups persecuted based on political opinion.

But what do these categories mean, and what is a well-founded fear of persecution? Case law can provide a clearer picture with respect to this issue. In *Immigration and Nationality Service v. Cardoza-Fonseca*, the Court addressed what it means for an applicant to have a “clear probability of persecution.”⁵⁶ Although the government attempted to argue that a well-founded fear of persecution depended on a standard of “more likely than not” that the applicant would be persecuted, the Court disagreed.⁵⁷ Instead, the Court delineated a new test, holding that applicants must show that (1) they are a refugee with a “well-founded fear of persecution” and (2) that the applicant’s life or freedom would be threatened if deported.⁵⁸ In other words, a refugee could show a credible fear of persecution if its chances were less than 50% so long as there was a credible threat to their life or freedom if they were returned to their country of origin. Additionally, *Matter of Kasinga* established that an act of persecution—in this case, forced genital mutilation—does not have to go as far as to “shocking the conscience,” as all that has to be shown is the aforementioned demonstration of fear and membership to one of the five categories.⁵⁹ However, there are limits to this test, especially with regard to political opinion. In *Immigration and Nationality Service v. Elias-Zacarias*, an applicant who testified he had a credible fear of persecution because of armed guerillas who broke into his home described that his fear resulted from the rebels’ opposition to the government and a looming threat of government retaliation.⁶⁰ The Court held here that forced conscription in a guerilla army did not constitute credible fear based on political opinion in an asylum case because the political opinion of the *refugee*, not that of the oppressive group, is what is

55. INA § 101(a)(42), 8 U.S.C. § 1101(a)(42) (emphasis added).

56. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 430 (1987).

57. *Id.*

58. *Id.* at 440–41.

59. *Kasinga*, 21 I. & N. Dec. 357, 365 (B.I.A. 1996).

60. *See INS v. Elias-Zacarias*, 502 U.S. 478, 479–80 (1992).

important to the determination that the alien is a refugee.⁶¹ In other words, the applicant must have a subjective political opinion of their own that would cause them to become endangered based on their political opinion, as the political opinion of the oppressing group is not relevant.⁶² The dissent, however, states that electing not to take sides in a particular conflict does amount to having a personal political opinion.⁶³

After establishing refugee status, the next question is how the refugee is processed into the United States. There are two potential paths for incoming refugees: asylum and withholding of removal. In order to claim asylum status, “a person must already be in the United States or at a U.S. port of entry and undergo an interview with the USCIS or an immigration judge.”⁶⁴ In other words, one is not eligible for asylum after attempting an illegal border crossing across, for example, the Rio Grande River; an applicant must present themselves at a bona fide port of entry, such as an international airport. More importantly, however, the Court held in *Cardoza-Fonseca* that asylum status is predicated on the Attorney General’s determination that the applicant is a refugee.⁶⁵ Thus, in summary, an applicant, to qualify for asylum status, must not only legally present themselves at a port of entry but must be determined to be a refugee in a sanctioned interview by the Attorney General.

If asylum is not granted, however, this is not the end of the applicant’s eligibility to remain in the United States, although there is no possible path to citizenship without a refugee’s granting of asylum. The applicant may then attempt to claim withholding of removal. Under the INA § 241(b)(3)(A), “the Attorney General may not remove an alien to a country if the Attorney General decides that the alien’s life or freedom would be threatened in that country because of the alien’s race, religion, nationality, membership in a particular social group, or political opinion,” subject to certain exceptions including the commission of aggravated felonies.⁶⁶ Analyzing this statute, the five categories of refugee status are present again. Therefore, the applicant would have to meet one of those five categories in order to qualify for withholding of removal. However, differently from asylum, the burden of proof is different and elevated to that of asylum. According to 8 C.F.R. § 208.16, the burden of proof is on the applicant to establish that “it is *more likely than not* that he or she would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion upon removal to that country.”⁶⁷ Therefore, there is a greater than 50% chance of threat to the person’s safety if determined

61. *See id.* at 482.

62. *See id.*

63. *See id.* at 486–87 (Stevens, J., dissenting).

64. FLA. DEP’T. OF CHILD. & FAM., REFUGEE PROGRAM ELIGIBILITY GUIDE FOR SERVICE PROVIDERS 2-1 (June 2022 rev.), https://www.myflfamilies.com/service-programs/refugee-services/webguides/eg_chapters/2.

65. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 427 (1987).

66. INA § 241(b)(3)(A), 8 U.S.C. § 1231(b)(3)(A). The exceptions to withholding of removal and asylum, including the aggravated felonies, are beyond the scope of this Note.

67. 8 C.F.R. § 208.16(b)(2) (emphasis added).

that they are eligible for withholding of removal.⁶⁸ Another drawback to withholding of removal is that, although the beneficiary of cannot be removed to their country of origin, they may be removed to a different country, if applicable to the beneficiary.⁶⁹ Finally, an applicant can find benefit through withholding of removal under the Convention Against Torture. This same more-likely-than-not burden of proof may apply to Convention Against Torture beneficiaries if it can be established that “it is more likely than not that he or she would be tortured if removed to the proposed country of removal.”⁷⁰

Finally, prosecutorial discretion is the most likely form of policy relief applicable to asylum since “asylum is discretionary.”⁷¹ In a September 30, 2021, memorandum to Immigration and Customs Enforcement (“ICE”), Alejandro Mayorkas, the director of the United States Department of Homeland Security (“DHS”), directed ICE to prioritize removal of only “noncitizens who are a threat to our national security, public safety, and border security” in a move that relaxed Trump-era prosecutorial discretion standards.⁷² In fact, the memorandum mentions some of the asylum and refugee factors, as “religion or political beliefs are often directly relevant in asylum cases and need to be assessed in determining a case’s merit.”⁷³ Thus, the Biden administration has seemingly liberalized discretion relative to asylum cases and therefore could look upon asylum cases more favorably.

Despite the controversial history of the Court’s treatment of foreign nationals coming to the United States, legal protections do indeed exist for those who wish to come to the United States seeking asylum. To qualify for asylum or a defensive withholding of removal, an applicant must show a credible fear of persecution based on race, religion, nationality, social group, or political opinion, as case law and the INA provides. As asylum is discretionary and based on the Attorney General’s determination that the applicant is a refugee, it is helpful that the Biden administration has loosened its prosecutorial discretion in cases of immigration and asylum. In the next section, this Note will apply the situation in Haiti and Afghanistan to these laws.

IV. VIETNAM’S INFLUENCE ON UNITED STATES REFUGEE POLICY AND CURRENT POLICIES OF DISCRIMINATION, ESPECIALLY TOWARDS HAITIANS

This section will examine how the policies described in the preceding section may inform the situation with refugees from Haiti and Afghanistan. However, this section will also delve into the differences in treatment between

68. See *Asylum and Withholding of Removal*, SAPOCHNICK LAW FIRM, <https://www.h1b.biz/asylum-and-withholding-of-removal.html> (last updated 2021) (citing *INS v. Stevic*, 467 U.S. 407 (1984)).

69. See *id.*

70. 8 C.F.R. § 208.16(c)(2).

71. *Asylum and Withholding of Removal*, *supra* note 69.

72. U.S. DEPT. OF HOMELAND SEC., GUIDELINES FOR THE ENF’T OF CIVIL IMMIGR. LAW (Sept. 30, 2021), <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

73. *Id.* at 5.

Haitian and Afghan refugees and will argue ways in which to eliminate the discrimination, especially towards Haitian migrants.

To apply the facts properly, it is important to analyze how the Vietnam refugee crisis informed United States policy with regard to the treatment of refugees entering the United States. The first and most obvious way to address a refugee crisis is via financial assistance. After the Vietnam War, in 1975 the United States Congress passed the Indochina Migration and Refugee Assistance Act.⁷⁴ This bill addressed the immediate concerns of the evacuation and resettlement by “setting aside \$405 million for a two-year evacuation and resettlement program to assist refugees from South Vietnam and Cambodia” and eventually from Laos as well.⁷⁵

This bill allowed 135,000 refugees to enter the United States following the end of the Vietnam War.⁷⁶ Crucially, this Act explicitly used the definition of “refugee” discussed above, applying the bill’s provisions to include those “who (A) because of persecution or fear of persecution on account of race, religion, or political opinion, fled from Cambodia or Vietnam”⁷⁷

However, the bill did not solve the crisis entirely, as more refugees intended to enter.⁷⁸ Next, Congress turned to capacity, as Congress formed the Select Commission on Immigration and Refugee Policy.⁷⁹ However, this commission seemed only to minimize Congress’s ability to admit Vietnamese refugees. Through this commission, Congress created the Coordinator for Refugee Affairs, which “capped the total number of refugees at 50,000, limited the administration’s parole power, and required the President to confer with Congress when raising the annual quota.”⁸⁰ Finally, Congress then passed the Refugee Act of 1980, which “was the country’s most comprehensive refugee legislation and overhauled many of America’s humanitarian policies.”⁸¹ The purpose of this Act, in the minds of many members of Congress, was “to establish a more regular system of immigration and resettlement that would establish a clear and flexible policy.”⁸² Amending the INA and Migration and Assistance Act, the bill “raised the annual ceiling for refugees from 17,400 to 50,000, created a process for reviewing and adjusting the refugee ceiling to meet

74. See *Refugee Crisis*, HIST., ART & ARCHIVES: U.S. HOUSE OF REPRESENTATIVES, <https://history.house.gov/Exhibitions-and-Publications/APA/Historical-Essays/Growing-Diversity/Refugee-Crisis/> (last visited Jan. 23, 2022).

75. *Id.*

76. See Immigration and Ethnic History Society, *Indochina Migration and Assistance Act (1975)*, IMMIGRATION HISTORY (2019), <https://immigrationhistory.org/item/1975-indochina-migration-and-refugee-assistance-act/>.

77. Indochina Migration and Assistance Act of 1975, Pub. L. No. 94-23, 89 Stat. 87, 87.

78. See *Refugee Crisis*, *supra* note 74.

79. See *id.*

80. *Id.*

81. *Id.*

82. *Refugee Act of 1980*, NAT’L ARCHIVES FOUND., <https://www.archivesfoundation.org/documents/refugee-act-1980/#:~:text=It%20raised%20the%20annual%20ceiling,between%20Congress%20and%20the%20President> (2022).

emergencies, and required annual consultation between Congress and the President.”⁸³

Applying these Vietnamese policies to the current crisis, the first question is funding. The FY Continuing Resolution provided \$6.3 billion for parolees from Afghanistan through the end of 2021.⁸⁴ Moreover, the Improving Access for Afghan Refugees Act provided “assistance to Afghan nationals who have suffered persecution based on their occupation” and also aided those who had a “well-founded fear of persecution,” conforming with the statutory definition of refugee.⁸⁵ But what assistance is being given to refugees coming from Haiti? While bills for Afghan refugees are abundant, the same cannot be said for Haiti. Although certain Senators have called on the Office of Refugee Resettlement to do whatever it takes to aid Haitian refugees,⁸⁶ some have alleged that “the Biden administration knew an influx of [Haitian] migrants was coming but deliberately made no humanitarian preparations—a strategic decision . . . meant to deter more Haitians from trying to cross into the United States.”⁸⁷

The next category that would be examined is the refugee quota. After the crisis in the Kabul airport, in response to the incoming Afghan refugee crisis, President Biden promised to increase the refugee admissions quota to 125,000 refugees—a number that even exceeded the 50,000 for Vietnam discussed above.⁸⁸ However, the same cannot be said for the response to the Haitian crisis. In fact, going even further, some Haitian migrants have filed suit for their treatment at the border when border patrol officers were photographed whipping Haitian migrants at the Rio Grande river border crossing location.⁸⁹ Instead of the seemingly open welcome that migrants from Afghanistan and a quota increase in reaction to the Afghanistan crisis, the Haitian migrants faced a significantly more unwelcome greeting from the United States, as thousands of Haitian migrants were expected to be deported—the complete opposite of a quota increase—in the wake of the mass gathering at the Rio Grande border

83. *Id.* Notably, this bill “also changed the definition of ‘refugee’ to a person with a ‘well-founded fear of persecution.’” *Id.*

84. See *Congress Approves Funding for Afghan Arrivals*, HIAS (Sept. 30, 2021), <https://www.hias.org/news/press-releases/congress-approves-funding-afghan-arrivals>.

85. H.R. 4736, 117th Cong. (2021).

86. Warren, *Congressional Delegation Call on Office of Refugee Resettlement to Coordinate with Massachusetts to Assist Haitian Families*, U.S. SEN. ELIZABETH WARREN (Nov. 10, 2021), <https://www.warren.senate.gov/oversight/letters/warren-congressional-delegation-call-on-office-of-refugee-resettlement-to-coordinate-with-massachusetts-to-assist-haitian-families>.

87. Eileen Sullivan, *Haitian Migrants File Lawsuit Protesting Treatment by Border Patrol*, N.Y. TIMES (Dec. 20, 2021), <https://www.nytimes.com/2021/12/20/us/politics/haitian-migrants-biden-border-lawsuit.html>.

88. *How Many Refugees Will President Biden Welcome from Afghanistan and Other Countries?*, INT’L RESCUE COMMITTEE, <https://www.rescue.org/article/how-many-refugees-will-president-biden-welcome-afghanistan-and-other-countries> (Oct. 8, 2021).

89. See Sullivan, *supra* note 87.

crossing area.⁹⁰ While the United States has seemed to roll out the red carpet for refugees from Afghanistan, the government is instead shutting the door on refugees from Haiti, turning them back when Haiti itself “cannot handle thousands of homeless deportees.”⁹¹

So, what should be done differently in the treatment of Haitian refugees? Simply put, just like the migrants from Afghanistan, the Haitians are refugees too, and under the enumeration of the statute defining refugees, the Haitian migrants have asylum rights as well. As mentioned previously, the United States has a history of interference in Haiti that has tolerated the abuses toward Haitian citizens.⁹² It is clear that the Haitian migrants meet the characteristics for asylum seekers; in the case at hand, Haitians, as discussed previously, meet the characteristics for a credible fear based on political opinion and a well-founded fear of persecution by a dangerous government and roving street gangs if they return home. Simply put, they should be granted their rights.

So then, what is the difference between the treatment of Afghan refugees and Haitian refugees? The answer is discrimination towards Haitians, which has been a common theme for the past forty years.⁹³ It has been argued that “the racism and violence on display . . . are at the heart of the U.S. government’s policy toward Haitian asylum seekers.”⁹⁴ In fact, under the administration of former President Trump, the president “sought to blow up the asylum system entirely, obliterating U.S. policy and principle as they apply to those who seek asylum from within America and to refugees.”⁹⁵ Even further, in 1980, a federal judge called a similar deportation of Haitian refugees “‘discriminatory acts’ . . . all ‘part of a program to expel Haitians.’”⁹⁶ Today, the Biden Administration has used Title 42 to justify its mass expulsion of Haitian migrants, despite federal courts telling the administration to stop.⁹⁷ Title 42 states, in part, the following:

Whenever . . . there is a serious danger of the introduction of [a communicable] disease into the United States . . . the Surgeon General . . . shall have the power to prohibit, in whole or in part, the introduction of persons and property from such countries or places

90. Harold Isaac & Catherine Porter, *Haiti Protests Mass U.S. Deportation of Migrants to Country in Crisis*, N.Y. TIMES (Sept. 19, 2021), <https://www.nytimes.com/2021/09/19/world/americas/us-haitian-deportation.html>.

91. *Id.*

92. Michael Posner, *What America Owes Haitian Asylum Seekers*, N.Y. TIMES (Oct. 4, 2021), <https://www.nytimes.com/2021/10/04/opinion/haiti-asylum-seekers-us.html>.

93. *See id.*

94. Carl Lindskoog, *Violence and Racism Against Haitian Migrants Was Never Limited to Agents on Horseback*, WASH. POST (Sept. 30, 2021), <https://www.washingtonpost.com/outlook/2021/10/02/violence-racism-against-haitian-migrants-was-never-limited-horseback-riders/>.

95. Posner, *supra* note 92.

96. Lindskoog, *supra* note 94.

97. *See id.*

as he shall designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose.⁹⁸

Migrants under Title 42 do not even receive a hearing; after a “cursory health check” for COVID-19, migrants can be sent back to their country of origin if determined that they have symptoms for COVID-19.⁹⁹ However, “[p]ublic health experts . . . have repeatedly argued that there is no scientific rationale for the policy and that it’s possible to safely process people at the border with the right precautions.”¹⁰⁰ In sum, the same “administration that ran on a belief in science and welcoming people with dignity continues to manipulate an obscure public health rule to violate the basic human rights of asylum seekers.”¹⁰¹ Therefore, it may take more than just simple bias training to cure the racial discrimination faced by Haitian migrants.¹⁰²

In sum, there are two main areas in which the current refugee crisis could be addressed in terms of policy: financial aid and quota-based aid. The lessons from Vietnam show that the passage of bills and creation of special commissions can indeed lessen the blow that migrants face when coming to the United States as refugees. Although the Biden Administration’s actions have started to trend in that direction for Afghanistan, the same certainly cannot be said about Haiti, as mass deportations based on Title 42 are contributing to discrimination against Haitian migrants. The Court ruling in favor of migrant rights groups in current litigation over Title 42 will help solve the already-pervasive threat of racial discrimination in immigration proceedings.

V. TURNING EYES GLOBALLY: HOW CAN THE INTERNATIONAL COMMUNITY AID IN THE REFUGEE CRISIS?

In this section, this Note will turn its eyes to the international community and see what is possible to be achieved in collaboration with the United States. It would be difficult for the United States to accept the refugee burden on its own; therefore, it should enlist the help of other countries as well.

To examine this issue, it is first important to consider how the United States collaborated with the international community in solving the refugee crisis in Vietnam post-1975. With over two and a half million Vietnamese

98. 42 U.S.C. § 265 (2018).

99. Andrea Castillo & Karen Garcia, *Title 42 Explained: The Obscure Public Health Policy at the Center of a U.S. Border Fight*, L.A. TIMES (Oct. 25, 2021), <https://www.latimes.com/politics/story/2021-10-25/what-is-title-42-how-does-it-impact-us-border-immigration>.

100. Nicole Narea, *Biden Is Defending Key Trump Immigration Policies in Court*, VOX (Jan. 25, 2022), <https://www.vox.com/22893065/biden-family-separations-title-42-border-court>.

101. *Id.*

102. Although ending systemic racism is a clear solution to aiding the Haitian migrant crisis, an analysis of systemic racism is beyond the scope of this Note. For more information on systemic racism, see, e.g., N’dea Yancey-Bragg, *What Is Systemic Racism? Here’s What It Means and How You Can Help Dismantle It*, USA TODAY (Jun. 15, 2020), <https://www.usatoday.com/story/news/nation/2020/06/15/systemic-racism-what-does-mean/5343549002/>.

refugees and only one million of them being resettled in the United States, that means that one and a half million Vietnamese refugees—more than half of them—would need to be resettled in the international community.¹⁰³ It would seem that resettling Vietnamese refugees in Southeast Asian nations would be the most convenient solution because of proximity. However, this was not a safe option for the refugees, as “some were openly hostile to the tens of thousands of Vietnamese . . . who were threatening to overwhelm their limited resources.”¹⁰⁴ Therefore, in 1979, facing a growing international crisis, more than sixty countries met in Geneva to discuss the problem “against a backdrop of broad disagreement among Asian countries and demands that Western powers accept more responsibility for solving the problem.”¹⁰⁵ At this Geneva conference, several plans were undertaken.¹⁰⁶ These plans included reducing the backlog of refugees by increasing resettlement, increasing the “orderly departure” of refugees still in Vietnam, and establishing processing centers, at the time starting with Indonesia and the Philippines.¹⁰⁷

After this meeting, initiatives were taken that included the above steps and approximately \$160 million in aid.¹⁰⁸ This meeting eventually led to what was called the Orderly Departure Program, “designed to facilitate the orderly departure of refugees, while also providing a clear process by which such refugees could receive assistance for resettlement in their new countries.”¹⁰⁹ Under the Orderly Departure Program, “countries prepared to accept refugees provided lists . . . to the government of Vietnam [which] in turn provided lists of citizens eligible to emigrate.”¹¹⁰ This program ultimately was most effective in resettling Vietnamese refugees in camps, as approximately 450,000 refugees were resettled in the first year and a half of the program.¹¹¹ In 1989, another Geneva conference came up with the Comprehensive Plan of Action, which, among other things, offered temporary asylum for certain Indochinese

103. See Roos, *supra* note 11.

104. *Id.*

105. William Chapman, *Geneva Conference on Refugees Faces Divisions*, WASH. POST (Jul. 19, 1979), <https://www.washingtonpost.com/archive/politics/1979/07/19/geneva-conference-on-refugees-faces-divisions/fa6dd59b-2b5a-469a-86c6-866b41129ce3/>.

106. See *Meeting on Refugees and Displaced Persons in South-East Asia, Convened by the Secretary-General of the United Nations at Geneva, on 20 and 21 July 1979, and Subsequent Developments: Report of the Secretary-General*, UNHCR: THE UN REFUGEE AGENCY, <https://www.refworld.org/docid/3ae68f420.html> (Nov. 7, 1979).

107. *Id.*

108. See *id.*

109. Justin Huynh, Note, *Tales of the Boat People: Comparing Refugee Resettlement in the Vietnamese and Syrian Refugee Crisis*, 48 COLUM. HUM. RTS. L. REV. 198, 199 (2016).

110. Susan Sutton, *Securing an Orderly Departure for Afghan Refugees*, WAR ON THE ROCKS (Sept. 27, 2021), <https://warontherocks.com/2021/09/securing-an-orderly-departure-for-afghan-refugees/>.

111. See UNHCR: THE UN REFUGEE AGENCY, *Flight from Indochina, in THE STATE OF THE WORLD'S REFUGEES 2000: FIFTY YEARS OF HUMANITARIAN ACTION* 84 (2000), <https://www.unhcr.org/3ebf9bad0.html>.

refugees.¹¹² This program was successful, eventually leading to “negligible” numbers of Vietnamese asylum seekers.¹¹³ Between 1975 and 1995, these refugees were resettled in over fifteen countries, with the highest numbers going to Australia, Canada, France, Germany, and the United Kingdom.¹¹⁴

So how has the international community begun to respond to the crisis in Afghanistan?¹¹⁵ The OCHA estimated that approximately 700,000 Afghans were displaced from Afghanistan in 2021.¹¹⁶ There are several international plans for refugees from Afghanistan. In terms of charitable work, the United Nations High Commissioner for Refugees (UNHCR) has started off with a “regional refugee response plan” that will allocate \$623 million “for 40 organizations working in protection, health and nutrition, food security, shelter, household items, water and sanitation, livelihoods and resilience, education and logistics.”¹¹⁷

Regionally, surrounding countries, such as Turkmenistan, Tajikistan, and Afghanistan, have their borders open for Afghan refugees but restrict them exclusively to Afghan “passport and visa holders.”¹¹⁸ The UNHCR has also engaged in charitable relief for refugees from Afghanistan, distributing items such as cash, winter supplies, and other types of basic assistance items to help refugees get back on their feet.¹¹⁹

Across Europe, resettlement of Afghan refugees has been relatively low compared to the numbers from the Vietnam resettlement. After the start of the refugee crisis, fifteen European countries agreed to take in approximately 40,000 Afghan refugees, with Germany taking the vast majority at 25,000, and countries such as Spain and the Netherlands taking under 4,000 each.¹²⁰ In the United Kingdom, 8,000 Afghan refugees were evacuated from Afghanistan after the fall of the government in August, while over 1,000 more were evacuated through the end of 2021.¹²¹ However, the full need from the Afghan

112. *See id.*

113. *Id.* at 85.

114. *See id.* at 99.

115. As the Haitian refugee crisis is more centered around the crossing of the United States border at the Rio Grande, the international response to the Haitian migrant crisis will not be discussed in this Note, though the lack of response is discussed below.

116. *Afghanistan Emergency*, UNHCR: THE UN REFUGEE AGENCY, <https://www.unhcr.org/en-us/afghanistan-emergency.html> (last visited Mar. 7, 2022).

117. *Id.*

118. UNHCR: THE UN REFUGEE AGENCY, FLASH EXTERNAL UPDATE: AFGHANISTAN SITUATION #14 3, <https://reporting.unhcr.org/document/1786> (Feb. 15, 2022). These numbers total approximately 172,940. *See id.* at 2.

119. *See id.* at 1.

120. *See EU Countries Agree to Take in 40,000 Afghan Refugees*, AL JAZEERA (Dec. 9, 2021), <https://www.aljazeera.com/news/2021/12/9/eu-member-states-agree-to-take-in-40000-afghan-asylum-seekers>.

121. *See Afghanistan: How Many People Has the UK Evacuated?*, BBC NEWS (Dec. 7, 2021), <https://www.bbc.com/news/uk-58245684>.

refugees was not met, with up to 150,000 Afghans applying for assistance in the month of August—leading to just a 5% evacuation rate.¹²²

However, noticeably absent from international refugee crisis discussions is the relocation of Haitian refugees. On the UNHCR refugee webpage, noticeably absent from the “Emergencies” tab is anything related to a Haitian migration crisis, despite webpages about Afghanistan, Myanmar, and even Ukraine,¹²³ the last of which is showing that the United Nations is keeping their refugee site current. The United Nations seems to have at least taken notice of the situation in Haiti, their human rights experts having condemned the mass deportation of Haitian migrants from the United States and “declar[ed] [the deportation] a violation of international law.”¹²⁴ The UNHCR did provide “basic assistance” to some Haitian migrants on the ground and called for a regional approach to help the situation in Haiti; however, the UNHCR itself even said that “more needs to be done to address their profound vulnerabilities.”¹²⁵ Why simply call for assistance in Haiti while actively providing assistance in countries such as Afghanistan and Ukraine? Once again, the concerns of the refugees of Haiti are being disregarded, showing possible discrimination towards the Haitian migrants.

The Vietnam refugee crisis led to an Orderly Departure Program and a Comprehensive Plan of Action. International bodies seemingly followed a similar process for Afghanistan, with the UNHCR implementing a refugee regional response plan while the EU and the UK contributed towards the resettlement of Afghan refugees. The situation in Haiti, however, seems to be less of a priority in the eyes of the international community, increasing the plight for the Haitian migrants. In the next and final section, this Note will address challenges the migrants will face going forward, starting with the challenges Vietnamese migrants faced (racism, etc.).

VI. WHAT CHALLENGES ARE REFUGEES FACING, AND HOW CAN WE ADDRESS THEM USING LESSONS FROM VIETNAM?

In this section, the Note will turn itself towards the challenges that the refugees from Afghanistan and Haiti are facing as they try to gain access and settle into the United States, especially from a lens of racial discrimination and trauma.

To fully understand the challenges that the migrants from Haiti and Afghanistan are facing or will face in the coming months and years, it is important to examine how Vietnamese refugees after the war were treated and

122. *See id.*

123. *See Emergencies*, UNHCR: THE UN REFUGEE AGENCY, <https://www.unhcr.org/en-us/> (last visited Mar. 8, 2022).

124. *UN Rights Experts Condemn US Expulsion of Haitian Migrants and Refugees*, UN NEWS (Oct. 25, 2021), <https://news.un.org/en/story/2021/10/1103962>.

125. *UN Agencies Call for Protection Measures and a Comprehensive Regional Approach for Haitians on the Move*, UNHCR: THE UN REFUGEE AGENCY (Sept. 30, 2021), <https://www.unhcr.org/en-us/news/press/2021/9/6155964b4/un-agencies-call-protection-measures-comprehensive-regional-approach-haitians.html>.

the challenges that they faced while migrating to the United States. One problem that Vietnamese refugees faced was overt racism. Vietnamese refugees, after their arrival in the United States, often faced racial slurs and taunts that included offensive language and words such as “commy.”¹²⁶

Racism, however, does not just play itself out in offensive taunts and language. Racism is systemically ingrained in American society, and it was no different for Vietnamese migrants.¹²⁷ While a study by the U.S. Commission on Civil Rights found that foreign-born Vietnamese immigrants faced comparable discrimination to other Asian-American groups, a 2012 study found that Vietnamese men earned less on the dollar than Eastern European immigrants.¹²⁸ Vietnamese groups have also faced racial violence. For example, in Texas, a “resurgence” of the Ku Klux Klan, a white supremacist group, was linked towards the new presence of Vietnamese refugees in Texas, including the burning of Vietnamese boats.¹²⁹ More recently, anti-Asian violence during the COVID-19 pandemic has seen its impact on the Vietnamese community as well.¹³⁰

Additionally, the Vietnamese refugee community dealt with trauma upon settling into the United States. The effects of trauma upon the Vietnamese refugee population are very real; a study indicated that “healthcare professionals should consider the migration background of foreign-born Vietnamese in screening for potential psychological issues, particularly around their trauma history and discriminatory experiences.”¹³¹ Related to the “horrors of war” are mental health conditions such as post-traumatic stress disorder (PTSD) as well as depression, substance abuse, and domestic violence.¹³² Statistics on mental health in the Vietnamese refugee population are alarming—it was estimated that approximately 50% of the Vietnamese-American population suffered from some form of depression, while 70% of those who were receiving mental health

126. See, e.g., Carolee Giaouyen Tran, *My Experience with Racism as a Vietnamese American*, ICAN, <https://www.ican2.org/my-experience-with-racism-as-a-vietnamese-american> (last visited Mar. 22, 2022).

127. As mentioned above, an analysis of systemic racism is beyond the scope of this Note.

128. See Linus Yamane, *Labor Market Discrimination: Vietnamese Immigrants*, 7 J. SE. ASIAN AM. EDUC. AND ADVANCEMENT 1, 2 (2012).

129. Agnes Constante, *Documentary Looks at 1970s Racial Tension Between Vietnamese, Whites in Texas Town*, NBC NEWS (May 4, 2020, 5:52 PM), <https://www.nbcnews.com/news/asian-america/documentary-looks-1970s-racial-tension-between-vietnamese-whites-texas-town-n1199846>.

130. See Viet Thanh Nguyen, *From colonialism to Covid: Viet Thanh Nguyen on the rise of anti-Asian violence*, THE GUARDIAN (Apr. 3, 2021, 4:00 PM), <https://www.theguardian.com/books/2021/apr/03/from-colonialism-to-covid-viet-thanh-nguyen-on-the-rise-of-anti-asian-violence>.

131. Isok Kim et al., *Trauma, Discrimination, and Psychological Distress Across Vietnamese Refugees and Immigrants: A Life Course Perspective*, 55 CMTY. MENTAL HEALTH J. 385, 385 (2019).

132. *Trauma at Root of Mental Health Issues Among Vietnamese*, VOICE OF OC, <https://voiceofoc.org/2013/02/trauma-at-root-of-mental-health-issues-among-vietnamese/> (Dec. 8, 2020).

care were eventually diagnosed with PTSD.¹³³ Surprisingly, later generations of Vietnamese-Americans are seeing the effects of PTSD and mental illness being passed down from the generations that actually experienced the conflict first-hand.¹³⁴ Although it is very difficult to provide care for these deep-seated traumas—overmedication can occur as the result of over-prescription of pills—some experts have suggested increasing resources to “culturally appropriate care” such as support groups in a Vietnamese culture that is heavily based on story-telling.¹³⁵ Also, “resolv[ing] stigma around PTSD and depression” among the community of Vietnamese migrants is critical to healing.¹³⁶

As with the challenges that the Vietnamese refugees faced upon entering the United States, so too are Afghan and Haitian refugees facing challenges today. For Afghan refugees, one of the most crucial challenges being faced is, simply put, meeting their own monetary needs.¹³⁷ For example, more funding is still needed for resettlement efforts, including for basic necessities such as food, clothing, and sanitary supplies.¹³⁸ On a more legal level, as mentioned above in Section III, the United States’ broken immigration system is not helping the cause, with thousands of Afghan refugees being without visas and “in legal limbo and rendering them ineligible for some federal social programs available to those admitted as refugees, including cash assistance and Medicaid.”¹³⁹ Additionally, many Afghan refugees have had difficulty locating affordable housing and also obtaining quality, well-paying jobs.¹⁴⁰ Some have also had difficulty finding necessary health care.¹⁴¹ Many are also experiencing culture shock as they adjust to life in a new country.¹⁴² Finally, while there has

133. See *War, Trauma, and the Mental Health of Vietnam War-Era Older Adults*, DIVERSE ELDERS COALITION (Jul. 16, 2019), <https://diverseelders.org/2019/07/16/war-trauma-and-the-mental-health-of-vietnam-war-era-older-adults/>.

134. See *id.*

135. Kim et al., *supra* note 131.

136. *War, Trauma, and the Mental Health of Vietnam War-Era Older Adults*, *supra* note 133.

137. See Jennifer Chowdhury, *Challenges Don’t End for Afghan Refugees After They Enter the U.S.*, PRISM (Sept. 16, 2021), <https://prismreports.org/2021/09/16/challenges-dont-end-for-afghan-refugees-after-they-enter-the-u-s/>.

138. See *id.*

139. Camilo Montoya-Galvez, *U.S. Effort to Resettle Afghan Refugees Faces Major Hurdles*, CBS NEWS (Sept. 2, 2021), <https://www.cbsnews.com/news/afghan-refugees-resettlement-legal-operational-hurdles/>.

140. See Deepa Shivaram, *The Next Challenge for Afghan Refugees Is Finding Affordable Housing and Jobs*, NPR (Feb. 25, 2022), <https://www.npr.org/2022/02/25/1083029733/afghan-refugees-resettlement-housing-jobs>. For housing, low supply and high demand have created a surge in housing prices, especially for rent; meanwhile, for jobs, a lack of connections and familiarity to the United States makes it more difficult for Afghan refugees to find work. See *id.*

141. See Christopher Ynclan, Jr., *Between a Rock and a Hard Place: Persistent Challenges Facing Afghan Refugees*, RISE TO PEACE, <https://www.risetopeace.org/2022/02/01/between-a-rock-and-a-hard-place-persistent-challenges-facing-afghan-refugees/chrisynclan/> (Jan. 2022).

142. See Akmal Dawi, *Afghan Refugees Navigate Legal, Cultural Challenges in Unfamiliar Land*, VOA (Feb. 17, 2022), <https://www.voanews.com/a/afghan-refugees-navigate-legal-cultural-challenges-in-unfamiliar-land/6446382.html>.

been no “aggregated data” so far of hate crimes against Afghan refugees, there have been isolated incidents.¹⁴³

Additionally, there have been many challenges that Haitian refugees have faced while coming to the United States, notwithstanding the disturbing treatment received at the border discussed above in Section I. Just as with the Afghan refugees, Haitian refugees are having difficulty obtaining asylum; however, one crucial difference is the violence that Haitians are being subject to, including “being chased down and shut out” and “being removed from airplanes . . . with their belongings scattered on the airport’s tarmac”¹⁴⁴ Relatedly, Haitian migrants attempting to cross the US border at the Rio Grande are facing resistance when being sent back to Mexico, “as certain Mexican state governments refuse to accept expellees,”¹⁴⁵ leaving Haitian migrants in a state of limbo. Additionally, per the Justice Department, Haiti is the country with the “highest rate of asylum denial” in the United States, which many Haitians indicate points towards historically racist and discriminatory policies employed by the United States against Haitian migrants.¹⁴⁶ Finally, and perhaps most importantly, Haitian migrants have faced raging poverty, as described above in Section II, and likely will continue to face struggles for economic stability while migrating to the United States, as many carry already-heavy burdens of poverty.¹⁴⁷

So, applying lessons learned from Vietnam, how can the United States best aid Haitian and Afghan refugees? Resolving the stigma around mental health, depression, and PTSD, as mentioned with Vietnamese refugees, is something that could be done;¹⁴⁸ however, statistics on mental health with Afghan and Haitian refugees are not fully developed yet because of the novelty of the crisis. It goes without saying that the United States “owes an enormous debt” to both Haiti¹⁴⁹ and Afghanistan based upon the history of violence that the United States has perpetuated in the two countries. So naturally, as one

143. *Id.*

144. Fabiola Cineas, *Why America Keeps Turning Its Back on Haitian Migrants*, VOX (Sept. 24, 2021), <https://www.vox.com/22689472/haitian-migrants-asylum-history-violence>.

145. Dan Friedman, *Title 42: Over a Million Expulsions and No End in Sight*, HIAS BLOG (Sept. 23, 2021), https://www.hias.org/blog/title-42-over-million-expulsions-and-no-end-sight?gclid=CjwKCAjwrfCRBhAXEiwAnkmKmRZJJ7GkJydb-5vcbMMc-3JhS_hOiiJBWL0WTnFPZmW8OmZuTd89RoCEp4QAvD_BwE.

146. Marisa Peñaloza, *Haiti Faces Disasters and Chaos. Its People are Most Likely to Be Denied U.S. Asylum*, NPR (Oct. 16, 2021), <https://www.npr.org/2021/10/16/1043458530/haitians—u-s-asylum—racist>.

147. See UNICEF: *Haiti Children Vulnerable to ‘Violence, Poverty and Displacement’*, UN NEWS (Sept. 23, 2021), <https://news.un.org/en/story/2021/09/1100972>.

148. See *War, Trauma, and the Mental Health of Vietnam War-Era Older Adults*, *supra* note 133.

149. Valerie Kaas & Kevin Cashman, *The US Should Welcome Haitian Refugees, Not Brutalize and Deport Them*, JACOBIN (Sept. 28, 2021), <https://www.jacobinmag.com/2021/09/migration-haitian-refugees-deportation-asylum-biden-administration-kamala-harris>.

article suggests for Haiti,¹⁵⁰ it is necessary to change the dynamic of how the United States has dominated Haiti and Afghanistan for decades and instead transition to culturally responsive care for all refugees. While there are many privately-funded organizations that provide culturally responsive care to refugees,¹⁵¹ this alone is not enough, as many organizations are under-resourced and are constantly asking for outside funding. Therefore, increased government investment into refugee programs as well as the government addressing the country's broken immigration system¹⁵² are some of the most effective ways the United States could address the migrant refugee crisis.

Since the war in Vietnam, refugees have faced many difficulties and challenges, including racism, trauma, and lack of equitable access to economic resources. The same is true for refugees from Haiti and Afghanistan as is being documented as the crises continue to develop. Although private charities can help, it is important for culturally appropriate care and competent, intentional government intervention to assist in the transition for Afghan and Haitian refugees to life in the United States.

VII. CONCLUSION

The Afghan and Haitian refugee crisis is a human emergency that has been inefficiently addressed. Many of the problems these refugees have faced, as with Vietnamese migrants in the 1970s, were created by policies of aggression and imperialism levied by the United States in their nations. As a result, and compounded with political instability in both Haiti and Afghanistan from the assassination of President Moïse and the return of the Taliban, Afghans and Haitians are fleeing their home countries.

There are several legal paths towards admission and assimilation for refugees into the United States, including the most applicable option, asylum, along with withholding of removal. Prosecutorial discretion, important for determining the fate of many applicants for admission, should be construed to favor refugees who are facing very real threats to their well-beings in their home countries.

However, as mentioned in Section VI, asylum applications, especially with Haitian migrants, are being processed very slowly and even could be influenced by racial discrimination. Therefore, using lessons from legislative actions after the Vietnam War, Congress should scrutinize both the refugee

150. *See id.*

151. For a list of organizations that provide culturally responsive care, see *Safe Haven for Afghans and Haitians in Crisis*, GCIR, <https://www.gcir.org/news/safe-haven-afghans-and-haitians-crisis> (Aug. 19, 2021).

152. Many scholars, politicians, and experts have repeatedly stated over the years that the immigration system in the United States is broken and needs to be fixed, but the problem has never been seriously addressed or scrutinized on a large scale in the government. For examples on how the broken immigration system affects the current refugee crisis, see, e.g., Joseph Choi, *DHS Secretary: We Are Working in 'Completely Broken' Immigration System*, THE HILL, Sept. 26, 2021, <https://thehill.com/homenews/state-watch/573980-dhs-secretary-we-are-working-in-a-completely-broken-system>.

quota and the allocation of federal funding to the migration crisis, especially in the disparities of funding that Afghans are receiving versus Haitians.

It is impossible, however, to ask the United States to do all the work with this refugee crisis on its own. Therefore, the United States should also encourage the international community to help, as they did after the Vietnam War. While Afghanistan is receiving a plan like the Orderly Departure Program from Vietnam, again, less help is being provided to Haiti from the UN and the international community.

Finally, as did refugees from Vietnam, Afghan and Haitian refugees are facing many challenges. These obstacles include racial and economic discrimination, lack of access to basic care, and mental health issues, as well as trauma stemming from their lived experiences and violence. The United States, while accepting the help of private donations, should step up their game and contribute more funds to refugee assistance while considering culturally competent care and fixing the broken immigration system.

While many Vietnamese refugees were successfully integrated into the United States, many were left in situations of poverty, racial discrimination, and mental health issues. It is still early for the United States to take steps to prevent these issues in the Haitian and Afghan communities; however, as shown by this Note, several incidents show that time is running out. The United States should step up to the plate and take drastic measures to help these migrant communities, as their legal rights necessitate.