

The Regulatory Leash of the One-Year Refugee Travel Document

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Asylees, refugees, and some Lawful Permanent Residents must obtain a Refugee Travel Document (RTD) from U.S. Citizenship and Immigration Services in order to travel abroad. These non-citizens cannot use passports from their home country, as doing so could result in a loss of their asylee or refugee status. RTDs are only valid for one year and must be renewed annually until the non-citizen naturalizes, if their holders plan to travel abroad. Because most countries require that a tourist's travel document have a minimum remaining validity of anywhere from three months to one year, RTD holders are inhibited from completing their business or personal travel for many months out of the year.

Part I of this Note introduces the problem of the one-year validity period and discusses the relevant terms and concepts pertaining to asylum and refugee classifications. Part II then discusses the history of refugee travel documents before and after the enactment of the U.N. Convention Relating to the Status of Refugees and the related 1967 Protocol Relating to the Status of Refugees before examining how the United States and other countries comply with their obligations under the Protocol. Part III delves further into the processes of applying for, obtaining, and using a refugee travel document. Part IV discusses how refugee travel documents affect two different kinds of rights: the limited right of reentry into the United States and the right to international travel, both of which also vary according to immigration status. Part V argues for an increased validity period of at least two years and outlines how the change could impact asylees, refugees, and lawful permanent residents. Finally, Part VI outlines the potential barriers to implementing the proposed regulatory reform, such as national security policy and political will.

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I. INTRODUCTION

One of the most difficult obstacles that refugees and asylum seekers face in rebuilding their lives is continuing to have their movement heavily restricted for years even after obtaining asylum or refugee status in their country of refuge. This Note focuses on how the one-year validity period of the U.S. Refugee Travel Document¹ (RTD) restricts refugees' and asylees' freedom of movement.

Part I of this Note introduces the problem of the one-year validity period and discusses the relevant terms and concepts pertaining to asylum and refugee classifications. Part II first discusses the history of RTDs before the enactment of the U.N. Convention Relating to the Status of Refugees (the "1951 U.N. Convention") and the related 1967 Protocol Relating to the Status of Refugees (the "1967 Refugee Protocol"). It then discusses the travel document regime that those documents created. Part II also examines how the United States and other countries comply with their obligations under the Protocol. Part III delves further into the processes of applying for, obtaining, and using an RTD, which can vary according to one's immigration status. Part IV explores how RTDs affect two different kinds of rights: the limited right of reentry into the United States and the right to international travel, both of which also vary according to immigration status. Part V argues for an increased validity period of at least two years and outlines how the change could impact asylees, refugees, and lawful permanent residents. Finally, Part VI outlines the potential barriers to implementing the proposed regulatory reform, such as national security policy and political will.

Many of the terms used in this Note are used colloquially and can have different meanings across different legal regimes. The relevant terms are here defined, and any necessary additional information is provided. A "refugee," according to the 1951 U.N. Convention, is someone who is unable or unwilling to return to their country of origin because of a well-founded fear of being persecuted for reasons of race, religion, nationality, membership

1. *See infra* Part II.

in a particular social group, or political opinion.² Under U.S. regulations, a refugee is someone who applies for and obtained refugee status in a third country and is later resettled into the United States.³ An “asylee” is someone who applies for and has obtained asylum in their country of refuge and who meets the definition of a “refugee” under the 1951 U.N. Convention and U.S. regulations.⁴ This Note uses the term “asylum seeker” to refer to a person colloquially referred to as a refugee — someone who leaves their country to seek refuge in another country and applies for asylum in the country of refuge. A permanent resident or a lawful permanent resident (LPR) is an alien who is permitted to reside permanently in the issuing country.⁵ In the United States, refugees and asylees must apply to U.S. Citizenship and Immigration Services (USCIS) to change their status (“adjust status”) to that of an LPR.⁶

II. HISTORY

According to the U.N. High Commissioner for Refugees (UNHCR), the ability to travel outside the country of his

2. Convention Relating to the Status of Refugees, art I (A), July 28, 1951, 189 U.N.T.S. 137. *See also* Immigration and Nationality Act (INA) § 101(a)(42), 8 U.S.C. § 1101(a)(42) (2012). The United States adopted the U.N.’s definition of a “refugee” in 1980 with the passage of the Refugee Act of 1980, 8 U.S.C § 1525 (1980) (repealed 1994).

3. INA § 101(a)(42), 8 U.S.C. § 1101(a)(42) (2012), *declared unconstitutional by* Golicov v. Lynch, 837 F.3d 1065 (10th Cir. 2016), cert. denied sub nom. Sessions v. Golicov, 138 S. Ct. 2018 (2018) and 8 C.F.R. §§ 207.1–207.2. The following outlines the typical refugee application process for refugees seeking to obtain official refugee status in the United States. Refugees express their desire to apply for refugee status to the UNHCR, U.S. embassy, or a specifically-trained non-governmental organization (NGO). Any of these groups will then refer the case to a Resettlement Support Center (RSC). The RSC will then assist the refugee applicant prepare their application for refugee status in the United States. Once the application is ready, the RSC will submit the application to U.S. Citizenship and Immigration Services (USCIS), an agency under the U.S. Department of Homeland Security (DHS), for adjudication. USCIS will then review the application and conduct an in-person interview before deciding whether to approve or deny the application. After USCIS approves a refugee application, the refugee must undergo a health screening and obtain sponsorship from a U.S.-based resettlement agency with experience providing assistance to new refugees. *See* U.S. DEP’T OF STATE, U.S. REFUGEE ADMISSIONS PROGRAM, <https://www.state.gov/j/prm/ra/admissions/> [<https://perma.cc/FRJ3-C2AW>] (last visited Nov. 4, 2018), for a more thorough explanation of the refugee admissions process.

4. *See* 8 C.F.R. § 208.13. *See generally* 8 C.F.R. § 208.

5. *See, e.g.*, 8 U.S.C. § 1101(a)(20) (2012).

6. *See generally* 8 C.F.R. §§ 209.1–209.2.

residence is “particularly important for a refugee.”⁷ This kind of travel is essential in order for a refugee to “take advantage of opportunities for education, training, or employment, [and] may be an essential prerequisite for a durable solution to his problems.”⁸ However, many refugees find it difficult to travel abroad because they lack a passport. In the United States, under the Immigration and Nationality Act (INA), § 208(c)(2)(D), if a refugee or asylee uses a passport from their country of persecution, then their asylum or refugee status could be subject to termination.⁹ However, refugees and asylees cannot obtain U.S. passports, because they are not citizens.¹⁰ As a result, refugees and asylees to the United States face the implicit requirement that they surrender their passports — and associated freedom of movement — for the chance to make a successful asylum claim, without any guarantee that the United States will provide comparable travel documents should their claims succeed. Instead, refugees and asylees must rely on RTDs to travel abroad.

Several different travel document regimes have been implemented over the years, two of which will be discussed in this section: the Nansen passport and the RTD regime proposed by the 1951 U.N. Convention and the 1967 Refugee Protocol. This Part discusses the historical reasons for the creation of these travel document regimes, as well as their strengths and deficiencies. The historical background highlights why the U.S. RTD regime — in particular the RTD’s one-year validity period — requires reform.

While there were many different travel document regimes in existence throughout the world before the ratification of the 1951

7. U.N. High Comm’r for Refugees, *Note on Travel Documents for Refugees*, U.N. Doc. EC/SCP/10 (Aug. 30, 1978).

8. *Id.*

9. “[T]he alien has voluntarily availed himself or herself of the protection of the alien’s country of nationality or, in the case of an alien having no nationality, the alien’s country of last habitual residence, by returning to such country with permanent resident status or the reasonable possibility of obtaining such status with the same rights and obligations pertaining to other permanent residents of that country.” INA § 208(c)(2)(D), 8 U.S.C. § 1158 (2012).

10. “A regular passport is issued to a national of the United States.” 22 C.F.R. § 51.3(a). A passport card can also only be issued to a national of the United States on the same basis as a regular passport. *Id.* at § 51.3(d). A “national of the United States” is a U.S. citizen or a person, who is not a U.S. citizen, but owes permanent allegiance to the United States. 8 U.S.C. § 1101(a)(22) (2012).

U.N. Convention,¹¹ this Part focuses on two predominant travel document regimes after World War I and II that specifically applied to refugees: the Nansen passport and the RTD. The U.N. Declaration on Human Rights (UDHR) and the 1951 U.N. Convention were both drafted and signed as a consequence of the horrific human rights abuses perpetrated on European Jews and other refugees during World War II. The impetus for the inclusion of the right to freedom of movement was the “Nazi regime’s curtailment of free movement during World War II.”¹² This Part explores the reasons for the post-war actions of international and national bodies to protect refugees and the freedom of movement.

The Nansen passport, also known as “the League of Nations passport” was a certificate of identity in the form of a passport used from 1921 to 1951.¹³ It was issued by the governments of participating countries in accordance with an arrangement with the Nansen International Office of Refugees.¹⁴ On August 22, 1921, the Inter-Governmental Conference on the Assistance to Russian Refugees was held in Geneva to arrange the coordination of relief work for Russian refugees who fled Russian after the Russian Revolution of 1917 and the subsequent Russian civil war,¹⁵ to define the legal status of refugees, and to consider a solution to employment and emigration issues plaguing Russian refugees.¹⁶ This Conference resolved to create an identity and

11. For example, after the end of World War II, the United Nations created another kind of travel document: the *laissez-passer*. The document was meant to be similar to the Nansen passport and meant for refugees who were “the concern of the Inter-Governmental Committee, other than those enjoying the benefit of earlier agreements.” For more information on travel document regimes that existed prior to the U.N. Convention Relating to the Status of Refugees, see Marjorie M. Whiteman, *Other Travel Documents, Etc.*, 8 DIG. INT’L L. 317, 330–335 (1967).

12. Jane McAdam, An Intellectual History of Freedom of Movement in International Law: The Right to Leave as a Personal Liberty, 12 MELBOURNE J. OF INT’L LAW 27, 27 (2011).

13. See *supra* note 11, at 327.

14. *Id.*

15. James E. Hassell, *Russian Refugees in France and the United States Between the World Wars*, 81 TRANSACTIONS OF THE AM. PHIL. SOC’Y 317, 327–329 (1991).

16. Louise W. Holborn, *The Legal Status of Political Refugees, 1920–1928*, 32 AM. J. OF INT’L LAW 680, 683 (1983). Most Russian refugees either had never had passports or had passports that had expired. *Id.* Further, because the issuance of passports was tightly controlled by the post-Revolution government, these refugees had almost no ability to legitimately obtain new passports. *Id.* Without a passport serving as an identity document, they were unable to emigrate from their original country of refuge where they may be living in destitution to other countries whether they could work. *Id.* Also, passports at that time “were necessary to enter one country from another, but also to

travel document to make up for Russian refugees' inability to obtain a national passport from their home country¹⁷ which hindered the resettlement of refugees in a host country.¹⁸ However, under any given Arrangement, the governments granting refugee or asylum status could only issue the Nansen passport to refugees from specified countries.¹⁹

The Nansen passport was essentially a certification of refugee status and recognition of the country of issuance's protection over that individual.²⁰ It permitted the bearer to travel abroad for the period of the document's validity, but would only permit them to return to the country of issuance if the document included a "return clause" so authorizing.²¹ Therefore, while Nansen passport-holders technically had the right to travel internationally, refugees could not do so in practice without risking statelessness once again, unless their passports included a return clause.²² Few countries would actually allow a Nansen passport-holder to enter on a Nansen passport, fearing that once a refugee entered their territory, he or she would be unable to

obtain work, to participate in the benefits of social insurance, and to obtain a permit of sojourn." *Id.* In some cases, Russian refugees who did not possess passports were subject to imprisonment or expulsion. For more, *see id.* at 682–684.

17. *Id.* at 681–82.

18. *See* Whiteman, *supra* note 11, at 329 (stating that a refugee's lack of passport was a problem for the host country because there was nothing "on which entry or exit visas could be affixed").

19. *Id.* at 327, 329–30. For example, the Arrangements of 1922, 1924, and 1926 (treaties between the League of Nations and a number of countries) which required the signatory governments to provide identity certificates, and return visas on the identity certificates for refugees leaving that country applied only to Russian and Armenian refugees. *Id.* Further, the Arrangement of 30 June 1928 extended the Nansen Passport only to Turkish refugees who lost their nationality under the Lausanne Protocol of 24 of July 1923, to Assyrian and Assyro-Chaldaeian refugees, and assimilated refugees of Syrian or Kurdish origin. *Id.* Finally, the Arrangement of 30 July 1935 extended the Nansen Passport only to Saar refugees. *Id.*

20. *Id.*

21. *Id.* at 327, 329.

22. The danger of statelessness in this context is that a stateless person is unable to obtain a passport from their government. *See id.* at 332. Without a passport, a person cannot travel. A destination country would not be inclined to permit a stateless person without a passport to enter their territory because there is no evidence that a government has vetted them and given them permission to enter. *Id.* Furthermore, a passport serves as proof of identity, nationality, and origin. *See id.* at 332. So, without a passport, the destination country cannot verify the identity of the traveler, which poses security issues. Also, without a passport, a stateless person cannot show that they have the ability to enter some country other than the destination country, which increases the risk that the stateless person may try to resettle within the destination country. *Id.* Finally, without a passport, a stateless person would not have documentation showing that they are under the protection of another government, making them vulnerable to abuses abroad. *Id.*

leave it due to a lack of a return visa to their country of refuge.²³ This problem was ameliorated by the Arrangement of 12 May 1926 relating to the Issue of Identity Certificates to Russian and Armenian Refugees between the League of Nations and several different governments, which recommended including return visas on Nansen passports.²⁴ This issue was finally resolved when the return clause was declared an integral part of the passport.²⁵

The United States did not participate in this agreement with the Nansen International Office for Refugees because the United States believed that its immigration laws already covered refugees entering the country.²⁶ U.S. law did not at the time have any immigration laws singling out refugees,²⁷ and the United States believed the immigration laws adequately covered refugees because there was no legal distinction between aliens (including refugees)²⁸ and U.S. citizens.²⁹ However, U.S. immigration laws did not fully encompass all refugees. Up until the passage of the Refugee Act of 1980 — which established a comprehensive U.S. refugee program focused on resettling and assisting different kinds of refugees and which adopted the U.N. definition of “refugee” — the United States had a piecemeal

23. See Whiteman, *supra* note 11, at 329. In this particular context, “country of refuge” refers to the country that issued the Nansen passport to the refugee and where the refugee has sought refuge or asylum status.

24. *Id.*

25. *Id.* The recommendation was only acceded to by twenty of the fifty-three participating countries. Article 2 of the Convention of 28 October 1933 and article 15 of the London Agreement of 15 October 1946 made the return clause an integral part of the travel document. *Id.* The countries who did participate were Belgium, Bulgaria, Denmark, Estonia, Finland, France, Greece, Hungary, India, Ireland, Luxembourg, Norway, Poland, Sweden, and Switzerland.

26. *Id.* at 327.

27. *Id.* (stating that U.S. immigration laws made no distinction between refugees and other aliens).

28. The United States did not have an asylum system at this time; therefore, there were no “asylees.”

29. See Whiteman, *supra* note 11, at 327–28 (citing Memorandum from Director in Charge of Technical Matters of the Passport Office Willis H. Young to Director of the Passport Office Frances G. Knight, “Documentation of Stateless Persons” (Apr. 11, 1958)). “On February 13, 1946, the Convention of the Privilege and Immunities of the United Nations (CPIUN), adopted by the General Assembly, provided for the issuance and use of the *laissez-passer* The CPIUN required the signing member states to recognize and accept the *laissez-passer* as a valid travel document.” *Id.* (citing G.A. Res. 22 (I) (A), Convention on the Privileges and Immunities of the United Nations, art. VII, § 24 (Feb. 13, 1946)).

approach to resettling refugees, preferring to assist refugees from certain countries over others.³⁰

A. U.N. CONVENTION RELATING TO THE STATUS OF REFUGEES
AND THE PROTOCOL

The U.S. RTD regime exists because of and is modeled after the 1951 U.N. Convention and the 1967 Refugee Protocol. These international agreements outline the required components and benefits that an RTD must have to comply with the 1951 U.N. Convention and the 1967 Refugee Protocol. In order to understand the nature of the problem with the one-year validity period of the U.S. RTD and why it is important that refugee's freedom of movement is limited, this Subpart discusses the history of the 1951 U.N. Convention and the 1967 Refugee Protocol.

In the wake of World War II, the U.N. General Assembly adopted the U.N. Convention Relating to the Status of Refugees, the cornerstone of international refugee protection in the world today — and the model on which current U.S. RTDs are based.³¹ The 1951 U.N. Convention entered into force on April 22, 1954. In order to account for refugees not covered by the 1951 U.N. Convention, the 1967 Protocol Relating to the Status of Refugees amended the 1951 U.N. Convention by removing the geographic and temporal limitations to the definition of a refugee.³² The Protocol transformed the Convention from a post-World War II instrument into a universal instrument.³³ The 1951 U.N.

30. 8 U.S.C. § 1525 (1988) (repealed 1994). Indochinese, Haitians, Central American, and refugees from non-communist countries were not considered refugees, even though they met the definition of a refugee under the 1951 U.N. Convention. In some cases, they were simply paroled in the United States. The parole program at that time, however, did not grant these refugees any permanent status, long-term employment authorization, resettlement benefits, or the right to apply for permanent residency. This disparate treatment was one of the reasons for the passage of the Refugee Act of 1980. See generally H.R. REP. NO. 96-608 (1979) (Conf. Rep.); *The Refugee Act of 1979, S.643: Hearing Before the S. Comm. on the Judiciary*, 96th Cong. (1979); and *Refugee Act of 1979: Hearing on H.R. 2618 Before Subcomm. on Immigration, Refugees, and Int'l Law of the H. Comm. on the Judiciary*, 96th Cong. (1979).

31. Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267; OFFICE OF THE U.N. HIGH COMM'R FOR REFUGEES, *Introductory Note to CONVENTION AND PROTOCOL RELATING TO THE STATUS OF REFUGEES 2* (Dec. 2010).

32. Office of the U.N. High Comm'r for Refugees, *supra* note 31, at 2.

33. *Id.*

Convention, while only amended once, has been supplemented by other refugee and subsidiary protection regimes in other regions,³⁴ as well as by international human rights law.³⁵

The 1951 U.N. Convention accomplishes the following: it (1) codifies the rights of refugees at the international level; (2) establishes both a single definition of the term “refugee”³⁶ and disqualifying criteria to eligibility for refugee status;³⁷ (3) contains safeguards against the expulsion of refugees; (4) promulgates the fundamental principles of non-discrimination, non-penalization, and non-refoulement;³⁸ and, (5) lays down basic minimum standards for the treatment of refugees such as access to the courts, access to primary education, access to work, and the access to identity documents, including an RTD in passport form.³⁹

The state parties that helped draft the 1951 U.N. Convention also unanimously adopted a recommendation urging governments which are party to the Inter-Governmental

34. *See id.* at n.3. “[T]he Organization of African Unity (now African Union) Convention governing the Specific Aspects of Refugee Problems in Africa 1969, was adopted in Addis Ababa, 10 September 1969; the European Union Council Directive 2004/83/EC of 29 April 2004 adopted minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, Official Journal L 304, 30/09/2004 P. 0012–0023. The Cartagena Declaration on Refugees, adopted at a colloquium held at Cartagena, Colombia, 19–22 November 1984, while non-binding, also sets out regional standards for refugees in Central America, Mexico and Panama.” *Id.*

35. *Id.*

36. A “refugee” is “any person who (1) has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization . . . (2) [a]s a result of events occurring before 1 January 1951 and 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 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.” Convention Relating to the Status of Refugees, art I (A), July 28, 1951, 189 U.N.T.S. 137.

37. The Convention ceases to apply to any person who “has voluntarily re-availed himself of the protection of the country of nationality,” has “acquired a new nationality,” and “enjoys the protection of the country of his new nationality”; or has “voluntarily re-established himself” in the country which he left or outside which he remained owing to fear of persecution. *Id.* at art. I (C)(1)–(5).

38. The principle of non-refoulement “provides that no one shall expel or return (*refouler*) a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears threats to life or freedom.” Office of the U.N. High Comm’r for Refugees, *supra* note 31, at 3.

39. *Id.*

Agreement on Refugee Travel Documents⁴⁰: (1) “to continue to issue or to recognize such travel document and to extend the issue of such documents to refugees” as defined by Article I of the 1951 U.N. Convention; or (2) “to recognize the travel documents so issued to such persons, until they shall have undertaken the obligations under Article 28 of the said Convention” because “the issue and recognition of travel documents is necessary to facilitate the movement of refugees, and in particular their resettlement.”⁴¹ Even though the 1951 U.N. Convention and the 1967 Refugee Protocol took steps to formalize and develop a body of international law to cover the movement of refugees, U.S. compliance has been inconsistent.

B. OBLIGATIONS UNDER THE 1967 REFUGEE PROTOCOL AND U.S. COMPLIANCE

The 1967 Refugee Protocol obliges state parties to comply with the substantive provisions of the 1951 U.N. Convention as to all persons covered by the refugee definition in Article I of the 1951 U.N. Convention.⁴² Accordingly, the United States is obligated, as a signatory, to comply with the substantive provisions codified in Convention Article 28, pertaining to a refugee’s right to freedom of movement and international travel.

Article 28 requires signatories to issue travel documents for purposes of international travel to refugees lawfully residing within their borders and gives signatories the option of issuing travel documents to any other refugees within their borders, if they are unable to obtain travel documents from their country of nationality.⁴³ Article 28, however, does not absolutely require the

40. The Inter-Governmental Agreement on Refugee Travel Documents is an international agreement signed on October 15, 1946 in London — Final Act of the Intergovernmental Conference on the adoption of a travel document for Refugees and Agreement relating to the issue of a travel document to refugees who are the concern of the Intergovernmental Committee on Refugees, 15 October 1946, 11 U.N.T.S. 150. See *infra* note 41.

41. U.N. Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, art. IV(A), U.N. Doc A/CONF.2/108/Rev.1, (July 25, 1951).

42. Protocol relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267. Pursuant to Art. I (1) of the Protocol, “the States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.” *Id.* at 606 U.N.T.S. at 268.

43. Convention Relating to the Status of Refugees, art. 28 (1), July 28, 1951, 189 U.N.T.S. 137. The travel documents that were issued to refugees under previous

issuance of travel documents to all lawful refugees. A signatory country may withhold issuance of a travel document to a lawful refugee on the basis of compelling national security reasons or public order considerations.⁴⁴ Finally, Article 28 mandates that the signatory use its prescribed list of requirements for RTDs (the “schedule”) and sample RTD⁴⁵ to model their own RTD regimes.⁴⁶

The most important requirements for purposes of this Note are (1) that RTDs be valid for the largest possible number of countries unless there is a special exception, which is undefined⁴⁷ and (2) that RTDs must be valid for one to two years, leaving signatories the choice between one- and two-year documents.⁴⁸

The United States claims to have fulfilled its obligations under the 1951 U.N. Convention and the 1967 Refugee Protocol by issuing U.S. RTDs.⁴⁹ However, because the RTD is only valid for a period of one year from the date of issuance,⁵⁰ this Note argues that the United States has failed to meet its obligation to make the travel document valid for the largest possible number of countries. The schedule states that holders of RTDs may still need to obtain a visa to enter other countries and are still subject to the same visa requirements as other aliens.⁵¹ The U.S. RTD’s one-year validity period violates the geographic validity requirement because U.S. law does not allow for extensions or renewal of RTDs⁵² and RTD holders are not granted visa waivers or relaxed visa requirements to enter into other countries.⁵³

international agreements by state parties to the 1951 U.N. Convention would continue to be recognized and would be treated as if they were issued pursuant to the 1951 U.N. Convention. *See* Convention Relating to the Status of Refugees, art. 28 (2), July 28, 1951, 189 U.N.T.S. 137.

44. *Id.*

45. *Id.* *See also id.* at Schedule, par. 1. The annex is titled “Specimen Travel Document.” The sample is written in both English and French. The French name for the travel document is “Titre de Voyage.”

46. *Id.*

47. *Id.* at Schedule, par. 4.

48. *Id.* at Schedule, par. 5.

49. An RTD is also invalid if the United Nations Convention of July 28, 1951, ceases to apply or does not apply to the person as provided in Article 1C, D, E, or F of the convention. *See* 8 C.F.R. § 223.3(b).

50. *See* 8 C.F.R. § 223.3(a)(2).

51. Convention Relating to the Status of Refugees, Schedule, par. 8 and par. 9 (2), July 28, 1951, 189 U.N.T.S. 137.

52. The schedule gives state parties discretion over whether to provide extensions or renewals of RTDs. *Id.* at Schedule, par. 6 (1).

53. The schedule does not provide for relaxed visa requirements or visa waivers for RTD holders. *Id.* at Schedule, par. 6–10. The schedule states that holders of RTDs may

C. COMPLIANCE BY OTHER NATIONS

An understanding of how other similarly-situated signatories have implemented the 1951 U.N. Convention and the 1967 Refugee Protocol elucidates the relative shortcomings of the U.S. RTD regime. The countries chosen for comparison, like the United States, have a history of accepting refugees, have developed economies that can sustain larger refugee admissions, are current members of British Commonwealth, and remain peers on the international stage. They are the United Kingdom, Canada, New Zealand, and Australia.

Those who have acquired refugee status in the United Kingdom, including the derivatives⁵⁴ of refugees and those who are united through the refugee family reunion process,⁵⁵ can apply for a “Convention Travel Document.”⁵⁶ The cost of the document is the same as the cost to obtain a national passport.⁵⁷ The travel document for an adult is normally valid for ten years.⁵⁸ However, the document may be issued for a shorter validity if the refugee has Discretionary Leave⁵⁹ in the United Kingdom, which

still need to obtain a visa to enter other countries and are still subject to the same visa requirements as other aliens. *Id.*

54. Derivatives of refugees are typically a refugee’s spouse and minor children, which are relationships that can be proven through civil documents. *See* 8 C.F.R. § 207.7(a) and 8 C.F.R. §§ 208.21(a)–(d). However, some countries more broadly define “derivatives.” The United Kingdom — which refers to derivatives as “dependents”— considers a spouse, civil partner, unmarried or same-sex partner, or minor children as derivatives. *See* HOME OFFICE, ASYLUM POLICY INSTRUCTION: DEPENDENTS AND FORMER DEPENDENTS 6 (Version 2.0 2014), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/314042/DependantsAndFormerDependants_External2014-05-22.pdf [<https://perma.cc/FB32-D6TA>].

55. UK Visas & Immigration, *TD112 BRP Guidance Notes: Version 11/2018* (stating that a refugee who has been granted asylum in the United Kingdom by being recognized as a refugee under the terms of the 1951 U.N. Convention qualifies for the UK Convention Travel Document, and that a person who has come to the United Kingdom on a Family Reunion visa to join a refugee who is present in the United Kingdom may qualify for the Convention Travel Document).

56. Refugee Council, *Travel Documents: United Kingdom*, AIDA: ASYLUM INFO. DATABASE, <http://www.asylumineurope.org/reports/country/united-kingdom/content-protection/movement-and-mobility/travel-documents> [<https://perma.cc/4X8T-YVKY>] (last visited Nov. 4, 2018).

57. *Id.*

58. *Id.*

59. Discretionary Leave (DL) is a form of leave to remain that is granted outside U.K. immigration laws and cannot be applied for outside the United Kingdom. HOME OFFICE, ASYLUM POLICY INSTRUCTION: DISCRETIONARY LEAVE 7 (Version 7.0 2015), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/658372/discretionary-leave-v7.0ext.pdf [<https://perma.cc/DYK2-A45F>]. Discretionary Leave is available as a mechanism to cover the few cases where it would be

is only valid for a limited period of time.⁶⁰ A child's travel document is typically valid for five years.⁶¹ The United Kingdom will not issue a travel document for longer than the refugee's permission to remain in the United Kingdom and most countries will not accept a travel document with less than six months' validity.⁶² The Convention Travel Documents are normally valid for travel to all countries except the country from which the refugee sought asylum.⁶³

The United Kingdom loosely interprets the 1951 U.N. Convention's instruction⁶⁴ to expedite refugees' naturalization proceedings. Currently, refugees in the United Kingdom must "earn their citizenship."⁶⁵ The 2009 Borders, Citizenship, and Immigration Act, in an effort to manage the amount of refugees allowed to permanently resettle in the United Kingdom, brings refugees within the existing points-based naturalization process already governing the route of migrant workers to citizenship.⁶⁶ Instead of applying for citizenship directly after five years of residency, refugees also need to have an additional period of "probationary citizenship which can be accelerated through a demonstration of active citizenship, but can be slowed down or halted altogether by criminality."⁶⁷ Therefore, the ten-year validity period of the document is designed to provide the bearer with enough freedom of movement to permit the refugee to travel largely uninhibited during the duration of the five-year residency requirement and probationary citizenship period.

Canada, in accordance with its obligations under the 1951 U.N. Convention and the 1967 Refugee Protocol, issues RTDs to those who meet the 1951 U.N. Convention's definition of

"unjustifiably harsh" to remove someone from the United Kingdom, is used in "exceptional compassionate circumstances," and applies in both asylum and non-asylum cases. *Id.* at 5–8. This is also used when returning a refugee to their country of nationality would breach U.K. obligations under the European Convention on Human Rights (ECHR). *Id.* at 10.

60. See Refugee Council, *supra* note 56.

61. *Id.*

62. *Id.*

63. *Id.*

64. See *supra* note 36, at art. 34.

65. Information Centre About Refugees and Asylum in England (ICAR), Citizenship for Refugees in the UK: Key Issues and Research 5 (February 2010).

66. *Id.* at 4.

67. *Id.* (internal quotations omitted).

“refugee.”⁶⁸ A refugee who has not become a citizen and who intends to travel outside of Canada must apply for a “Refugee Travel Document.”⁶⁹ At minimum, refugees will need to use the Refugee Travel Document for five years, because citizenship applicants must wait five years before being able to apply.⁷⁰ In practice, however, due to Canada’s stringent citizenship requirements and long processing times, many refugees find themselves using their Refugee Travel Documents for more than six years.⁷¹ The issuing office determines the validity period of

68. *Refugee travel document—Refugees and Protected Persons*, GOV’T OF CAN. (Sep. 3, 2014), <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/permanent-residence/protected-persons/refugee-travel-document-refugees-protected-persons.html> [<https://perma.cc/B6TT-VSFJ>].

69. *Id.* Refugees who become citizens can travel on their Canadian passports.

70. Citizenship Act of 2017, R.S.C. 1985, c. 5(1)(c) (Can.).

71. *Check Processing Times*, GOV’T OF CAN. (Nov. 14, 2018) <https://www.canada.ca/en/immigration-refugees-citizenship/services/application/check-processing-times.html> (For the drop-down menu, choose “Citizenship” for the question “What are you applying for?” Then, choose “Citizenship grant” for the question “Which type of citizenship application?” Finally, choose “On or after April 1, 2015” for the question “If you have already applied, when did you apply?”). According to current processing times, an applicant for citizenship will need to wait an average of twelve months for Canadian immigration authorities to adjudicate a citizenship application. *Id.* Therefore, a refugee would need an RTD for at least six years (five years as a permanent resident until they can apply for citizenship and one year while waiting for the adjudication of their citizenship application).

There are three types of refugee regimes in Canada: Privately Sponsored Refugee Resettlement (PSRR), the Blended Visa Office-Referred program (BVOR), and asylum where the refugee applies within Canada. A refugee who enters through the PSRR or BVOR program becomes a permanent resident upon arrival in Canada. CITIZENSHIP AND IMMIGR. CAN., PRIVATELY SPONSORED REFUGEE RESETTLEMENT IN CANADA: INFORMATION BULLETIN (2014). *See also* CITIZENSHIP AND IMMIGR. CAN., BLENDED VISA OFFICE-REFERRED PROGRAM REFUGEE RESETTLEMENT IN CANADA 4 (2014). The average processing time for an asylum application is thirty months. *See Check Processing Times*, GOV’T OF CAN., <https://www.canada.ca/en/immigration-refugees-citizenship/services/application/check-processing-times.html> [<https://perma.cc/EJJ5-DMMD>] (last visited Nov. 4, 2018). A refugee who applies for asylum inside of Canada does not have permanent resident status even after their asylum application is granted. *See* Immigr., Refugees, and Citizenship Can., *Claiming Asylum in Canada — What Happens?*, GOV’T OF CAN., https://www.canada.ca/en/immigration-refugees-citizenship/news/2017/03/claiming_asylum_incanadawhathappens.html [<https://perma.cc/S9TK-CPDF>] (last visited Nov. 4, 2018). After a refugee is granted asylum, they will need to apply for permanent resident status in Canada. *See id.* In order to apply for citizenship, a refugee permanent resident must have been physically present in Canada for at least three years during the five years leading up to filing the citizenship application, must have met their income tax obligations in the three tax years that are fully or partially within the five years leading up to the citizenship application, must speak and listen in English or French at a certain level, and must pass a civics exam. *Find Out If You Are Eligible — Citizenship*, GOV’T OF CAN., <https://www.canada.ca/en/immigration-refugees-citizenship/services/canadian-citizenship/become-canadian-citizen/eligibility.html> [<https://perma.cc/BTY5-USC6>] (last visited Nov. 4, 2018). It currently takes about one year for the Canadian government to process a citizenship application. *See Check Processing Times*, *supra* note 71. Therefore, a refugee in Canada will spend at least six years in permanent residence status before they become

the Refugee Travel Document.⁷² The document is valid for travel to all countries except the refugee's country of persecution⁷³ and the refugee must return to Canada before the document's expiration. If the refugee uses their home country's passport (i.e. the country of persecution), it could cause their refugee status to be revoked.⁷⁴ Considering that the validity period of the Refugee Travel Document is discretionary, a Canadian refugee's ability to travel internationally and their freedom of movement is also relatively uninhibited.

New Zealand issues RTDs to persons with refugee status confirmed by its immigration agency, Immigration New Zealand.⁷⁵ The "Refugee Travel Document" is valid for a maximum of five years and is valid until the date of expiration.⁷⁶ In New Zealand, refugees can apply to citizenship after at least five years of residing in New Zealand if they meet all other citizenship requirements, including demonstrating basic English language skills.⁷⁷ Therefore, a refugee will need to use a Refugee Travel Document for at least five years, which is also the maximum validity period of the travel document. This should leave the refugee's ability to travel abroad, once again, relatively uninhibited.

The Australian government issues a Convention Travel Document, also known as a "Titre de Voyage," to refugees lawfully residing in Australia.⁷⁸ The Convention Travel

a citizen, if eligible. As such, they will require an RTD during those six years to travel. For more information about Canadian RTDs, see Immigration and Refugee Protection Regulations, SOR/2009-163, 151 (Can.).

72. *Types of Passports and Travel Documents*, GOV'T OF CAN., <https://www.canada.ca/en/immigration-refugees-citizenship/services/canadian-passports/travel-documents-non-canadians/document-types.html> (last visited Nov. 4, 2018) [<https://perma.cc/CE6G-N3RW>].

73. *Id.*

74. *Travel outside of Canada*, CANADIAN COUNCIL FOR REFUGEES, <http://ccrweb.ca/en/psr-toolkit/other-useful-info-travel-outside-canada> [<https://perma.cc/2FXE-A799>] (last visited Oct. 17, 2018).

75. *Certificate of Identity or Refugee Travel Document*, N.Z. GOV'T (Oct. 11, 2017) <https://www.passports.govt.nz/what-you-need-to-renew-or-apply-for-a-passport/certificate-of-identity-or-refugee-travel-document/> [<https://perma.cc/W4WK-D9DU>].

76. *Id.*

77. *Information for Refugees Settling in New Zealand, UNHCR Mandated Refugees Selected by INZ*, N.Z. GOV'T (June 26, 2014), <https://www.immigration.govt.nz/audiences/supporting-refugees-and-asylum-seekers/information-for-refugees-settling-in-new-zealand> [<https://perma.cc/3JBJ-UQ5G>].

78. *Convention Travel Documents (CTD)*, AUSTRALIAN DEP'T OF FOREIGN AFF. AND TRADE, <http://dfat.gov.au/about-us/publications/corporate/passports/online-passport-information/Policy/TravelDocuments/COICTD/ConventionTravelDocuments/index.htm> [<https://perma.cc/5S7Z-JZX7>] (last visited Oct. 17, 2018).

Document, unlike the other travel documents discussed in this Note, does not give the holder a right to re-enter Australia and the bearer needs to obtain a reentry visa to reenter Australia.⁷⁹ The travel document is valid usually for one or two years.⁸⁰ A refugee is unable to apply for Australian citizenship until they complete a four-year waiting period and must have been physically present in Australia for nine months or more in the year preceding their citizenship application.⁸¹ Therefore, a refugee will need to use a Convention Travel Document for at least four years before they can become a citizen and apply for a national passport. Unfortunately, the one- to two-year validity period does not cover the full four-year waiting period, which may inhibit the refugee's freedom of movement.

These are just a few examples of how different signatories to 1951 U.N. Convention and the 1967 Refugee Protocol have complied with their obligations to issue travel documents to refugees. The next section discusses how the length of the travel document's validity period can inhibit a refugee's freedom of movement. Freedom of movement is essential for visiting family abroad, some of whom may be refugees in other countries. This particular kind of liberty implicates many other human rights and liberty interests like the right to marriage and family, the right to public assembly, the right to work, and the right to education; therefore, governments should be wary of limiting freedom of movement.

III. THE COMPLEXITY OF RTD USE IN THE UNITED STATES

A. WHO NEEDS RTDS AND WHY

U.S. RTDs are used by asylees, refugees, their derivatives,⁸² and lawful permanent residents (LPRs) who obtained such status based on their asylum or refugee status.⁸³ Asylees and refugees

79. *Id.*

80. *Travel Related Documents*, AUSTRALIAN PASSPORT OFF., <https://www.passports.gov.au/pages/travel-related-documents.aspx> [https://perma.cc/QP4W-MXXA] (last visited Oct. 17, 2018).

81. *Citizenship*, REFUGEE COUNCIL OF AUSTL., <https://www.refugeecouncil.org.au/getfacts/settlement/citizenship/citizenship/> [https://perma.cc/YFP8-FCDJ] (last visited Oct. 17, 2018).

82. See *supra* note 54.

83. USCIS, Fact Sheet: Traveling Outside the United States as an Asylum Applicant, an Asylee, or Lawful Permanent Resident Who Obtained Such Status Based on Asylum

use RTDs because, under U.S. law, a person who “holds refugee status pursuant to section 207 of the [INA], or asylum status pursuant to section 208 of the [INA], *must* have an RTD to return⁸⁴ to the United States after temporary travel abroad unless he or she is in possession of a valid advance parole document.”⁸⁵ Even though an asylee or refugee has the option of obtaining an RTD or an advance parole document to reenter the United States, the fact that the regulation specifies “*after* temporary travel *abroad*”⁸⁶ determines which document they should obtain. The reason that LPRs who obtained their status based on their asylum or refugee status need to use an RTD is addressed later in this Subpart.

An RTD serves two purposes. First, it serves as a document for international travel that other countries can affix entry and exit visas to, much like a passport, so that the traveler can travel legally (“purposes of international travel”).⁸⁷ Second, it serves as evidence of refugee or asylee status in the United States, which helps determine if the refugee or asylee is eligible to reenter the United States.⁸⁸ An advance parole document, on the other hand, is not a travel document to which other countries can affix entry

Status (2006). In the United States, there are various classes of immigrants who are eligible to apply and obtain lawful permanent resident status in the United States. Two such classes are refugee and asylees. See 8 C.F.R. § 209.1–209.2 (2018).

84. Reentry is not guaranteed, however. See USCIS, INSTRUCTIONS FOR APPLICATION FOR TRAVEL DOCUMENT (2016). This Subpart later discusses how RTDs affect a refugee’s ability to reenter the United States.

85. 8 C.F.R. § 223.1(b) (2018) (emphasis added). An “advance parole document” is a travel document that allows certain classes of aliens to enter the United States for a specific purpose. An individual who uses an advance parole document has not been legally admitted into the United States and remains an “applicant for admission” even while paroled. See USCIS, *supra* note 84.

86. 8 C.F.R. § 223.1(b) (2018) (emphasis added).

87. See Whiteman, *supra* note 11, at 329 (stating Dr. Nansen’s concern that the lack of a travel document to which countries can affix entry and exit stamps affects a country’s ability to resettle the refugee). See also 8 C.F.R. § 211.1(a)(4) (2018) (showing that an unexpired RTD, properly endorsed to reflect admission as a lawful permanent resident, is valid documentation that an arriving alien may show in applying for admission into the United States for lawful permanent residence).

88. See 8 C.F.R. § 223.3(d) (2018) (stating that “[u]pon arrival in the United States, an alien who presents a valid unexpired refugee travel document, or who has been allowed to file an application for a refugee travel document and this application has been approved under the procedure set forth in § 223.2(b)(2)(ii), shall be examined as to his or her admissibility under the Act. An alien shall be accorded the immigration status endorsed in his or her refugee travel document, or (in the case of an alien discussed in § 223.2(b)(2)(ii) which will be endorsed in such document, unless he or she is no longer eligible for that status, or he or she applies for and is found eligible for some other immigration status”).

and exit visas, so it cannot replace a passport; it serves only as evidence to a U.S. customs official at a U.S. port of entry that the alien trying to enter the country has authorization to travel to the United States without applying for a visa.”⁸⁹ Therefore, a refugee or asylee who needs to travel abroad will almost always need to apply for an RTD in order to travel because they do not have a passport to which immigration officials at the destination country may affix a visa and to which customs officials at the destination country may affix a stamp granting entry and exit from that country. Even asylees or refugees who do have passports issued by their country of persecution still require an RTD to the United States as a practical matter since, under INA Section 208(c)(2)(D), an asylee or refugee’s status could be terminated if they use a passport from their country of persecution.⁹⁰

A lawful permanent resident who became eligible for such status based on their asylum or refugee status (LPR-AR)⁹¹ may also use an RTD to travel abroad.⁹² An LPR-AR would need an RTD for the same reasons that a refugee or asylee would: they do not possess nor can they obtain a passport from their country of citizenship because that country refuses to issue a passport, it is too dangerous to travel to that country and request a passport, requesting a passport could expose them to new persecution, or

89. USCIS, *Travel Documents*, DEPARTMENT OF HOMELAND SECURITY (June 26, 2017), <https://www.uscis.gov/travel-documents> [https://perma.cc/Z296-NXTB].

90. “The alien has voluntarily availed himself or herself of the protection of the alien’s country of nationality or, in the case of an alien having no nationality, the alien’s country of last habitual residence, by returning to such country with permanent resident status or the reasonable possibility of obtaining such status with the same rights and obligations pertaining to other permanent residents of that country.” INA § 208(c)(2)(D).

91. A refugee in the United States is required to apply to change their status (adjust status) to that of an LPR one year after being admitted as a refugee. See INA § 209(a)(1). In order to become an LPR, a refugee must (1) have been admitted as a refugee under INA § 207; (2) have been physically present in the United States for at least one year; (3) not have had their refugee status terminated; and (4) have not acquired permanent resident status under another classification. *Id.* An asylee may apply to become an LPR after they have been physically present in the United States for one year. See INA § 209(b). In order to be eligible to adjust their status to that of an LPR, an asylee must (1) have been physically present in the United States for at least one year; (2) continue to be a refugee within the meaning of INA § 101(a)(42)(2); (3) not have firmly resettled in any foreign country; and (4) be admissible as an immigrant under the Immigration and Nationality Act. *Id.* A refugee or asylee would adjust their status to that of an LPR by submitting Form I-485, proof of their asylee or refugee status, and other relevant documents to USCIS. For more information about the application process, see USCIS, GREEN CARD FOR ASYLEES, <https://www.uscis.gov/greencard/asylees> [https://perma.cc/B8A7-KPA2] (last visited Oct. 9, 2018).

92. See also 8 C.F.R. § 211.1(a)(4) (2018).

requesting a passport could jeopardize their status in the United States. Even though LPR-ARs are no longer refugees or asylees, if they travel to the country of citizenship or obtain a passport from their country of citizenship, USCIS may either suspect that the LPR-AR has re-availed them self of the protections of his country of citizenship and no longer requires U.S. protection, or that the LPR-AR may have committed fraud when applying for refugee or asylum status.⁹³ Either suspicion may cause USCIS to re-open the LPR-AR's grant of asylum or refugee status upon learning that they have another passport or have traveled back to their country of citizenship.⁹⁴ So, unlike refugees or asylees, LPR-ARs may only need the RTD for purposes of international travel and not for permission to re-enter the United States. A refugee or asylee, in order to re-enter the United States after temporary travel abroad, must show an RTD or an advance parole document, but an LPR can show a variety of different documents to prove their LPR status, such as a valid, unexpired "green card," an immigrant visa, a reentry permit, or an RTD.⁹⁵ All LPRs are automatically issued a green card upon acquiring that status.⁹⁶ Therefore, RTDs are salient for LPRs for international travel purposes, rather than reentry purposes.

B. THE APPLICATION PROCESS

A refugee, asylee, or LPR-AR must apply for an RTD before they travel abroad.⁹⁷ In order to apply for an RTD, the applicant must submit a completed Form I-131 to U.S. Citizenship and Immigration Services with the designated filing fee, a copy of the

93. See 31. *Asylum Status*, IMMIGRATION EQUALITY, <https://www.immigrationequality.org/get-legal-help/our-legal-resources/immigration-equality-asylum-manual/asylee-status/> [<https://perma.cc/FH29-PRPF>] (last visited Oct. 17, 2018). See also *You Can Go Home Again (Sort of): Visiting Your Home Country After a Grant of Asylum*, THE ASYLUMIST (Jan. 6, 2016), <https://www.asylumist.com/2016/01/06/you-can-go-home-again-sort-of-visiting-your-home-country-after-a-grant-of-asylum/> [<https://perma.cc/VE7X-4QZX>]. See also USCIS, *Volume 7 - Adjustment of Status, Part M, Chapter 5.B* in USCIS POLICY MANUAL (last updated Sept. 26, 2018), <https://www.uscis.gov/policymanual/Print/PolicyManual-Volume7-PartM.html> [<https://perma.cc/C9BK-3R6X>].

94. See also THE ASYLUMIST, *supra* note 93.

95. For a complete list of acceptable documents that an LPR can present to enter the United States, see 8 C.F.R. § 211.1(a) (2018).

96. See generally USCIS, *After a Green Card is Granted*, DEPARTMENT OF HOMELAND SECURITY (Sept. 28, 2018), <https://www.uscis.gov/green-card/after-green-card-granted> [<https://perma.cc/4AJT-5CQG>].

97. Dep't of Homeland Security, USCIS, *Instructions for Applicant for Travel Document 3* (Dec. 23, 2016).

USCIS notice approving their refugee or asylee status, an official photo identity document, and two passport-style photos of the applicant.⁹⁸ An applicant for an RTD must also complete a biometrics appointment where their fingerprints are taken.⁹⁹ USCIS runs background checks on the applicant using their biometrics.¹⁰⁰

An applicant is eligible for an RTD if they have submitted the application while in the United States and are either under valid refugee status under INA Section 207 or valid asylum status under INA Section 208, or if they are an LPR-AR.¹⁰¹ The only exception to these filing requirements pertains to applications submitted by aliens who are not within the United States.¹⁰² Also, an applicant is ineligible for an RTD if the previously issued RTD is still valid and has not been returned to USCIS or been demonstrated to be lost.¹⁰³ Such applicants must wait until their RTDs are no longer valid.¹⁰⁴

The regulatory scheme provides that an applicant is not guaranteed an RTD: USCIS “may approve or deny a request for a . . . refugee travel document as an exercise of discretion.”¹⁰⁵ Therefore, USCIS may deny an application for an RTD if the applicant does not meet the statutory requirements of a refugee or asylee, or is not an LPR-AR.¹⁰⁶ An applicant is not in valid refugee status if they were not in fact a refugee within the

98. *Id.* at 8–12.

99. *Id.* at 11.

100. 72 Fed. Reg. 17172, 17173 (April 6, 2007).

101. 8 C.F.R. § 223.2(b)(2)(i) (2018).

102. USCIS has discretionary authority to accept applications for an RTD by an alien who is not in the United States. The USCIS office which has jurisdiction over the port-of-entry or pre-flight inspection location where the alien is seeking admission, or the overseas office where the alien is present may accept and adjudicate the application from an alien who has been previously admitted to United States as a refugee or who has been granted asylum status in the United States and departed the United States before applying for an RTD. Also, the officer may accept these applications if he feels satisfied that the alien did not intend to abandon his refugee or asylum status at his time of departure from the United States, that the alien did not engage in activities outside the United States that would be inconsistent with continued refugee or asylum status, and the alien was not outside the United States for more than one year since his departure. 8 C.F.R. § 223.2(b)(2)(ii) (2018).

103. 8 C.F.R. § 223.2(c)(1) (2018).

104. *Id.*

105. 8 C.F.R. § 223.3(e) (2018).

106. USCIS can also deny an application even if the applicant does meet the statutory requirements. *Id.* As a practical matter, the discretionary element gives USCIS more flexibility to deny applications if the applicant raises criminal or national security concerns.

meaning of INA Section 101(a)(42) at the time of their admission.¹⁰⁷ Additionally, USCIS can deny an application or invalidate a previously issued RTD if they find that the 1951 U.N. Convention ceased to apply to the applicant “as provided in Article 1C, D, E, or F of the convention.”¹⁰⁸ An applicant is not in valid asylum status if the U.S. Attorney General determines that the applicant no longer meets the eligibility requirements for asylum described in INA Section 208(b)(1).¹⁰⁹ Reasons that an asylee would no longer meet the eligibility requirements for asylum include: (1) a fundamental change in circumstances in the country of persecution such as a change in government resulting in the neutralization of the threat of persecution against the asylee; (2) the asylee meets a condition described in INA Section

107. INA § 207(c)(4). See also USCIS, *Chapter 53.3(a)(5) and (b)(1)–(10) in ADJUDICATOR’S FIELD MANUAL*, <https://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-20165/0-0-0-20211.html> [<https://perma.cc/YMR2-9X5J>] (last visited Oct. 17, 2018).

108. See INA § 207(c)(4). See also Article 1C of the 1951 U.N. Convention, stating that the convention ceases to apply if: “(1) [The applicant] has voluntarily re-availed himself of the protection of the country of his nationality; or (2) Having lost his nationality, he has voluntarily re-acquired it; or (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or (5) He can no longer, because the circumstances in connexion [sic] with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality; and (6) Being a person who has no nationality he is, because of the circumstances in connexion [sic] with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence.” Article D states that the 1951 U.N. Convention ceases to apply to persons receiving protection or assistance from organs or agencies of the United Nations other than UNHCR. Article E states that the 1951 U.N. Convention ceases to apply to a person who “is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.” Article F states that the 1951 U.N. Convention ceases to apply to “any person with respect to whom there are serious reasons for considering that: (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.” See *Convention Relating to the Status of Refugees*, art I (C)–(F), July 28, 1951, 189 U.N.T.S. 137.

109. “The Secretary of Homeland Security or the Attorney General may grant asylum to an alien who has applied for asylum . . . if the Secretary of Homeland Security or the Attorney General determines that such alien is a refugee within the meaning of INA § 101(a)(42)(A).”

208(b)(2);¹¹⁰ (3) the asylee voluntarily avails himself or herself of the protection of the country of persecution; or (4) the asylee acquires a new nationality.¹¹¹ USCIS may also invalidate an RTD if “it was obtained through material false representation or concealment, of if the person is ordered excluded or deported.”¹¹²

As demonstrated in this Part, the use of RTDs in the United States is complicated, and the process of acquiring an RTD can be difficult and nuanced. The following Part now examines how the complexity of this regime is complicated by the one-year validity period, such that RTD holders are denied freedom of movement.

IV. RTDs AND THE PROBLEM OF THE ONE-YEAR VALIDITY PERIOD

A. THE PROBLEM

In order to understand the nature of the problem with the one-year validity, one must look to the regulation that creates the U.S. RTD regime: 8 C.F.R. Section 233.3(a)(2). Currently, under 8 C.F.R. Section 233.3(a)(2), the United States issues RTDs that are “valid [for] 1 year, or to the date the refugee or asylee status expires, whichever comes first.” Under Section 223.3(c), the validity of the document may not be extended. At present, processing times for an application for an RTD range from five months to six months per office.¹¹³ The average processing time for RTD applications for all USCIS offices is currently four to six months — this compares to an eighty-two-day average in fiscal year 2016, eighty-one-day average in fiscal year 2015, and an eighty-two-day average in fiscal year 2014.¹¹⁴

Because of the extended processing times for RTDs, asylees and refugees are forced to plan international travel unusually far in advance. This problem is exacerbated by the fact that many

110. This Section lists reasons why an alien may be denied asylum status, such as that the alien committed a serious nonpolitical crime or ordered, incited, assisted or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

111. INA § 208(c)(2)(A)–(E).

112. 8 C.F.R. § 222.3(b) (2018).

113. See USCIS, *Processing Times*, DEPT OF HOMELAND SECURITY, <https://egov.uscis.gov/processing-times/> (last visited Nov. 4, 2018) [<https://perma.cc/2EH5-X7YC>].

114. See *id.* (in the drop-down menu, choose “I-131 | Application for Travel Document,” and “Nebraska Service Center”).

countries distinguish between U.S. passport holders and RTD holders, requiring only the latter to obtain tourist visas. For example, some countries within the Schengen Zone¹¹⁵ have changed their internal policies pertaining to visa requirements for RTD holders, and now request that RTD holders apply for a Schengen visa before they plan to travel.¹¹⁶ Even if the refugee or asylee were to proactively file for a new RTD while the current one is still valid in order to have a seamless transition, USCIS would deny the application if the current one is still valid, forcing the asylee or refugee to apply once again and wait another number of months for a valid document.¹¹⁷

Furthermore, some countries require visitors to have at least a three-month validity on their travel document before admission will be granted.¹¹⁸ Other countries will not allow an RTD holder to enter if their document has less than six months of validity remaining.¹¹⁹ Therefore, a refugee or asylee applying for admission to one of these countries may be barred from entry

115. The Schengen Zone or the Schengen Area encompasses most European Union (EU) states, except for Bulgaria, Croatia, Cyprus, Ireland, Romania and the United Kingdom, and also includes some non-EU states like Iceland, Norway, Switzerland, and Liechtenstein. Within the Schengen Zone, there are no internal customs checks at internal borders and a common set of rules applies to people crossing the EU external borders. European Commission, *Schengen Area*, MIGRATION AND HOME AFFS., https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen_en [<https://perma.cc/MWF9-SY6B>] (last visited Oct. 17, 2018).

116. Italy announced in March 2017 that Schengen visas will be required for RTD holders upon entering. Other countries such as Turkey also require that holders of RTDs to apply for a visa before travelling and that RTD holders must have at least one year validity remaining on their travel document. This source also includes a table of the countries that require visitor visas for 1951 U.N. Convention RTD holders. See Gherson, *Refugee travel documents and visa free travel*, LEXOLOGY (Aug. 9, 2017), <https://www.lexology.com/library/detail.aspx?g=bda8422e-9057-47c3-973f-360c5e95fa29> [<https://perma.cc/WM9U-WMK9>]. See also Ruslan Kosarenko, *Travelling Abroad with Refugee Travel Document: Visa Requirements and Restrictions*, STERLING & LAW ASSOCIATES LLP (Mar. 11, 2017), <http://sterling-law.co.uk/en/travelling-abroad-refugee-travel-documents-visa-requirements-restrictions/> [<https://perma.cc/F8BC-5LE2>] (including a list of countries that currently require visitor visas for RTD holders).

117. See 8 C.F.R. § 223.2(c)(1) (2018).

118. The United States is one such country. A nonimmigrant visa, which does not grant permanent residence in the issuing country, is only to be issued in passports that are valid for at least six months beyond the initial period of contemplated stay in the United States, except in some circumstances. See 8 U.S.C. § 1101 (a)(26) (2012). See also 9 FAM 403.9-3(B)(1)(U) (2018). Some countries have arrangements or agreements with United States whereby their passports are recognized as valid for return to the country concerned for a period of six months beyond the expiration date specified in the passport. *Id.* at (B)(2). The Foreign Affairs Manual (FAM) does not clarify whether the term “passport” here includes RTDs. *Id.* at (A)(1)–(A)(2).

119. See 9 FAM 403.9-3(B)(1)(U)(2018). See also Gherson, *supra* note 116.

until they can obtain a new travel document with a longer validity period. Since U.S. RTD holders can neither obtain an extension of their travel document nor obtain a new travel document until their current document has expired,¹²⁰ an RTD holder that had less than three months left on the document would have to wait at least three months to travel internationally, even if USCIS granted a new RTD at the exact the moment that the old RTD expires.¹²¹

Another consequence of limiting a refugee's freedom of movement by issuing an RTD with a one-year validity period is that the subsequent travel problems are reminders to the refugee that their status in their country of residence is not that of a full citizen, but a foreigner who has sustained substantial trauma.¹²² For example, when a refugee or asylee learns that they cannot travel to Spain for business because their RTD does not meet Spain's minimum validity period requirement for travel documents, they are reminded their travel is restricted because they were a victim of persecution. According to a clinical study on the impact of asylum interviews on asylum seekers, "the feeling of being ruthlessly exposed to a situation and helpless to change it . . . has been identified as a factor determining how traumatic a situation is perceived to be. Trauma-related stimuli may thus lead to an increase in PTSD [Post Traumatic Stress

120. See 8 C.F.R. § 223.3 (c) (2018).

121. See Am. Immigr. Laws. Assoc., Comments on DHS's Retrospective Review of Existing Regulations, AILA Doc. NO. 16111633 (Nov. 16, 2016).

122. "Refugees and asylum seekers are highly vulnerable to psychological disorders." Mina Fazel et al., *Prevalence of Serious Mental Disorder in 7000 Refugees Resettled in Western Countries: A Systematic Review*, 365 THE LANCET 1309, 1309 (2005). According to a clinical research study conducted on asylum seekers in Germany, asylum interviews trigger posttraumatic intrusions because the experience of an asylum interview "may evidently remind them of life-threatening experiences in their home country — and thus may stimulate and reactivate the associated feelings of helplessness." Katrin Schock et al., *Impact of Asylum Interviews on the Mental Health of Traumatized Asylum Seekers*, 2015 EUR. J. PSYCHOTRAUMATOLOGY 1, 6. For more information about post-traumatic stress disorder (PTSD) in refugee populations, see Julian Gojer & Adam Ellis, *Post-Traumatic Stress Disorder and the Refugee Determination Process in Canada: Starting the Discourse*, U.N. HIGH COMM'R FOR REFUGEES (March 2014) <http://www.unhcr.org/en-us/research/working/53356b349/post-traumatic-stress-disorder-refugee-determination-process-canada-starting.html>; Nat'l Ctr. on Domestic Violence, Trauma & Mental Health, *Trauma-Informed Legal Advocacy (TILA) in Asylum & Immigration Proceedings: A Curated Selection of Resources for Attorneys and Legal Advocates* (Sept. 2016), http://www.nationalcenterdvtraumamh.org/wp-content/uploads/2013/08/TILA_bib_for_immigration_asylum_attorneys_final.pdf [<https://perma.cc/RAJ9-T6Z8>].

Disorder] when they are associated with life-threatening situations.”¹²³

Travel restrictions can be further triggering for refugees in ways that do not affect natural-born citizens. For example, travel restrictions impact the ability of refugees to visit the families and friends they left behind in their countries of citizenship, as finding a neutral third country to which both parties can travel is difficult. Financial constraints of settling in a new country further complicate these difficulties. As such, making travel arrangements for a refugee is a stressful process that can be exacerbated by an administrative obstacle, causing re-traumatization and hindering healing.¹²⁴

The impact of this restrictive regulatory practice is a recognized issue. In 1978, the U.N. High Commission for Refugees (UNHCR) issued a white paper describing some of the problems encountered by refugees worldwide regarding the issuance of travel documents.¹²⁵ UNHCR noted the following regarding one-year RTDs: “Such a short period of validity could, in certain circumstances impose an unduly heavy burden on the refugee.”¹²⁶ Furthermore, such a short validity period, as far as renewal is concerned, “could also involve considerable administrative inconvenience for the authorities in the issuing country or its diplomatic or consular representatives abroad.”¹²⁷ Accordingly, the High Commissioner recommends that governments issue RTDs “with wide validity both geographically and in time.”¹²⁸

While the U.S. RTD regime technically complies with temporal validity requirements set by the 1951 U.N. Convention, in practice, it violates the geographic validity requirement. The

123. See Schock, *supra* note 122, at 6. Furthermore, another clinical study argues that refugees only manage to escape their traumatic situation and cope with resettling in another country by deliberately avoiding thinking about the traumatizing event. See generally Jane Herlihy et al., *Should Discrepant Accounts Given by Asylum Seekers be Taken as Proof of Deceit?*, 16 TORTURE 81 (2006).

124. Mental disorder in refugees arises from a mix of factors, including (a) repeated exposure to traumatic experiences in the country of origin; (b) stresses encountered in the period of transition and asylum seeking; and (c) post-migration experiences, such as insecure residency, fear of repatriation, and socioeconomic discrimination. Louise Newman et al., *Seeking Asylum — Trauma, Mental Health, and Human Rights — An Australian Perspective*, 14 J. TRAUMA & DISSOCIATION 213 (2013).

125. See U.N. High Comm’r for Refugees, *supra* note 7.

126. *Id.*

127. *Id.*

128. *Id.*

geographic limitation and the administrative obstacles of the U.S. RTD regime can impose a heavy burden on refugees, asylees, and LPR-ARs' freedom of movement and trigger memories of their traumatic experiences as refugees. There is a simple solution for the United States to ameliorate its violation: extend the temporal validity period of RTDs.

V. PREVIOUSLY PROPOSED SOLUTION AND RESPONSE

The U.S. government is not blind to the problems that the one-year validity period creates. One major attempt by the USCIS Ombudsman to extend the validity period of RTDs (the "2005 Recommendation") was unsuccessful. This Part reviews the 2005 Recommendation, the subsequent government response, and the reasons for its failure.

In 2005, USCIS Ombudsman Prakash Khatri, who is charged with "improving the quality of USCIS services by providing case assistance and with issuing recommendations on how to improve management of immigration benefits,"¹²⁹ recommended the USCIS Director, Eduardo Aguirre, revise 8 CFR Section 223.3(a)(2) to extend the validity period of RTDs from one year to ten years and establish a policy of adjudicating RTD applications and reentry permits within six weeks.¹³⁰

Ombudsman Khatiri argued that given the cap, long processing times for RTDs, and the number of years it takes refugees and asylees to become U.S. citizens, most asylees would be required to use an RTD for at least six and a half to seven years.¹³¹ Therefore, long delays in receiving RTDs or reentry permits from USCIS disrupt the travel plans of not only non-citizens, but often their U.S. citizen family members and

129. *CIS Ombudsman*, DEPARTMENT OF HOMELAND SECURITY, <https://www.dhs.gov/topic/cis-ombudsman> [https://perma.cc/W4VL-W25D] (last visited Oct. 10, 2018).

130. See Prakash Khatri, Recommendation from the CIS Ombudsman to the Director (June 10, 2005). In 2005, there was a statutory cap limiting annual asylee adjustments to 10,000 which resulted in waiting times for adjustment for asylees to exceed ten years, which has since been eliminated. In 2005, there was a statutory cap limiting annual asylee adjustments to 10,000 which resulted in waiting times for adjustment for asylees to exceed ten years. This cap has since been eliminated.

131. *Id.* at 2 ("In addition, refugees and asylees granted LPR status must wait another 5 years to apply for citizenship, and longer still to be naturalized, at which point they finally are eligible to obtain a U.S. passport. So, in the best of circumstances, an asylee, even if able to become an LPR in minimum time, is still required to use a refugee travel document for at least 6 ½ to 7 years.").

traveling companions. Extending the validity period to ten years would alleviate the burden and cost imposed on applicants who currently have to apply for multiple RTDs prior to becoming LPRs and citizens, and would significantly decrease the number of RTD applications processed by USCIS allowing it to reassign resources to other areas.¹³²

The Acting Deputy Director of USCIS, Robert Divine, responded that it would be inappropriate to extend the validity period of RTDs to ten years because the one-year validity period is consistent with the legal regime by which asylees and refugees become LPRs.¹³³ In 2005, the statutory construct limited refugee status to one year, at the end of which the individual had to apply for adjustment of status to that of a permanent resident.¹³⁴ Divine argued that a ten-year travel document would run counter to the entire statutorily-mandated process to review the status of asylees and refugees after one year of physical presence in the United States.¹³⁵ However, Divine failed to recognize that not all RTD applicants are subject to the one-year statutory review: While refugees are statutorily mandated to adjust their status after one year,¹³⁶ asylees are not.¹³⁷ An asylee's I-94 Arrival-Departure Record, which is issued by DHS after granting asylum status, shows an asylee's status is indefinite. The drafters of 8 C.F.R. Section 223.3(a)(2) likely recognized the distinct adjustment of status requirements of refugees and asylees, as the regulation states that the RTD will expire after one year or when the holder's status expires, "whichever comes first." So, Divine's argument does not carry the weight that he believes it does. He may have even recognized the weakness, accounting for his claim that the extension was merely "inappropriate," instead of "impermissible."

Divine also claimed refugees and asylees would be confused by the ten-year RTD validity period and think that their asylum or refugee status would last ten years.¹³⁸ In other words, refugees or asylees would equate the validity period on an RTD to the

132. *Id.*

133. Robert Divine, Response to CIS Ombudsman Recommendation from Acting Deputy Director (Dec. 27, 2005).

134. *Id.*

135. *Id.*

136. *See* 8 C.F.R. § 209.1(a) (2018).

137. *See supra* note 91.

138. *See* Divine, *supra* note 133.

validity period of their immigration status and lead to failures to file for adjustment of status on time.¹³⁹ But this reasoning is misguided: refugees and asylees can reference myriad other immigration documents that explicitly note the expiration of their status, like the I-94 Arrival-Departure Card that non-immigrants receive upon legally entering the United States, an approved refugee application (Form I-590) with proper endorsement, an approved refugee relative petition (Form I-730), or an order from an immigration judge.¹⁴⁰ As such, the scenario that Divine illustrates would be a rare occurrence and is not a sufficiently strong reason to oppose Ombudsman Khatri's recommendation.

Divine also argued a multi-year RTD would be unnecessary because the Real ID Act of 2005 — a U.S. federal law pertaining to security, authentication, and issuance procedures for state driver's licenses and identity documents, as well as some immigration issues¹⁴¹ — removed the numerical cap for asylee adjustments, causing applications to be processed faster and reducing backlog.¹⁴² A refugee or asylee would not need an RTD with a ten-year validity period, if it took less than ten years for an asylee or refugee to become a U.S. citizen. But Divine's argument does not take into consideration the complexity of RTD use in the United States. RTDs are used by refugees and asylees for both purposes of international travel and for permission to re-enter into the United States.¹⁴³ As discussed in Part II.A, refugees and asylees require RTDs for international travel unless and until they become U.S. citizens — and as neither refugees nor asylees are required to obtain citizenship, they may require RTDs for international travel indefinitely. Furthermore, as it takes five years in LPR status to become eligible for citizenship and therefore a U.S. passport, even refugees and asylees who become LPRs as soon as they are eligible will still need to travel on an RTD for a minimum of five years, and thus could benefit from a multi-year RTD.¹⁴⁴ Therefore, faster processing of

139. If refugees did not file an adjustment of status application before their asylum or refugee status expired, then DHS could begin deportation proceedings against the individual for being in the United States without valid immigration status.

140. See USCIS, *supra* note 93.

141. See generally Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, Pub. L. No. 109-13 (May 11, 2005).

142. See *supra* note 133.

143. See *infra* Part II.A.

144. While refugees are required to adjust to LPR status within a year, asylees are under no such obligation. For example, an asylee could spend four years in asylee status

applications for adjustment of status to that of an LPR does not obviate the need for a multi-year RTD.

Accordingly, this Note does not subscribe to this solution and presents its own in Part VI or something like that

VI. NEW PROPOSAL: REACHING A COMPROMISE BETWEEN FREEDOM OF MOVEMENT AND SECURITY BY AMENDING THE REGULATORY REGIME

This Note's proposal is informed and influenced by the 2005 Recommendation, but subscribes to the belief that the current regulatory, statutory, and political landscape calls for a more tempered recommendation. This Note therefore proposes that Department of Homeland Security enact an amendment to 8 C.F.R. Section 223.3, extending the validity period of U.S. RTDs to *at least* two years. Such a validity period would: (1) continue to be consistent with the United States' obligations under the 1951 U.N. Convention and the 1967 Protocol; (2) be consistent with UNHCR's Guidance pertaining to 1951 U.N. Convention travel documents; (3) decrease USCIS staffing issues and solve efficiency issues; (4) permit longer periods for refugees and asylees to travel without administrative hindrances; (5) match the statutory and regulatory scheme for adjustment of status and naturalization for refugees and asylees; and (6) conform more with the rights of international travel and reentry accorded to refugees and asylees.

before deciding to apply to adjust their status to that of an LPR. Also, it could also take an asylee two or more years to accumulate the one year of physical presence in the United States required by the INA to apply for adjustment of status to that of an LPR. *See supra* note 91. *See also* INA § 209 (b), 8 U.S.C. § 1159. Under U.S. immigration law, an individual must be an LPR to apply for citizenship. Once they are a citizen, they can get a ten-year U.S. passport with visa-waiver privileges. So, if one adds those years in asylee status to the five years that one must be in LPR status before applying for U.S. citizenship, then it would take an asylee at least seven years to become a U.S. citizen and no longer require an RTD. *See* INA § 316(a); 8 U.S.C. § 1427. The speedier processing time does not matter because even after a refugee or asylee adjusts to LPR status, they still need to be in LPR status (LPR-AR) for five years before they can even apply for citizenship. So, a multi-year document may still be necessary.

A. CONSISTENT WITH U.S. OBLIGATIONS UNDER 1951 U.N.
CONVENTION AND THE 1967 PROTOCOL

As previously noted, the United States is a state party to the 1967 Protocol, but not the 1951 U.N. Convention. However, the Protocol obliges state parties to abide by two articles of the 1951 U.N. Convention: Article 26, pertaining to a refugee's freedom of movement, and Article 28, pertaining to the issuance of RTDs.¹⁴⁵ The 1951 U.N. Convention includes a schedule which explicitly states that any travel document issued pursuant to the 1951 U.N. Convention "shall have a validity of either one or two years, at the discretion of the issuing authority."¹⁴⁶ Some states, like the United Kingdom, have gone above and beyond the one to two-year mandate of the 1951 U.N. Convention, and issued travel documents with a validity period of ten years, as the Ombudsman suggested.¹⁴⁷ The United States, given its unique racially-driven and discriminatory immigration history, especially towards refugees,¹⁴⁸ will likely be hesitant to provide refugees with more

145. Convention Relating to the Status of Refugees, art 26, 28, July 28, 1951, 189 U.N.T.S. 137.

146. *Id.* at Schedule, ¶ 5.

147. See *Travel Documents: United Kingdom*, *supra* note 56; see also Khatri, *supra* note 130.

148. It is important to note that Congress' plenary immigration power was derived from racially-driven, xenophobic, and discriminatory immigration cases that reached the courts during the same time period as *Plessy v. Ferguson*, such as *Chae Chan Ping v. United States*, *Fong Yue Ting v. United States*, and *Wong Wing v. United States*. Rigoberto Ledesma, Comment, *The Unconstitutional Application of Apprehension and Detention Laws: Section 236(C) of The Immigration and Nationality Act*, 19 ST. MARY'S L. REV. RACE & SOC. JUST. 361, 369 (2017). *Chae Chan Ping* dealt with the Chinese Exclusion Act of October 1, 1888 which prohibited Chinese laborers who had temporarily left the United States from re-entering the country, resulting in the effective expulsion of thousands. *Chae Chan Ping v. U.S.*, 130 U.S. 581, 582–590 (1889). The Chinese Exclusion Act was a direct consequence of the nativist, anti-Chinese sentiment in California, which later spread throughout the country. Lauri Kai, Note, *Embracing The Chinese Exclusion Case: An International Law Approach to Racial Exclusions*, 59 WM. & MARY L. REV. 2617, 2629–2630 (2018). Evidence of the racial sentiment embedded in the exclusionary legislation is by no means buried. For example, the delegates from the California Constitutional Convention told Congress that they were concerned about the "oriental invasion" and that they considered it a "menace to our civilization." *Id.* In *Chae Chan Ping*, the Court determined that Congress has complete authority to govern immigration through enacting legislation. *Chae Chan Ping* established a doctrine that entry can be barred to foreigners if there is a national security reason premised on race or nationality. *Id.* at 2619. After *Chae Chan Ping*, the Court dealt with another racially-motivated case, *Fong Yue Ting v. U.S.* where the Court reiterated Congress's right to expel foreigners. Ledesma, *supra* at 369. In *Fong*, the Court reviewed a statute that referred to the Chinese as "obnoxious" and a "distasteful class." *Id.* For more information about exclusionary and discriminatory immigration laws directed at Chinese immigrants, see Nina Wang, *Laws Harsh As Tigers:*

Chinese Immigrants and the Shaping of Modern Immigration Law, 31 Harv. C.R.-C.L. L. Rev. 587 (1996). Furthermore, Congress passed the Immigration Act of 1917 which established a literacy test that all immigrants needed to pass to enter the United States. *The Immigration Act of 1924 (The Johnson-Reed Act)*, U.S. DEP'T OF STATE OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1921-1936/immigration-act> (last visited Nov. 6, 2017) [<https://perma.cc/U4HG-2SST>] [hereinafter "Johnson-Reed Act"]. According to one of the sponsors of the Immigration Act of 1924, the purpose of the Act was to create a visa program that favored North Europeans "whose culture Americans viewed as superior to Southern and Eastern Europeans, who were considered non-white and considered unable to assimilate naturally into U.S. society. Kaila C. Randolph, *Executive Order 13769 and America's Longstanding Practice of Institutionalized Racial Discrimination Towards Refugees and Asylum Seekers*, 47 STETSON L. REV. 1, 16–17 (2017). Segregationists supported this legislation because it effectively restricted entry from non-English-speaking immigrants like Asian, Greek, Italian, Hungarian, and Polish immigrants. *Id.* at 15. In order to further restrict the number of immigrants from non-desirable countries, Congress passed the Immigration Act of 1924 which amended the immigration quota system, increasing the availability of visas for Western European immigrants, but reducing the availability of visas for Southern and Eastern European immigrants. *Id.* at 16. The Act also prevented Japanese immigrants and immigrants of African descent from immigrating to the United States. *Id.* at 17. *See also* Johnson-Reed Act. The quota system was not changed until the passage of the Immigration and Nationality Act of 1965. Randolph, *supra* at 17.

The United States' racially discriminatory immigration laws have also been directed at refugees and asylum seekers. For example, the national origin quota system established by the Immigration Act of 1924 made fewer visas available for Southern and Eastern European refugees, including Jewish refugees fleeing persecution from Nazi Germany. *Id.* Furthermore, American xenophobic sentiment also discouraged increased immigration because Americans feared that immigrants would take the remaining jobs available during the Great Depression. *Id.* Further, the United States denied visas to Jewish refugees because the United States believed that these unemployed refugees whose property was seized by the Nazi regime would become public charges and seek public assistance in the United States. *Id.* at 18. *See also* Constitutional Rights Found., *History Lesson 5: U.S. Immigration Policy and Hitler's Holocaust, Educating About Immigration*, [http://](http://www.crfimmigrationed.org/index.php?option=com_content&view=article&id=144:hl5&catid=50:lessonsforteachers)

www.crfimmigrationed.org/index.php?option=com_content&view=article&id=144:hl5&catid=50:lessonsforteachers [<https://perma.cc/Z434-S5FP>] (last visited Nov. 6, 2017) [hereinafter "Holocaust"]. Like present-day rhetoric about terrorists posing as refugees, many Americans at that time believed that Nazi and Communist spies were posing as Jewish refugees. Randolph, *supra* at 18. *See* Daniel A. Gross, *The U.S. Government Turned Away Thousands of Jewish Refugees Fearing That They Were Nazi Spies*, SMITHSONIAN (Nov. 18, 2015), <http://www.smithsonianmag.com/history/us-government-turned-away-thousands-jewish-refugees-fearing-they-were-nazi-spies-180957324/> [<https://perma.cc/2VNM-G2ES>] (describing how "[g]overnment officials from the State Department to the FBI to President Franklin Roosevelt himself argued that refugees posed a serious threat to national security" and describing the story of Herbert Karl Friedrich Bahr, a refugee from Germany, who sought asylum in the United States, but was later revealed to be a Nazi spy). This fear was encouraged by statements made by President Franklin Delano Roosevelt and other government officials. *Id.* There continues to be racially-motivated refugee and asylum policies in the United States. For example, in the early 1980s, the United States refused to recognize Central American immigrants fleeing government persecution and war as "refugees" or "asylees." Randolph, *supra* at 20–22. Also, the United States treated Haitian and Cuban refugees differently, granting Cuban refugees differently, granting Cuban refugees resettlement while refusing Haitians the ability to apply for political asylum, preferring to repatriate them to Haiti. *Id.* at 24–26.

rights or benefits than required under a treaty.¹⁴⁹ As such, the request to the USCIS Director to extend the validity period of RTDs to ten years was likely too far-fetched an aspiration.

A more reasonable proposal, and one still consistent with the U.S. obligations under the 1951 U.N. Convention, would have been that the USCIS extend the validity of RTDs to two years. The proposal would be reasonable because it does not ask the United States to go beyond the 1951 U.N. Convention and the 1967 Refugee Protocol,¹⁵⁰ and the 1967 Refugee Protocol explicitly states that a two-year validity period is adequate.¹⁵¹ Also, an incremental extension that falls closer within the language of the Protocol would be a more practical solution politically because it is highly unlikely that Congress will want to go beyond the required one- to two-year validity period set out in the Protocol.¹⁵²

B. CONSISTENT WITH UNHCR GUIDANCE AND WOULD EXPAND FREEDOM OF MOVEMENT

An RTD with a two-year validity period would be consistent with UNHCR guidance as well. As previously stated, in 1978, UNHCR issued guidance to state parties to the 1951 U.N. Convention stating that countries who issue a travel document with a validity period of one-year cause an “unduly heavy burden on the refugee.”¹⁵³ The Commissioner suggested that countries

For more information about the racially-discriminatory history of immigration laws, see generally Randolph, *supra*.

149. Consider the legislative history of the Refugee Act of 1980, which highlights concern for refugees, but also concern that increasing refugee admissions could take away resources from Americans. 125 CONG. REC. H11965 (daily ed. Dec. 13, 1979) (Senator Lott stating that the United States may not have the ability to accept unlimited amounts of refugees and that it is foolhardy for the United States to accept refugees when there is a domestic energy crisis, unemployment, and inflation. He believes that accepting additional refugees will exacerbate these problems). Furthermore, consider the language of the regulation creating the RTD: “A refugee travel document is also invalid if the United Nations Convention of July 28, 1951, ceases to apply.” See 8 C.F.R. § 223.3(b). Therefore, there is both legislative history and regulatory language that hints that the United States would not expand benefits beyond its obligations under the 1951 U.N. Convention and the 1967 Refugee Protocol.

150. See *id.*

151. See Convention Relating to the Status of Refugees, Schedule, ¶ 5, July 28, 1951, 189 U.N.T.S. 137.

152. See 8 C.F.R. § 223.3. In fact, the language of the regulation suggests that RTDs would not exist if the Protocol or Convention were no longer valid. “A refugee travel document is also invalid if the United Nations Convention of July 28, 1951, ceases to apply . . .” See 8 C.F.R. § 223.3(b).

153. See U.N. High Comm’r for Refugees, *supra* note 7.

issue RTDs with “wide validity both geographically and in time.”¹⁵⁴ A two-year validity period falls within this guidance because it would prove a wider temporal validity period that would reduce many of the burdens of holders of RTDs.

A two-year validity period implicitly extends the geographic validity of an RTD.¹⁵⁵ Under the current one-year validity period, RTD holders can only travel to countries that require a six-month validity period on travel documents for six months out of their year. For the remaining six-month validity period, RTD holders have to restrict their personal and business travel to countries that do not require six months validity period. Schengen countries, for example, are administratively “blacked out” for six months out of the year. While RTD holders could theoretically frontload their travel plans to these blacked out countries during the first six months of the validity period of their RTDs, this is both overly restrictive and requires RTD holders to predict all international travel. Business and personal emergencies are a natural consequence of life. Requiring RTD holders to be less responsive to emergencies inflicts upon them a second-class status that is not a consequence of any action of theirs, but a consequence of their victimhood. If the validity period were extended to two years, then RTD holders would be able to travel to these blacked out countries for a longer period of time than before, permitting them to lead an existence more like that of other immigrants.

C. CONSISTENT WITH U.S. STATUTORY AND REGULATORY SCHEME

A two-year validity period for RTDs would be more consistent with the U.S. statutory and regulatory scheme for refugees and asylee adjustment and citizenship. As noted in Part II, countries that issue RTDs with validity periods longer than two years seemingly have a statutory framework for refugee citizenship of the same length.¹⁵⁶ The length of a U.S. RTD does not currently match the statutory and regulatory path to citizenship for a refugee or asylee.

154. *Id.*

155. *See supra* Part IV.A.

156. *See id.* at 13–18.

Recall that currently, a refugee or asylee has to wait at least five years from the time they enter the United States in valid refugee status or are granted asylum status to become a U.S. citizen, and that a refugee is required to become a lawful permanent resident after one year of physical presence in the United States.¹⁵⁷ An asylee, on the other hand, is not required to adjust their status to that of a permanent resident; if an asylee meets the other regulatory requirements, they *may* adjust their status after one year of physical presence in the United States.¹⁵⁸ After an asylee or refugee is granted lawful permanent residence in the United States, they can apply for U.S. citizenship after four years.¹⁵⁹ Therefore, during the five years preceding their U.S. citizenship application, a refugee or asylee will have to obtain at least five separate RTDs in order to travel internationally. This is both a financial and administrative burden.¹⁶⁰

While a five-year RTD would be ideal and most consistent with the regulatory and statutory framework, the liberal language of the regulations permitting asylees to adjust status make it an unlikely solution. Theoretically, an asylee could

157. See INA § 209(b), 8 U.S.C. § 1159.

158. See 8 C.F.R. § 209.2.

159. 8 C.F.R. § 209.1(e) states that “[i]f the applicant is found to be admissible for permanent residence under section 209(a) of the Act, USCIS will approve the application, admit the applicant for lawful permanent residence as of the date of the alien’s arrival in the United States, and issue proof of such status.” This section applies to refugees adjusting their status to that of lawful permanent resident. The implication of 8 C.F.R. § 209.1(e) is that a refugee will be granted permanent residence as of the date they entered the United States as a refugee, which would be at least one year prior to the grant of their adjustment of status application. Therefore, a refugee would only need to remain in permanent resident status for four more years to apply for and obtain U.S. citizenship. For example, if a person entered the United States as a refugee on December 12, 2017, she would be eligible to adjust her status to that of a lawful permanent resident on December 12, 2018. Once USCIS granted her application for adjustment of status, she would receive a green card showing that she has been a lawful permanent resident since December 12, 2017, not 2018. The start date of her lawful permanent residence has been “rolled back” one year. Therefore, she would be eligible to apply for U.S. citizenship on December 12, 2022, not 2023. The one year she was in refugee status applies to the five years of lawful permanence required for U.S. citizenship. The same is true for asylees. See 8 C.F.R. § 209.2(f).

160. Each individual RTD application can cost between \$105 and \$220, not including attorney’s fees. *I-131, Application for Travel Document*, U.S. CITIZENSHIP AND IMM. SERVS. (Nov. 9, 2018) <https://www.uscis.gov/i-131>. *Supra* Parts II and III discuss how the current RTD application process is an administrative burden that impacts the travel plans and lives of both the applicants and their U.S. citizen family members.

remain in asylee status as long as they choose,¹⁶¹ so, an asylee could need an RTD to travel anywhere from five years after the grant of asylum to the length of their lives. While this prospect could have encouraged lawmakers or rule makers to issue multi-year RTDs, the uncertainty produced the alternate effect. Issuing a one-year RTD allows USCIS and DHS to both periodically re-evaluate the validity of an applicant's asylum status and encourage asylees to apply for permanent residence sooner.¹⁶²

While a one-year RTD allows USCIS to periodically evaluate the validity of an asylee's refugee status and encourage them to take apply for permanent residence, a two-year validity period would achieve a substantially similar result while still affording asylees and refugees greater freedom of movement. In the ideal situation, a refugee who naturalizes within five years of their entry into the United States would only need to apply for a two-year RTD a maximum of three times during their non-citizen status. An ideal asylee would do the same. For the asylees or refugees who do not want to immediately naturalize and postpone naturalization for their own personal reasons, a two-year RTD would still permit greater freedom of movement without requiring them to incur the unnecessary administrative burden.

A two-year RTD would not have negative implications on a refugee or asylee's ability to adjust their status to that of a lawful permanent resident or to eventually naturalize, and would still impose the same limitations on the length of a refugee or asylee's international travel. A two-year travel document would hypothetically just extend the amount of time for an asylee to accumulate the required one-year of physical presence from two years to three years. It would have no impact on the timing of a

161. Asylees do, however, run the risk that country conditions in their home countries could change, causing the Attorney General to revoke their asylee status because they no longer meet the definition of a "refugee." INA § 208(c)(2).

162. In his response to the Ombudsman, Divine strongly implies that USCIS wants refugees and asylees to apply for LPR status quickly and as soon as possible. See Divine, *supra* note 133. His response does not provide a reason. However, the reason that Congress created a quicker route to permanent residency for refugees and asylees may be buried in the legislative history of the Refugee Act of 1980. In the legislative history, Congress not only increased refugee admissions, but established resettlement benefits for refugees. In addition, several members of Congress expressed concern about the amount that states and the federal government spend on public assistance programs. See *supra* note 149.

refugee's adjustment of status, which would still take place at the one-year anniversary of their entry into the United States.¹⁶³

It is possible that a multi-year RTD may affect an asylee's incentive to adjust to LPR status, but it is not dispositive to the value of this proposal. A longer validity period could reduce the incentive to hurry to become a U.S. citizen and therefore an LPR because a U.S. passport may not be as appealing. However, it would be more detrimental to asylees to postpone their adjustment to LPR status than it would be for the U.S. government. Asylees would still need to meet the definition of a "refugee" while they are in asylee status; so, changes in the circumstance in the asylee's home country could trigger USCIS to begin proceedings to revoke the asylee's status. There would not be an additional burden on the U.S. government if asylees were less incentivized to adjust to LPR status because the U.S. government would retain the ability to revoke their status and eligibility for public assistance programs remains regardless of whether they adjust or not.¹⁶⁴

Finally, extending the validity period to two years would not necessarily have negative implications on a refugee's or asylee's ability to naturalize within five years of entry into the United States or their asylum grant, respectively. In order to be eligible for naturalization, a lawful permanent resident who acquired that status as a result of their asylee or refugee status is required to have been physically present¹⁶⁵ in the United States for at least half of the five years.¹⁶⁶ So, an LPR-AR must have been physically present in the United States for at least thirty months

163. See USCIS, *supra* note 93, at Ch. 2(A) ("An asylee who travels outside the United States as an asylee will not meet the physical presence requirement until the cumulative amount of time spent in the United States equals one year. The officer should review the asylee's adjustment application and the documentation in the record to determine whether the asylee has been absent from the United States during the previous calendar year to ensure the asylee meets the physical presence requirement for adjustment.").

164. See generally INA § 412, 8 U.S.C. § 1522 for authorized government refugee assistance programs. See also ANDORRA BRUNA, CONG. RESEARCH SERV., U.S. REFUGEE RESETTLEMENT ASSISTANCE 6–12 (2011), <https://fas.org/sgp/crs/row/R41570.pdf> [<https://perma.cc/H2LA-RGUP>].

165. Physical presence refers to the number of days that the applicant must be physically in the United States during the "statutory period up to the date of filing for naturalization." USCIS usually counts the day that the applicant for naturalization left the United States and the day he returned to the United States as days of physical presence for naturalization purposes. USCIS, USCIS POLICY MANUAL, Vol. 12, Part D, Ch. 4(A) (2017), <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartD-Chapter4.html> [<https://perma.cc/BYQ2-QRBJ>].

166. See INA § 316(a), 8 U.S.C. § 1427.

before filing their naturalization application.¹⁶⁷ LPR-ARs who have RTDs can travel abroad for longer periods of time than refugees¹⁶⁸ as long as they are not outside the United States for longer than six months at a time or have applied for and possess a reentry permit.¹⁶⁹ Absences longer than six months may disrupt continuous residency requirements for naturalization and raise the presumption that the applicant abandoned their permanent resident status.¹⁷⁰ If a potential applicant for naturalization wishes to travel abroad for any longer than six months and less than two years, then they must apply for a reentry permit before USCIS.¹⁷¹ A two-year RTD would not disrupt the naturalization framework for asylees and refugees because they would have to apply for a reentry permit to preserve their ability to naturalize just like they would under the current legal regime.¹⁷²

Finally, Acting USCIS Director Divine's belief that a multi-year validity period is contrary to the statutory framework is incorrect. Arguably, the Ombudsman's ten-year travel document is contrary to the statutory framework, but a two-year document is not. It does not exceed the duration that a refugee or asylee would potentially be a noncitizen of this country and does not bestow refugee or asylee status with rights equivalent to those of U.S. citizens or lawful permanent residents.

D. AMELIORATIVE OF USCIS STAFFING AND EFFICIENCY ISSUES

A two-year travel document would ameliorate USCIS staffing and efficiency issues. As previously mentioned, USCIS is

167. See USCIS, *supra* note 165.

168. Refugees need to apply to adjust their status to that of an LPR within one year of becoming a refugee. See INA § 209(a)(1)(B)–(C). See also *Refugees*, U.S. CITIZENSHIP AND IMM. SERVS. (Oct. 24, 2017) <https://www.uscis.gov/humanitarian/refugees-asylum/refugees>. Given the one-year physical presence requirement for adjustment of status, a refugee cannot be outside of the United States for long periods of time, much less six months at a time. See USCIS Policy Manual, U.S. CITIZENSHIP AND IMM. SERVS., Vol. 7, Ch. 2(b), (Oct. 30, 2018).

169. See USCIS, *International Travel as a Permanent Resident* (Jan. 11, 2018), <https://www.uscis.gov/green-card/after-green-card-granted/international-travel-permanent-resident> [<https://perma.cc/3PY7-ZXML>].

170. *Id.*

171. *Id.*

172. A reentry permit allows a permanent resident to apply for admission into the United States during the permit's validity without a need for the applicant to obtain a returning resident visa from a U.S. embassy or consulate. One uses the same application for a reentry permit that they do for an RTD. *Id.*

currently processing applications for RTDs within four to six months of the filing date.¹⁷³ From Fiscal Years 2013–2015, processing times averaged closer to three months, but processing times are getting progressively slower. Therefore, extending the validity period of RTDs to two years would reduce the need for refugees to submit yearly applications for new documents; this, in turn, would decrease the amount of applications before USCIS and could eventually decrease the backlog of I-131 Applications for a Travel Document. The reduced number of yearly applications would permit USCIS officers to staff other, more pressing immigration applications.¹⁷⁴ Furthermore, reducing the backlog of applications also allows USCIS to predict approximate case processing times more accurately.¹⁷⁵ As such, applicants for RTDs can use the more refined case processing times to track the volume of pending applications and estimate how long it will take for USCIS to adjudicate their applications.¹⁷⁶ This, in turn, reduces the possibility that the applicants will be adversely affected by delayed processing times and allows them make travel plans more efficiently.

E. CONSISTENT WITH REFUGEE AND ASYLEE'S RIGHTS OF INTERNATIONAL TRAVEL AND REENTRY

A two-year RTD would conform with the refugee and asylee's rights to international travel and reentry under the U.S. regulatory and statutory regime. First of all, refugees and asylees do not have the same benefits or rights as U.S. citizens or lawful permanent residents. For example, U.S. citizens are almost always guaranteed reentry to the United States, whereas refugees and asylees traveling on RTDs are not.¹⁷⁷ A two-year

173. *See supra* notes 113–114.

174. According to USCIS, backlog elimination allows USCIS to approximate a more accurate average processing time for applications. USCIS, BACKLOG ELIMINATION PLAN UPDATE 8 (FY 2006 3d Quarter). Reducing backlogged applications also allows USCIS to dedicate more attention to customer service and focus on national security matters. *Id.* at 3–5.

175. *Id.* at 8.

176. USCIS, BACKLOG ELIMINATION PLAN 5 (FY 2005, 4th Quarter update) (2006).

177. Some federal courts have found that an American citizen's right to return to the United States from abroad is a substantive due process right. *See Fikre v. F.B.I.*, 3:13-CV-00899-BR, 2014 WL 2335343 (D. Or. May 29, 2014); *Tarhuni v. Holder*, 3:13-CV-00001-BR, 2014 WL 1269655 (D. Or. May 26, 2014); *see also* *Nguyen v. Immigration and Naturalization Serv.*, 533 U.S. 53, 67 (2001) (discussing privileges of U.S. citizenship, including "the absolute right to enter [the] borders" of the United States). Entry for

travel document would be consistent with the legal regime that distinguishes between the travel and reentry benefits bestowed on lawful permanent residents and refugees and asylees.

A potential negative consequence of a two-year RTD is that it would increase the amount of time that a refugee, asylee, or lawful permanent resident could travel internationally which could, in turn, jeopardize their ability to naturalize. Currently, the one-year RTD permits its holders to travel internationally for six months out of the year — nine months if they travel to the few countries that require only a three-month validity period at the time of entry, which is one of the lowest temporal requirements for travel documents. When an alien wants to become a U.S. citizen, they must report every international trip they have taken in the past five years.¹⁷⁸ This reporting requirement is a tool for USCIS to check whether the applicant has met the requirement that an applicant for naturalization has been physically present in the United States for at least thirty months out of the five years immediately preceding the date of filing their naturalization application and to check whether the applicant has continually resided in the United States for a period of five years.¹⁷⁹ If an applicant was absent from the United States for continuous periods of between six months and one year, then USCIS can determine that the applicant's trip disrupted their residence in the United States.¹⁸⁰ A two-year travel document would effectively allow the holder to travel for eighteen to twenty-one months. Accordingly, RTD users will need to be careful about any prolonged absence from the United States, because otherwise

refugees and asylees and lawful permanent residents is still discretionary. If at a port-of-entry, a customs and border official determines that one of the inadmissibility bars to entry apply, then the refugee/asylee/lawful permanent resident will be placed in deportation proceedings and an immigration judge will hear their case.

178. See USCIS, N-400, APPLICATION FOR NATURALIZATION, <https://www.uscis.gov/n-400> [<https://perma.cc/XZM9-LN5M>] (last visited Oct. 26, 2018); see also USCIS, INSTRUCTIONS FOR APPLICATION FOR NATURALIZATION, https://www.uscis.gov/system/files_force/files/form/n-400instr.pdf?download=1 [<https://perma.cc/DGW8-W344>] (last visited Oct. 26, 2018).

179. See 8 C.F.R. § 316.2(a)(3)–(4). Physical presence concerns the total number of days someone was in the United States during the period required for their naturalization. “Continuous residence concerns the time one resided lawfully in the United States without an absence long enough to break that continuity for naturalization purposes.” See USCIS, A GUIDE TO NATURALIZATION 23 (2016) (internal quotations omitted) <https://www.uscis.gov/sites/default/files/files/article/M-476.pdf> [<https://perma.cc/T25X-47ZJ>].

180. See 8 C.F.R. § 316.5(c)(i)–(ii).

USCIS may determine that their continuous U.S. residences have been disrupted and deny their naturalization applications.

As this Subpart makes clear, a two-year RTD is a more practical alternative to the one-year RTD because it not only satisfies the United States' obligations under the 1951 U.N. Convention and 1967 Protocol, but conforms to international recommendations and the U.S. statutory and regulatory framework. Finally, the two-year RTD will not expand the rights and benefits of refugees and asylees residing in the United States.

Yet though USCIS is aware of the deficiencies of the one-year travel document and advocates have attempted to convince USCIS to increase the validity period of RTDs, the government hesitates in amending the regulatory and statutory language.¹⁸¹ The next Part evaluates the various counterarguments to and obstacles facing USCIS' publication of regulations extending the validity period of RTDs to two years, such as national security concerns and the current political climate, and what arguments advocates can make to overcome them.

VII. SECURITY CONCERNS AND OTHER OBSTACLES TO REFORM

In order to change the validity period of U.S. RTDs, USCIS Director must amend the controlling regulation, 8 C.F.R. Section 233.3(a)(2), by publishing the amendment in the Federal Register for a period of notice-and-comment rulemaking.¹⁸² There are a few obstacles to successfully convincing the USCIS Director to publish a new rule for notice-and-comment rulemaking: the national security implications of permitting RTD holders to travel

181. During a USCIS Asylum Division Quarterly Stakeholder Meeting, stakeholders asked USCIS to consider extending the validity period of RTDs to four or five years. They noted that the validity period was too short for the high application fee and that RTDs are required for emergency travel. The Asylum Division noted that USCIS was currently undertaking a comprehensive policy review of travel documents and asylum with a working group. They stated that they would raise the question to the working group. USCIS, Agenda Items: USCIS Asylum Division Quarterly Stakeholder Meeting (Mar. 21, 2011), AILA InfoNet Doc. No. 11010462. *See also* Am. Immgr. Laws. Assoc. Letter to U.S. Dept. of Homeland Security Re: DHS's Retrospective Review of Existing Regulations (Nov. 10, 2016).

182. As such, in order to change the validity period of RTDs, it is necessary to convince the USCIS Director, who is in charge of recommending rules for publishing, to amend the current rule.

for an extra year and the current political narrative from some quarters that refugees are potential criminals and terrorists instead of victims. The most difficult obstacle is political climate; as such, this amendment is unlikely to succeed during the current Trump Administration.

A. NATIONAL SECURITY CONCERNS

As this proposal only lengthens the amount of time that a holder of a RTD can travel internationally, increasing the validity period to two years has a minimal effect on U.S. national security. As of 2007, applicants for RTDs are required to present their biometrics for processing.¹⁸³ The purposes of capturing biometric data (i.e., fingerprints and photographs) is to conduct background checks, verify the applicant's identity and status, and produce the final benefit card or document.¹⁸⁴ USCIS's statement in support of its notice of information collection vaguely¹⁸⁵ stated that biometric collection is required to verify foreign nationals' status when applying for certain travel documents.¹⁸⁶ USCIS also requires applicants for adjustment of status, asylum, and refugee status to submit their biometrics for processing.¹⁸⁷ Changing the validity period of an RTD from one year to two years results in USCIS directly obtaining a refugee, asylee, or LPR's biometrics every two years instead of every year.

This less frequent appraisal of foreign nationals' criminal records is relevant when there is increased anxiety about refugees as potential terror threats. A reduction in the government's ability to know who they are permitting to enter

183. 72 Fed. Reg. 17172, 17173 (Apr. 6, 2007).

184. *Id.*

185. "This statement is vague and does not explain why USCIS now believes it is necessary to subject applicants to biometrics collection. Information on loss of permanent resident status, or refugee or asylee status, or denial of an adjustment of status application is easily accessible by reference to the foreign national's record in agency databases, and does not require submission of biometrics. Foreign nationals applying for parole who are outside the United States either have previously submitted their biometrics (e.g., refugee abroad who did not apply for an advance parole), or have not previously been in the United States and thus have no status for USCIS to verify." AILA National Letter to DHS RE: USCIS-2007-0045-0006 (Dec. 6, 2007).

186. USCIS, USCIS-2007-0045-0003, I-131 Supporting Statement (2007).

187. *See supra* note 183, at 17174 ("CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: All individuals who are applying for benefits and/or who are petitioning on behalf of individuals applying or petitioning for benefits pursuant to the Immigration and Nationality Act. 8 U.S.C. 1101 et seq.").

the country could be fatal.¹⁸⁸ However, refugees and asylees are already individuals whose biometric data does not appear to match those of known criminals or terrorists. By the time that asylees and refugees are in the United States, DHS has already investigated and screened them.¹⁸⁹

Additionally, if RTD holders were permitted to travel for longer periods of time, RTD holders may be crossing international borders and re-entering the United States more frequently. Doing so would require the RTD holders to submit their biometric data to border officials of different countries to gain entry into that country. This is especially true of countries requiring RTD holders to obtain visas, as most countries run a background check on visa applicants.¹⁹⁰ Since DHS professes to “work closely with international partners, including foreign governments, major multilateral organizations, and global businesses, to strengthen the security of the networks of global trade and travel,”¹⁹¹ the United States may be able to obtain additional biometrics checks on RTD holders by means of bilateral information-sharing agreements with destination countries.

188. See Yeganeh Torbati & Mica Rosenberg, *Under Trump Plan, Refugees From 11 Countries Face Additional U.S. Barriers*, U.S. NEWS (Oct. 24, 2017), <https://www.usnews.com/news/world/articles/2017-10-24/trump-administration-to-add-new-screening-for-refugees-document> [<https://perma.cc/54ZK-5QDX>]; Gregg Re, *Trump Admin Orders Sharp Drawdown of U.S. Refugee Resettlement: Report*, FOX NEWS (Dec. 22, 2017), <http://www.foxnews.com/politics/2017/12/22/trump-admin-orders-sharp-drawdown-us-refugee-resettlement-report.html> [<https://perma.cc/Q6ZY-XXQR>].

189. Written Testimony of Kelli Ann Walther, Senior Director for Screening Coordination, Office of Policy, U.S. Department of Homeland Security Before United States House of Representatives Committee on Homeland Security Subcommittee on Border and Maritime Security (Sep. 11, 2012), AILA InfoNet Doc. No. 12091159.

190. See, e.g., HOME OFFICE, CRIMINAL RECORD CERTIFICATE REQUIREMENT (2018), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/673331/criminal-record-certificate-guidance-v2.0ext.pdf [<https://perma.cc/FU87-5KFP>].

191. See U.S. DEP'T OF HOMELAND SEC., INTERNATIONAL ENGAGEMENT RESULTS, <https://www.dhs.gov/international-engagement-results> [<https://perma.cc/HZ7N-SVH3>] (last visited Oct. 20, 2018). There are information-sharing agreements with various countries. These agreements, while not public, have been alluded to in federal court cases like *ACLU of Washington v. U.S. Dept of Justice*, 2011 WL 1900140 (W.D. Wash. May 19, 2011) (the government's attorney asserts that the information-sharing agreements with other countries are contained in the documents requested under FOIA, but cannot be identified to the public). Furthermore, Eric Holder, former Attorney General of the United States, remarked in a statement that the United States not only have information-sharing agreements with other countries to provide and share information about actual and suspected foreign terrorists, but also about traveler information. See Attorney General Holder Delivers Remarks at the Countering Violence Extremism Summit (Feb. 18, 2015), 2015 WL 673981 (D.O.J.).

Finally, upon re-entry to the United States, foreigners must submit their biometric data into the United States Visitor and Immigrant Status Indicator Technology system (US-VISIT).¹⁹² US-VISIT uses the fingerprint scans and facial photographs to confirm the identity and status of foreigners.¹⁹³ US-VISIT information is used by various agencies to track identities of those in the United States and of unauthorized immigrants, to identify terror suspects by cross-referencing biometric information collected terrorist safe houses or training camps, and to assist state and local law enforcement during investigations.¹⁹⁴ Therefore, while some may argue that it is preferable to keep the one-year RTD regime because more frequent check of biometric data protects homeland security and exposes aliens with criminal backgrounds, the two-year travel document may actually lead to more biometric collection and increased security. As such, it is highly improbable that extending the validity period to two years would endanger national security.

B. CURRENT POLITICAL CLIMATE

The current political climate could also be detrimental to convincing the USCIS Director to publish a regulation changing the validity period of RTDs because the USCIS Director would not want to act contrary to the President's orders or to his greater anti-refugee platform.¹⁹⁵ The Trump administration has

192. See U.S. DEPT OF HOMELAND SEC., US-VISIT, BIOMETRICS AND YOU 1 (2007), https://www.dhs.gov/xlibrary/assets/usvisit/usvisit_edu_traveler_brochure_english.pdf [https://perma.cc/D3MB-NHS5] (describing the US-VISIT procedure and providing information about its applicability).

193. *Id.*

194. Mark Skerry, Protect America by Being Unique: How Changes in Biometric Data Collection Procedures Can Improve US-VISIT, 2 CASE W. RESERVE J. L. TECH. & INTERNET 71, 82–84 (2011).

195. Louis Jacobson, *Donald Trump Says If You're From Syria and a Christian, You Can't Come to the U.S. as a Refugee*, POLITIFACT (July 20, 2015, 10:00 AM ET), <https://goo.gl/fucYZP> [https://perma.cc/G49X-DUDM] (“If you’re from Syria and you’re a Christian, you cannot come into this country, and they’re the ones that are being decimated. If you are Islamic . . . it’s hard to believe, you can come in so easily.”); Ali Vitali, *Donald Trump in New Hampshire: Syrian Refugees Are Going Back*, NBC NEWS (Oct. 1, 2015, 7:33 AM ET), <https://goo.gl/4XSeGX> [https://perma.cc/5Y49-CXF3] (“[I]f I win, they’re going back! . . . They could be ISIS.”); Ryan Teague Beckwith, *Read Donald Trump's Speech on the Orlando Shooting*, TIME (June 13, 2016, 4:36 PM ET), <https://goo.gl/kgHKrb> [https://perma.cc/ZFG4-KACD] (President Trump stating that each year the United States “permanently admits 100,000 immigrants from the Middle East and many more from Muslim countries outside the Middle East.”); *Transcript: Donald Trump's national security speech*, POLITICO.COM (June 13, 2016), <https://www.politico.com/>

expressed hostility towards refugees, notably through the two executive orders and subsequent proclamation colloquially referred to as the “Muslim Ban” or “Travel Ban.”¹⁹⁶ In January 2017, Executive Orders 13769 and 13780 suspended the program for resettling refugees within the United States for 120 days.¹⁹⁷ The first Executive Order also lowered the number of refugees to be admitted to the United States in 2017 from 80,000 to 50,000 and suspended the entry of Syrian refugees indefinitely.¹⁹⁸ In addition, President Trump has expressed his animosity to refugees and asylees by stating that taking in asylum seekers and refugees makes the United States a “dumping ground”¹⁹⁹ and a “migrant camp,”²⁰⁰ and that accepting refugees would increase crime.²⁰¹ Accordingly, the Trump administration has generally opposed policies that would make asylum and refugee settlements practically available.²⁰²

Therefore, in order to convince the USCIS Director to publish the proposed regulation, it is critical to stress that (1) the new

story/2016/06/transcript-donald-trump-national-security-speech-224273 [https://perma.cc/63PQ-4HXH] (“We have to stop the tremendous flow of Syrian refugees into the United States.”). See Nat’l Immigration Law Ctr., *All Tweets from @realDonaldTrump That Include the Word “Refugee” or “Refugees” Since Donald Trump Declared his Candidacy for President on June 16, 2015*, NILC, https://www.nilc.org/issues/litigation/trump-tweets-with-refugee-refugees/ [https://perma.cc/4NRU-PEYL] (last visited Oct. 20, 2018).

196. See Executive Order 13769 (Jan. 27, 2017); Executive Order 13780 (Mar. 6, 2017); and Proclamation 9645 (Sep. 24, 2017).

197. See Executive Orders 13769, 13780, *supra* note 196.

198. See Executive Order 13769, *supra* note 196.

199. *Id.*

200. On June 18, 2018, during a meeting of the National Space Council, President Trump expressed strong anti-refugee and anti-asylee rhetoric when he said that he refuses to let the United States become a migrant camp or a refugee holding facility like he believes Europe has become. Tara Golshan, *Trump: The US Will Not Turn Into a “Migrant Camp” or “Refugee Holding Facility,”* VOX (June 18, 2018), https://www.vox.com/2018/6/18/17475512/trump-migrant-camp-refugee-germany [https://perma.cc/2KLE-K9JX].

201. Jon Stone, *Why Donald Trump is Wrong About Germany’s Crime Rate*, THE INDEPENDENT (June 18, 2018), https://www.independent.co.uk/news/world/europe/donald-trump-germany-crime-rate-immigrants-migrants-refugees-a8404786.html [https://perma.cc/9GAH-P9KW].

202. Former Attorney General Jeff Sessions has also made it more difficult for asylum seekers to gain entry or claim asylum in the United States. On June 11, 2018, he issued a ruling in an immigration matter, *Matter of A-B*, that reversed a Board of Immigration Appeals precedent recognizing domestic violence as a form of persecution sufficient to support a grant of asylum under the INA. Katie Benner et al., *Sessions Says Domestic and Gang Violence are not Grounds for Asylum*, N.Y. TIMES (June 11, 2018), https://www.nytimes.com/2018/06/11/us/politics/sessions-domestic-violence-asylum.html [https://perma.cc/U38T-XGCT]. *Matter of A-B* also says that asylum claims that pertain to gang violence will also not qualify for asylum. *Id.* For the former Attorney General’s opinion in that matter, see *Matter of A-B*, 27 I&N Dec. 316 (A.G. 2018).

proposed regulation would not present a threat to national security because these individuals have already passed the U.S. vetting or extreme vetting process²⁰³ and have already been subjected to additional background checks during the RTD application process; (2) expanding and facilitating a refugee and asylee's ability to travel internationally benefits the U.S. economy;²⁰⁴ and (3) that a consequence of increasing the validity period is that an RTD holder would travel more and be subject to more biometrics screenings as a result of their international travel and the results of those screenings could be accessed by the United States through their cooperation with other intelligence networks.

VIII. CONCLUSION

The current one-year validity period for U.S. RTDs not only restricts holders' freedom of movement, but it creates administrative backlogs and inefficiencies. This Note's proposal to extend the validity period to two years remedies these problems while both being consistent with the United States' obligations under the 1951 U.N. Convention and 1967 Refugee Protocol and reflecting the regulatory and statutory framework for adjustment of status and naturalization for refugees and asylees. Countries around the world issue RTDs with a validity

203. See USCIS, *Refugee Processing and Security Screening* (Aug. 31, 2018), <https://www.uscis.gov/refugeescreening> [<https://perma.cc/NH89-D9JU>].

204. There have been a number of reports that show that refugees contribute to tax revenue and are beneficial to the economy. For example, a 2017 draft report from the U.S. Department of Health and Human Services finds that refugees have contributed over \$63 billion more in taxes than they cost in public resettlement benefits, and even contributed more per capita. U.S. DEPT. HEALTH & HUM. SERVICES, *THE FISCAL COST OF THE U.S. REFUGEE ADMISSIONS PROGRAM AT THE FEDERAL, STATE, AND LOCAL LEVELS, FROM 2005–2014*, at 31 (2017), <https://assets.documentcloud.org/documents/4056060/Refugee-Report-Draft.pdf> [<https://perma.cc/2AAF-NSAU>]. Another study by the New American Economy Research Fund found that refugees are fifty percent more likely to become entrepreneurs than U.S. born citizens. NEW AM. ECON., *FROM STRUGGLE TO RESILIENCE: THE ECONOMIC IMPACT OF REFUGEES IN AMERICA* (2017), http://research.newamericaneconomy.org/wp-content/uploads/sites/2/2017/11/NAE_Refugees_V6.pdf [<https://perma.cc/VY4E-A8XN>]. The study also found that refugees make meaningful contributions to several state economies and that 40% of Fortune 500 companies were founded by immigrants, refugees, or their children. *Id.* See also NEW AM. ECON., *THE "NEW AMERICAN" FORTUNE 500*, at 2 (2011), <http://www.newamericaneconomy.org/sites/all/themes/pnae/img/new-american-fortune-500-june-2011.pdf> [<https://perma.cc/NWQ8-HA4D>]. Considering the globalized economy of the United States, increasing the ability of entrepreneurial refugees, their children, and their businesses may bring about more growth in various industry sectors like banking, aerospace and defense, retail, automotive, engineering, etc. *Id.* at 10–11.

period that reflects the number of years that a refugee or asylee will have to wait to apply for citizenship.²⁰⁵ Unfortunately, the United States is unlikely to issue a travel document for five years — the minimum amount of time that a refugee or asylee will have to wait to complete their path to citizenship. The language of the Schedule within the 1951 U.N. Convention explicitly provides that the document must be valid for one to two years, and it is unlikely that the USCIS Director would issue a travel document with a validity period that goes beyond the language of the 1951 U.N. Convention, given the Trump administration's concern that immigrants pose crime and terror risks. As such, a two-year validity period is a decent compromise that both allows the U.S. government to periodically conduct background checks on foreign nationals, but also expands refugees and asylees' freedom of movement and quality of life.

There are two great obstacles to obtaining this regulatory amendment: national security and political climate. The increasing number of terrorist attacks worldwide and the terrorist attacks of September 11, 2001 have made governments wary of those seeking protection within their countries. Advocates for a two-year RTD should pivot away from the normative and moral arguments and instead emphasize that a two-year travel document would not create more national security concerns, but rather can actually result in more frequent background checks and more intelligence-sharing. If refugees and asylees are allowed to travel internationally for longer, with reduced processing times, then they can take advantage of more business and education opportunities. While it would be unlikely that any USCIS Director under the Trump administration would publish this proposed regulation, advocates should start building their coalitions and arguments to grow congressional support in their favor. A strong coalition that is backed by congressional support would be critical asset for advocates when they begin engaging with key offices within the Department of Homeland Security like the USCIS Ombudsman or the Office of Strategy, Policy and Plans which serves as a central resource to the Secretary of DHS on strategic planning and analysis.²⁰⁶ Through these engagements, advocates can lobby DHS to conduct studies

205. See *supra* Part I.C.

206. See U.S. DEP'T OF HOMELAND SEC., OFF. OF THE SEC'Y, <https://www.dhs.gov/office-secretary> [<https://perma.cc/F58M-Z854>] (last visited Oct. 26, 2018).

on the value and strength of this proposal which can then serve as a foundation for a future administration which may or may not be more sympathetic to them.