Perpetuating Persecution: Mental Health and Psychosocial Barriers to U.S. Immigration

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INTRODUCTION

Globally, the number of people displaced as a result of state violence, other armed and collective violence, persecution, and human rights violations reached an astounding 79.5 million by the end of 2019, a number that the United Nations High Commissioner for Refugees observed was nearly double that of the 41 million recorded in 2010.[1] While the data for 2020 has not yet been fully processed, this number surpassed 80 million by mid-year.[2] Many of these individuals suffer common mental disorders, some of which are associated with the trauma that they experienced during the violence or other circumstances that resulted in their displacement, including post-traumatic stress disorder (PTSD), hypervigilance, depression, anxiety, panic attacks, and somatization.[3]

The challenges confronting these refugees are legion. They may escape the horrors within their own countries only to discover fewer and fewer governments willing to welcome them at their borders. This exacerbates the risks to which they already were exposed, risks to their physical and mental well-being, food insecurity risk, ongoing human rights violations, and lack of access to basic services and to socioeconomic integration.

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[1] U.N. HIGH COMM'R FOR REFUGEES, GLOBAL TRENDS: FORCED DISPLACEMENT IN 2019 8 (2020), https://www.unhcr.org/5ee200e37.pdf [https://perma.cc/8FSA-RGJT].

[2] Press Release, U.N. High Comm'r for Refugees, Forced Displacement Passes 80 Million by Mid-2020 as COVID-19 Tests Refugee Protection Globally, (Dec. 9, 2020), https://www.unhcr.org/news/press/2020/12/5fcf94a04/forced-displacement-passes-80-million-mid-2020-covid-19-tests-refugee-protection.html [https://perma.cc/CX9T-KSWC].

[3] To provide one example, a recent study of refugees and internally displaced persons from the Syrian conflict reported that more than three-quarters of those surveyed may be suffering serious mental health symptoms; data indicated that 84% of the refugees studied had at least seven of fifteen key symptoms of PTSD. SYRIA RELIEF, THE DESTRUCTION YOU CAN'T SEE: A REPORT INTO THE PREVALENCE OF POST TRAUMATIC STRESS DISORDER (PTSD) SYMPTOMS AMONGST IDPS AND REFUGEES FROM THE SYRIAN CONFLICT (2021), https://reliefweb.int/report/ syrian-arab-republic/destruction-you-cant-see-report-prevalence-post-traumatic-stress [https://perma.cc/Z6HT-RQJT].

Despite the fact that the United States has been involved in some fashion in many of the conflicts that precipitated the current global resettlement crisis, it also is one of the nations that has been closing its borders to conflict-related displaced persons. Former United States President Donald J. Trump dramatically reduced the level of refugees admitted to the United States during his tenure.[4] Although his administration failed to follow through, it pronounced its intention in 2019 to reduce the annual refugee admission ceiling to zero in 2020.[5]

Countering this trend, on February 4, 2021, less than one month after taking office, President Biden pledged to increase refugee admissions to an annual cap of 125,000.[6] The then newly-elected President issued an Executive Order that, *inter alia*: (1) rescinded Trump administration policies limiting refugee resettlement and requiring excessive vetting of applicants; (2) expanded refugee adjudication capacity; and (3) enhanced access for the vulnerable refugee populations, including women, children, and those at risk of persecution because of their gender, gender identity, or sexual orientation.[7]

Even if the United States' borders are beginning to open once more, refugees and other immigrants with mental health issues may find that its immigration process can present challenges to those seeking the psychosocial support and services that they need to maintain their well-being. Existing immigration laws, policies, and practices in the United States foster a climate of hostility and discrimination that may provoke or aggravate mental health-related conditions in trauma-impacted displaced persons. This essay addresses some of these barriers and proposes several reforms for their removal, reduction, or amelioration.

I. MENTAL HEALTH AND REFUGEE MIGRATION IN THE INTERNATIONAL LEGAL SYSTEM

The international community has long recognized the association between the destabilizing factors that result in forced displacement of

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[4] Statement on United States Refugee Admissions, 2021 DAILY COMP. PRES. DOC. (May 3, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/05/03/statement-by-president-joe-biden-on-refugee-admissions/ [https://perma.cc/W2KN-P26Z] (the Trump administration reduced the annual refugee admissions cap to 15,000 for fiscal year 2021).

[5] Ted Hesson, *Trump Officials Pressing to Slash Refugee Admissions to Zero Next Year*, POLITICO (July 18, 2019, 9:04 PM), https://www.politico.com/story/2019/ 07/18/trump-officials-refugee-zero-1603503 [https://perma.cc/6GRL-545G].

[6] Exec. Order No. 14,013, 86 Fed. Reg. 8839, (2021), https://www.govinfo.gov/content/pkg/FR-2021-02-09/pdf/2021-02804.pdf [https://perma.cc/744T-QDDY]. President Biden formally raised the U.S. annual refugee admissions cap to 62,500 for the 2021 fiscal year in May 2021 and restated his intent to expand the nation's capacity to admit 125,000 refugees in the next fiscal year. Statement on United States Refugee Admissions, 2021 DAILY COMP. PRES. DOC. (May 3, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/05/03/statement-by-president-joe-biden-on-refugee-admissions/ [https://perma.cc/W2KN-P26Z].

[7] Exec. Order No. 14,013, 86 Fed. Reg. 8839, *supra* note 6.

refugees[8] and the significant negative health impacts in this population. Although there is not one comprehensive international legal instrument governing the topic, there are multiple documents that implicate these health impacts, including mental health consequences, some broad, and some more specific. This section will review these instruments briefly.

To begin, consider the Constitution of the World Health Organization.[9] Its Preamble defines "health" in the very broadest terms, stating that it is "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity" and that its enjoyment is "one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition."[10] It goes on to declare that "[t]he extension to all peoples of the benefits of medical, psychological and related knowledge is essential to the fullest attainment of health."[11]

Also relevant is the controversial "right to health" set forth in Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), in which the parties "recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."[12] Although a more nuanced definition of such a right has yet to be elaborated, refugees who have been subjected to forced migrations are entitled thereto.[13] Additionally, Article 25(1) of the Universal Declaration of Human Rights declares that "[e]veryone has the right to a standard of living adequate for the health and well-being of [them]self and of [their] family, including[,]" but not limited to, "medical care and necessary social

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[8] For purposes of this essay, a "refugee" is a person outside his or her country of nationality who is unable or unwilling to return to his or her country of nationality because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion; *see* 8 U.S.C. § 1101(a)(42).

[9] Constitution of the World Health Organization, pmbl., July 22, 1946, 62 Stat. 2679, 14 U.N.T.S. 185, https://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf?ua=1 [https://perma.cc/UZ84-HUFZ].

[10] *Id.*

[11] *Id.*

[12] G.A. Res. 2200A (XXI), art. 12, ¶ 1 (Dec. 16, 1966).

[13] To more closely align with the subject of this essay, the term "right to health" herein will be expressed as the right to health *care* rather than as the more expansive definition that encompasses rights to the conditions that are required to assure one's health, including safe water and adequate sanitation and housing, nutrition, etc. *See, e.g.*, Virginia A. Leary, *The Right to Health in International Human Rights Law*, in 1 HEALTH AND HUM. RTS. 24 (1994). *Cf.* Ryszard Cholewinski, *Economic and Social Rights of Refugees and Asylum Seekers in Europe*, 14 GEO. IMMIGR. L.J. 709, 720 (2000) ("The ESC Committee has yet to define the minimum core content of the right to health, nor has it issued a General Comment on this right elaborating its parameters."). For other international commitments that recognize the right to health, see G.A. Res. 44/25, annex. 44, U.N. Convention on the Rights of the Child, U.N. GAOR, 44th Sess., Supp. No. 49 at 167, U.N. Doc. A/44/49 (Nov. 20, 1989); G.A. Res. 2106 (XX), U.N. International Convention on the Elimination of All Forms of Racial Discrimination, annex. 20, U.N. GAOR, Supp. No. 14 at 47, U.N. Doc. A/6014 (Dec. 1, 1965); G.A. Res. 34/180, U.N. Convention on the Elimination of All Forms of Discrimination Against Women, U.N. GAOR, 34th Sess., Supp. No. 46 at 193, U.N. Doc. A/34/46 (Dec. 18, 1979); G.A. Res. 45/158, U.N. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, annex., U.N. GAOR, 45th Sess., Supp. No. 49(A) at 262, U.N. Doc. A/45/49 (Dec. 18, 1990); G.A. Res. 61/106, U.N. Convention on the Rights of Persons with Disabilities, annex I., U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (Dec. 6, 2006); G.A. Res. S-26/2, U.N. Declaration of Commitment on HIV/AIDS, U.N. Doc. A/RES/S-26/2 (June 27, 2001).

services, and the right to security in the event of . . . sickness [and] disability. . . ."[14]

Similarly, while international human rights treaties currently do not explicitly prohibit discrimination against refugees vis-à-vis their status, ICESCR has declared that health-related antidiscrimination principles prohibit:

any discrimination in access to health care and underlying determinants of health . . . on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or *mental disability*, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health.[15]

Another more specific example is the United Nations Convention Relating to the Status of Refugees (the Refugee Convention).[16] This Convention went into effect in 1954 to protect refugees fleeing Europe in the wake of World War II,[17] but its 1967 Protocol removed its date and time limits and expanded its geographic scope.[18] One purpose of the Refugee Convention was to ensure that refugees enjoy access to services consistent with those accorded to a signatory country's citizens. While the Convention does not contain provisions explicitly conferring a right to health, Article 23 recognizes that refugees lawfully staying in a state's territory should receive national treatment in terms of relief and assistance, including, according to the original working draft, those affected by mental disease.[19] The United Nations High Commissioner for Refugees (UNHCR), the agency created to provide aid to refugees, considers "[r]efugee mental health and psychosocial wellbeing . . . an integral part of [its] approach to protection, public health and education."[20]

Consistent with the UNHCR's endorsement of the provision of mental health services to refugees, the Refugee Convention played a role when, in the 1970s and 1980s, substantial numbers of Southeast Asian refugees demonstrated symptoms of anxiety and depression. A number of studies were conducted on the mental health status of these refugees as well as

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[14] G.A. Res. 217 (III) A, art. 25, ¶ 1, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR].

[15] U.N. Econ. & Soc. Council, Comm. on Econ., Soc. and Cultural Rights, ¶ 18, The Right to the Highest Attainable Standard of Health, Gen. Comment No. 14: U.N. Doc E/C.12/2000/4 (Aug. 11, 2000) (emphasis added).

[16] U.N. Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150 (entered into force Apr. 12, 1954) [hereinafter Refugee Convention].

[17] *See id.* at art. 10 (states that persons displaced due to World War II are allowed lawful residence within a contracting state.)

[18] Protocol Relating to the Status of Refugees, art. 1, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 [hereinafter Refugee Protocol].

[19] PAUL WEIS, THE REFUGEE CONVENTION, 1951: THE TRAVAUX PREPARATOIRES ANALYSED WITH A COMMENTARY BY DR. PAUL WEIS 123 (1995).

[20] U.N. High Commission for Refugees, *Mental Health and Psychosocial Support*, https://www.unhcr.org/en-us/mental-health-psychosocial-support.html?query=mentalhealth [https://perma.cc/TJW2-XAXZ].

those of other nationalities,[21] and data began to accumulate that confirmed the strong association recognized today between violence-related traumatic events and negative mental health consequences in exposed populations.[22] The conclusions of these studies indicated that severe traumatic disorders can impair concentration; disrupt normal information processing and emotional and physiological functioning; alter and distort time, spatial perceptions, and sequencing; produce memory blocks or result in partial or complete amnesia; and effect flashbacks and depersonalization. All of these symptoms can result in a failure to process traumatic experiences in memory, and avoidance strategies can further impair that integration.[23]

This understanding of the psychological residuum of trauma became part of the UNHCR Handbook.[24] Paragraphs 206–212 of the Handbook contain specific guidelines for decision-makers in asylum and refugee cases that reflect the unique challenges that examiners confront when interacting with applicants with mental or emotional disturbances.[25]

Three additional international instruments have a mental health focus. The U.N. General Assembly adopted the first of these instruments — the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (The MI Principles) — in 1991 to serve as a guide by which to evaluate the human rights practices of global mental health systems.[26] The MI Principles also established minimum standards of treatment of people with mental disabilities in community and institutional settings.[27]

Another set of standards, the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (the Standard Rules), followed in 1993.[28] Unlike a treaty or convention, the Standard Rules are not legally binding, although they may achieve the status of international customary

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[21] Zachary Steel, Naomi Frommer & Derrick Silove, *Part 1—The Mental Health Impacts of Migration: The Law and its Effects: Failing to Understand: Refugee Determination and the Traumatized Applicant*, 27 INT'L J.L. & PSYCHIATRY 511, 514–25 (2004).

[22] *Id.*

[23] *Id.* at 517–18. As others have noted, it is tragically ironic that the conflict in Vietnam was one of the events that focused attention on the interactions of conflict, human rights violations, and trauma while that conflict also heralded the beginning of Western policies to deter immigration of individuals suffering from conflict-associated trauma; *see* J.P. v. Sessions, LACV1806081JAKSKX, 2019 WL 6723686 (C.D. Cal. Nov. 5, 2019). *Editor's Note*: Though its citizens refer to their nation as Việt Nam or Viet Nam, the Bluebook uses the English spelling of Vietnam.

[24] U.N. HIGH COMM'N FOR REFUGEES, HANDBOOK ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS AND GUIDELINES FOR INTERNATIONAL PROTECTION UNDER THE 1951 CONVENTION AND THE 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES ¶¶ 206–12 (2019), https://www.unhcr.org/en-us/publications/legal/ 5ddfcdc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html [https://perma.cc/H6CN-Z3XU].

[25] *Id.*

[26] *See* G.A. Res. 46/119, Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, U.N. GAOR, 46th Sess., Supp. (No. 49) at 189, U.N. Doc. A/46/49 (Dec. 7, 1991).

[27] According to some commentators, the MI Principles "constitute[d] the most comprehensive international statement of the rights of people with mental disabilities to date." Eric Rosenthal & Leonard Rubenstein, *International Human Rights Advocacy Under the Principles for the Protection of Persons with Mental Illness*, 16 INT'L J.L. & PSYCHIATRY 257, 259 (1993).

[28] *See* G.A. Res. 48/96, annex, U.N. Doc. A/48/96 (Mar. 4, 1994).

law by means of the traditional route. They also operate as a "strong moral and political commitment on behalf of States to take action for the equalization of opportunities."[29]

In 2001, the World Health Organization weighed in with the third international instrument, the non-binding, advisory Declaration of Cooperation: Mental Health of Refugees, Displaced and Other Populations Affected by Conflict and Post-Conflict Situations (Declaration of Cooperation on Refugee Mental Health).[30] It described this Declaration as a "technical consensus building document" to provide a framework for "all governments, organizations and institutions to adopt and implement . . . in taking up the challenge to prevent and reduce mental disorders and mental health problems, to restore hope, dignity, mental and social well-being, and normality to the lives of refugees, displaced and other populations affected by conflict."[31]

Despite the international recognition that mental health issues have received, including the explicit acknowledgement of the potentially negative psychological consequences of violence-related trauma, states retain the authority to take measures that limit the human rights of refugees, health-related or other, in the event of serious threats to public health so long as the measures are "specifically aimed at preventing disease or injury or providing care for the sick and injured."[32] According to the internationally-accepted *Siracusa Principles*, any such restrictions upon human and civil rights must be prescribed by and implemented in accordance with the law; must have a legitimate objective that cannot be achieved through less intrusive means; must be based upon scientific evidence; must be limited in time and must not be drafted or imposed arbitrarily; and must be subject to review.[33]

These constraints, however, have not prevented states from denying entry to migrating persons with certain mental health disorders based upon "serious public health threat" justifications or to avoid "excessive demands on health or social services."[34] In the United States, for example, psychosocial impairments are the subject of federal regulations designed to screen and potentially reject refugees and other immigrant populations,

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[29] Theresia Degener, *Disabled Persons and Human Rights: The Legal Framework, in* HUMAN RIGHTS AND DISABLED PERSONS: ESSAYS AND RELEVANT HUMAN RIGHTS INSTRUMENTS 9, 12–13 (Theresia Degener & Yolan Koster-Dreese eds., 1995) (quoting U.N. Doc. A/48/96).

[30] WHO, Declaration of Cooperation: Mental Health of Refugees, Displaced and Other Populations Affected by Conflict and Post-Conflict Situations (Oct. 2000), https://mtrapman.home.xs4all.nl/xgasten/nizw/WHODeclaration.html [https://perma.cc/GR3V-TBAT].

[31] *Id.*

[32] U.N. Econ. & Soc. Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, annex, ¶ 25, U.N. Doc. E/CN.4/1985/4 (Sept. 28, 1984) [hereinafter Siracusa Principles]. The Siracusa Principles are not binding, but they have been adopted by the United Nations and have been cited in pleadings before international tribunals. *Cf.* Randall Peerenboom, *Assessing Human Rights in China: Why the Double Standard?*, 38 CORNELL INT'L L.J. 71, 92 (2005).

[33] *See generally* Siracusa Principles, *supra* note 32.

[34] LEANDRO DESPOUY, HUMAN RIGHTS AND DISABLED PERSONS, ¶ 194, U.N. Doc. ST/HR(05)/H852/no.6, U.N. Sales No. E.92.XIV.4 (1993) (citing Canadian Immigration Act, art. 19.2, clause 2 (2)).

as discussed in the next section.

II. MENTAL HEALTH IN U.S. IMMIGRATION LAW AND POLICY[35]

Although the United States became a party to the Refugee Convention's Protocol in 1968,[36] its immigration process often appears to be in conflict with both the treaty's terms and its spirit, as is apparent in the way with which it handles many of the most vulnerable displaced persons who seek safety here. Decision-makers involved in immigration policymaking and administration in the United States seem to ignore, or to be ignorant of, the UNHCR Guidelines regarding interactions with and examinations of noncitizens who may suffer post-traumatic or other psychological symptoms.

This is not a trivial matter, even at the very earliest stages of an immigration proceeding. Data confirm that the process by which individuals enter a host country can have significant impacts on mental health, including reports that immigration process interviews are associated with psychological stress for traumatized displaced persons.[37] Research also suggests that the United States' current immigration admission practices may re-traumatize conflict-displaced persons.[38]

This essay will not discuss the more obvious examples of these practices, such as forcible family separations, often lengthy or indefinite stays in immigration detention facilities in the United States,[39] and issues of

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[35] The incredible complexity of the U.S. legal framework pertaining to refugees and asylum seekers is beyond the scope of this essay. As mentioned herein, this piece focuses holistically and less technically on certain aspects of the immigration admission process for refugees and asylees and on other more procedural requirements that have the potential to have a negative impact on noncitizen mental health. It leaves for others a more in-depth analysis of the mental health and other long-term consequences that the trauma and stress of detention may have on noncitizens crossing the U.S. borders, see, *e.g.*, Jeffrey R. Baker & Allyson McKinney Timm, *Zero-Tolerance: The Trump Administration's Human Rights Violations Against Migrants on the Southern Border*, 13 DREXEL L. REV. 581 (2021); as well as a discussion of mental health and competency considerations associated with deportation and other adversarial immigration proceedings in courtroom settings. *See, e.g.*, Sarah Sherman-Stokes, *No Restoration, No Rehabilitation: Shadow Detention of Mentally Incompetent Noncitizens*, 62 VILL. L. REV. 787 (2017).

[36] *See* Refugee Protocol, *supra* note 18; *see also* States parties, including reservations and declarations, to the 1967 Protocol Relating to the Status of Refugees, at 2, https://www.unhcr.org/en-us/5d9ed66a4 [https://perma.cc/WDH5-6YN5] (confirming that the United States acceded to the Refugee Protocol in 1968).

[37] Katrin Schock, Rita Rosner & Christine Knaevelsrud, *Impact of Asylum Interviews on the Mental Health of Traumatized Asylum Seekers*, 6 EUR. J. PSYCHOTRAUMATOLOGY (2015).

[38] *See, e.g.*, KATHERINE PORTERFIELD ET AL., RESILIENCE & RECOVERY AFTER WAR: REFUGEE CHILDREN AND FAMILIES IN THE UNITED STATES, REPORT OF THE APA TASK FORCE ON THE PSYCHOSOCIAL EFFECTS OF WAR ON CHILDREN AND FAMILIES WHO ARE REFUGEES FROM ARMED CONFLICT RESIDING IN THE UNITED STATES 43 (2010).

[39] *See, e.g.*, Jeffrey R. Baker & Allyson McKinney Timm, *Zero-Tolerance: The Trump Administration's Human Rights Violations Against Migrants on the Southern Border*, 13 DREXEL L. REV. 581 (2021); *see also* Renuka Rayasam, *Migrant Mental Health Crisis Spirals in ICE Detention Facilities*, POLITICO (July 21, 2019), https://www.politico.com/story/2019/07/21/migrant-health-detention-border-camps-1424114 [https://perma.cc/VHV2-CMUM].

noncitizen competency in immigration proceedings.[40] Rather, it will focus on the less obvious, but equally significant, practices in the United States' immigration system that may cause, re-traumatize, or exacerbate pre-existing trauma symptoms or other mental health disorders or that may otherwise impair recovery.

In the United States, an applicant's interview and testimony are often the most critical sources of information for the immigration decision-maker.[41] Under 8 U.S.C. § 1158, an applicant *seeking asylum* in the United States must meet the burden of proving past persecution or a well–founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion in the country of nationality.[42] Although the government may demand corroboration of an applicant's claim, such as documentation regarding human rights conditions in the noncitizen's home country, the primary source of evidence in these cases is the applicant's testimony.[43] The necessity of recollecting and providing testimony about traumatic experiences may trigger or aggravate symptoms of trauma-related mental illness.[44] As the notes in one officer training manual state:

[T]orture and other severe trauma can leave lasting psychological effects on survivors. Often, symptoms appear after a latency period and do not usually subside merely with the passing of time. A survivor may appear to be adjusting fairly well, only to have symptoms triggered without warning.

There are many possible triggers: an event may trigger painful memories or an individual may remind the survivor of the torturer. Even sounds and smells can trigger symptoms.

The implications for the interview are great. Recollections of the traumatic events, such as are required in the interview, can be expected to trigger symptoms. If the survivor was interrogated, the mere experience of the interview can remind the survivor of being interrogated where his or her life was dependent upon the whim of the interrogator. Uniformed security guards, a particular manner of questioning or particular questions, certain objects in the interview room or office environment, etc., can trigger memories of the trauma and cause "flashbacks" for the survivor. A

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[40] *See, e.g.*, CATHOLIC LEGAL IMMIGRATION NETWORK, PRACTICE ADVISORY - REPRESENTING NONCITIZENS WITH MENTAL ILLNESS (May 2020), https://cliniclegal.org/file-download/download/public/3756 [https://perma.cc/S25C-9RPY].

[41] Michael Kagan, *Is Truth in the Eye of the Beholder? Objective Credibility Assessment in Refugee Status Determination*, 17 GEO. IMMIGR. L. J. 367, 368 (2003) ("[B]eing deemed credible may be the single biggest substantive hurdle before applicants beginning the refugee status determination process.").

[42] 8 U.S.C. § 1158(b)(1)(B)(i). *See also* 8 U.S.C. § 1231(b)(3) ("[T]he Attorney General may not *remove* an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.") (emphasis added).

[43] Kagan, *supra* note 41, at 368.

[44] *See* Rocío Naranjo Sandalio, *Feature: Life After Trauma: The Mental-Health Needs of Asylum Seekers in Europe*, MIGRATION INFO. SOURCE (Jan. 30, 2018), https://www.migrationpolicy.org/article/life-after-trauma-mental-health-needs-asylum-seekers-europe [https://perma.cc/8934-F4AB].

survivor may be very fearful of symptoms being triggered during the interview.[45]

These potentially adverse reactions may be compounded by an applicant's awareness of the significance of an adverse outcome in the immigration proceeding.[46]

The very conditions from which applicants suffer also may undermine the presentation of their claims. Displaced individuals who suffer from PTSD or other conditions that display similar symptoms, e.g., fragmentation of memory, memory loss, disassociation, inconsistent recitation of certain events or situations, or flashbacks.[47] These symptoms can complicate credibility assessments for immigration officials, bureaucrats who often have little or no medical or psychological training or familiarity with trauma-related symptoms of mental health disorders.[48] A lack of experience with trauma-related memory distortions may cause officials to react suspiciously or impatiently to applicant testimony or to negatively interpret an applicant's non-sequencies, confusion, or incoherence as falsity or obfuscation.[49] Case studies indicate that decision-makers in immigration processes often fail to understand how the experience of trauma and the symptoms of its psychological distress can impact the communications and memories of applicants.[50]

Because the law places the burden upon noncitizen applicants to satisfy immigration officials that their claims are credible, this failure can have catastrophic results.[51] Section 208 of the Immigration and Nationality Act (INA) provides a list of factors to be used in assessing credibility, including an applicant's demeanor, candor, or responsiveness; the plausibility and consistency of an applicant's written and oral statements with other evidence; and any statement inaccuracies or falsehoods.[52] Every single one

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[45] U.S. CITIZEN & IMMIGRATION SERVICES, RAIO COMBINED TRAINING PROGRAM: INTERVIEWING SURVIVORS OF TORTURE AND OTHER SEVERE TRAUMA 17 (2019), https://www.uscis.gov/sites/default/files/document/foia/Interviewing_-_Survivors_of_Torture_LP_RAIO.pdf [https://perma.cc/4N76-FKZ9] [hereinafter USCIS Officer Training Module].

[46] *See id.* at 20–22.

[47] Steel, *supra* note 21, at 517–18.

[48] *Id.* at 514, 516–17; USCIS Officer Training Module, *supra* note 45, at 17, 19–22.

[49] Steel, *supra* note 21, at 516–17, 523.

[50] *Id.*

[51] 8 U.S.C. § 1158(b)(1)(B)(ii) ("Sustaining burden. The testimony of the applicant may be sufficient to sustain the applicant's burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. In determining whether the applicant has met the applicant's burden, the trier of fact may weigh the credible testimony along with other evidence of record. Where the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.")

[52] 8 U.S.C. § 1158(b)(1)(B)(iii) ("Credibility determination: Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an

of these factors is potentially unreliable for assessing credibility in the context of a trauma survivor's statement, yet they serve as the foundation upon which an immigration official decides an applicant's fate.[53]

A noncitizen's risk of a catastrophic outcome was compounded by the Trump administration's draconian order barring entry of asylum seekers at the United States' northern and southern land borders on the basis of the rarely-used provision of the 1944 Public Health Service Act.[54] The Order, colloquially referred to as Title 42 for its invocation of the Public Health Service Act in that Title of the United States Code, targeted noncitizens seeking asylum who lack "proper travel documents" and denied them the opportunity to claim asylum or protection from persecution prior to being repatriated to their country of origin or to Mexico.[55] Even those

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inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor. There is no presumption of credibility, however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.")

[53] Stephen Paskey, *Telling Refugee Stories: Trauma, Credibility and the Adversarial Adjudication of Claims for Asylum*, 56 SANTA CLARA L. REV. 457, 477–78 (2016) ("[I]mmigration judges overwhelmingly expect that credible applicants will tell a consistent story. Internal inconsistencies within and among an applicant's written and oral statements are by far the dominant factor in negative credibility findings. . . . [J]udges also give significant weight to the way an applicant's story is told. . . . [J]udges also relied on other traits of the applicant's testimony. Judges who did so frequently described the applicant's testimony as 'implausible,' 'vague,' 'lacking in detail,' 'unresponsive,' or 'evasive.' Less frequently, judges described an applicant's testimony as 'confusing,' 'hesitant,' 'disjointed,' 'incoherent,' or 'unreliable.' . . . [I]n the United States (and elsewhere), it is widely assumed that consistent statements are central to credibility, and that a person whose story changes over time is not truthful. But . . . when the person is a trauma survivor, that assumption is not true.").

[54] Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, 85 Fed. Reg. 17,060, 17,060 (Mar. 26, 2020), https://www.federalregister.gov/documents/2020/03/26/2020-06327/notice-of-order-under-sections-362-and-365-of-the-public-health-service-act-suspending-introduction [https://perma.cc/8ZDD-T7S5]. The Order, more commonly referred to as Title 42, relied upon an emergency rule issued March 20, 2020 by the Department of Health and Human Services that implemented 42 U.S.C. § 265, which permits the Director of the CDC to "suspend . . . the introduction into the United States of individuals when the Director determines that . . . [there is] serious danger of the introduction of [a communicable] disease into the United States." Any customs officers, including immigration officials, were authorized to implement Title 42. The final version of the rule was published on September 11, 2020, in which the CDC acknowledged that the order was being used to expel refugees and asylum seekers from U.S. borders. Control of Communicable Diseases; Foreign Quarantine: Suspension of the Right to Introduce and Prohibition of Introduction of Persons into United States from Designated Foreign Countries or Places for Public Health Purposes, 85 Fed. Reg. 56,424, 56,433 (Sept. 11, 2020), https://www.federalregister.gov/documents/2020/09/11/2020-20036/control-of-communicable-diseases-foreign-quarantine-suspension-of-the-right-to-introduce-and [https://perma.cc/YAN6-MT34] [hereinafter, with Mar. 26, 2020 Order, Title 42]. An in-depth discussion of the broader-in-scope Migrant Protection Protocols (MPP) exceeds this essay. *See* Kirstjen M. Nielsen, Secretary U.S. Department of Homeland Security, Memorandum, Policy Guidance for Implementation of the Migrant Protection Protocol (Jan. 25, 2019), https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf [https://perma.cc/Z7JJ-LNL3]. The MPP, more commonly referred to as the "Remain in Mexico" policy, was initiated by the Trump administration in January 2019 pursuant to Section 235(b)(2)(C) of the INA. It set forth the authority under which the United States would return to Mexico certain citizens and nationals of countries other than Mexico while their removal proceedings are pending in the United States. *Id.* The Biden administration's efforts to reverse this policy have been unsuccessful as of the date of this publication. *See* Fred Porter, Biden administration to restart Trump-era 'Remain in Mexico' policy, JURIST (Dec. 2, 2021, 5:35 PM), https://www.jurist.org/news/2021/12/biden-administration-to-restart-trump-era-remain-in-mexico-policy/ [https://perma.cc/77CR-ZL8D].

[55] Title 42, *supra* note 54. By February 2021, Customs and Border Patrol had expelled more than 520,000 pursuant to this Order. Despite pleas to revoke the Rule, the Biden administration originally lifted its application only with regard to unaccompanied children. *See also* Notice of Temporary

who escaped *this* Order were impacted by other Trump administration immigration activities. For example, Trump's Justice Department attempted to redefine asylum to further limit the applicants who would ultimately qualify, e.g., imposing significant barriers to entry for victims of domestic or gang violence.[56] The Biden administration's DOJ very recently ended application of these restrictions.[57]

Attorney General Garland's changes stand in stark contrast to the Trump administration's policy, regulatory, and programmatic changes. These modifications transformed the United States' immigration system in ways both dramatic and technically detailed.[58] For example, the Trump

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Exception From Expulsion of Unaccompanied Noncitizen Children Pending Forthcoming Public Health Determination, 86 Fed. Reg. 9942, 9942 (Feb. 17, 2021), https://www.federal register.gov/documents/2021/02/17/2021-03227/notice-of-temporary-exception-from-expulsion-of-unaccompanied-noncitizen-children-pending [https://perma.cc/65SQ-6H76]. Not only have numerous groups filed legal challenges to the Title 42 Order, *see, e.g.*, Huisha-Huisha v. Mayorkas, 110 Fed. R. Serv. 3d (West) 1134 (D.D.C. 2021), several high-ranking officials have openly criticized the Biden administration for its implementation thereof. *See* Jaya Ramji-Nogales, *How an Internal State Department Memo Exposes "Title 42" Expulsions of Refugees as Violations of Law — From Kamala Harris' Letter to the Koh Memo*, JUST SECURITY (Oct. 5, 2021), https://www.justsecurity.org/78476/how-an-internal-state-department-memo-exposes-title-42-expulsions-of-refugees-as-violations-of-law/ [https://perma.cc/JLL2-KW6W]. For example, distinguished Yale scholar and senior U. S. State Department legal adviser Harold H. Koh circulated an internal State Department memorandum opining, in very strong language, that the Biden administration's continuation of Trump's Title 42 violates the United States' legal obligations pursuant to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the 1967 Protocol relating to the Status of Refugees ("Refugee Protocol"), which modifies and incorporates the terms of the 1951 Convention relating to the Status of Refugees. Memorandum from Harold H. Koh, Senior Adviser, Office of Legal Adviser, U.S. State Department, *Ending Title 42 return flights to countries of origin, particularly Haiti* (Oct. 2, 2021), https://www.politico.com/f/?id=0000017c-4c4a-dddc-a77e-4ddbf3ae0000 [https://perma.cc/J8RZ-M96S] (For the 2021-22 academic year, Professor Koh's is the Eastman Visiting Professor at the University of Oxford.). In a series of letters, "[p]ublic health and medical experts have repeatedly called on the CDC to rescind the Title 42 expulsion policy which does not protect public health and . . . is a discriminatory practice with no scientific basis as a public health measure." July 2021 Letter from Named Concerned Physicians and Public Health Professionals to HHS Secretary Xavier Becerra and CDC Director Dr. Rochelle Walensky on the Title 42 Order (July 1, 2021), https://www.publichealth.columbia.edu/research/program-forced-migration-and-health/july-2021-letter-hhs-secretary-becerra-and-cdc-director-walensky-title-42-order [https://perma.cc/4DNF-34CA]; *see also* Fact Sheet, *Title 42 Border Expulsions: How Biden and the CDC's Misuse of Public Health Authority Expels Asylum Seekers to Danger*, PHYSICIANS FOR HUMAN RIGHTS (May 20, 2021), https://phr.org/our-work/resources/title-42-border-expulsions-how-biden-and-the-cdcs-misuse-of-public-health-authority-expels-asylum-seekers-to-danger/ [https://perma.cc/8D7B-Q5SP].

[56] Policy Memorandum from U.S. Citizenship & Immigration Services at 1–3 (July 11, 2018), https://www.uscis.gov/sites/default/files/document/memos/2018-06-18-PM-602-0162-USCIS-Memorandum-Matter-of-A-B.PDF [https://perma.cc/E6XD-TUCQ]. The application of this particular effort faced legal challenges, and its application was at one point enjoined vis-à-vis initial interviews, Grace v. Whitaker, 344 F. Supp. 3d 96, 146 (D.D.C. Dec. 19, 2018), a holding that was partially upheld. Grace v. Barr, 965 F.3d 883, 908–09 (D.C. Cir. July 17, 2020).

[57] U.S. Attorney General Merrick Garland vacated the decisions of a Trump administration Attorney General: *In re* L-E-A-, 27 I. & N. Dec. 581, 596–97 (Att'y Gen. July 29, 2019); *In re* A-B-, 27 I. & N. Dec. 316, 346 (Att'y Gen. June 11, 2018); and *In re* A-B-, 28 I. & N. Dec. 199 (Att'y Gen. June 16, 2021). Pursuant to Attorney General Garland's instructions, Immigration Judges and the Board of Immigration Appeals will revert to prior precedent. *See* Vanita Gupta, Associate U.S. Attorney General, Memorandum, Impact of Attorney General Decisions in Matter of L-E-A-and Matter of A-B-, at 1 (June 16, 2021).

[58] For a detailed analysis of these changes, see SARAH PIERCE & JESSICA BOLTER, MIGRATION POL'Y INST., DISMANTLING AND RECONSTRUCTING THE U.S. IMMIGRATION SYSTEM: A CATALOG OF CHANGES UNDER THE TRUMP PRESIDENCY 60–63 (2020), https://www.migrationpolicy.org/sites/default/files/ publications/MPI_US-Immigration-Trump-Presidency-Final.pdf [https://perma.cc/Z3C9-P28U].

administration amended guidance documents that made the preliminary asylum interview more difficult for applicants by removing reminders for officers to consider the effects of trauma when making credibility determinations.[59] The guidance instead heavily emphasized testimonial consistency in applicant testimony,[60] conspicuously overlooking the recognized impact of trauma on victim narratives.

Another Trump administration initiative that flagrantly disregarded trauma-related mental health impacts on asylum seekers involved a pilot program in which United States Customs and Border Patrol (CBP) agents were authorized to supplement trained asylum officers at United States' borders to conduct initial asylum credible-fear interviews[61] and to make credible fear determinations with life or death consequences.[62] It is important in this context to note that CBP agents have been described as "highly trained law enforcement personnel" who are qualified to, and who regularly conduct, screenings at the border for illegal immigration, narcotics smuggling, and illegal importation.[63] Statistics starkly reveal the zeal with which the CBP conducted these credible fear interviews, perhaps inevitable given the adversarial nature of their core law enforcement function. In a twelve-month period, CBP agents approved only 37% of credible fear interviews as compared to the 64% approved by trained asylum officers.[64] It stretches credulity to believe that applicant demographics could account for this statistical anomaly.

The negative impact of their traumatic experiences in the immigration process may be complicated by, and intensify, inhibitions that applicants may suffer from cultural- or gender-related norms associated with their ability to disclose the reasons for their displacement, i.e., female, male, and nonbinary shame regarding sexual or physical violence or intimidation; genital mutilation, forced abortion and/or sterilization; or forcible conscription into national armies or non-state armed groups.[65] Their current uncertain status, cultural assimilation issues, and living conditions

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[59] *Credible Fear of Persecution and Torture Determinations Lesson Plan Overview*, U.S. CITIZEN & IMMIGR. SERVICES, Apr. 30, 2019, at 14, https://www.aila.org/infonet /uscis-updates-officer-training-credible-fear [https://perma.cc/F6ZM-GQTK] [hereinafter USCIS 2019 Lesson Plan]. The 2019 guidance removed the following language from prior editions: "The applicant's willingness and ability to provide [detailed] descriptions may be directly related to the asylum officer's skill at placing the applicant at ease and eliciting all the information necessary to make a proper decision. An asylum officer should be cognizant of the fact that an applicant's ability to provide such descriptions may be impacted by the context and nature of the reasonable fear screening process." *Reasonable Fear of Persecution and Torture Determinations Lesson Plan Overview*, U.S. CITIZEN & IMMIGR. SERVICES, Feb. 13, 2017, at 13, https://www.uscis.gov/sites/default/files/document/lesson-plans/Reasonable_Fear_Asylum_Lesson_Plan.pdf [https://perma.cc/KNM6-DZTH] [hereinafter USCIS 2017 Lesson Plan].

[60] USCIS 2019 Lesson Plan, *supra* note 59, at 14–15.

[61] A.B.-B. v. Morgan, No. 20-cv-846 (RJL), 2020 WL 5107548, at *3 (D.D.C. Aug. 31, 2020).

[62] *Id.* (Without a "credible fear of persecution" determination, an asylum seeker may be removed from the U.S. without further hearing or review.)

[63] *Id.* at *2.

[64] PIERCE & BOLTER, *supra* note 58, at 73.

[65] *Gender Issues in the Asylum Claim*, RTS. EXILE PROGRAMME, https://www.refugeelegalaidinformation.org/gender-issues-asylum-claim [https://perma.cc/5G3N-CQD9] (last visited Sept. 5, 2021).

too may cause symptoms to reoccur or may exacerbate trauma-related concentration impairments.[66]

These same cultural norms, together with punitive laws and policies, may then prevent displaced persons from attempting to access what limited psychosocial support might be available to them to treat their impairments or disorders.[67] For example, cultural stigmas pertaining to mental illness are cited as barriers to seeking professional mental health services, even if these services might be useful in the immigration process.[68] Laws and policies such as those that restrict the access of undocumented individuals to public health benefits while in the United States or that potentially expose their presence to authorities also may deter the displaced from pursuing appropriate treatment.[69] All of these circumstances increase the risk of adverse credibility determinations and, ultimately, inadmissibility rulings in the immigration process.

There also are certain provisions of United States federal immigration law that specifically focus on a migrant's mental health status. Our federal law has long excluded and/or deported immigrants who suffer from specified mental disorders[70] and those who may become "public charges,"[71] guidance for which indicates that mental disability is one relevant consideration.[72]

With regard to mental illness, pursuant to Section 212(a)(1)(A)(iii) of the INA, a displaced person who is determined to have a current or past mental disorder with associated harmful behavior is inadmissible to the United States.[73] To be so excluded, the government must designate a

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[66] *See, e.g.*, Steel, *supra* note 21, at 516 ("Confinement in immigration detention centers during the refugee determination process is likely to result in deterioration in the mental health of asylum seekers. . . . [T]here is a significant and chronic impairment in concentration, with detainees being unable to perform even simple tasks.") (internal quotations omitted). *Cf.* Linda Piwowarczyk, *Seeking Asylum: A Mental Health Perspective*, 16 GEO. IMMIGR. L.J. 155, 160 (2001) (discussing how trauma related to post-migration stresses and uncertainty contribute to continued levels of physical and mental distress).

[67] *See, e.g.*, Andrés J. Pumariega, Eugenio Rothe & JoAnne B. Pumariega, *Mental Health of Immigrants and Refugees*, 41 CMTY. MENTAL HEALTH J. 581, 591 (2005).

[68] America Paredes, Mental Health Am., *Supporting Mental Health of Immigrant Communities*, https://www.mhanational.org/sites/default/files/1245p2%20Paredes.pdf [https://perma.cc/8NCF-HS8K].

[69] *See, e.g.*, Morgan M. Philbin et al., *State-Level Immigration and Immigrant-Focused Policies as Drivers of Latino Health Disparities in the United States*, 199 SOC. SCI. & MED. 28, 28–34 (2017) (explaining that one such program is colloquially referred to as "287(g)," so-called after 8 U.S.C. § 1357(g), the 1996 statutory provision that authorized its addition to the INA and that engages state and local law enforcement in immigration enforcement).

[70] This category at one time included homosexuality. Although the U.S. Surgeon General opined that homosexuality would no longer be considered a mental disease or defect in 1979 and advised immigration officials to stop mental examinations for determinations solely based upon homosexuality, *see In re Longstaff*, 716 F.2d 1439, 1444 (5th Cir. 1983), homosexuality was not formally removed as a ground for exclusion to the United States under the law until 1990. *See* Immigration Act of 1990, Pub. L. No. 101-649, § 101, 104 Stat. 4978, 4986–89 (1990).

[71] Helena Tetzeli, *Medical and Health-Related Grounds of Exclusion: Recent Law, Trends, and Practice*, 97-01 IMMIGR. BRIEFINGS 1 (Jan. 1997).

[72] Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689, 28,690 (May 26, 1999), https://www.govinfo.gov/content/pkg/FR-1999-05-26/pdf/99-13202.pdf [https://perma.cc/C29U-7PHQ] [hereinafter 1999 Public Charge Field Guidance].

[73] 8 U.S.C. § 1182(a)(1)(A)(iii).

physician to conduct an exam, and that exam must result in a certification that the individual has a mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, and which behavior is likely to recur or to lead to other harmful behavior.[74] Individuals also can be removed if already present in the United States under certain circumstances.[75]

There is a high level of discretion to exclude noncitizens under this regulatory scheme. A medical examiner,[76] defined as a panel physician[77] (for medical examinations conducted outside the U.S.), a civil surgeon[78] (for medical examinations conducted inside the U.S.), or other physician designated on behalf of the Director of the Centers for Disease Control and Prevention (CDC) or a designee as approved by the Director or the Secretary of the Department of Health and Human Services (HHS), conducts the examinations.

The purpose of these initial immigration examinations is to identify health-related conditions that may render an applicant inadmissible to the United States as well as to identify and inform the applicant of conditions that may require follow-up care.[79] Yet their legal role in the immigration process imposes a duty on the medical examiner to "identify" and "diagnose" any mental disorders, including alcohol-related disorders.[80] In its *Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-Related Disorders*, the CDC has provided diagnostic guidance for its examiners regarding critical statutory terms, i.e., "mental disorder," "harmful behavior," and "likely to recur,"[81] and requires their application in accordance with the current version of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM),[82] the authoritative source on the classification

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[74] These mental examinations are conducted pursuant to the specifications set forth in the regulations promulgated by the Department of Health and Human Services (HHS) and are administered by the HHS and the Centers for Disease Control and Prevention (CDC). *See* 42 C.F.R. Part 34 (2021).

[75] Mental illness sometimes may present via criminal conduct or substance abuse, which also may provide grounds for removal. *See, e.g.*, 8 U.S.C. § 1227(a)(2). *See also* Amelia Wilson et al., *Addressing All Heads of the Hydra: Reframing Safeguards for Mentally Impaired Detainees in Immigration Removal Proceedings*, 39 N.Y.U. REV. L. & SOC. CHANGE 313 (2015).

[76] 42 C.F.R. § 34.2(j) (2021).

[77] 42 C.F.R. § 34.2(o) (2021). *See also Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-Use Disorders for Panel Physicians*, CTR. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/immigrantrefugeehealth/panel-physicians/mental-health.html [https://perma.cc/LF9N-N4Q8] [hereinafter CDC Panel Physician Technical Instructions] (last visited June 1, 2021).

[78] 42 C.F.R. § 34.2(c) (2021). S*ee also Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-Use Disorders for Civil Surgeons*, CTR. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/immigrantrefugeehealth/civil-surgeons/mental-health.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fimmigrantrefugeehealth%2Fexams%2Fti%2Fcivil%2Fmental-civil-technical-instructions.html [https://perma.cc/CS5G-LWUU] [hereinafter CDC Civil Surgeon Technical Instructions] (last visited July 1, 2021).

[79] CDC Civil Surgeon Technical Instructions, *supra* note 78.

[80] *Id. See also* 42 C.F.R. § 34.3 (2021).

[81] CDC Civil Surgeon Technical Instructions, *supra* note 78.

[82] *See* AM. PSYCHIATRIC ASS'N, DIAGNOSTIC & STAT. MANUAL OF MENTAL DISORDERS (DSM) (5th ed. 2013).

of mental disorders.[83] The DSM's diagnostic criteria have been the subject of serious debate and controversy within, and outside, the mental health profession,[84] controversy that calls into question the soundness of the CDC's decision to design a mental health exam process based thereupon. Its system delegates broad discretion to examiners, includes ambiguous definitions for diagnostic terms of art, and adopts the controversial DSM wholesale — the entire procedure is questionable in the context of mental health examinations.

Its soundness is questionable in other significant ways. Consider that, in the Section 212 examination process, the initial examiner need not even be a psychiatrist.[85] Given the fact that, even for specialists in the field, the relationship between mental illness and violent behavior is a highly nuanced and contested topic,[86] there is a risk that the public's stigmatization of the mentally ill may influence an examiner's perception of the threat of violence posed by an applicant's mental disorder.

An applicant's options for challenging adverse mental health determinations also present challenges for those with mental health disorders, particularly those who present oft-unrecognized trauma-related symptoms. Following the initial medical evaluation, both the applicant and the government are authorized to request that a review board comprised of specially-designated medical officers be convened to reexamine the applicant.[87] However, *only if* a determination has been made that the applicant has a specific mental condition for which that individual may be inadmissible is that applicant entitled to be reexamined by a board of medical

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[83] *See, e.g.,* CDC Panel Physician Technical Instructions, *supra* note 77. The Foreign Affairs Manual, however, expressly defines mental disorders by reference to the World Health Organization's Manual of International Classification of Diseases (ICD). *See* 9 U.S. DEP'T OF STATE, FOREIGN AFF. MANUAL § 40.11, n.11.1(a)(2) (2012) ("Only mental disorders that are included in the current version of the World Health Organization's Manual of International Classification of Diseases (ICD) are considered for visa medical exams.").

[84] "[T]he latest iteration of the manual . . . has been broadly criticized by practitioners and outsiders alike, sparking an unusually high level of controversy . . . [It] has been criticized as highly politicized, driven by special interests [sic] groups, especially the pharmaceutical industry, . . . overinclusive[,] . . . failing in both reliability (the ability to render consistent diagnoses) and validity (the ability to diagnose legitimate mental illnesses." Betsy J. Grey, *The Future of Emotional Harm*, 83 FORDHAM L. REV. 2605, 2636–38 (2015). To learn more about APA research that reports doctors examining identical patients regularly reach opposite conclusions about even the most common mental illnesses, *see* Matt Lamkin, *Regulating Identity: Medical Regulation as Social Control*, 2016 B.Y.U. L. REV. 501, 557 (2016). For a race-conscious critique of the mental health-related immigration exclusion, see Monika Batra Kashyap, *Toward A Race-Conscious Critique of Mental Health-Related Exclusionary Immigration Laws*, 26 MICH. J. RACE & L. 87 (2021).

[85] 8 U.S.C. § 1182(a)(1)(A)(iii) (A noncitizen is inadmissible if they have a physical or mental disorder that may or has posed a threat to the property or safety of themselves or others, as determined "in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General").

[86] Mental Health and Violence, 27 Harv. Mental Health Letter 1, 1–3 (2011) (on file with author). *See also* Eric B. Elbogen et. al., *Beyond Mental Illness: Targeting Stronger and More Direct Pathways to Violence*, 4 CLINICAL PSYCH. SCI. 747, 753 (2016) (Study indicated that external factors such as drug or alcohol impairment mitigated any statistical association between violence and mental illness. Seriously mentally ill study participants reportedly were less likely to commit violent acts than those without serious mental illness once other risk factors were considered).

[87] 42 C.F.R. § 34.8(a) (2021).

officers[88] that includes at least one medical professional experienced in the diagnosis and treatment of the relevant mental disorder.[89] Before 2016, in cases in which an applicant's mental health was the basis for inadmissibility, the regulations required that at least one medical officer on the review board be a board-certified psychiatrist.[90] This was changed in 2016 to require only that one medical officer be "*experienced* in the diagnosis and treatment of the physical or mental disorder, or substance-related disorder" in question.[91] As there does not appear to be a definition of "experienced" to guide the selection of a medical officer in this circumstance, applicants — particularly those without legal representation — may be seriously disadvantaged and may be assigned medical professionals who lack the ability to recognize trauma-related mental health impacts. This trivialization of the expertise of mental health specialists and their ability to effectively perform mental health diagnoses is, to put it mildly, concerning.

The "public charge" exclusion also is a serious concern for migrants with mental health-related conditions. Although not applicable to humanitarian immigrants such as refugees and asylees seeking admission to the United States,[92] INA Section 212 sets forth as a ground for inadmissibility[93] a determination that the applicant is likely to become a "public charge."[94] The term "public charge" has never been defined statutorily, but the INA does specify that government officers must, "at a minimum[,]" take into account the applicant's age; health; family status; assets, resources, and financial status; and education and skills.[95]

The INS provides more detailed guidance to its field officers regarding the public charge determination, reminding them that "[s]ome specific circumstances, such as mental or physical disability, advanced age, or other fact reasonably tending to show that the burden of supporting the

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[88] A "medical officer" is a "physician or other medical professional assigned by the Director to conduct physical and mental examinations of aliens on behalf of HHS/CDC." 42 C.F.R. § 34.2(m) (2021).

[89] 42 C.F.R. §§ 34.8(b)(3), (c)(3) (2021). In addition to a possible reexamination, a noncitizen adjudged inadmissible due to a mental disorder may seek a waiver from the exclusion, but the waiver procedures are highly complicated and require supporting documentation identifying a course of treatment that can significantly reduce the likelihood that the physical or mental disorder will result in harmful behavior in the future from a reputable facility in the U.S. *See, e.g.*, 8 C.F.R. § 212.7(b)(2)(ii)(B) (2021). The paperwork also must contain an agreement by the applicant, a family member, or some other responsible individual to assume responsibility for treatment and confirmation of payment arrangements therefore. *Id.*

[90] Medical Examination of Aliens—Revisions to Medical Screening Process, 81 Fed. Reg. 4191, 4195 (Jan. 26, 2016) (to be codified at 42 C.F.R. § 34).

[91] *Id.* (emphasis added).

[92] Refugees and asylees are exempt from public charge determinations for purposes of admission and adjustment of status under INA sections 207–209. *See* 8 U.S.C. §§ 1157–1159. A longer discussion of the history of the Trump administration's ultimately unsuccessful attempt to alter the criteria by which public charge determinations are made appears herein, *infra* note 97. *See* 8 C.F.R. § 212.23, *invalidated by* Inadmissibility on Public Charge Grounds; Implementation of Vacatur, 86 Fed. Reg. 14,221, 14,221 (Mar. 15, 2021) [hereinafter 2021 Public Charge Vacatur]. However, even under the amended criteria, refugees and asylees were exempt from public charge determinations for purposes of admission and adjustment of status.

[93] *See generally* 8 U.S.C. § 1182(a)(A)(1)–(10) (2021) (discussing grounds for admissibility).

[94] *Id.* § 1182(a)(4)(A).

[95] *Id.* § 1182(a)(4)(B)(i).

[applicant] is likely to be cast on the public, must be present."[96] It also offers a definition of "public charge" as an applicant who is or is likely to become "primarily dependent on the government for subsistence," as demonstrated by either "(i) the receipt of public cash assistance for income maintenance, or (ii) institutionalization for long-term care at government expense."[97] In its Field Guidance, the INS, the precursor agency to the U.S. Citizenship and Immigration Services (USCIS), specifically lists "Programs (including Medicaid) supporting [sic] aliens who are institutionalized for long-term care *e.g.*, in a nursing home or mental health institution)[,]" as a benefit that may be considered for public charge purposes.[98]

The public charge exclusion can present a significant immigration barrier to vulnerable applicants. Under Section 212 of the INA, immigration officers are authorized to make public charge determinations "in the[ir] opinion[s] . . . ."[99] Officers necessarily are granted broad discretion to form opinions, and, considering administrative and judicial standards of review, these officer opinions are subject to very narrow or no review.[100]

The cavalier attitude toward mental health that pervades the United States' immigration regulatory scheme presents imposing obstacles for those who may in fact be entitled to admission to the United States but may fall victim to an indifferent system. Current United States' immigration laws and practices may re-traumatize conflict-displaced persons and present barriers to their entry into the country. The next section considers adjustments to these laws and practices that might be made to make the United States' system a more humane one for immigrants impacted by trauma.

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[96] 1999 Public Charge Field Guidance, *supra* note 72, at 28,690.

[97] *Id.* at 28,692. In 2018, the Trump administration's DHS published a new rule, scheduled to take effect in October 2019, that proposed to dramatically expand the definition of "public charge" by categorizing as a public charge every person who receives 12 months of public benefits over any 36-month period, regardless of the value or cost of the benefits. Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292, 41,295 (Aug. 14, 2019); *see also* 84 Fed. Reg. 52,357 (Oct. 2, 2019) (Corrections). If an individual received two types of benefits in one month, the rule would count that individual as receiving benefits for two months. *Id.* Due to a flurry of judicial activity, application of the Rule was minimal and was halted entirely when the Biden administration's DHS removed the Rule's text from the C.F.R. and restored the text as it previously appeared. *See* 2021 Public Charge Vacatur, *supra* note 92. In effect, the Citizenship and Immigration Services of the DHS advised that it had reverted to the 1999 Field Guidance and that it will not consider a person's receipt of Medicaid (except Medicaid for long-term institutionalization), public housing, SNAP benefits, or medical treatment or preventive services for COVID-19 (including vaccinations) as part of the public charge inadmissibility determination. Public Charge Letter from Tracy L. Renaud, Senior Official Performing the Duties of the Director of U.S. Department of Homeland Security-U.S. Citizenship and Immigration Services, to Interagency Partners (April 12, 2021), https://www.uscis.gov/sites/default/files/document/notices/SOPDD-Letter-to-USCIS-Interagency-Partners-on-Public-Charge.pdf [https://perma.cc/743S-9WX6].

[98] 1999 Public Charge Field Guidance, *supra* note 72, at 28,692.

[99] 8 U.S.C. § 1182(a)(4)(A).

[100] 8 U.S.C. § 1252(a)(2) (eliminates judicial review of any determinations regarding identified forms of discretionary relief in immigration-related matters and preserves review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals).

III. POSSIBLE REFORMS

Although some glimmers of hope for trauma sufferers seeking entry to the United States have appeared[101] both administratively and judicially,[102] systemic barriers remain for refugees, asylum seekers, and other noncitizens with mental health issues who are attempting to navigate the immigration system in the United States. This section briefly proposes just a few possible options that might improve their situation.

The author's first proposal is a large-scale reform, one that would replace all adversarial proceedings in the United States' immigration system with an inquisitorial model. This is not an original proposal; the advantages of the inquisitorial approach for all immigration cases have been described in detail by others, including that it has the potential to be more efficient, more accurate, more fair, and more politically palatable.[103] However, in cases involving victims of trauma or individuals suffering from mental health conditions that could impact their applications, the benefits are exponentially greater.

The second proposal is a much simpler one, requiring only greater transparency around the government's application of § 212 with regard to the grounds on which immigration officials exclude noncitizens on mental health grounds.[104] Personal applicant information need not be disclosed;[105] it would be sufficient to publish or otherwise provide access to anonymized data in order to subject it to public scrutiny for compliance with regulatory requirements and for consistency with objective, non-discriminatory evaluation standards. Not all noncitizen applicants have access to

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[101] Exec. Order No. 14,013, 86 Fed. Reg. 8839, *supra* note 6. *See also* Michael D. Shear & Zolan Kanno-Youngs, *Biden Aims to Rebuild and Expand Legal Immigration*, N.Y. TIMES (May 31, 2021), https://www.nytimes.com/2021/05/31/us/politics/biden-immigration.html?referringSource=articleShare [https://perma.cc/N98G-439P] (discussing President Biden's plans to make it easier to immigrate to the United States and secure work visas).

[102] A 2019 ruling by a federal judge required the U.S. government to provide mental health services to migrant families that have undergone trauma as a result of being separated at the southern border pursuant to Trump administration policies. J.P. v. Sessions, *supra* note 23. The judge based his ruling on several factors: that the Trump administration's family separation policy created or exposed individuals to danger which they would not have otherwise faced, that it put people into these dangerous situations with "deliberate indifference," and that it caused psychological trauma and substantially increased risks of long-term mental health injuries to this population. *Id.* at *30. These factors also might be present in individual cases where refugees are fleeing from conflicts in which the U.S. acted affirmatively and with deliberate indifference by placing a refugee in a known or obvious danger. Arguably, there are other conflict-related circumstances impacting groups that might satisfy this standard, such as the air delivery by United States' forces of cluster bombs against targets in areas populated with civilians.

[103] Won Kidane, *The Inquisitorial Advantage in Removal Proceedings*, 45 AKRON L. REV. 647, 709, 710–11, 714–16 (2012). *See also* Peter W. Billings, *A Comparative Analysis of Administrative and Adjudicative Systems for Determining Asylum Claims*, 52 ADMIN. L. REV. 253 (2000) (compares asylum processing systems in Australia, Canada, the United Kingdom, and the United States).

[104] 8 U.S.C. § 1182(a)(1)(A)(iii). *See also supra* text accompanying notes 73-91.

[105] *See, e.g.*, Applicant: (Identifying Information Redacted By Agency) Application: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114, 2008 WL 5745448, at *6–7. *See also* S-O-G-& F-D-B -, 27 I. & N. Dec. 462 (Att'y Gen. Sept. 18, 2018).

counsel or to the resources to appeal negative preliminary decisions, and there appear to be few reported cases on the § 212(a)(1)(A)(iii) exclusion pertaining to mental health disorders and associated behaviors and little-to-no readily-available or collated data for analysis.[106] Publicly-available data on mental disorder-related exclusions potentially would decrease variability in governmentally-performed diagnoses and increase consistency in exam-related definitional applications. As of now, there is little basis for determining the scope of or basis for any such exclusions.[107]

Another set of reforms pertains to the training and credentialing of all officials or individuals contractually involved in the United States' immigration process. It would appear obvious, but all individuals associated with the government immigration process who regularly engage with vulnerable noncitizen populations should receive training on the psychological and physical impact of trauma, on how to recognize its symptoms, and on how best to sensitively interact with its survivors in a non-adversarial manner so as to avoid re-traumatization.[108] It is particularly important for immigration officials who evaluate applications, including asylum officers, lawyers, and judges, to be trained to identify trauma cases during official proceedings,[109] and, more specifically, on how trauma and cultural factors can impact an applicant's demeanor, narrative capability, and responsiveness.[110] This is critical when an applicant's credibility and reactions may be negatively impacted by trauma-related symptoms such as high anxiety, shame, avoidance, and flashbacks, all of which may impair an individual's memory, ability, or both, to consistently recollect traumatic experiences.[111]

Procedurally, immigration officials should once again explicitly be directed to consider the impact of PTSD and other trauma-related symptoms on applicant-related statements or testimony as a "relevant factor" when assessing credibility, particularly prior to making an adverse credibility determination.[112] A formal diagnosis of PTSD or a similar mental health condition should not be required, or even be a consideration, when assessing credibility. Given the circumstances under which many

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[106] For example, one older source reported that "61 percent of noncitizens have no lawyer during proceedings. . . . " *Deportation by Default - Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System,* HUM. RTS. WATCH (July 25, 2010), https://www.hrw.org/report/2010/07/25/deportation-default/mental-disability-unfair-hearings-and-indefinite-detention-us#_ftn15 [https://perma.cc/43BJ-VAA2].

[107] For a fascinating historical review of mental health-related immigration policies in the United States, see Polly J. Price, *Infecting the Body Politic: Observations on Health Security and the "Undesirable" Immigrant*, 63 U. KAN. L. REV. 917 (2015).

[108] *See* ALISON BECKMAN ET AL., THE CTR. FOR VICTIMS OF TORTURE, DESIGNING A TRAUMA-INFORMED ASYLUM SYSTEM IN THE UNITED STATES (2021), https://www.cvt.org/sites/default/files/attachments/u101/downloads/2.4.designing_a_trauma_informed_asylum_report.feb42021.pdf [https://perma.cc/49UT-5L8M].

[109] For example, the government should refer all refugees and all noncitizens who are seeking asylum for credible fear interviews with asylum officers who not only are trained in asylum law but who also are trained to identify trauma cases during asylum interviews. *See, e.g.*, Schock, *supra* note 37.

[110] BECKMAN, *supra* note 108, at 10.

[111] *See* Schock, *supra* note 37.

[112] *See supra* text accompanying notes 59-60.

applicants have been displaced, these individuals may not have had the opportunity, the resources, or the insight to seek mental health care or evaluations.[113]

Adjustment, too, is necessary in the qualifications of physicians involved in the immigration medical examination process.[114] Medical providers engaged in an immigration proceeding that involves a refugee, asylum seeker, or other noncitizen displaying trauma-related symptoms should be required to have psychiatric training or educational credentials related to trauma-informed care.[115] Because the purpose of these initial medical examinations is to identify health-related conditions that may render an applicant inadmissible to the United States,[116] the impact that this one examination may have on a displaced person's future is profound. This initial examination is critical in refugee and asylum cases and in cases in which applicant interviews or circumstances suggest the possibility of trauma. Accordingly, all medical professionals must be notified thereof, and these professionals should be required to have the training and credentials to qualify them to perform sensitive, effective evaluations.

In addition to changes to medical examination requirements associated with the United States' immigration process, changes also are necessary to the public charge exclusion process. Although currently not an issue for refugees and asylum seekers in immigration procedures in the United States,[117] an applicant's mental disability is one factor specifically identified as one that "reasonably tend[s] to show [an immigration official] that the burden of supporting the [applicant] is likely to be cast on the public . . . [,]" thus rendering that individual inadmissible to the United States under § 212(a)(4).[118] Rather than restricting access to mental health services, policymakers should consider expanding such access. This not only could alleviate health disparities and improve a displaced individual's ability to become a productive, self-sufficient member of society, it could improve long-term health and psychological benefits for applicants, their families, and their communities. Access to care during the process could also improve an applicant's testimonial capacity.

A more expansive view of access also would be helpful in the context of the financial guaranties utilized in the public charge exclusion process. Under § 213(A) of the INA, for example, immigration officials may admit a noncitizen who otherwise might be excludable as a public charge if that individual has the financial support of a sponsor or sponsors, as demonstrated in an affidavit of support.[119] Currently, only certain natural persons

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[113] 8 U.S.C. § 1158(b)(1)(B)(iii).

[114] *See supra* text accompanying notes 73–91.

[115] BECKMAN, *supra* note 108, at 10.

[116] *See* CDC Panel Physician Technical Instructions, *supra* note 77; *see also* CDC Civil Surgeon Technical Instructions, *supra* note 78. The examinations also are ostensibly done to identify and inform the applicant of conditions that may require follow-up care.

[117] 8 C.F.R. § 212.23 (2021), *invalidated by* 2021 Public Charge Vacatur, *supra* note 92.

[118] 1999 Public Charge Field Guidance, *supra* note 72, at 28,690.

[119] 8 U.S.C. § 1183(a). Affidavits of Support are required for most family-related applicants and those seeking entry based upon offers of employment. Shayak Sarkar, *Crediting Migrants*, 71 STAN.

may serve as sponsors, including relatives and, for employment-based immigrants, family members with at least a 5% ownership interest in the business that will employ the applicant.[120] Sponsors also must meet citizenship, residence, age, domicile, and income requirements. If unable to meet the minimum income requirements, a sponsor may enlist a joint sponsor or may demonstrate the availability of significant assets for the support of the applicant.[121] Noncitizens who have been excluded on public charge grounds also may be admitted if they are able to post a suitable bond.[122]

Allowing applicants more, yet equally effective, options for providing the necessary financial guarantees and incentives authorized in the public charge exclusion process could prove less stressful for applicants, streamline the immigration process, and provide fiscal sustainability for the various entities involved in immigration administration. For example, it should be manageable to allow nonresidents and those who are not domiciled in the United States to sponsor noncitizens, either solely or jointly, by pledging United-States-based assets under the right circumstances, at the sponsor's expense and with the designation of a U.S. agent. Further, although sponsors currently are statutorily defined as individual natural persons,[123] this requirement offers no real advantage over an expanded definition that could include governmental and private entities, both for-profit and non-profit, many of which are better and more consistently funded than the typical noncitizen sponsor. State or local governments; religious, mental health, and immigrant advocacy groups; and corporations and other entities all might be interested in providing financial guaranties for noncitizen applicants pursuant to the public charge exclusion process. Further, even if it is not possible to amend the statute, regulatory changes might enable public or private entities to indemnify individual sponsors or to act as sureties in the bond process.[124] The government should reactivate and redesign a bond process that provides adequate financial assurances yet does not create unnecessary procedural barriers to

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L. REV. ONLINE 281, 285 (2019).

[120] 8 U.S.C. § 1183(a)(1)(A); 8 U.S.C. § 1184; AUSTIN T. FRAGOMEN, JR. ET AL., IMMIGR. PROC. HANDBOOK § 19:27 (June 2021 Update).

[121] AUSTIN T. FRAGOMEN, JR. ET AL., IMMIGR. PROC. HANDBOOK § 19:28 (June 2021 Update).

[122] INA § 213; 8 U.S.C. § 1183; 8 C.F.R. § 103.6 (2021); 8 C.F.R. § 213.1 (2021). These regulations also were impacted by the Trump administration's changes to the public charge rule, which have since been withdrawn or vacated. *See supra* note 97. The option, however, does not appear to be used with any frequency; its requirements are out-of-date, even when considering the use of a surety or other intermediary: "All bonds and agreements covering cash deposits given as a condition of admission . . . shall be in the sum of not less than $1,000." 8 C.F.R. § 213 (2021).1. Indeed, the USCIS admitted in 2018 that it did not even have a process in place to regularly accept public charge bonds. Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51,114 (proposed Oct. 10, 2018).

[123] 8 U.S.C. § 1183(a)(1)(A); 8 U.S.C. § 1184.

[124] Similarly, one scholar asked why "a state [could not] provide funding to a third-party sponsor even when it itself cannot be one? Consider, for example, a state interested in supporting lower-income immigrant sponsors' efforts at family reunification. State funding could manifest as full or partial indemnification should a sponsor be ultimately brought to court by the alien or a third-party under the affidavit of support, or, alternatively, as preferential financing for sponsors. For public charge bonds, a state could subsidize surety bonds by financing the bond premiums." Sarkar, *supra* note 119, at 289–90.

entry.

Each of these financial mechanisms should be reviewed to make them more user-friendly for all involved parties: the sponsors, the applicants, and the government. At some point in the future, should a noncitizen become, or be at risk of becoming, a public charge, the process for seeking reimbursement or funding from a sponsor or surety also should be easy both to locate and to implement.[125]

The final set of proposals very broadly recommends that mental health services be offered to all noncitizens with trauma-related symptoms and that the governmental units in the United States that receive federal funding be required to provide treatment for all those applicants in need who are detained in immigration-related facilities. As is apparent in its approach to immigration-related medical evaluations, a heavy-handed and less-than-nuanced attitude to mental health care and medicine permeates the practices of the immigration-related services of the United States government. A more enlightened framework might improve outcomes for immigrant settlement and community integration, enhancing psychosocial effects and reducing costs. Mental health treatment obviously should be based upon each individual's situation, but, at a minimum, it should allow access to evaluations, individual and group counseling, and psychotropic medications.[126]

This author is not naïve as to the cost of such services, but there are advocacy organizations and medical and academic institutions that have stepped in to provide these services in some geographic locations, services that might be replicable elsewhere. Further, it might be possible to seek funding at a domestic and an international level to create an endowment mechanism dedicated to providing support, including mental health treatment, for displaced persons. Funding could be assessed from countries whose citizens have been displaced and from the nations that contributed to the conditions that resulted in their displacements. Funds could be proportionally distributed to provide social and other support services for the affected populations. This would go some way to alleviating the suffering of these often-unwilling migrants, to improving their circumstances, and perhaps to relieving some of the impacts related to their trauma.

CONCLUSION

There are persistent problems with psychosocial understanding and

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[125] An affidavit of support can be enforced by both the agency that provided benefits to a sponsored immigrant or by the sponsored immigrant directly. Data indicates that "sponsored immigrants have been the most active enforcers of affidavits of support, using litigation to enforce family support obligations." Sarkar, *supra* note 119, at 285–86 (citations omitted).

[126] Alyssa Campbell, *Due Process, Not Deportation, for the Immigration System's Hidden Population: Did the American Bar Association's Civil Immigration Standard Fall Short of Its Mission?*, 26 GEO. J. LEGAL ETHICS 581, 586 (2013).

support for displaced persons in the United States' immigration system. The United States is one of the Western nations that has used its immigration process to restrict the entry of displaced persons, a process that poses numerous barriers to traumatized individuals and, in many ways, may even exploit their vulnerability.

Those fleeing from conflict zones often continue to experience their trauma from persecution, torture, imprisonment, separation from family, and resettlement long after they have left their country of origin. A humane immigration system should not countenance the use of procedures in which trauma symptoms arising from the very conflicts that forced their migration are ignored, potentially impairing displaced persons' ability to effectively present their claims. Nor should it offer so little understanding of, support for, and treatment or management of their traumatic impairments. Those working with displaced individuals who are engaged with the United States' immigration system should fully take this community's experiences of that process into account. Reforms in existing immigration law and policies, as well as the expansion of existing legal tools, may provide a path for removing at least some of the barriers that trauma-impacted populations, including refugees and asylum seekers, confront when seeking entry to the United States.