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One in Fifty: Refugee Federalism and Wyoming

Suzan M. Pritchett

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ONE IN FIFTY: *REFUGEE FEDERALISM AND WYOMING*

*Suzan M. Pritchett**

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I. INTRODUCTION

Since 2011, the conflict in Syria, continued instability in Afghanistan, and ongoing civil strife and international struggle in many parts of the world have contributed to the massive upheaval of individuals from their homes and their countries of origin.¹ Approximately one in one hundred individuals around the globe are either internally or externally displaced.² The current geopolitical reality of large-scale human displacement has led the United Nations to conclude that the world is in the midst of a global refugee crisis.³ As noted by António Guterres, former UN High Commissioner for Refugees, “We are witnessing a paradigm change, an unchecked slide into an era in which the scale of global forced displacement as well as the response required is now clearly dwarfing anything seen before.”⁴

In bearing its burden in the global refugee crisis, the United States has accepted large numbers of these refugees through the federal Refugee Admissions Program (RAP).⁵ Since 1975, the United States has welcomed over 3 million refugees inside its borders, allowing these individuals to find safety from persecution and giving them the opportunity to begin their lives again.⁶

Within the United States, every state participates in the resettlement of refugees, except for Wyoming, which has never been a formal participant in the national refugee resettlement program.⁷ For reasons discussed in this article,

¹ *Global Trends: Forced Displacement in 2015*, UNHCR, THE UN REFUGEE AGENCY, 3 (2016), <http://www.unhcr.org/en-us/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html> (showing that 54% of the world’s refugees come from Syria, Afghanistan, and Somalia) [hereinafter *Global Trends 2015*]; International Crisis Group, *What’s Driving the Global Refugee Crisis?* (last updated Sept. 15, 2016), <https://www.crisisgroup.org/global/what-s-driving-global-refugee-crisis>.

² Phillip Connor & Jens Manuel Krogstad, *Key Facts About the World’s Refugees*, PEW RES. CENTER (Oct. 5, 2016), <http://www.pewresearch.org/fact-tank/2016/10/05/key-facts-about-the-worlds-refugees/>.

³ *Global Trends 2015*, *supra* note 2 (finding that “By end-2014, 59.5 million individuals were forcibly displaced worldwide as a result of persecution, conflict, generalized violence, or human rights violations.”).

⁴ *Id.* at 3.

⁵ See U.S. DEP’T. OF STATE, REFUGEE ADMISSIONS (last visited Apr. 15, 2017) <https://www.state.gov/j/prm/ra/>.

⁶ *Id.*

⁷ Justin Fisk, *State’s Role in Refugee Resettlement*, THE CURRENT STATE E-NEWSL., Jan. 2017, http://www.csg.org/pubs/capitolideas/enews/cs41_2.aspx.

refugees still find their way to Wyoming, but there is no formal structure in place to affirmatively welcome refugees to the State.⁸ Simply put: *the State of Wyoming is one in fifty*.⁹ Given the State's exceptionalism in this regard and in light of the global refugee crisis, the question then arises: should Wyoming join the federal refugee resettlement program or *must* Wyoming join the federal refugee resettlement program? From a legal perspective, could the federal government require Wyoming to bear its proportionate burden in the national refugee resettlement program and engage in resettlement in the State?

This article explores Wyoming's role in the global refugee crisis. Part II describes the legal framework, both international and domestic, that creates the multi-layered refugee and asylum regime.¹⁰ Part III examines how the refugee resettlement program works in practice—from identification of refugees abroad to resettlement in specific communities within the United States.¹¹ Building on this legal and procedural foundation, the article moves to a Wyoming-specific analysis. Part IV describes the Wyoming refugee resettlement discussion to date, including efforts by local advocates to bring refugees to the State and the resistance that has followed.¹²

Part V builds on the work of immigration scholar Stella Elias, who has written comprehensively on state responses to refugee resettlement and introduced the term *refugee federalism* to describe the interactions of state and federal government in the refugee admissions and resettlement context.¹³ Using a refugee federalism theoretical framework,¹⁴ Part V brings a Wyoming specific analysis to the scholarship in this area and contextualizes Wyoming's role in an emerging anti-refugee narrative that has been characterized, in part, by states' failed efforts to limit refugee resettlement.¹⁵ Part V poses the Wyoming-specific questions of whether the federal government would have legal authority to require Wyoming to accept refugees, or, alternatively, whether Wyoming might, as Elias suggests, use the existing federalism framework to affirmatively welcome refugees within its borders.¹⁶ The article concludes by suggesting that Wyoming is at a crossroads

⁸ See *id.*

⁹ *Id.*

¹⁰ See *infra* notes 18–146 and accompanying text.

¹¹ See *infra* notes 147–175 and accompanying text.

¹² See *infra* notes 175–232 and accompanying text.

¹³ Stella Burch Elias, *The Perils and Possibilities of Refugee Federalism*, 66 AM. U. L. REV. 353, 358 (2016).

¹⁴ See generally Steve Vladeck, *Three Thoughts on Refugee Resettlement Federalism*, LAWFARE BLOG (Nov. 17, 2015), <https://www.lawfareblog.com/three-thoughts-refugee-resettlement-federalism>; PRATHEEPAN GULASEKARAM & S. KARTHICK RAMAKRISHNAN, *THE NEW IMMIGRATION FEDERALISM* 12 (2015).

¹⁵ See *infra* notes 233–310 and accompanying text.

¹⁶ Elias, *supra* note 14 at 407–12; see also *infra* notes 233–310 and accompanying text.

in the refugee resettlement debate. Given the possibilities for economic growth, demographic diversity, and service provision to refugees and asylees already within the state, the article recommends that it would be in the State's best interest to position itself as a willing participant in the federal refugee resettlement program.

II. RESPONDING TO THE GLOBAL REFUGEE CRISIS: A MULTI-LEVELED REGULATORY REGIME

Multple levels of law and regulations define the United States' refugee resettlement regime. At the international level, the United States has indicated an obligation to provide a certain standard of treatment to those fleeing persecution.¹⁷ It has also engaged with the United Nations High Commissioner for Refugees to receive referrals for refugee resettlement.¹⁸ At the federal level, Congress has codified the United States' international obligations and created legal procedures that offer safe-haven to those who are displaced from their country of origin on account of persecution.¹⁹ From an enforcement perspective, Congress also delegated authority to the President to restrict the admission of certain classes of non-citizens when it is in the national interest.²⁰ In operationalizing this statutory scheme, federal agencies have created a menu of programs for the engagement of sub-national state actors in the process refugee resettlement in local communities.²¹ This section provides an overview of these varying levels of regulation, which create the normative legal framework underlying the global refugee crisis and the refugee resettlement debate.

A. *The United Nations Convention Relating to the Status of Refugees: A Collective International Approach to the Refugee Problem*

The United Nations Convention Relating to the Status of Refugees (Refugee Convention) is the primary instrument governing the treatment of refugees internationally.²² The Refugee Convention reflects the principle that rather than being the problem of any one country which might happen to find refugees within its borders, "the refugee problem is a matter of concern to the international community and must be addressed in the context of international cooperation

¹⁷ See Convention Relating to the Status of Refugees, Apr. 22, 1954, 189 U.N.T.S. 137 [hereinafter Refugee Convention]; Protocol Relating to the Status of Refugees, Oct. 4, 1967, 606 U.N.T.S. 267 [hereinafter Optional Protocol].

¹⁸ 8 U.S.C. §§ 1521–1524 (2012).

¹⁹ See, e.g., 8 U.S.C. § 1101(a)(42) (defines refugee within Immigration and Nationality Act); 8 U.S.C. § 1521 (establishes Office of Refugee Resettlement); Refugee Act of 1980, Pub. L. 96-212, 94 Stat. 102 (1980) [hereinafter 1980 Refugee Act] (outlines changes to the Immigration and Nationality Act codifying refugee obligations).

²⁰ 8 U.S.C. § 1182(f) (2012).

²¹ See 8 U.S.C. § 1522(a)(2)(B).

²² See Refugee Convention, *supra* note 18.

and burden-sharing.”²³ To that end, members of the United Nations drafted the Refugee Convention as a collective problem-sharing solution in response to the large numbers of refugees created by the Second World War.²⁴

At the time it was drafted, the Refugee Convention was limited in time and scope. It was initially intended only to protect those individuals that had become refugees prior to, and as a result of, events taking place before January 1, 1951.²⁵ As members of the international community soon realized, however, the problem of displaced persons was not a phenomenon limited to the events precipitated by the Second World War. Refugees would come to permanently define the international landscape and require international cooperation.²⁶ Accordingly, the 1967 Protocol Relating to the Status of Refugees²⁷ (Optional Protocol) expanded the temporal scope of the Refugee Convention and made it the “universal international instrument for the protection of refugees.”²⁸ At the time of writing, 146 nations have ratified the Refugee Convention and its corresponding Optional Protocol, including the United States.²⁹

The Refugee Convention sets forth the definition of a refugee as anyone who,

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality

²³ PAUL WEIS, THE REFUGEE CONVENTION, 1951: THE TRAVAUX PRÉPARATOIRES ANALYSED WITH A COMMENTARY BY DR PAUL WEIS 4 (1995), <http://www.unhcr.org/en-us/protection/travaux/4ca34be29/refugee-convention-1951-travaux-preparatoires-analysed-commentary-dr-paul.html>.

²⁴ *Id.*

²⁵ Refugee Convention, *supra* note 18, art. 1(A)(1); *see also* UNHCR, CONVENTION AND PROTOCOL RELATING TO THE STATUS OF REFUGEES 2, n.2 (2010), <http://www.unhcr.org/en-us/3b66c2aa10> (“The Convention enabled States to make a declaration when becoming party, according to which the words ‘events occurring before 1 January 1951’ are understood to mean ‘events occurring in Europe’ prior to that date.”).

²⁶ Weis, *supra* note 24, at 4; *see also* Refugee Convention, *supra* note 18, recommendation D (“[the Conference] recommends that Governments continue to receive refugees in their territories and that they act in concert in a true spirit of international cooperation in order that these refugees may find asylum and the possibility of resettlement.”).

²⁷ Optional Protocol, *supra* note 18, at 2, (Jan. 31, 1967) (On Nov. 1, 1968, the United States became a party to the Optional Protocol, which incorporates the provisions of the Refugee Convention).

²⁸ Weis, *supra* note 24, at 4.

²⁹ UNHCR, STATES PARTIES TO THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND THE 1967 PROTOCOL (April 2015), <http://www.unhcr.org/en-us/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html>.

and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.³⁰

The definition of a refugee rests on three primary guiding principles under the Refugee Convention: “non-discrimination, non-penalization and *non-refoulement*.”³¹ With respect to non-discrimination, the Refugee Convention states that its provisions are to be applied “without discrimination as to race, religion or country of origin.”³² The non-penalization provisions recognize that genuine refugees often must transgress the immigration laws of the receiving country in order to enter and apply for refugee status.³³ Finally, and most importantly, the Refugee Convention reflects the customary international legal norm of *non-refoulement*, which prevents signatories and non-signatories alike from returning a refugee to a country where his or her life or freedom would be threatened.³⁴

Beyond its guiding principles, the Refugee Convention provides a number of additional protections to those who meet its definition of a refugee. In particular, the Refugee Convention mandates that host governments must protect freedom of religion, freedom of association, and freedom to seek and engage in employment for refugees.³⁵ Moreover, state parties must provide access to courts, certain housing resources, public education, certain public benefits, and identity and travel documentation.³⁶ In mandating these protections and services, the Refugee Convention’s aims are to encourage a refugee’s integration into her new country of permanent residence and provide refugees with the opportunity to create a meaningful life, complete with the same human rights protections available to citizens and nationals.³⁷

³⁰ Refugee Convention, *supra* note 18, art. 1(A)(2).

³¹ UNHCR, INTRODUCTORY NOTE: CONVENTION AND PROTOCOL RELATING TO THE STATUS OF REFUGEES 3, (2010), <http://www.unhcr.org/en-us/3b66c2aa10> [hereinafter INTRODUCTORY NOTE].

³² Refugee Convention, *supra* note 18, art. 3.

³³ *Id.*, art. 31(1) (stating that “[t]he Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”)

³⁴ Refugee Convention, *supra* note 18, art. 33; *see also* UNHCR, CONVENTION AND PROTOCOL RELATING TO THE STATUS OF REFUGEES, *supra* note 26, at 3, 4; Joan Fitzpatrick, *Revitalizing the 1951 Refugee Convention*, 9 HARV. HUM. RIGHTS. J. 229, 252 (1996) (“The most enduring contribution of the Convention is its elevation of *nonrefoulement* [sic] to the status of an obligatory norm.”).

³⁵ Refugee Convention, *supra* note 18, arts. 4, 15, 17.

³⁶ Refugee Convention, *supra* note 18, arts. 16, 21, 22–24, 27–28.

³⁷ *See* INTRODUCTORY NOTE, *supra* note 32, at 3.

*B. The Immigration and Nationality Act and its Delegated Authority:
Translating International Obligations into Domestic Procedures*

The United States became a party to the Refugee Convention in 1968.³⁸ However, prior to acceding to obligations internationally, Congress had shown a concern for refugees and displaced persons through several varied pieces of domestic legislation. These included the Displaced Persons Act of 1948,³⁹ which responded to the refugee crisis created by World War II,⁴⁰ the Immigration and Nationality Act Amendments of 1965,⁴¹ which established a permanent statutory basis for refugee admission,⁴² and through an *ad hoc* Refugee Task Force in 1975, which resettled hundreds of thousands non-citizens from Southeast Asia following the Vietnam War.⁴³ Yet, as scholars have noted, despite the many attempts to respond to the varying refugee flows and populations in the post-World War II period, “the United States . . . struggled to define its proper role in coping with the refugee problem.”⁴⁴

Finally in 1980, Congress created the Refugee Act to create a “comprehensive, objective and fair refugee and asylum policy.”⁴⁵ The Refugee Act adopted the definition of a refugee from the Refugee Convention,⁴⁶ and provided the legal framework for the resettlement of refugees from abroad.⁴⁷ In addition, it created a procedure whereby individuals physically present inside the United States could apply for asylum and have their applications adjudicated on a “systematic and equitable basis.”⁴⁸ Each of these statutory provisions, as well as the delegation

³⁸ Optional Protocol, *supra* note 18, at 2.

³⁹ Displaced Persons Act of 1948, Pub. L. No. 80-774, 62 Stat. 1010 (1948).

⁴⁰ See Deborah E. Anker & Michael H. Posner, *Forty Year Crisis: A Legislative History of the Refugee Act of 1980*, 19 SAN DIEGO L. REV. 9, 13 (1981) (noting that “[t]he Act provided sanctuary only for certain displaced, forced laborers from states conquered by Germany and for certain refugees who qualified under the United Nations (UN) refugee standards, particularly those who had fled Nazi or Fascist persecution and those fleeing Soviet persecution.”).

⁴¹ Immigration and Nationality Act, amendments, Pub. L. 89-236, 79 Stat. 911 (1965) [hereinafter 1965 Amendments].

⁴² Doris Meissner, *Thirty Years of the Refugee Act of 1980*, 15 eJournal USA 8, <https://americancenterjapan.com/wp/wp-content/uploads/2015/11/EJ-refugees-0710.pdf> (last visited Apr. 19, 2017).

⁴³ *History of The U.S. Refugee Resettlement Program*, REFUGEE COUNCIL USA, <http://www.rcusa.org/history/> (last visited Apr. 15, 2017).

⁴⁴ Anker & Posner, *supra* note 41, at 10.

⁴⁵ See Anker & Posner, *supra* note 41, at 89.

⁴⁶ Compare 8 U.S.C. § 1101(a)(42) (2012) (defines refugee within Immigration and Nationality Act) with Refugee Convention, *supra* note 18, art. 1(A)(2).

⁴⁷ Anker & Posner, *supra* note 41, at 11.

⁴⁸ *Id.* at 11–12.

of authority to the executive to exclude certain classes of non-citizens⁴⁹ will be explored in turn.

1. *Domestic Asylum Adjudication: Meeting the Definition of a Refugee*

As noted above, Congress adopted an almost identical definition of refugee from the Refugee Convention.⁵⁰ The definition of a refugee under the Immigration and Nationality Act provides that:

The term “refugee” means . . . any person who is outside any country of such person’s nationality . . . 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.⁵¹

Along with establishing this definition, Congress created a process whereby individuals who are already physically present in the United States can prove they meet the definition of a refugee by filing an application for asylum with the United States Citizenship and Immigration Services, a branch of the Department of Homeland Security.⁵² Alternatively, an applicant for asylum can assert protection under the Refugee Act as a defense to deportation or removal from the United States before the Executive Office for Immigration Review, otherwise known as the Immigration Court.⁵³

To prevail on a claim for asylum, a non-citizen must prove either that he or she suffered past persecution or that he or she has a well-founded fear of future persecution on account of race, religion, nationality, political opinion, or membership in a particular social group.⁵⁴ The U.S. Supreme Court has held

⁴⁹ 8 U.S.C. § 1182(f) (2012).

⁵⁰ Compare 8 U.S.C. § 1101(a)(42) (2012) (defines refugee within Immigration and Nationality Act) with Refugee Convention, *supra* note 18, art. 1(A)(2).

⁵¹ 8 U.S.C. § 1101(a)(42) (2012).

⁵² 8 U.S.C. § 1158(1) (2012) (“Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien’s status, may apply for asylum”); 8 C.F.R. §§ 208.3, 1208.3; see also Regina Germain, *Seeking Refuge: The U.S. Asylum Process*, 35 Colo. Law. 71, 74 (2006) (citing REGINA GERMAIN, AILA’S ASYLUM PRIMER: A PRACTICAL GUIDE TO U.S. ASYLUM LAW AND PROCEDURE 77-100 (4th ed. 2005)) (describing the administrative process of applying for asylum).

⁵³ See 8 C.F.R. § 1208.1 (2017).

⁵⁴ 8 U.S.C. § 1101(a)(42) (2012); see also 8 C.F.R. § 1208.13 (2017).

that a well-founded fear of persecution equates to at least a ten percent chance that the applicant will face persecution upon return to her country of origin.⁵⁵ Persecution itself has no precise definition under the Refugee Act, although over time, case law has defined what does and does not rise to the level of persecution.⁵⁶ The persecution must bear a nexus to one of the five protected grounds,⁵⁷ with the “particular social group” ground expanding continually to create cognizable claims in the areas of gender, family, and sexual orientation-motivated harms.⁵⁸

In addition to meeting the definition of a refugee, an applicant for asylum must also prove that she is not subject to one of the statutory bars to asylum. These include failing to file for asylum within one year of arrival in the United States, being firmly resettled in a third country prior to arrival in the United States, having persecuted others, having committed a particularly serious crime, or otherwise being a threat to the safety and security of the United States.⁵⁹ In some instances, the United States has entered Safe Third Country Agreements with other nations that require the asylum applicant to apply for asylum in the first country of arrival.⁶⁰

In 2015, the United States immigration agency determined that 26,124 non-citizens met the definition of a refugee and warranted a grant asylum.⁶¹ This number does not reflect the accompanying, or following to join, family members that come to the United States after an immediate family member has been granted asylum,⁶² which totaled an additional 7,116 admissions in 2015.⁶³ Once a non-citizen has been granted asylum, they become an *asylee*. Asylees can access financial and other resources through the Office of Refugee Resettlement (ORR)

⁵⁵ *INS. v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987).

⁵⁶ See Regina Germain, *Seeking Refuge: The U.S. Asylum Process*, 35 *COLO. LAW.* 71, 73 (2006) (quoting *Matter of Kasinga*, 21 Dec. 357 (BIA 1996)) (“The BIA has defined ‘persecution’ as the ‘infliction of harm or suffering by a government, or persons a government is unable or unwilling to control, to overcome a characteristic of the victim.’”).

⁵⁷ 8 U.S.C. § 1158(b)(1)(B)(i) (2012).

⁵⁸ See, e.g., Blaine Bookey, *Symposium: The Global Struggle for Women’s Equality: Gender-Based Asylum Post-Matter of A-R-C-G: Evolving Standards and Fair Application of the Law*, 22 *SW. J. INT’L L.* 1, 2, 5 (2016) (citing *Matter of A-R-C-G-*, 26 Dec. 388, 392 (BIA 2014)) (finding that “married women in Guatemala who are unable to leave their relationship” constitutes a cognizable particular social group sufficient for asylum).

⁵⁹ 8 U.S.C. § 1158(a)(2) (2012).

⁶⁰ *Id.*; see, e.g., Agreement for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries, U.S.–Canada, Dec. 5, 2002, T.I.A.S. 04-1229.

⁶¹ NADWA MOSSAAD, U.S. DEP’T OF HOMELAND SEC., ANNUAL FLOW REPORT, REFUGEES AND ASYLEES: 2015 1 (2016), https://www.dhs.gov/sites/default/files/publications/Refugees_Asylees_2015.pdf.

⁶² 8 C.F.R. § 208.21 (2017) (addressing “Admission of the asylee’s spouse and children”).

⁶³ MOSSAAD, *supra* note 62, at 7.

because they have proven that they meet the definition of a refugee under the Immigration and Nationality Act.⁶⁴ However, an asylee's access to ORR assistance requires that a program be in place in the asylee's state of residence, and for individuals who are granted asylum while living in Wyoming, this means that such assistance is not available.⁶⁵

It is important to note that during the asylum application process and at any time thereafter, asylum applicants and asylees are free to move about the country. There is no regulation or restriction on an asylum applicant's or asylee's freedom of movement.⁶⁶ In fact, the Refugee Convention requires that, once granted asylum, the United States must guarantee refugees or asylees "the right to choose their place of residence and to move freely within its territory"⁶⁷ Thus, an applicant or asylee might arrive in one state and subsequently move freely between states at any point during the application process or after asylum is granted. Such movement does not require the consent of the state or federal government and does not depend on whether a federal refugee resettlement program exists in the receiving jurisdiction.⁶⁸

Several examples illustrate this process. First, an applicant for asylum might arrive at Denver International Airport, travel to Wyoming, apply for asylum while living in Wyoming, and become a Convention-defined refugee, i.e. an asylee, in Wyoming. Alternatively, a non-citizen might be granted asylum while living in Nebraska, but, while holding asylee status, choose to live in Wyoming, creating yet another situation where someone who fits the Refugee Convention definition of a refugee becomes a Wyoming resident. In each of these instances, the asylees would be eligible for benefits that, in the presence of a resettlement program, the federal Office of Refugee Resettlement would provide.⁶⁹ These are just two examples of how asylees who meet the definition of a refugee might find their way to Wyoming even in the absence of an affirmative state-sponsored refugee resettlement program.⁷⁰

⁶⁴ See 45 C.F.R. §§ 400.45–400.319 (2017).

⁶⁵ *Asylee Eligibility for Assistance and Services*, OFFICE OF REFUGEE RESETTLEMENT (Jul, 12, 2012), <https://www.acf.hhs.gov/orr/resource/asylee-eligibility-for-assistance-and-services>.

⁶⁶ See 8 U.S.C. § 1305(a) (2012) (requiring that aliens notify the Department of Homeland Security of a change of address within ten days from the date of such change but placing no restrictions on an alien's freedom of movement between states and within the United States).

⁶⁷ Refugee Convention, *supra* note 18, art. 26.

⁶⁸ See 8 U.S.C. § 1305(a) (2012).

⁶⁹ 8 C.F.R. § 400.62 (2017).

⁷⁰ The author was unable to obtain statistics representing how many refugees are present in Wyoming under these modes of arrival.

2. *Overseas Refugee Resettlement: A Statutory Basis*

Unlike asylum, the process of domestic refugee resettlement begins outside of the United States. The United Nations High Commissioner for Refugees (UNHCR), in cooperation with national governments, has authority for making initial refugee status determinations.⁷¹ However, in order for a displaced person to be identified as a candidate for resettlement in a third country, the UNHCR must determine that the individual meets the definition of a refugee under the Refugee Convention.⁷² As noted above, the Refugee Convention's refugee definition closely mirrors that of the Immigration and Nationality Act.⁷³ This determination requires that UNHCR officials conduct an extensive interview of displaced persons to conclude whether the facts of the person's case demonstrate that he or she has faced past persecution or has a well-founded fear of future persecution based on one of the protected grounds.⁷⁴

Once a displaced person has been identified as a refugee, United Nations and national officials then undertake the work of determining which durable solution presents the refugee with the opportunity to live "in dignity and peace."⁷⁵ Durable solutions take three forms: (1) voluntary repatriation, (2) integration, and (3) resettlement.⁷⁶ Voluntary repatriation is the act by which the refugee decides that it is safe for her to return to her country of origin and then physically returns home.⁷⁷ Integration is the process by which the refugee finds a "home in the country of asylum and integrat[es] into the local community . . ."⁷⁸ Integration is

⁷¹ UNHCR, HANDBOOK ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS UNDER THE 1951 CONVENTION AND THE 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES 4–5 (rev. 1992) [hereinafter UNHCR Handbook].

⁷² *Id.* ¶ 29 ("Determination of refugee status is a process which takes place in two stages. Firstly, it is necessary to ascertain the relevant facts of the case. Secondly, the definitions in the 1951 Convention and the 1967 Protocol have to be applied to the facts thus ascertained.").

⁷³ Compare Refugee Convention, *supra* note 18, art. 1(A)(2), with 8 U.S.C. § 1101(a)(42) (2012).

⁷⁴ UNHCR Handbook, *supra* note 72, Section B2; see also *Refugee Status Determination*, UNHCR, <http://www.unhcr.org/en-us/refugee-status-determination.html> (last visited Apr. 15, 2017).

⁷⁵ *Solutions*, UNHCR, <http://www.unhcr.org/en-us/solutions.html> (last visited Apr. 15, 2017). See also PAUL WEIS, *supra* note 24, at 4 ("International cooperation in dealing with refugee problems presupposes collective action by governments in working out appropriate durable solutions for refugees."); UNHCR, GLOBAL REPORT 2006, FINDING DURABLE SOLUTIONS, <http://www.unhcr.org/4a2fd4fc6.pdf> (last visited Apr. 15, 2017).

⁷⁶ UNHCR, SOLUTIONS FOR REFUGEES, 186 (2016), <http://www.unhcr.org/50a4c17f9.pdf> (last visited May 3, 2017) [hereinafter SOLUTIONS FOR REFUGEES].

⁷⁷ See UNHCR, VOLUNTARY REPATRIATION: INTERNATIONAL PROTECTION 4 (1996), <http://www.unhcr.org/publ/PUBL/3bfe68d32.pdf> (defining voluntary repatriation as the process of "enabling a refugee to exercise the right to return home in safety and with dignity.").

⁷⁸ *Local Integration*, UNHCR, <http://www.unhcr.org/en-us/local-integration-49c3646c101.html> (last visited Apr. 15, 2017).

rare, as many highly-affected host countries often lack educational and economic opportunity or the political will to support displaced populations with an offer of permanent residence.⁷⁹

Finally, resettlement in a third country is an option for those refugees for whom voluntary repatriation or integration is not possible.⁸⁰ As defined by UNHCR, “[r]esettlement is the transfer of refugees from an asylum country to another State that has agreed to admit them and ultimately grant them permanent settlement.”⁸¹ Of the over 15 million refugees encountered by the UNHCR around the world by the end of 2015, less than one percent of those refugees were resettled in third countries.⁸²

The United States participates in the UNHCR’s resettlement program and has enacted legislative provisions, largely through the 1980 Refugee Act, to guide its acceptance of overseas refugees and the administration and funding of the program.⁸³ The President of the United States, in consultation with Congress, determines the limit on the number of refugees admitted to the United States each year, and takes into account “humanitarian concerns” and the “national interest.”⁸⁴ Once the President has determined a cap on refugee admissions for the fiscal year, the U.S. Department of Homeland Security, acting in cooperation with the U.S. Department of State, may “admit any refugee who is not firmly resettled in any foreign country.”⁸⁵ It should be noted that neither the Refugee Convention nor its Optional Protocol require nation-state parties to accept *any* refugees from abroad.⁸⁶ Yet, many countries participate in the refugee resettlement program. The United States is the global leader in accepting refugees referred

⁷⁹ KAREN JACOBSEN, UNHCR, *NEW ISSUES IN REFUGEE RESEARCH*, RESEARCH PAPER NO. 45, *THE FORGOTTEN SOLUTION: LOCAL INTEGRATION FOR REFUGEES IN DEVELOPING COUNTRIES 2* (2001), <http://www.unhcr.org/3b7d24059.pdf>.

⁸⁰ *Resettlement*, UNHCR, <http://www.unhcr.org/en-us/resettlement.html> (last visited Apr. 15, 2017).

⁸¹ *Id.*

⁸² *Id.*

⁸³ 8 U.S.C. § 1157 (2012); *see also* 8 U.S.C. § 1522 (2012) (providing for resettlement assistance, both monetary and through support for sponsorships, to newly arrived refugees).

⁸⁴ 8 U.S.C. § 1157(a)(2); *see, e.g.*, PRESS SEC’Y, EXEC. OFFICE OF THE PRESIDENT, *PRESIDENTIAL DETERMINATION ON REFUGEE ADMISSIONS FOR FISCAL YEAR 2017* (2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/09/28/presidential-determination-refugee-admissions-fiscal-year-2017> (establishing that “the admission of up to 110,000 refugees to the United States during Fiscal Year (FY) 2017 is justified by humanitarian concerns or is otherwise in the national interest”).

⁸⁵ 8 U.S.C. § 1157(c)(1) (2012).

⁸⁶ *See* Refugee Convention, *supra* note 18; Refugee Protocol, *supra* note 18; Elias, *supra* note 14 at 367 (2016) (noting that neither the Convention nor its Optional Protocol obligate signatories to accept refugees from abroad, but rather obligate parties not to *refoul* individuals who are physically present within their borders and might face harm upon return).

by the UNHCR.⁸⁷ Canada, Australia, Norway, and the United Kingdom also significantly participate in the resettlement of refugees within their borders.⁸⁸

If the Refugee Convention does not mandate that parties participate in the resettlement of refugees, the question naturally arises: why do countries willingly accept refugees referred by the UNHCR? Some scholars have noted that the United States has agreed to accept overseas refugees as a matter of foreign policy.⁸⁹ Providing safe-haven to refugees fleeing conflict might provide the United States with a stick in the carrot-and stick balance of international law and diplomacy. For example, for many years, the United States employed a very generous asylum policy toward individuals fleeing Communist regimes, a strategy central to its Cold-War policy of “damaging and ultimately defeating Communist countries”⁹⁰

In addition, refugees can provide economic benefits to receiving states. As one commentator noted, “[r]efugees are some of the best bets for almost any economy.”⁹¹ As another noted, “[r]efugees contribute to the economy in many ways: as workers, entrepreneurs, innovators, taxpayers, consumers, and investors. Their efforts can help create jobs; raise the productivity and wages of American workers; increase capital returns; stimulate international trade and investment; and boost innovation, enterprise, and growth.”⁹² Indeed, in the United States, former Secretary of State Madeline Albright, scientist Albert Einstein, and Google co-founder Sergey Brin were refugees.⁹³ Coupled with a rich history of immigration to the United States, overseas refugee admission is a staple aspect of national immigration law and policy.

⁸⁷ *Resettlement Fact Sheet 2015*, UNHCR, <http://www.unhcr.org/en-us/524c31a09> (last visited Apr. 15, 2017) (showing that in 2015, the top five resettlement countries for refugee resettlement were United States at 82,491; Canada at 22,886; Australia at 9,321; Norway at 3,806; and the United Kingdom at 3,622).

⁸⁸ *Id.*

⁸⁹ See Elias, *supra* note 14, at 368 (noting that “during each year in which refugee admissions peaked, the increase could be attributed to U.S. foreign policy decision or military incursions that had a direct impact on the countries from which the refugees were seeking asylum.”).

⁹⁰ KATHLEEN NEWLAND, *THE IMPACT OF U.S. REFUGEE POLICIES ON U.S. FOREIGN POLICY: A CASE OF THE TAIL WAGGING THE DOG?*, *THREATENED PEOPLES THREATENED BORDERS: WORLD MIGRATION AND U.S. POLICY 190* (Michael S. Teilbaum & Myron Weiner eds., 1995), <http://carnegieendowment.org/1995/01/01/impact-of-u.s.-refugee-policies-on-u.s.-foreign-policy-case-of-tail-wagging-dog-pub-229>.

⁹¹ Daniel Altman, *We Should All Be Competing to Take In Refugees*, *FOREIGN POLICY* (Sep. 8, 2015), <http://foreignpolicy.com/2015/09/08/we-should-all-be-competing-to-take-in-refugees-europe-syria/>.

⁹² Philippe Legrain, *Refugees Are a Great Investment*, *FOREIGN POLICY* (Feb. 13, 2017), <http://foreignpolicy.com/2017/02/03/refugees-are-a-great-investment/>.

⁹³ *Famous Refugees*, INT’L RESCUE COMM. (Jan. 9, 2017), <https://www.rescue.org/article/famous-refugees>.

3. *Recent Executive Orders: Suspending Refugee Admissions*

Since the 2016 election, the issue of refugee settlement has become a policy focus of the presidential administration. At the time of writing this article, President Donald Trump has issued a series of Executive Orders (EOs) that have called for a halt to the Refugee Admissions Program. The first Executive Order was ostensibly issued in response to the perceived threat of non-citizen admissions through the Refugee Admissions Program and other immigrant and non-immigrant programs.⁹⁴ President Trump issued the Executive Orders pursuant to a Congressional delegation of authority under 8 U.S.C. § 1182(f), which states that

[w]henver the President finds that the entry of . . . any class of aliens in the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of . . . any class of aliens . . . he may deem appropriate.⁹⁵

Accordingly, in support of the RAP's suspension, the EO states:

Numerous foreign-born individuals have been convicted or implicated in terrorism-related crimes since September 11, 2001, including foreign nationals who entered the United States after receiving visitor, student, or employment visas, or who entered through the United States refugee resettlement program. Deteriorating conditions in certain countries due to war, strife, disaster, and civil unrest increase the likelihood that terrorists will use any means possible to enter the United States. The United States must be vigilant during the visa-issuance process to ensure that those approved for admission do not intend to harm Americans and that they have no ties to terrorism.⁹⁶

In Section 5, the EO suspended the RAP for 120 days, during which time government officials were instructed to review the program and its procedure to ensure that “those approved for refugee admission do not pose a threat to the security and welfare of the United States.”⁹⁷ After a 120 day review period, the EO indicated that the RAP would be resumed, but with a priority toward resettling those whose claim for refugee status was based on religiously motivated persecution, “provided that the religion of the individual is a minority religion

⁹⁴ Exec. Order No. 13769, 82 Fed. Reg. 8,8977 (Jan. 27, 2017).

⁹⁵ 8 U.S.C. § 1182(f) (2012).

⁹⁶ *Id.* Section 1.

⁹⁷ *Id.* Section 5(a).

in the individual's country of nationality."⁹⁸ The January 27 EO also suspended the admission of Syrian refugees indefinitely.⁹⁹ Finally, the first EO reduced the number of refugees accepted by the United States from President Obama's target of 100,000 down to 50,000.¹⁰⁰

On February 3, 2017, in the case of *Washington v. Trump*, a federal district court entered a nation-wide Temporary Restraining Order (TRO) against enforcement of the EO.¹⁰¹ In the TRO, federal district court judge James L. Robart found that the EO adversely affected the states' residents "in areas of employment, education, business, family relations, and freedom to travel."¹⁰² In addition, the court found that the EO inflicted harm upon the states' universities and institutes of higher education.¹⁰³

The Ninth U.S. Circuit Court of Appeals upheld the restraining order on February 9, 2017.¹⁰⁴ In its decision, the court found that "although courts owe considerable deference to the President's policy determinations with respect to immigration and national security, it is beyond question that the federal judiciary retains the authority to adjudicate constitutional challenges to executive action."¹⁰⁵ On this basis, the court concluded that the EO created several procedural due process and religious discrimination problems that the government was unlikely to win on the merits.¹⁰⁶ On March 15, 2017, the Ninth Circuit voted against *en banc* rehearing to consider *vacatur* of the panel opinion in *Washington v. Trump* denying the stay of the district court's injunction.¹⁰⁷ Thus, at the time of publication, the case has been remanded to the district court for further litigation.

On March 6, 2017, President Trump issued a new executive order aimed at rectifying some of the deficiencies federal courts identified in the January 27 order.¹⁰⁸ In the second EO, the administration stated that the policy and purpose

⁹⁸ *Id.* Section 5(b).

⁹⁹ *See id.* Section 5(c).

¹⁰⁰ *See id.* Section 5(d).

¹⁰¹ *See Washington v. Trump*, No. C17-0141JLR, 2017 WL 462040, at *2 (W.D. Wash. Feb. 3, 2017), *appeal dismissed sub nom.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *See Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (order granting motion for temporary restraining order), *reconsideration en banc denied*, No. 17-35105, 2017 WL 992527 (9th Cir. Mar. 15, 2017).

¹⁰⁵ *Id.* at 1164.

¹⁰⁶ *Id.* at 1167.

¹⁰⁷ *See Washington v. Trump*, No. 17-35105, 2017 WL 992527, at *1 (9th Cir. Mar. 15, 2017) (order denying reconsideration of previous order *en banc*).

¹⁰⁸ Exec. Order No. 13780, 82 Fed. Reg. 13,209 (Mar. 6, 2017).

of the order was to “improve the screening and vetting protocols and procedures associated with the visa-issuance process and the USRAP.”¹⁰⁹ As evidence for the necessity of the EO, the second order attributed threats to national security to the admission of refugees.¹¹⁰ The second order again halted the Refugee Admission Program for a 120 day period pending review of the program’s procedures and protocols and reduced the number of refugee admissions for the fiscal year to 50,000.¹¹¹ However, the order removed language related to “religious minorities” and Syrian refugees.¹¹² Notably, the second Executive Order makes a sweeping statement in the refugee federalism context.¹¹³ As discussed in more detail below, such a statement signals an intention on the part of federal policy makers to give more power to the states in the refugee resettlement process.¹¹⁴ Yet, this EO was also enjoined by the federal courts, which found that that the EO was potentially a violation of the establishment clause and likely to result in harm to the plaintiffs in the case.¹¹⁵ Ongoing litigation over the scope of executive authority and the admission of refugees to the United States will be an important factor shaping the refugee resettlement debate into the near future.

C. *Sub-National Resettlement Implementation*

The regulation of the admission and exclusion of non-citizens, including asylees and refugees, is a matter of federal law.¹¹⁶ The U.S. Supreme Court upheld this principal in *Arizona v. United States*, in which it reiterated that “the Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”¹¹⁷ This authority rests, in part, on the Federal Government’s constitutional power to “‘establish an uniform Rule of Naturalization,’ . . . and its inherent power as sovereign to control and conduct relations with foreign nations.”¹¹⁸

¹⁰⁹ *Id.* at Section 1(a) (Mar. 6, 2017) (establishing a renewal of USRAP restrictions outlined in Exec. Order No. 13769).

¹¹⁰ *Id.* Section 1(h) (stating that “[s]ince 2001, hundreds of persons born abroad have been convicted of terrorism-related crimes in the United States. They have included not just persons who came here legally on visas but also individuals who first entered the country as refugees.”).

¹¹¹ *Id.* Section 6(b).

¹¹² *Id.*

¹¹³ *Id.* at Section 6(d).

¹¹⁴ *See infra* notes 238–288 and accompanying text.

¹¹⁵ *Hawai’i v. Trump*, No. 17-00050 DKW-KSC, 2017 WL 1011673, *at 16–17 (D. Haw. Mar. 15, 2017) (order granting motion for temporary restraining order).

¹¹⁶ Elias, *supra* note 14, at 402 (“Longstanding legal doctrines preclude the states from taking actions that control immigrant admission and exclusion, committing that role to the federal government.”).

¹¹⁷ *Arizona v. United States*, 567 U.S. 387, 394 (2012).

¹¹⁸ *Id.* at 421.

Yet, in the operation of the resettlement of refugees from abroad to communities inside the United States, sub-national state actors play an important role. Congress envisioned that the process of resettling refugees into communities in the U.S. would involve close cooperation between the federal immigration agencies, the U.S. Department of State Bureau of Population, Refugees, and Migration, the U.S. Department of Health and Human Service's Office of Refugee Resettlement (ORR), and state governments and non-governmental organizations, often referred to as private nonprofit voluntary agencies (VOLAGs).¹¹⁹ Accordingly, Congress and federal agencies have created an intricate regulatory scheme to carry out the work of refugee resettlement.

First, the Immigration and Nationality Act creates a framework for state and federal government consultation on the placement of refugees within the United States.¹²⁰ The Act requires that the ORR "shall consult regularly (not less often than quarterly) with State and local governments and private nonprofit voluntary agencies concerning the sponsorship process and the intended distribution of refugees among the States and localities before their placement in those States and localities."¹²¹ The Act further requires that ORR "develop and implement, in consultation with representatives of voluntary agencies and State and local governments, policies and strategies for the placement and resettlement of refugees within the United States."¹²² Such consultation should take into account areas already highly impacted by the presences of refugees.¹²³

To determine where refugees are resettled in the United States, representatives of local affiliates of voluntary agencies regularly meet with representatives of state and local governments to plan and coordinate the appropriate placement of refugees. These meetings are designed to consider existing refugee populations, the availability of housing, employment opportunities, and other resources, and the likelihood of a refugee becoming self-sufficient in that area.¹²⁴ VOLAGs meet

¹¹⁹ See *Voluntary Agencies*, OFFICE OF REFUGEE RESETTLEMENT (Jul. 17, 2017), <https://www.acf.hhs.gov/ort/resource/voluntary-agencies> (listing the Department of State's agreements with nine official VOLAGs authorized to undertake refugee resettlement: Church World Service, Ethiopian Community Development Council, Episcopal Migration Ministries, Hebrew Immigrant Aid Society, International Rescue Committee, US Committee for Refugees and Immigrants, Lutheran Immigration and Refugee Services, United States Conference of Catholic Bishops, and World Relief Corporation.) *U.S. Refugee Admissions Program FAQs*, U.S. DEP'T OF STATE (Jan. 20, 2017), <https://www.state.gov/j/prm/releases/factsheets/2017/266447.htm> [hereinafter *USRAP Factsheet*] (stating that VOLAGs must apply for grant funding annually in a competitive process in which the organizations must demonstrate their capacity to resettle refugees).

¹²⁰ 8 U.S.C. § 1522 (2012).

¹²¹ *Id.* § 1522(a)(2)(A).

¹²² *Id.* § 1522(a)(2)(B).

¹²³ *Id.* § 1522(a)(2)(C)(i).

¹²⁴ *Id.* § 1522(a)(2)(C)(iii).

weekly with Department of State officials at the Refugee Processing Center in order to determine which of the agencies will resettle individual refugees and refugee families.¹²⁵ The committee considers such factors as “family size, nationality, ethnicity, religion, and medical conditions” to determine which placement option is best for the approved refugees.¹²⁶

Federal law and regulations provide different structures for state engagement in the resettlement of refugees. The goal of refugee resettlement, no matter which administrative form is chosen, is “to provide for the effective resettlement of refugees and to assist them to achieve economic self-sufficiency as quickly as possible.”¹²⁷ The regulations stipulate that “[i]n order for a state to receive refugee resettlement assistance from funds” under Immigration and National Act § 414, it must choose a program structure and submit a plan to the ORR.¹²⁸ Currently, refugee resettlement at the sub-national level takes one of three programmatic forms: (1) state administered plans; (2) public-private partnerships; and (3) Wilson-Fish programs. The next section of this article will explore each type of state-level refugee resettlement structure.

1. *State Administered Resettlement*

Under a “state administered” refugee resettlement plan, the state government itself serves as the primary administrator of federal monies and coordinates all aspects of refugee resettlement in the state.¹²⁹ To initiate a state-administered refugee resettlement program, a state government submits to the ORR a detailed plan that outlines, among other criteria, how the state will coordinate cash and medical assistance, language training, and employment services with local service and voluntary agencies.¹³⁰ In addition, either the governor or the state legislature must appoint an employee to act as a state coordinator with responsibility for coordinating refugee resettlement within the state.¹³¹ Finally, the state coordinator commits to holding regular meetings with representatives of local resettlement agencies, local community service agencies, and local government officials “to plan and coordinate the appropriate placement of refugees in advance of the refugees’ arrival.”¹³²

¹²⁵ ANDORRA BRUNO, CONG. RESEARCH SERV., R41570, U.S. REFUGEE RESETTLEMENT ASSISTANCE 7 (2011), <https://fas.org/sgp/crs/row/R41570.pdf>.

¹²⁶ *Id.* at 8.

¹²⁷ 45 C.F.R. § 400.1(b) (2017).

¹²⁸ *Id.* § 400.4(a).

¹²⁹ *Id.*

¹³⁰ 8 U.S.C. § 1522(a)(6) (2012); 45 C.F.R. § 400.5(a)–(c) (2017).

¹³¹ 45 C.F.R. § 400.5(d) (2017).

¹³² *Id.* § 400.5(h).

After ORR approves a state administered plan, the state becomes eligible for two types of federal grants: (1) Cash assistance, medical assistance, and related administrative costs (CMA grants); and (2) Social services grants.¹³³ The state is reimbursed for 100% of the services provided to refugees under the Cash and Medical Assistance program, the Refugee Medical Assistance program, and the Unaccompanied Refugee Minor program, as well as the associated administrative costs.¹³⁴ Under a state plan, the state may not delegate “the responsibility for administering or supervising the administration of the plan” and retains full responsibility for the administration of federal dollars and the provision of services to newly arrived refugees.¹³⁵

2. *Public-Private Partnerships*

As an alternative to a state-administered resettlement program, a state may instead elect to enter into a public/private partnership program (PPP).¹³⁶ Under a PPP, a state chooses to establish a program between the state and a local resettlement agency, or VOLAG, whereby the VOLAG local affiliate will provide cash assistance and services to the resettled refugees directly.¹³⁷ Many states elect to operate a PPP because it enables more effective and better quality resettlement led by VOLAGs. Because VOLAG affiliates are community-based organizations with a substantial amount of exposure to refugee populations and the resources they require, they are often considered to “have a greater understanding of the cultural issues faced by refugees than state agencies and can serve them more effectively.”¹³⁸ Under the PPP, the VOLAG carries out the daily operations of refugee resettlement while the state maintains responsibility for policy and administrative oversight.¹³⁹

¹³³ *Id.* § 400.11.

¹³⁴ Refugee Resettlement Program; Requirements for Refugee Cash Assistance; and Refugee Medical Assistance, 65 Fed. Reg. 65,15410-65,15411 (Mar. 22, 2000) (codified at 45 C.F.R. Parts 400 and 401), <https://www.gpo.gov/fdsys/pkg/FR-2000-03-22/pdf/00-6848.pdf>.

¹³⁵ 45 C.F.R. § 400.22(a) (2017).

¹³⁶ *Id.* § 400.57.

¹³⁷ BRUNO, *supra* note 126, at 12; MARY FARREL, BRET BARDEN & MIKE MUELLER, THE EVALUATION OF THE REFUGEE SOCIAL SERVICE (RSS) AND TARGETED ASSISTANCE FORMULA GRANT (TAG) PROGRAMS: SYNTHESIS OF FINDINGS FROM THREE SITES 16 (The Lewin Group, 2008), <https://www.acf.hhs.gov/sites/default/files/ort/synthesisoffindingsfromthreesites.pdf>.

¹³⁸ *Id.*

¹³⁹ *See Annual ORR Report to Congress - 2005: Public/Private Partnerships*, OFFICE OF REFUGEE RESETTLEMENT (May 6, 2014), <https://www.acf.hhs.gov/orr/resource/annual-orr-report-to-congress-2005-public-private-partnerships>.

3. *Wilson-Fish Models*

The Wilson-Fish program is the third type of state-level refugee resettlement structure. The Wilson-Fish administrative model emerged in 1985, in response to Congress' concern about the burden to states in the administration of the refugee resettlement program.¹⁴⁰ The Wilson-Fish Alternative Program was intended to be an alternative to state-administered refugee assistance programs, and was created, in part, to ensure that refugee assistance programs exist in every state where refugees are resettled.¹⁴¹ Named after its sponsors, the "Wilson-Fish Alternative Program," establishes that:

[ORR] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.¹⁴²

In practice, the Wilson-Fish program allows VOLAGs to administer federal refugee resettlement cash and medical funds and provide social services, including employment, case management, and English language instruction, largely without the participation of the state government. As the Seventh Circuit recently held, "in states that choose not to participate in the refugee assistance program the federal government has been authorized to establish an alternative program, called Wilson/Fish, that distributes federal aid to refugees in a state without the involvement of the state government."¹⁴³ While the Wilson-Fish program has been criticized for circumventing states' rights in determining voluntary participation in the refugee resettlement program,¹⁴⁴ no court has found the legislation unconstitutional. Currently, twelve states conduct refugee resettlement through the Wilson-Fish program.¹⁴⁵

¹⁴⁰ H.R.J. Res. 648, 98th Congress (1984) (codified at 8 U.S.C. § 1522(e)(7) (2012)).

¹⁴¹ 93 INTERPRETER RELEASES, Art. 16 (Sept. 5, 2016).

¹⁴² 8 U.S.C. § 1522(c)(7)(A) (2012); *see also* 45 C.F.R. § 400.69 (2017) ("A State that determines that a public/private RCA program or a publicly-administered program modeled after its TANF program is not the best approach for the State may choose instead to establish an alternative approach under the Wilson/Fish program, authorized by section 412(e)(7) of the INA.").

¹⁴³ *Exodus Refugee Immigration, Inc. v. Pence*, 838 F.3d 902, 905 (7th Cir. 2016).

¹⁴⁴ *See, e.g.*, Michael Patrick Leahy, *Why 12 States Hold the Key to a Constitutional Challenge to the Increasingly Controversial U.S. Refugee Resettlement Program*, BREITBART (Dec. 8, 2015), <http://www.breitbart.com/big-government/2015/12/08/12-states-hold-key-constitutional-challenge-refugee-resettlement-program/>.

¹⁴⁵ Fisk, *supra* note 8.

In conclusion, the Refugee Convention and its Optional Protocol provide the backbone for international cooperation and obligation with respect to the treatment of refugees around the globe. Domestically, Congress has operationalized U.S. international obligations through legislation that incorporates the treaty definition of a refugee and provides a process for those who are physically within its borders to apply for asylum and for those who have been identified as refugees outside of its border to be resettled in the United States. At the state level, the regulations define three levels of state engagement with the federal government to relocate refugees in communities across the country. The next section of this article will explore, in practice, the journey a refugee makes from third country displacement to the chance to begin life again in the United States.

III. THE PROCESS OF REFUGEE RESETTLEMENT: FROM DISPLACEMENT TO CITIZENS IN WAITING

As previously described, the refugee resettlement process begins when the UNHCR or associated governmental officials conduct a refugee status determination (RSD).¹⁴⁶ The RSD is a legal process by which the UNHCR and its partners determine whether a displaced individual is a refugee under the definition provided by the Refugee Convention.¹⁴⁷ Once the UNHCR has determined that an individual meets the definition of a refugee, it then engages in a process of determining which durable solution: voluntary repatriation, integration, or resettlement, is appropriate for the refugee.¹⁴⁸ The Inter-Agency Standing Committee on Durable Solutions has established that “a durable solution is achieved when [internally displaced persons] no longer have any specific assistance and protection needs that are linked to their displacement and such persons can enjoy their human rights without discrimination resulting from their displacement.”¹⁴⁹ As such, durable solutions are permanent resolutions to a refugee’s internal or external displacement.

In a small number of cases, the UNHCR determines that resettlement to a third country is the most appropriate durable solution for a refugee or a refugee family.¹⁵⁰ In those instances, the UNHCR refers the refugee to a participating

¹⁴⁶ See *Refugee Status Determination*, UNHCR, <http://www.unhcr.org/en-us/refugee-status-determination.html> (last visited Apr. 14, 2017); see also *supra* notes 72-82 and accompanying text.

¹⁴⁷ *Id.*; see Refugee Convention, *supra* note 18, art. 1(A)(2).

¹⁴⁸ *Finding Durable Solutions*, UNHCR, 34–36 (2009), <http://www.unhcr.org/publ/PUBL/4922d43b0.pdf>.

¹⁴⁹ BROOKINGS INSTITUTION – UNIVERSITY OF BERN PROJECT OF INTERNAL DISPLACEMENT, IASC FRAMEWORK ON DURABLE SOLUTIONS FOR INTERNALLY DISPLACED PERSONS 5 (2010), <http://www.unhcr.org/50f94cd49.pdf>.

¹⁵⁰ *Resettlement*, UNHCR, <http://www.unhcr.org/en-us/resettlement.html> (last visited Apr. 14, 2017) (only 1% of displaced persons are actually resettled in third countries).

resettlement country's national representatives.¹⁵¹ When the United States is the recipient of the UNHCR's referral, the U.S. State Department's Bureau of Population, Refugees and Migration (PRM) begins its review process.¹⁵² PRM officials begin this process by working through an administrative office, known as a Resettlement Support Center (RSC), to capture the refugee's biometric data (fingerprints, photograph).¹⁵³ Multiple U.S. agencies, including the Department of Homeland Security, use this biometric data to conduct security screening and background checks.¹⁵⁴ In addition to a security screening, a representative of the United States Citizenship and Immigration Service (USCIS) conducts an additional interview to ensure that the individual meets the definition of a refugee under U.S. law and does not pose a safety or security threat to the United States.¹⁵⁵

Once a refugee applicant has passed the USCIS interview process, she next undergoes a health screening to ensure that she does not carry communicable diseases that will pose a health risk to individuals living in the United States.¹⁵⁶ Prior to departure for the United States, the RSC obtains "sponsorship assurance" from a voluntary agency that assists with refugee resettlement upon arrival in the U.S.¹⁵⁷ Organizations such as the International Organization For Migration (IOM) often conduct "cultural orientation" programs for departing refugees to acquaint refugees with unfamiliar cultural norms in the United States and "[reduce] anxiety on the part of refugees and migrants by painting a more realistic picture of what awaits them."¹⁵⁸ The entire process from referral by the UNHCR to departure to the United States can take eighteen months to two years.¹⁵⁹

¹⁵¹ *U.S. Refugee Admissions Program: Application and Case Processing*, U.S. DEP'T OF STATE, <https://www.state.gov/j/prm/ra/admissions/index.htm> (last visited Apr. 14, 2017). [hereinafter *USRAP Processing*] (Occasionally, a U.S. Embassy or a specially trained nongovernmental organization will refer a refugee to the U.S. Refugee Admissions Program.)

¹⁵² *Id.* ("Some refugees can start the application process with the RSC without a referral from UNHCR or other entity. This includes close relatives of asylees and refugees already in the United States and refugees who belong to specific groups set forth in statute or identified by the Department of State as being eligible for direct access to the program.")

¹⁵³ *Id.*

¹⁵⁴ *Id.*; see also *The Refugee Processing and Screening System*, U.S. DEP'T OF STATE, <https://www.state.gov/documents/organization/266671.pdf> ("U.S. national security agencies, including the National Counterterrorism Center, FBI, Department of Homeland Security (DHS), the Department of Defense, and the Department of State, as well as the intelligence community, begin screening the applicant using the data transmitted from the RSCs. The screening checks for security threats, including connections to known bad actors, and past immigration or criminal violations. For Syrian applicants, DHS conducts an additional enhanced review. Refugees are screened more carefully than any other type of traveler to the U.S.")

¹⁵⁵ *USRAP Processing*, *supra* note 152.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ INTERNATIONAL ORGANIZATION FOR MIGRATION, PRE-DEPARTURE ORIENTATION / CULTURAL ORIENTATION 1 (2004), http://publications.iom.int/system/files/pdf/pre-departure_orientation.pdf.

¹⁵⁹ *USRAP Processing*, *supra* note 152.

Weekly, the nine authorized VOLAGs meet at ORR offices in Virginia to determine which VOLAG will assume leadership for the resettlement of the refugee and which communities in the United States are most appropriate for the refugee's resettlement.¹⁶⁰ In determining placement, VOLAG representatives consider the particular needs of a refugee, the resources available in particular resettlement communities, and whether a refugee has family or relatives in the United States.¹⁶¹ If a refugee has family ties in the United States, he or she is likely to be resettled near family members.¹⁶² Once a relocation community has been determined, refugees travel to the United States on a plane ticket that is paid for by a loan from the U.S. government, which must be repaid.¹⁶³

Upon arrival in the country, refugees are again screened for security purposes by Customs and Border Protection Officers.¹⁶⁴ Representatives of VOLAGs then meet arriving refugees at the airport, and the local resettlement process begins when representatives take refugees to their new homes.¹⁶⁵ At the outset, PRM provides VOLAGs with a one-time monetary grant per refugee to cover the early costs of helping a refugee become established in her new home and community.¹⁶⁶ These costs include rent, furnishings, food, and clothing.¹⁶⁷ Following initial resettlement, refugees are eligible to receive various forms of federal financial and medical assistance for up to thirteen months from the date of admission.¹⁶⁸

As lawful immigrants, refugees are eligible for employment authorization immediately upon their arrival.¹⁶⁹ In addition, one year after arrival, refugees *must* apply to adjust their status to that of a lawful permanent resident (LPR).¹⁷⁰ After five years of holding LPR status, a former refugee becomes eligible for

¹⁶⁰ *U.S. Refugee Admissions Program: The Reception and Placement Program: Planning for Refugees' Arrival in the United States*, U.S. DEP'T OF STATE, <https://www.state.gov/j/prm/ral/receptionplacement/> (last visited Apr. 14, 2017) [hereinafter *USRAP Arrival Plan*].

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *USRAP Processing*, *supra* note 152.

¹⁶⁵ *Id.*

¹⁶⁶ *USRAP Arrival Plan*, *supra* note 161.

¹⁶⁷ *Id.*

¹⁶⁸ 45 C.F.R. § 400.203 (2017); U.S. DEP'T OF HEALTH AND HUM. SERVS., ADMINISTRATION FOR CHILDREN AND FAMILIES, SUMMARY OF ORR BENEFITS AND SERVICES TO ELIGIBLE POPULATIONS, https://www.acf.hhs.gov/sites/default/files/orr/orr_fact_sheet_benefits_at_a_glance.pdf (last visited Apr. 14, 2017).

¹⁶⁹ 8 C.F.R. § 274a.12(a) (2017).

¹⁷⁰ 8 C.F.R. § 209.1(a)(1) (2017) ("Every alien in the United States who is classified as a refugee under 8 CFR part 207, whose status has not been terminated, is required to apply to USCIS one year after entry in order for USCIS to determine his or her admissibility under section 212 of the Act, without regard to paragraphs (4), (5), and (7)(A) of section 212(a) of the Act.").

naturalization.¹⁷¹ Reports regularly find that refugees quickly find their way to economic self-sufficiency in the United States, with “income levels and rates of public benefits usage” approximating those of United States-born citizens.¹⁷² In fact, as previously noted, refugees can aid economic growth in communities of resettlement, improving the overall picture for both United States citizens and non-citizens alike.¹⁷³ Essentially, refugees, once admitted, are citizens in waiting.

IV. ONE IN FIFTY: THE REFUGEE RESETTLEMENT DEBATE IN WYOMING

The refugee resettlement story in Wyoming begins in the Democratic Congo with one man: Bertine Bahige.¹⁷⁴ In the late 1990s, rebel soldiers fighting in the eastern regions of the Democratic Republic of Congo (DRC) ripped thirteen-year-old Bertine away from his family at gunpoint.¹⁷⁵ The rebels were forcibly recruiting young boys to join their ranks and assist them in their struggle to gain power and access to natural resources following the 1994 Rwandan genocide.¹⁷⁶ For the next two years of his life, rebels forced Bertine to serve as a child soldier.¹⁷⁷ Back in the DRC, fighting and civil conflict displaced his remaining family members, including nine siblings.¹⁷⁸ Luckily, Bertine was able to escape rebel forces and find his way to a refugee camp in Mozambique, where the UNHCR identified him as a Convention refugee.¹⁷⁹ UNHCR then determined that because Bertine could no longer locate his displaced family, he was a candidate for the durable solution of resettlement.¹⁸⁰ The U.S. State Department subsequently resettled Bertine in the

¹⁷¹ 8 U.S.C. § 1427 (2012).

¹⁷² See, e.g., *The Integration Outcomes of U.S. Refugees*, MIGRATION POLICY INSTITUTE, <http://www.migrationpolicy.org/research/integration-outcomes-us-refugees-successes-and-challenges> (last visited Apr. 14, 2017).

¹⁷³ Legrain, *supra* note 93; see also *supra* notes 90–94 and accompanying text.

¹⁷⁴ The author has been involved with discussions on refugee resettlement in Wyoming since the fall of 2013. Prior to this time, discussions surrounding refugee resettlement in Wyoming might have taken place, but the author has been unable to find a legislative or policy history to show that refugee resettlement had received extensive state-level consideration before 2013.)

¹⁷⁵ Kyle Roerink, *Former Child Soldier Wants Refugee Office in Wyoming*, CASPER STAR TRIBUNE, Feb. 22, 2014, http://trib.com/news/state-and-regional/govt-and-politics/former-child-soldier-wants-refugee-office-in-wyoming/article_13c8457f-683b-51a9-b037-b9119eceb426.html; see also Wyoming PBS, *Wyoming Chronicle: Thanksgiving*, YOUTUBE (Nov. 16, 2012), <https://www.youtube.com/watch?v=cfL0IIH920w&t=920s> [hereinafter *Wyoming Chronicle*] (tracing Bertine Bahige’s path to Wyoming through the refugee resettlement program to the University of Wyoming); Caroline Ballard, *From The Congo To Coal Country: One Man’s Journey From Refugee To Wyomingite*, WYOMING PUBLIC MEDIA (Aug. 21, 2015), <http://wyomingpublicmedia.org/post/congo-coal-country-one-mans-journey-refugee-wyomingite>.

¹⁷⁶ Roerink, *supra* note 176.

¹⁷⁷ *Wyoming Chronicle*, *supra* note 176.

¹⁷⁸ Roerink, *supra* note 176.

¹⁷⁹ *Id.*

¹⁸⁰ See SOLUTIONS FOR REFUGEES, *supra* note 77.

United States and placed him in a community near Baltimore, Maryland.¹⁸¹ He excelled in his new environment, working several jobs to save money for college and becoming accustomed to his new home.¹⁸² At the same time, he missed his family.¹⁸³ Since rebels had taken him from the DRC, he had not heard from his mother or siblings, and he feared for their safety and well-being.¹⁸⁴

In 2006, the University of Wyoming awarded Bertine a scholarship to play soccer.¹⁸⁵ He seized the opportunity to move West, and once again, made the most of the opportunity to start his life anew: this time, as a college student. Bertine was actively involved on campus and met his future wife, Amanda, at the University.¹⁸⁶ Upon graduation, the couple married and moved to Gillette, Wyoming, where they started a family.¹⁸⁷ Bertine has since obtained a Masters degree, naturalized, and is now the principal of a public school in Gillette.¹⁸⁸ He is, by all accounts, a successful, productive and important member of his Wyoming community.

In 2010, Bertine began thinking about Wyoming as a home for refugees.¹⁸⁹ He looked at a map of states that participate in refugee resettlement and noticed that Wyoming was strangely a different color than every other state in the country.¹⁹⁰ This was, of course, because Wyoming is the only state in the country that does not participate in the affirmative resettlement of refugees.¹⁹¹ Wyoming has no VOLAGs currently operating in the State, and the State of Wyoming has neither a state administered, public-private partnership, or Wilson-Fish agreement in place with the federal government or voluntary agencies. As such, Wyoming is one in fifty.

¹⁸¹ Roerink, *supra* note 176.

¹⁸² *Id.*

¹⁸³ *Wyoming Chronicle*, *supra* note 176.

¹⁸⁴ *Id.*

¹⁸⁵ Roerink, *supra* note 176.

¹⁸⁶ Caroline Ballard, *Wyoming Debates Refugee Resettlement Program*, WYOMING PUBLIC MEDIA, Sept. 25, 2015, <http://wyomingpublicmedia.org/post/wyoming-debates-refugee-resettlement-program>.

¹⁸⁷ *See* Roerink, *supra* note 176.

¹⁸⁸ *Wyoming: Bertine Bahige*, REFUGEE CONGRESS, <http://refugeecongress.org/bertine-bahige/> (last accessed May 4, 2017).

¹⁸⁹ Roerink, *supra* note 176.

¹⁹⁰ *See, e.g., Find Resources and Contacts in Your State*, OFFICE OF REFUGEE RESETTLEMENT, <https://www.acf.hhs.gov/orr/state-programs-annual-overview> (last visited Apr. 14, 2017).

¹⁹¹ Emma Breyse, *Lack of programs makes refugee replacement unlikely*, JACKSON HOLE NEWS & GUIDE, Dec. 2, 2015, http://www.jhnewsandguide.com/news/features/lack-of-programs-makes-refugee-replacement-unlikely/article_97b81c10-6b31-5647-a3d1-ab6e86f96e46.html.

In thinking about his life in Wyoming, Bertine reflected on his love and appreciate for the State.¹⁹² He thought about the excellent education he received at the University of Wyoming.¹⁹³ He thought about the wonderful family he had found through his wife, a Gillette native.¹⁹⁴ He thought about the students he taught in Campbell County Schools, and how their curiosity about his life and his story reflected an appreciation for diversity and a kindness of spirit.¹⁹⁵ Bertine's reflections on his life in Wyoming and his appreciation for his community caused him to begin asking: "Why not Wyoming?"¹⁹⁶ In an interview with a state newspaper, Bertine noted "When you come from nothing, it's not easy to find your way in a big community That's the beauty of Wyoming: small and family oriented communities. If you fall, people will pick you up."¹⁹⁷

Thus began an ongoing discussion about the future of refugee resettlement in Wyoming. In 2013, Bertine contacted the University of Wyoming College of Law's International Human Rights Clinic.¹⁹⁸ Along with clinical law students, Bertine began researching the requirements for a refugee resettlement program and brought together stakeholders to engage in discussions with members of Governor Matt Mead's policy teams. Bertine and students attended multiple meetings with state government officials and provided information about refugee resettlement, describing the different structures a refugee resettlement program might take in the State. VOLAGs participated in these discussions and indicated an interest in participating in a refugee resettlement program in Wyoming.¹⁹⁹

These efforts culminated in a September 2013 letter from Matt Mead, the Governor of Wyoming, to the federal Office of Refugee Resettlement, stating:

The State of Wyoming has elected to pursue a Public-Private Partnership model of a refugee Resettlement program and to participate in that program through the Office of Refugee Resettlement. This formalizes the work of many interested persons and organizations across many years.

¹⁹² Video Recording of the Panel Discussion, *Wyoming's Immigration Policy*, WYO. NEWS AND PUB. AFF., Mar. 23, 2016, <http://video.wyomingpbs.org/video/2365702898/>.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Wyoming Chronicle*, *supra* note 176, 4:30–4:55.

¹⁹⁶ *Wyoming's Immigration Policy*, *supra* note 193.

¹⁹⁷ Roerink, *supra* note 176.

¹⁹⁸ The author serves as the faculty Director of the International Human Rights Clinic and supervised University of Wyoming College of Law students in their research on refugee resettlement in Wyoming. She was also present at meetings with law students, Mr. Bahige, Lutheran Family Services, and Governor Matt Mead's policy teams.

¹⁹⁹ *See supra* note 199.

Wyoming will designate a Refugee Resettlement Coordinator in the near future.²⁰⁰

However, after Governor Mead submitted the letter, the process stalled. Shortly thereafter, in 2014, a gubernatorial election year in Wyoming, Governor Mead's stance on refugee resettlement shifted. His policy position migrated from electing to pursue refugee resettlement in the State through a public/private partnership,²⁰¹ to "learn[ing] more about what is done in Wyoming."²⁰² In a March 2014 editorial, he stated:

There have been recent discussions about refugees coming to Wyoming. It is an important issue as refugees are coming now and have been coming to Wyoming with our state having no plan or say on the matter. Questions of what, if any, resources are being used and how they are used remain unanswered. We are the only state in the country without a plan or process.²⁰³

In response to his requests for further discussions about refugee resettlement, Governor Mead faced a backlash. Refugee resettlement restrictionists, such as Ann Corcoran of the Refugee Resettlement Watch blog, began highlighting stories from Wyoming.²⁰⁴ A citizens group called Citizens Protecting Wyoming organized anti-refugee resettlement protests and stated that "[t]he people of Wyoming are caring and generous Yet that does not mean we are OK with being forced to increase the burden to our health, safety, welfare, medical, community and educational programs via our tax dollars."²⁰⁵

Because 2014 was an election year, Governor Mead also faced criticism from political opponent Taylor Haynes. Gubernatorial candidate Haynes expressed concern about the introduction of communicable diseases such as HIV, Ebola or drug-resistant tuberculosis through refugee communities in addition to concerns

²⁰⁰ Letter from Matthew H. Mead, Governor of Wyo., to Mr. Eskinder Negash, Dir., Office of Refugee Resettlement (September 5, 2013) (on file with author) [hereinafter Governor Mead 2013 Letter].

²⁰¹ *Id.*

²⁰² Governor Matt Mead, Editorial, *It's Important to Have a Wyoming Plan for Refugees*, CASPER STAR TRIBUNE, Mar. 16, 2014, http://trib.com/opinion/columns/mead-it-s-important-to-have-a-wyoming-plan-for/article_76d7f22a-197f-522a-b2bd-9802a3dfaec.html.

²⁰³ *Id.*

²⁰⁴ Ann Corcoran, *Wyoming Public Radio pushing refugee resettlement for Wyoming*, REFUGEE RESETTLEMENT WATCH, Mar. 14, 2016, <https://refugeeresettlementwatch.wordpress.com/tag/wyoming/>.

²⁰⁵ Trevor Brown, *Refugee Program Worries Locals*, WYO. TRIBUNE EAGLE, Nov. 1, 2014, http://www.wyomingnews.com/news/refugee-program-worries-locals/article_74911f86-ec6e-5ca1-821a-ad9c0511aca6.html#.VFw4N5UtBwG.

about terrorism.²⁰⁶ “I think they’re groups of people brought in to kill our labor and undermine our culture,” Haynes said.²⁰⁷ Mead responded by denying that the State was engaged in refugee resettlement or “importing refugees.”²⁰⁸ Rather, Mead described that Wyoming was “exploring the idea of having a refugee resettlement program. Count the number of refugees we’ve brought under my administration,” Mead said. “Zero.”²⁰⁹ In a follow up interview, a spokesperson for Governor Mead said that community interest must pave the way for the establishment of a refugee resettlement program in Wyoming.²¹⁰ However, Mead’s spokesperson stated, “no interested group has offered a recommendation to establish a program to date,”²¹¹ a statement that failed to consider the tireless advocacy of Bertine Bahige and other citizens within the State.

Governor Mead was reelected in November 2014.²¹² Following the 2014 election, Mead appeared dismayed by the tone taken by certain opponents of refugee resettlement. “What we saw in that debate in my mind was nonfactual and, in fact, hurtful. . . . When we heard during the political season various descriptions of refugees, you know, it felt like to me we were going backwards.”²¹³ Recognizing that the level of discourse had been reduced to “terms none of us would be proud of,”²¹⁴ Mead asked the Wyoming Humanities Council to lead civic dialogue around the State regarding refugee resettlement.²¹⁵ The Humanities Council subsequently hosted several events around the State that gave citizens of

²⁰⁶ Laura Hancock, *Mead, Haynes Differ on Refugees, Federal Intrusion at Casper debate*, CASPER STAR TRIBUNE, Jul. 15, 2014, http://trib.com/news/state-and-regional/govt-and-politics/mead-haynes-differ-on-refugees-federal-intrusion-at-casper-debate/article_5a36487f-d556-54f9-902e-bbc16b12b97f.html.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ Brown, *supra* note 206.

²¹¹ *Id.*

²¹² Trevor Brown, *Mead Wins 2nd Term as Governor*, WYOMING TRIBUNE EAGLE, Nov. 4, 2014, http://www.wyomingnews.com/news/mead-wins-nd-term-as-governor/article_466828a3-d5bf-5460-a7d0-0da2539dab90.html.

²¹³ Laura Hancock, *Mead Asks for Factual Nonracist Discussion on Refugees (w/audio)*, CASPER STAR TRIBUNE, Jul. 1, 2015, http://trib.com/news/state-and-regional/govt-and-politics/mead-asks-for-factual-nonracist-discussion-on-refugees-w-audio/article_7d65b708-e4a0-5bcb-b3e8-2cc1a12764fc.html.

²¹⁴ *Opinion: Refugee Plan Would Give State Control*, WYOMING TRIBUNE EAGLE, Apr. 27, 2014, http://www.wyomingnews.com/opinion/refugee-plan-would-give-state-control/article_219457da-98a3-5e1a-b745-71599412e778.html.

²¹⁵ Caroline Ballard, *Governor Mead Says With No Refugee Resettlement Program, Wyoming At A Disadvantage*, WYO. PUBLIC MEDIA (Dec. 7, 2015), <http://wyomingpublicmedia.org/post/governor-mead-says-no-refugee-resettlement-program-wyoming-disadvantage>.

Wyoming an opportunity to ask questions about refugee resettlement and become informed about the process.²¹⁶

At the end of 2015, terrorist attacks struck Paris, killing 130 and wounding hundreds.²¹⁷ President Francois Hollande described the attacks as an act of war organized by Islamic militant groups.²¹⁸ While directly following the attacks the press reported that the terrorists were carrying Syrian passports, it was later revealed that the attackers were only posing as Syrian refugees.²¹⁹ Nonetheless, following the attacks, over thirty state governors called for a halt on the resettlement of Syrian refugees to the United States, including Governor Mead.²²⁰ On November 17, 2015, Mead's press release stated:

The President needs to make certain an absolutely thorough vetting system is in place that will not allow terrorists from Syria or any other part of the world into our country. In light of the horrific terrorist attacks in Paris, I have joined other governors in demanding the refugee process be halted until it is guaranteed to provide the security demanded by Wyoming and United States citizens.²²¹

Governor Mead's public statement was peculiar in light of the fact that Wyoming has never formally participated in the federal refugee resettlement program.²²² To date, the Governor has made no further efforts to create a state administered or public-private partnership refugee resettlement program.

The final chapter of Wyoming's refugee resettlement debate ends in the halls of the State's capital. During the 2016 legislative session, Representative Tom

²¹⁶ Michael Rotellini, *Wyoming Humanities Council to Discuss Refugee Situation*, THE BRANDING IRON, Dec. 4, 2015, <http://www.uwbrandingiron.com/2015/12/04/wyoming-humanities-council-to-discuss-refugee-situation/>.

²¹⁷ *Paris Attacks: What Happened on the Night*, BBC (Dec. 9, 2015), <http://www.bbc.com/news/world-europe-34818994>.

²¹⁸ *Id.*

²¹⁹ James Rothwell, *Majority of Paris Attackers Used Migration Routes to Enter Europe, Reveals Hungarian Counter-Terror Chief*, THE TELEGRAPH (Oct. 2, 2016), <http://www.telegraph.co.uk/news/2016/10/02/majority-of-paris-attackers-used-migration-routes-to-enter-europ/>.

²²⁰ Arnie Seipel, *30 Governors Call for Halt to U.S. Resettlement of Syrian Refugees*, NPR (Nov. 17, 2015), <http://www.npr.org/2015/11/17/456336432/more-governors-oppose-u-s-resettlement-of-syrian-refugees>.

²²¹ Press Release, Office of Governor Matt Mead, *Governor Mead Says No Refugees Under Flawed System* (Nov. 17, 2015), <https://sites.google.com/a/wyo.gov/governor/media/news-releases/2015-news-releases/governormeadsaysnorefugeesunderflawedsystem>.

²²² Suzan M. Pritchett, *Note to Mead: Wyoming Never Has Taken Refugees*, WYOFILE, Nov. 20, 2015, <http://www.wyofile.com/note-mead-wyoming-never-taken-refugees/>.

Reeder of Casper, Wyoming introduced House Bill 47.²²³ The bill attempted to make the Wyoming legislature, rather than the Governor's office, the only state-level authority with the ability to enact or administer a "refugee or asylum seeking resettlement program."²²⁴ In addition, the bill would have required the Governor to rescind "all refugee resettlement plans or agreements submitted to the office of refugee resettlement within the department of health and human services."²²⁵

Moreover, the bill required that any future Wyoming refugee resettlement plan should include, among other criteria, a plan for how the State intends to achieve refugee self-sufficiency as quickly as possible, a description of all funds available to administer the plan, and a projection of any state funds necessary to administer the resettlement program.²²⁶ Finally, the proposed bill required that prior to approval, a joint committee would hold hearings to receive comments from Wyoming citizens, local government representatives, volunteer agencies and other interested parties on the plan prior to authorizing any refugee resettlement program.²²⁷ House Bill 47 passed out of the house by a vote of fifty-one to nine and was advanced to the Senate, but failed introduction.²²⁸

Generally, the identification of refugees, the selection of refugees for resettlement, and the admission of refugees into the United States are largely the work of the federal government and international agencies.²²⁹ However, the ongoing debate around refugee resettlement in the State of Wyoming within both the State's executive and legislative branches is indicative of the growing interest of states in trying to control the arrival of and movement of refugees within their borders. Immigration scholar Stella Elias has described the phenomenon of *refugee federalism*,²³⁰ in which some states struggle to assert their Tenth Amendment rights to control the perceived threats of refugees against the exclusive federal power to regulate immigration.²³¹ What does refugee federalism mean for Wyoming in its one in fifty exceptionalism? The next section of this article will explore through the refugee federalism framework Wyoming's exclusionary position in light of an ongoing national backlash against refugee resettlement.

²²³ H.B. 47, 63rd Leg., Reg. Sess. (Wyo. 2016), <http://legisweb.state.wy.us/2016/bills/HB0047.pdf>.

²²⁴ *Id.* § 9-21-101(a). (Under the terms of the proposed bill, it is not clear what an "asylum seeking program" involves, as asylum is an application process that is pursued solely with the federal immigration agency); *see also* 8 U.S.C. § 1158(a) (2012).

²²⁵ HB47, § 9-21-101(b) (2016).

²²⁶ *Id.* § 9-21-101(c)(i).

²²⁷ *Id.* § 9-21-101(d).

²²⁸ *See* HB 47, 63rd Leg., Reg. Sess. (Wyo. 2016), <http://legisweb.state.wy.us/2016/Digest/HB0047.pdf>.

²²⁹ *See supra* notes 147–174 and accompanying text.

²³⁰ Elias, *supra* note 14, at 358.

²³¹ *Id.* at 380–402.

V. REFUGEE FEDERALISM AND WYOMING

As one commentator has noted, “[the law is both well settled and well conceived on the relative roles of the state and federal government when it comes to refugee crisis”.²³² The power to resettle refugees necessarily lies with the federal government with a limited role of consultation with the states because of federal exclusivity over the regulation of immigration.²³³ As the Supreme Court has reaffirmed time and time again, immigration law is a matter of federal law incident to national sovereignty.²³⁴ Within this authority, the federal government has consistently elected to resettle refugees within our borders as a matter of policy and because of our commitment to providing safe-haven for individuals who have faced persecution. This commitment is demonstrated by the United States’ accession to the Refugee Convention, our robust asylum system, and our tradition of being a global leader in welcoming refugees to our country.²³⁵

However, since 2013, there have been multiple efforts to increase the role of states in responding to the refugee crisis through state-level regulation and executive action. As immigration scholars Gulasekaram and Ramakrishnan have noted, “immigration federalism is variegated landscape with room for states to maneuver on both restrictionist and integrationist policies.”²³⁶ As Elias has described in her article *The Perils and Possibilities of Refugee Federalism*, some of these efforts have reflected states’ desire to support refugees as they resettle in new communities and begin their lives again.²³⁷ Others have involved both Congress and state governments pushing back against the federal immigration authority and attempting to assert states’ rights in determining who, what, and how many refugees a state must resettle.²³⁸

So where does Wyoming fit into this landscape? To date, Wyoming’s brand of refugee rulemaking has focused on whether and how Wyoming should join the refugee resettlement program, or whether it should continue to assert itself as the one in fifty states that does not affirmatively resettle refugees. Interestingly, perhaps the decision is not Wyoming’s to make. Through exploring the refugee federalism discussion playing out across the United States, this section of the

²³² Vladeck, *supra* note 15.

²³³ *Id.*

²³⁴ *Arizona v. United States*, 567 U.S. 387, 393 (2012).

²³⁵ See Meissner, *supra* note 43.

²³⁶ GULASEKARAM & RAMAKRISHNAN, *supra* note 15, at 201.

²³⁷ See Elias, *supra* note 14, at 391–398 (describing efforts by state governors to issue executive orders and decrees in support of refugees in addition to state legislative efforts to increase funding for refugee resettlement and programs).

²³⁸ *Id.*, at 395, 403 (describing “Exclusionary lawmaking” in the area of refugee resettlement as laws reflecting an anti-refugee or anti-asylee purpose).

article contextualizes the refugee resettlement discussion in Wyoming in a larger national conversation. It then analyses the possibility of refugee resettlement without affirmative consent and weighs the benefits of cooperative refugee resettlement in Wyoming.

A. Preserving Exceptionalism: Lessons Learned from the Restrictionist Movement

Imagine a hypothetical. It is 2017 and Wyoming has failed to move forward with a plan to establish an affirmative refugee resettlement program in the State. However, there is interest from the citizens of Wyoming in bringing refugees to the State and there are refugees and asylees interested in or suited to resettlement in Wyoming. These interested non-citizens include both those to whom USCIS has granted asylum status and those refugees coming from abroad who are looking to reunite with family or find safety from persecution in a new community in the United States. A voluntary agency steps forward and approaches the federal government with a plan to resettle refugees in Wyoming under the Wilson-Fish program without approval from the State government. Would there be a legal basis for refugee resettlement in the State without the State government's consent? If the governor issued an executive order calling for a halt of the resettlement of refugees in the State or the legislature passed a bill banning the federal government's resettlement of refugees, would such action withstand constitutional scrutiny?

This is an interesting refugee federalism question, and one that has been playing out in the halls of Congress and in state governments since 2013.²³⁹ As discussed further below, the answer is that the federal government could resettle refugees in Wyoming without the State's consent—even in the face of gubernatorial or legislative resistance.²⁴⁰ Supreme Court precedent, recent legislative action at both the federal and state levels, and state litigation challenging federal immigration action establish that states play a limited and inconsequential role in the refugee resettlement process.²⁴¹ Instances of the application of the federal preemption doctrine in the area refugee resettlement will be discussed, in turn.

In the late 1800s, the Supreme Court had multiple occasions to consider what role, if any, the states should play in the regulation of non-citizens within the United States. Cases from this time period firmly established federal supremacy

²³⁹ See *infra* notes 243–250 and accompanying text.

²⁴⁰ *Id.* See generally Elias, *supra* note 14, at 391–401 (describing the failure of state executive orders, gubernatorial decrees, legislation, and litigation to halt refugee resettlement at the sub-national level).

²⁴¹ *Id.*

over immigration control.²⁴² In 2012, the Supreme Court reiterated the principle of exclusive federal authority over immigration in the case of *Arizona v. United States*.²⁴³ In that case, the legislature of Arizona had enacted several state laws in an attempt to “discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States.”²⁴⁴ These laws included two state-level misdemeanors for failing to register and attempting to engage in unauthorized work within the State.²⁴⁵ Two other provisions bestowed immigration enforcement authority on state and local law enforcement officers.²⁴⁶

In considering the validity of state legislation in the area of immigration, the Court noted that “[t]he Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”²⁴⁷ This power flows in part from the Constitution’s delegation of authority to Congress to “establish an uniform Rule of Naturalization,” and is an incident of the United States’ sovereignty as a nation.²⁴⁸ The Court held that because “federal governance of immigration and alien status is extensive and complex” and forms a unitary scheme for the regulation of non-citizens, Arizona’s attempt to regulate in the area of immigration law was preempted.²⁴⁹

Arizona v. United States provides an important foundation for the refugee resettlement discussion in Wyoming. While Wyoming has not attempted to pass legislation that would bar the resettlement of refugees in the State, it also has not acted to affirmatively join the refugee resettlement program. In addition, recent legislative efforts indicate both an ideological and practical resistance to joining in federal efforts.²⁵⁰ At the same time, refugees are coming to the State

²⁴² See, e.g., *Chy Lung v. Freeman*, 92 U.S. 275 (1876) (striking down California law requiring bond for arriving immigrants as immigration law is matter of federal law); *Henderson v. Mayor of the City of New York*, 92 U.S. 259 (1875) (striking down New York law requiring bond for immigrants as immigration law is a matter of federal law); *Chae Chan Ping v. United States*, 130 U.S. 581 (1889) (upholding the Federal Chinese Exclusion Act as immigration law is a matter of federal law that is incident to sovereignty); *Fong Yue Ting v. United States*, 149 U.S. 698 (1893) (holding that the right to exclude or to expel aliens, or any class of aliens, absolutely or upon certain conditions, in war or in peace, is an inherent and inalienable right of every sovereign nation.).

²⁴³ *Arizona v. United States*, 567 U.S. 387, 393 (2012).

²⁴⁴ *Id.*

²⁴⁵ *Id.* at 393–394 (citing Ariz. Rev. Stat. Ann. § 13–1509, § 13–2928(C) (2012)).

²⁴⁶ *Id.* (citing Ariz. Rev. Stat. Ann. § 13–3883(A)(5), § 11–1051(B) (2012)).

²⁴⁷ *Id.* at 394.

²⁴⁸ *Arizona v. United States*, 567 U.S. 387, 394 (2012); see note 243.

²⁴⁹ *Id.* at 395 (2012).

²⁵⁰ H.B. 47, 63rd Leg., Reg. Sess. (Wyo. 2016), <http://legisweb.state.wy.us/2016/bills/HB0047.pdf> [hereinafter HB47].

as secondary migrants,²⁵¹ as asylees, and, potentially in the future, through the Wilson-Fish Program, which does not consider a role for the state. Should Wyoming attempt to limit the flow of refugees to the State through state-level legislation, such actions would not prevail. As Stella Elias notes, “[t]o the extent that state laws designed to control the inflow of refugees to their jurisdictions serve as tools of immigrant exclusion, they are therefore clearly preempted under the Court’s *Arizona* doctrine.”²⁵²

Under the existing regulatory scheme, the federal statutory resettlement framework envisions only a limited role for states in refugee resettlement. As noted, above,²⁵³ 8 U.S.C. § 1522 provides a process for the federal government to consult with states and localities regarding the distribution of refugees among jurisdictions.²⁵⁴ In addition, the federal government shall “to the maximum extent possible, take into account” the preferences of states and localities with respect to the placement of refugees within a state.²⁵⁵ However, there is no statutory provision that gives state governors or legislatures the ability to deny the admission of refugees to their states. As one commentator noted, “There’s no veto; there’s no remedy if the federal government doesn’t actually ‘consult’; and there’s no requirement that the federal government actually implement whatever recommendations the state may make.”²⁵⁶ Decisions regarding how many refugees are resettled in the United States, which countries they come from, and where those refugees live lie primarily with the federal executive branch.²⁵⁷

Recent Congressional legislative proposals support this conclusion. At the time of writing, Congress is considering multiple bills that aim to address

²⁵¹ Lucas High, *Somalis Find New Home in Cheyenne*, WYO. TRIB. EAGLE, May 5, 2014, https://www.wyomingnews.com/users/signup/?referer_url=http%3A%2F%2Fwww.wyomingnews.com%2Fnews%2Fsomalis-find-new-home-in-cheyenne%2Farticle_239137ea-d0dc-5499-83a5-365f1dc6aacd.html.

²⁵² Elias, *supra* note 14, at 404.

²⁵³ See *supra* notes 18–94 and accompanying text (outlining the refugee resettlement statutory and regulatory framework).

²⁵⁴ 8 U.S.C. § 1522 (2012).

²⁵⁵ *Id.*

²⁵⁶ Vladeck, *supra* note 15.

²⁵⁷ Karthick Ramakrishnan & Pratheepan Gulasekaram, *The Law is Clear: States Cannot Reject Syrian Refugees*, WASH. POST, Nov. 19, 2015, https://www.washingtonpost.com/posteverything/wp/2015/11/19/the-law-is-clear-states-cannot-reject-syrian-refugees/?utm_term=.14d69339b4d3 (“Federal law emphatically does not provide authority for states to nullify the president’s decision to increase the number or type of refugees or where those refugees will eventually live, though. Congress, in the Refugee Act, lodged sole power over those decisions with the president and the State Department, an important recognition of the connection between our country’s refugee policy and foreign policy.”).

the refugee federalism issue.²⁵⁸ For example, H.R. 546, the “No Resettlement Without Consent Act” would create a process by which state or local legislatures or state governors could have veto power over the placement of refugees within state borders.²⁵⁹ Members of Congress have attempted to create similar veto legislative efforts in previous legislative sessions without success.²⁶⁰ Accordingly, the inclination of Congress to propose such legislation speaks to the underlying power of the federal government to place refugees in states without the consent of state governors or legislatures.

The recent executive orders also shed light on the power of state government relative to the federal government in refugee resettlement. In his revised March 6, 2017 Executive Order, President Trump clearly indicated concern over the *de minimus* role of states in refugee resettlement.²⁶¹ Specifically, the EO seeks to give states a greater voice in refugee resettlement, providing that:

It is the policy of the executive branch that, to the extent permitted by law and as practicable, State and local jurisdictions be granted a role in the process of determining the placement or settlement in their jurisdictions of aliens eligible to be admitted to the United States as refugees. To that end, the Secretary of State shall examine existing law to determine the extent to which, consistent with applicable law, State and local jurisdictions may have greater involvement in the process of determining the placement or resettlement of refugees in their jurisdictions, and shall devise a proposal to lawfully promote such involvement.²⁶²

Finally, with respect to the question of whether the federal government could resettle refugees in Wyoming without affirmative consent of the State government, recent litigation proves illuminating. In 2015, following the terrorist attacks in Paris and San Bernardino, a number of state governors indicated their intent to withdraw from the refugee resettlement program, and particularly cease

²⁵⁸ See H.R. 546, 115th Cong. (2017) (assigned to committee on January 13, 2017); *see also* H.R. 604, 115th Cong. (2017) (to amend the Immigration and Nationality Act to permit the governor of a state to reject the resettlement of a refugee in that state unless there is adequate assurance that the alien “does not present a security risk”, and for other purposes); S. 211, 115th Cong. (2017) (a bill to amend the Immigration and Nationality Act to permit the Governor of a State to reject the resettlement of a refugee in that State unless there is adequate assurance that the alien “does not present a security risk,” and for other purposes).

²⁵⁹ See H.R. 546, 115th Cong. (2017).

²⁶⁰ See, e.g., Elias, *supra* note 14, at 388.

²⁶¹ Exec. Order No. 13780, 82 Fed. Reg. 13,209 (Mar. 6, 2017).

²⁶² *Id.* at Section 6(d).

the resettlement of Syrian refugees within their states.²⁶³ Legislators in twelve states attempted to pass legislation that would block the resettlement of Syrian refugees.²⁶⁴ Yet, as of the end of 2016, none of these state efforts at “exclusionary lawmaking”²⁶⁵ had succeeded, and the federal government continued to resettle refugees, including Syrian refugees, in over thirty-one states whose governors had promised the halt of resettlement.²⁶⁶ Again, the inability of state governments to stop refugee resettlement within their borders speaks to the federal government’s broad power over immigration law and refugee resettlement.

Litigation efforts by states to block refugee resettlement have also been futile. Two particular cases that arose in response to the terrorist attacks in 2015 support the proposition that, with respect to refugee resettlement, states have little role to play. The first case, *Exodus v. Pence*, arose when then governor of Indiana, Mike Pence declared on November 16, 2015 that he was suspending the resettlement of Syrian refugees in Indiana.²⁶⁷ Exodus, a VOLAG affiliate, continued to resettle refugees in Indiana despite the gubernatorial directive.²⁶⁸ In response, the State of Indiana threatened to withhold the federal grant funds that Exodus would use to provide resettlement and social services to Syrian refugees.²⁶⁹

Exodus subsequently brought suit against the State of Indiana and requested a preliminary injunction of the State’s actions citing both equal protection and Title VI claims.²⁷⁰ The federal district court granted Exodus’s request for a preliminary injunction, stating that “the State’s withholding of federal funds for social services provided to Syrian refugees is diametrically opposed to Congress’s goal of providing services to refugees ‘without regard to . . . nationality.’”²⁷¹ The

²⁶³ See *What Is Your Governor Saying about Syrian Refugees?*, FEDERATION FOR AMERICAN IMMIGRATION REFORM, <http://www.fairus.org/issue/what-is-your-governor-saying-about-syrian-refugees> (last visited Apr. 14, 2017); Sara Rathod, *The Freak-Out Over Syrian Refugees Is Continuing in These States*, MOTHER JONES (Feb. 26, 2016), <http://www.motherjones.com/politics/2016/02/anti-syrian-refugee-legislation-states>.

²⁶⁴ See generally Rathod, *supra* note 264.

²⁶⁵ Elias, *supra* note 14, at 380.

²⁶⁶ See *Exodus Refugee Immigration, Inc. v. Pence*, 838 F.3d 902, 905 (7th Cir. 2016) (finding that “[a]lthough in the fall of 2015 a number of state governors issued statements opposing the resettlement of Syrian in their domains, their opposition petered out. Since then Syrian refugees have been resettled in 40 states (Indiana of course is one of them), and there is no indication that their absence from the other 10 is attributable to actions by state governments.”); see also Elias, *supra* note 14, at 394–95.

²⁶⁷ *Exodus Refugee Immigration, Inc. v. Pence*, 165 F. Supp. 3d 718, 726 (S.D. Ind.), *aff’d*, 838 F.3d 902 (7th Cir. 2016).

²⁶⁸ *Id.* at 726.

²⁶⁹ *Id.*

²⁷⁰ *Id.* at 728.

²⁷¹ *Id.* at 728 (citing 8 U.S.C. § 1522(a)(5)).

court found that the State's directive, which singled out Syrians, was a national origin classification, the justification for which must meet strict scrutiny.²⁷² The court held that because "the withholding of funds from Exodus that are meant to provide social services to Syrian refugees in no way directly, or even indirectly, promotes the safety of Indiana citizens," the governmental action was not narrowly tailored to the goal of safety and failed to withstand a heightened level of scrutiny.²⁷³

On appeal, the Seventh Circuit Court of Appeals upheld the district court's grant of a preliminary injunction against the State of Indiana.²⁷⁴ The appellate court reaffirmed the exclusive federal power over immigration in stating that "[t]he regulation of immigration to the United States, including by refugees (people who have fled their homeland, and unable to return because of threat of persecution seek to relocate in a country in which they'll be safe), is a federal responsibility codified in the Immigration and Nationality Act."²⁷⁵ Importantly, the Court of Appeals went on to note that the role of states in refugee resettlement is limited.²⁷⁶ In states that choose not to participate in the formal federal refugee resettlement program, "the federal government has been authorized to establish an alternative program, called Wilson/Fish, that distributes federal aid to refugees in a state without the involvement of the state government."²⁷⁷ Accordingly, the *Exodus* case clearly established that the role of states in refugee resettlement is limited and should a state like Wyoming choose not to participate, alternative avenues exist to resettle refugees within a state's borders.

Refugee resettlement was similarly litigated in the case of *Texas Health & Human Services Commission v. United States*.²⁷⁸ In that case, the State of Texas brought suit against the International Rescue Committee, a federal VOLAG, seeking to prevent Syrian refugees from resettling in Texas.²⁷⁹ Once again, the federal district court held that the role of states is limited in refugee resettlement.²⁸⁰ The court noted that the federal government is obligated to consult regularly with the states and take into account the recommendation of states.²⁸¹ However, the court found that the "consultation requirement is 'not intended to give States

²⁷² *Id.* at 734–35.

²⁷³ *Id.* at 737–38.

²⁷⁴ *Exodus Refugee Immigration, Inc. v. Pence*, 838 F.3d 902, 905 (7th Cir. 2016).

²⁷⁵ *Id.* at 903 (citing 8 U.S.C. §§ 1101 *et seq.*).

²⁷⁶ *Id.* at 905.

²⁷⁷ *Id.* (citing 8 U.S.C. § 1522(e)(7), 45 C.F.R. § 400.69).

²⁷⁸ *Tex. HHS Comm'n v. United States*, 193 F. Supp. 3d 733, 737 (N.D. Tex. 2016), *appeal dismissed* (Oct. 11, 2016).

²⁷⁹ *Id.*

²⁸⁰ *Id.* at 740.

²⁸¹ *Id.* (citing 8 U.S.C. § 1522(a)(2)(A), 8 U.S.C. § 1522(a)(2)(D)).

and localities any veto power over refugee placement decisions, but rather to ensure their input into the process and to improve their resettlement planning capacity.”²⁸² The court dismissed the claim against the VOLAG and the federal government, reaffirming the position that the federal government maintains control over refugee resettlement in the states.²⁸³

Accordingly, recent litigation has reaffirmed the exclusive federal authority over immigration. Under a preemption doctrine, courts have concluded that because immigration is a matter of federal law, states have little power to control the resettlement of refugees within their borders.²⁸⁴ While the statutory framework provides for a consultative process between the federal government and the states, it does not provide a mechanism for states to block resettlement of refugees within their borders. Congressional and executive efforts amplify states’ voices as well unsuccessful litigation to assert states’ rights underscore the existing limits of restrictionist refugee federalism.

As such, the logical conclusion to the refugee resettlement debate in Wyoming is that if the federal government determines that it would like to resettle refugees in the State and willing participant VOLAGs are prepared to undertake the operations of resettlement, there is no current legal mechanism by which the State could veto such federal action. Indeed, the Wilson Fish program is designed to allow refugee resettlement in a state without the involvement of state government.²⁸⁵ One might argue that it is only a matter of time, in the face of a growing global refugee crisis, until the Office of Health and Human Services, in cooperation with a VOLAG operating in neighboring states, might begin to resettle refugees in Wyoming.

Of course, there are a number of impediments to refugee resettlement moving forward in the absence of state consent. Primarily, the Office of Refugee Resettlement requires that a VOLAG establish that sufficient resources exist within a given community before a resettlement program is approved.²⁸⁶ For example, the VOLAG would need to demonstrate that there are sufficient housing, employment, transportation, and education resources available to ensure that newly arriving refugees receive the support they need to move toward self-sufficiency.²⁸⁷ It would be difficult for a VOLAG to meet ORR

²⁸² *Id.* at 745 (citing H.R. Rep. No. 99-132, at 19 (1985)).

²⁸³ *Id.* at 744.

²⁸⁴ Elias, *supra* note 14, at 401–02.

²⁸⁵ See *Exodus Refugee Immigration, Inc. v. Pence*, 838 F.3d 902, 905 (7th Cir. 2016) (citing 8 U.S.C. § 1522(e)(7), 45 C.F.R. § 400.69).

²⁸⁶ See, e.g., 45 C.F.R. § 400.69 *et seq.*

²⁸⁷ *Id.*

approval without state-level engagement and cooperation in the provision of these basic governmental services. Moreover, as some commentators have noted, states can make life difficult for resettled refugees by refusing to cooperate, restricting funding for health and other services, and creating administrative hurdles for refugees in the acquisition of state identification and access to state-sponsored resources.²⁸⁸

Nonetheless, the legal framework exists to allow the federal government to forge ahead with refugee resettlement within the State of Wyoming without the State's affirmative consent. Indeed, the federal government might consider it the only equitable way forward in a nation where 49 other states have born a part of the responsibility in responding to the global refugee crisis. In light of this reality, it would be prudent for Wyoming to explore the practicality of its one in fifty exclusionary position in relation to refugee resettlement.

B. Engaging in Collective Action: Cooperative Refugee Resettlement

Given that the federal government has authority to resettle refugees within Wyoming without the State's consent, the question then arises: is cooperative refugee resettlement a better way forward? A discussion of this question benefits from additional context. Refugees are coming to Wyoming. Even without a formal refugee resettlement program, the number of refugees within the State is increasing.²⁸⁹

First, refugees are choosing to move to Wyoming from bordering states.²⁹⁰ Because states do not and cannot control the movement of people between states, many individuals who have been initially resettled in other states subsequently make their way to Wyoming.²⁹¹ This phenomenon is being observed in Cheyenne, where a number of refugees who work in the meat production industry in Greeley are moving across the border to make their homes in Wyoming.²⁹² They are drawn to Wyoming because of its relatively accessible housing options, particularly in relation to federal housing vouchers for which refugees face a lengthy wait in other communities and states.²⁹³ Yet moving to Wyoming is proving to be a challenge. As one relocated refugee noted, "Greeley has a system to help new immigrants get

²⁸⁸ Vladeck, *supra* note 15; *see also* Ramakrishnan & Gulasekaram, *supra* note 258.

²⁸⁹ Lucas High, *Somali Refugees Find New Homes in Cheyenne*, WASH. TIMES, May 8, 2014, <http://www.washingtontimes.com/news/2014/may/8/somali-refugees-find-new-homes-in-cheyenne/>.

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ Miles Bryan, *Some On Public Housing Waitlists Are Moving To Get Vouchers*, NPR (Oct. 29, 2014), <http://www.npr.org/2014/10/29/359892963/some-on-public-housing-waitlists-are-moving-to-get-vouchers>.

services and education. But because the Somali community in Cheyenne is newer, those services are sometimes harder to find.”²⁹⁴ Public schools, public housing authorities, and local services providers are struggling to respond to the needs of a growing refugee population without state-level coordination.²⁹⁵

Second, non-citizens who live in Wyoming, apply for, and are granted asylum are considered Convention-defined refugees under the Immigration and Nationality Act.²⁹⁶ When these individuals are granted asylum, they become eligible for the package of benefits distributed through the Office of Refugee Resettlement.²⁹⁷ However, at present, when these Wyomingites are admitted as asylees, they are unable to access the federal benefits and resources to which they are entitled because of the absence of a refugee resettlement program in the State.²⁹⁸

Accordingly, refugees are already in the State of Wyoming. Without a state plan or cooperative refugee resettlement with federal authorities, newly arrived refugees and those recently granted asylum are unable to access federal resources to assist in their resettlement and integration in the State of Wyoming.²⁹⁹ In addition, without formal participation in the federal refugee resettlement program, the State lacks the broad oversight and coordination that can come from a more coordinated approach. The concerns highlighted by the sponsors of H.B. 47,³⁰⁰ primarily lack of consultation with Wyoming communities and citizens, are unaddressed by the *status quo*. Therefore, a cooperative refugee resettlement plan, which would enable the distribution of federal grants to qualifying populations within the State and create a more positive climate for the benefits that flow from refugee resettlement, seems like a more productive way forward.

²⁹⁴ High, *supra* note 290.

²⁹⁵ *Id.*

²⁹⁶ 8 U.S.C. § 1101(a)(42) (2012).

²⁹⁷ 45 C.F.R. § 400.62 (2017).

²⁹⁸ Suzan M. Pritchett, *From Refugees and Asylees to Citizens: Clarifying the Refugee Admissions Process*, WYO. LAW. June 2014, at 24.

²⁹⁹ *Id.*

³⁰⁰ H.B. 47, 63rd Leg., Reg. Sess. (Wyo. 2016), <http://legisweb.state.wy.us/2016/bills/HB0047.pdf>.

Indeed, the federal regulatory scheme provides space and encourages such “inclusionary”³⁰¹ or “integrationist”³⁰² law and regulatory frameworks, as several scholars have described. As previously noted,³⁰³ the *de facto* structure of the refugee resettlement program imagines an interactive role for the state in the administration of federal grants.³⁰⁴ Moreover, apart from the *de minimus* consultation role for the states, Wyoming stands to create a more successful refugee resettlement program by exercising its consultative role in a cooperative spirit with the federal government. Professor Stella Elias suggests state-level efforts such as “consulting with local communities to see which communities are interested in hosting refugees, helping the communities prepare for their arrival, and even identifying refugees from the pool of screened refugees that would be the best for the community under question.”³⁰⁵ Such efforts, she asserts, “promote continued inclusion and acceptance of these vulnerable populations”³⁰⁶

Wyoming has much to gain in actively pursuing cooperative refugee resettlement with the federal government. The State can receive federal funding to support those non-citizens who have been granted asylum by the U.S. government and call Wyoming home. Engagement at the federal level is also more likely to result in a coordinated approach to secondary refugee migrants who are making their way to Wyoming.³⁰⁷ The State can pursue its own goals of diversity, safety, and economic growth in an otherwise down economy³⁰⁸ through engaging in a consultative process with the federal government and entering into a resettlement plan.³⁰⁹ Most importantly, Wyoming can join the forty-nine other states in the United States that have reached out to provide individuals who have been forced to flee their homes the chance to begin their lives again, safe from the fear of persecution and harm.

³⁰¹ Elias, *supra* note 14 at 409 (“the current statutory scheme does present an opportunity for ‘inclusionary lawmaking’ through using the consultation process to make the refugee resettlement process to work best for the state.”).

³⁰² GULASEKARAM & RAMAKRISHNAN, *supra* note 15, at 201 (“More generally, the tide of restrictionist and enforcement-heavy regulations began to wane in 2012, soon followed by a rising tide of state-level integrationist laws The constitutional and statutory leeway for these pro-immigrant state and local enactments is broad, as many are either agnostic to immigration status or are in line with federal statutory authority.”)

³⁰³ See *supra* notes 147–174 and accompanying text.

³⁰⁴ See 8 C.F.R. § 400.5 (2017) *et seq.*

³⁰⁵ Elias, *supra* note 14, at 409.

³⁰⁶ *Id.* at 414.

³⁰⁷ See High, *supra* note 290.

³⁰⁸ John Cassidy, *The Economics of Syrian Refugees*, THE NEW YORKER, Nov. 18, 2015, <http://www.newyorker.com/news/john-cassidy/the-economics-of-syrian-refugees> (describing that refugees tend to provide economic benefits to the communities in which they resettle).

³⁰⁹ 45 C.F.R. § 400.4(a).

VI. CONCLUSION

To date, Wyoming is the only state in the country that has not affirmatively participated in the federal refugee resettlement program. This article explored the legal framework that underlies refugee resettlement and the options that Wyoming has for welcoming refugees within its borders. In addition, it has outlined the process of refugee resettlement and followed the journey a refugee makes from displacement in a third country to resettlement in a new community in the United States.

In tracing the historical trajectory of the refugee resettlement debate in Wyoming, the article has identified some of the arguments that have been presented in opposition to resettlement within the State. It has also highlighted a particular form of “exclusionary” rulemaking particular to the refugee resettlement discussion in Wyoming. From this foundation, the article has analyzed the extent to which the federal government’s exclusive power over immigration and the existing refugee resettlement framework trumps sub-national attempts to veto the resettlement of refugees at the state-level.

In concluding that the federal government has the power to place refugees within a state without affirmative state consent, the article has proposed that it is in Wyoming’s best interest to engage in cooperative refugee resettlement with the federal government. Through cooperative refugee federalism, Wyoming stands to benefit economically, socially, and demographically as it joins the forty-nine other states that have provided safe-haven to those who are forced to begin their lives again.