

No. 26-43

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

L [REDACTED] T [REDACTED],

Petitioner,

v.

TODD BLANCHE, ACTING UNITED STATES ATTORNEY GENERAL,

Respondent.

ON PETITION FOR REVIEW FROM THE BOARD OF IMMIGRATION
APPEALS

**BRIEF OF *AMICUS CURIAE* HUMAN RIGHTS FIRST
IN SUPPORT OF PETITIONER**

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Amicus Curiae Human Rights First hereby certifies that it is a non-profit organization, with no parent company and no publicly traded stock.

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IDENTITY AND INTEREST OF *AMICUS CURIAE*¹

Human Rights First is a non-governmental organization established in 1978 that advocates for human rights globally and U.S. compliance domestically with this country's human rights commitments. Human Rights First provides pro bono legal representation to refugees, working in partnership with volunteer lawyers at leading law firms to represent without charge asylum applicants unable to afford counsel. Human Rights First has conducted research, issued reports, and provided recommendations to the United States government regarding compliance with its legal obligations under international law, including, as most relevant to this case, under the 1951 Refugee Convention and its 1967 Protocol. Human Rights First is co-counsel in ongoing litigation challenging the Department of Homeland Security's current policy and practice removing persons with final order of removal—including refugees granted withholding of removal—to third countries, *see generally D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 1:25-cv-10676-BEM (D. Mass.) (prelim. inj. Apr. 18, 2025), *stay granted, Dep't of Homeland Sec. v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025), and is also actively involved in monitoring and documenting such

¹ No party's counsel authored this brief in whole or in part. No party or party's counsel made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae or their counsel made such a monetary contribution. All parties have either consented to the filing of this brief, or taken no position on the filing of this brief.

removals and the bilateral agreements that make them possible. Based on this work, Human Rights First is aware that asylum seekers who are found to meet the refugee definition but are either denied all protection, or granted only withholding of removal, because they are found to be firmly resettled in a country where they do not in fact have permanent resident rights and security, are at risk of removal to the country where they fear persecution and/or to third countries where they also face violations of their rights, including onward return to their country of persecution. Human Rights First thus has an interest in ensuring that the firm resettlement bar is interpreted consistently with the refugee protection obligations of the United States.

INTRODUCTION

The firm resettlement bar was designed for a narrow purpose: to exclude from asylum protection only those who have secured stable, durable protection in another country—protection equivalent to the rights and obligations of nationality. It was never intended to bar asylum seekers holding precarious, contingent, or temporary permissions to remain in a third country.

The precedential decision of the Board of Immigration Appeals (BIA or Board) in the present case, *Matter of L-T-A-*, 29 I&N Dec. 362 (BIA 2025), Administrative Record (AR) 6-13, departs significantly from this settled understanding and, in doing so, creates an overbroad rule that transforms the exception into a sweeping restriction that undermines the statutory protection of asylum itself. *Amicus* respectfully submits this brief to demonstrate how the Board's holding is at odds with the original intent and historical application of the firm resettlement bar under the 1951 Refugee Convention and U.S. law, and the consequences thereof. The practical realities of temporary protection schemes under U.S. immigration law, and around the world, demonstrate the dangerous and unworkable nature of the Board's standard, which—if allowed to stand—creates a categorical approach that excludes individuals from the protection of safe refuge and *non-refoulement* that the United States has obligated itself to guarantee.

ARGUMENT

I. THE LEGAL ORIGINS OF THE FIRM RESETTLEMENT BAR CONFIRM THAT IT APPLIES ONLY TO REFUGEES WHO HAVE ALREADY SECURED DURABLE, NATIONALITY-EQUIVALENT PROTECTION IN ANOTHER COUNTRY.

The Board, in its precedential decision in the present case, seeks to reframe firm resettlement—a statutory bar to eligibility for asylum in the United States—to include permitted presence for an indefinite, but not permanent and still precarious, duration. In doing so, the Board breaks from the purpose and intent of the firm resettlement bar, which originated in the 1951 Refugee Convention and the 1967 Protocol on the Status of Refugees and was incorporated into U.S. law following Congress’ enactment of the Refugee Act of 1980, and which requires a finding that the applicant has already obtained durable, nationality-equivalent protection in another country.

A. The Firm Resettlement Bar Must Be Interpreted Consistent with Article 1E of the Refugee Convention Which Provides a Narrow Exclusion for People Who Already Possess Nationality-Equivalent Protection.

The firm resettlement bar originated from Article 1E of the 1951 Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137 [hereinafter Refugee Convention]. Although not a party to the Refugee Convention, the United States acceded to the Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 [hereinafter 1967 Protocol], which eliminated temporal and geographic limitations in Article 1 and incorporated Articles 2 through

34 by reference. Congress then passed the Refugee Act of 1980, Pub. L. No. 96-212, § 101(b), 94 Stat. 102, bringing domestic law into conformity with these obligations and adopting a refugee definition closely tracking the Convention and Protocol. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 436–37 (1987). Article 1E provides that the Convention “shall not 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.” Refugee Convention art. 1E.

Article 1E’s object and purpose is to exclude only those persons who do not require refugee protection because they already enjoy a status that corresponds, with limited exceptions, to that of nationals. And a “strict test is ... called for” before the exclusion may be applied. U.N. High Comm’r for Refugees, *Note on the Interpretation of Article 1E of the 1951 Convention Relating to the Status of Refugees* ¶¶ 1–2 (Mar. 2009), <https://www.refworld.org/policy/legalguidance/unhcr/2009/en/66462> [hereinafter UNHCR Article 1E Note].

The Convention’s drafting history confirms Article 1E’s narrow function. UNHCR notes that Article 1E was included principally with refugees of German extraction in mind who, upon arrival in the Federal Republic of Germany, were recognized as possessing rights and obligations attaching to German nationality; it was later applied to refugees of Turkish origin from Bulgaria who entered Turkey

and normally received naturalization within one year. UNHCR Article 1E Note, *supra*, ¶ 3. These examples demonstrate the exclusion's intent: the persons in question were assimilated into the country of protection, and the offer of protection carried with it the right to nationality or its equivalent.

Article 1E also requires security of status as a resident that includes the rights to return, re-enter, and remain in the country concerned, with the same rights as nationals. UNHCR Article 1E Note, *supra*, ¶¶ 9–16. The status label itself is not dispositive and must be assessed on an individualized basis. The inquiry turns on the rights attached to the person's status in the individual case, including whether the person enjoys, with only minor divergences, the civil, political, economic, social, and cultural rights and obligations of nationals. *Id.*, ¶¶ 11–16.

Most importantly for the firm-resettlement inquiry, the person must, like a national, be fully protected against deportation or expulsion. UNHCR Handbook ¶ 145; UNHCR Article 1E Note, *supra*, ¶¶ 14, 20. That requirement links Article 1E directly to the Refugee Convention's non-refoulement guarantee: a person cannot be excluded as already protected elsewhere if that status leaves her exposed to removal, expulsion, or onward return to persecution. Refugee Convention, *supra*, art. 33. Accordingly, adjudicators must assess any claimed fear of persecution or serious harm in the country of alleged firm resettlement and must avoid returning—directly

or indirectly—anyone who otherwise meets the definition of a refugee to their country of nationality. UNHCR Article 1E Note, *supra*, ¶¶ 17–20. *See* Sec. III, *infra*.

B. The Firm Resettlement Exclusion Developed in U.S. Law Consistent with International Refugee Law.

Following the Refugee Act of 1980, the firm resettlement bar under U.S. asylum and immigration law developed consistent with the narrow constrictions of Article 1E, which was designed as a narrow protection-completeness rule, not as a device for denying refugee protection based on partial, precarious, or contingent permission to remain elsewhere. It began as a safe-refuge concept which was among the discretionary factors for an adjudicator to consider before it became a mandatory bar, whereby the concept of firm resettlement was tied to a durable offer of permanent protection. Specifically, the first post-Refugee Act regulations allowed discretionary denial where there was an outstanding offer of resettlement in a third nation, and defined a person as “firmly resettled” only if “offered resident status, citizenship, or some other type of permanent resettlement by another nation.” 8 C.F.R. §§ 208.8(f)(1), 208.14 (1981). Even when a formal offer existed, the applicant was not treated as firmly resettled if her residence was so substantially and consciously restricted that she was not in fact resettled, with adjudicators directed to consider housing, employment, property, travel documentation, education, public relief, naturalization, and other rights available to residents. *Id.*

In 1990, the then-Immigration and Naturalization Service (INS) amended the regulations to make firm resettlement mandatory grounds for denial of asylum. 8 C.F.R. § 208.14(c)(2) (1991); 55 Fed. Reg. 30,674, 30,678 (July 27, 1990). Congress later codified firm resettlement as a statutory asylum bar in IIRIRA. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, § 604, 110 Stat. 3009-546, 3009-690; 8 U.S.C. § 1158(b)(2)(A)(vi).

But that change did not alter the substantive touchstone. The operative regulations still ask whether the person entered another country with, or received there, “an offer of permanent resident status, citizenship, or some other type of permanent resettlement,” subject to exceptions for necessary transit onwards, and substantially restricted residence. 8 C.F.R. § 1208.15.² Permanence remains a central element of the bar, not a gloss that can be replaced with generalized permission to remain.

The Board’s own precedent has construed the firm resettlement bar consistently with its narrow international law origins. In *Matter of A-G-G-*, 25 I&N Dec. 486 (BIA 2011), the Board provides the historical context for the firm resettlement bar, citing explicitly to art.1E of the Refugee Convention, *id.*, 489-90,

² The most recent version of some immigration regulations are enjoined by federal litigation. Unless an earlier publication date is specified, citations to 8 C.F.R. § 1208.15 are to the 2020 version, which is currently in effect. See https://nipnlg.org/sites/default/files/2025-03/EOIR_reg-chart.pdf. Note also there are parallel asylum regulations at 8 C.F.R. §§ 208 and 1208.

before establishing a four-step burden-shifting framework that places the initial burden on the Department of Homeland Security to present prima facie evidence of an offer of firm resettlement through direct evidence, such as “a grant of asylum, residence permit, [or] travel documents indicating the permanence of a person's status,” or, where unavailable, through indirect evidence rising to “a sufficient level of clarity and force.” *Id.*, 501-03. The Board thereby recognized, and subsequent jurisprudence has affirmed, that the bar applies only where evidence exists that the government of a third country has made a genuine, concrete offer of permanent protection that enables the individual to remain indefinitely with the security of legal status, consistent with UNHCR guidance. Temporary status—even where such status may be indefinite in duration—is not contemplated.

II. APPLICATION OF THE FIRM RESETTLEMENT BAR REQUIRES AN INDIVIDUALIZED ASSESSMENT OF WHETHER THE APPLICANT HAS NOT ONLY INDEFINITE, BUT ALSO SECURE, EFFECTIVE, AND DURABLE PROTECTION IN THE THIRD COUNTRY.

As discussed *supra* Sec. I, application of the firm resettlement bar under 8 U.S.C. § 1158(b)(2)(A)(vi)—when read consistent with U.S. obligations under the 1967 Protocol and, by extension, the Refugee Convention—requires an assessment of whether an asylum seeker has been offered or received permanence of resettlement, with the same legal rights and obligations of a national of the asserted country of firm resettlement. The Board’s equation of the right to indefinite stay with permanent resettlement is erroneous. Expanding the scope of “firm resettlement”

beyond its intended limits, as the Board has done in the present case, risks creating a *de facto* exclusion regime that works contrary to the protection regime created by the drafters of the Refugee Convention and adopted by Congress through its passage of the 1980 Refugee Act. In doing so, it unduly exposes refugees to the dangers of prohibited refoulement, both directly and through chain, or indirect, *refoulement*, discussed *infra*, Sec. III.

The Board's decision in this case dramatically expands the firm resettlement bar by deeming Petitioner T [REDACTED] "firmly resettled" based on a finding that she possessed a "legal right to enter, live, work, and own property indefinitely" in India under the India-Nepal Treaty. The Board's equation of a general, categorical permission to enter, reside, and work in a country, with an offer of "enduring legal status" implicating the firm resettlement bar, AR10-11, extends the firm resettlement bar beyond its intent, in a way incompatible with the system of refugee protection under both international and domestic law.

While the India-Nepal Treaty, upon which the Board primarily relies,³ provides that the "Governments of India and Nepal agree to grant, on a reciprocal basis, to the nationals of one country in the territories o[f] the other the same privileges in the matter of residence, ownership of property, participation in trade

³ The Board also cites to reports from a BBC article of 2008, referenced in a 2008 document from the Research Directorate of the Immigration and Refugee Board of Canada. AR9.

and commerce, movement and other privileges of a similar nature”, AR9, there is nothing in the provisions cited by the Board or the Immigration Judge that speaks to any specific legal status offered under the Treaty, nor the permanency of said status available to individuals under the Treaty. Indeed, the Board concedes the lack of an explicit offer of affirmative legal status granted to Ms. T [REDACTED] on a permanent basis and finds instead that she “*was not considered in unlawful status* while living and working in India and could continue to legally live and work there indefinitely,” AR10 (emphasis added).

While 8 C.F.R. § 1208.15(a)(1)(ii) (2020), the legal authority upon which the Board relies, provides that an asylum seeker may be deemed “firmly resettled” if that asylum seeker has resided in a country “with any non-permanent but indefinitely renewable legal immigration status (including asylee, refugee, or similar status but excluding status such as of a tourist),” it retains the requirement of ongoing, permanent protection in the form of a meaningful legal status. Of note, the examples of legal statuses provided in the regulation are explicit protection-based statuses implicating a country’s obligations under the Refugee Convention, statuses that often lead to permanent residence—and, in the case of the United States, citizenship. Instead, the Board conflates temporary or contingent permission to stay and work, albeit for an indefinite period, with actual legal status provided to an individual as a genuine permanent protection.

Permission to reside, work, and even own property in a country is not the equivalent of “permanent legal immigration status,” nor even is it the equivalent of “non-permanent but indefinitely renewable legal immigration status (including asylee, refugee, or similar status...),” as allowed pursuant to 8 C.F.R. § 1208.15(a)(1). And it is certainly not the functional equivalent of permanent protection, as required for application of the Refugee Convention, art. 1E.

The Board makes no findings that the permissive status afforded Nepali nationals in India resulted in an offer of permanent status to Ms. T [REDACTED] with the same “rights and obligations” as nationals of India. Nor is there any discussion or finding as to whether the permissions afforded through the Treaty provide permanent protection against deportation or expulsion, akin to that afforded to nationals, consistent with UNHCR’s interpretation of permitted exclusions under 1E. UNHCR Handbook, *supra*, ¶ 145. Instead, the Board relies on India’s agreement, under the India-Nepal Treaty, to grant reciprocal permission to nationals of Nepal, to live and work in India, as Ms. T [REDACTED] has done. The Board ignores the lack of any individualized rights and obligations—consistent with those rights and obligations afforded to nationals of India in India—conferred by the government of India to Ms. Thapa. The Board further ignores the possibility that any variation or modification to the India-Nepal Treaty, or direct efforts to remove Ms. T [REDACTED] independent of, or

even in adherence with, the Treaty provisions could result in Ms. T [REDACTED]'s removal or expulsion from India back to Nepal.

The Board's equation of indefinite permission to reside and work in a country with firm resettlement is not only erroneous but incompatible with the purpose of the firm resettlement bar, which is intended to be applied only in cases where it is clearly established that an *individual* has secured stable and durable protection in another country. UNHCR defines resettlement as "the transfer of refugees from a State in which they have sought protection to a third State that has agreed to admit them with permanent residence status." *See e.g.* UNHCR, Resettlement Handbook at 3 (2011), available at <https://www.refworld.org/docid/4ecb973c2.html>. In determining whether the legal status afforded satisfies the requirements for triggering Art. 1E exclusion from the Refugee Convention, the origins of the firm resettlement bar under U.S. law, UNHCR notes: "The status envisaged in Article 1E should normally only be temporary, followed by formal acquisition of nationality of the country concerned. The longer the period required for acquisition of nationality, the larger the assimilation to the rights of the nationals should be." *See* UNHCR, Note on Art. 1E, ¶ 15. U.S. asylum law—whereby persons granted asylum are then afforded the right to apply for legal permanent resident status, and ultimately citizenship—is consistent with this guidance. The Board's equation of an indefinite, but still temporary permission to live, work, and own property in a country—in that

the right can be taken away at any time by either country to the Treaty—turns the requirements on their head.

III. THE BOARD’S INTERPRETATION OF THE FIRM RESETTLEMENT BAR FAILS TO ENSURE MEANINGFUL PROTECTION, PLACING ASYLUM SEEKERS AT RISK OF CHAIN- OR INDIRECT-*REFOULEMENT*.

Consistent with its obligations under the 1967 Protocol—and, by reference, the Refugee Convention—the United States may exclude from protection persons otherwise meeting the definition of a refugee under the firm resettlement bar, only after determining that the person it seeks to exclude has received or has an offer of a protection status from another country. In order for that offer of status to meet the protection standards, it must carry with it the same right and obligations afforded a national of that country, *see supra*, Sec. I. These parameters serve as necessary guardrails to ensure that persons are protected against return to a country where it is likely they will face persecution on account of a protected category, or torture, through either direct or chain *refoulement*.

With its precedential decision issued in this case, the Board has removed those guardrails and has set forth a framework for assessing firm resettlement that jeopardizes individuals who are in a status of protracted displacement from their home country, with limited and precarious immigration statuses and permissions. Beyond the specifics of T■■■■’s case, the criteria and standard created by the Board should be limited because the Board’s logic extends to a vast range of temporary

statuses that bear no resemblance to genuine permanent resettlement, as illustrated in the examples below.

A. An Overbroad Application of the Firm Resettlement Bar Unduly Subjects Persons to Family Separation, and the Risk of Prohibited *Refoulement*—Both Direct and Indirect.

Asylum seekers who are denied asylum based on the firm resettlement bar, may be granted withholding of removal under 8 U.S.C. § 1231(b)(3) if they can show that persecution would be more likely than not. They may also qualify for withholding of removal under the Convention Against Torture if they can show the same likelihood of torture under 8 C.F.R. §§ 1208.16–1208.18. Unlike asylum, however, withholding does not create a path towards legal permanent resident status and ultimate citizenship, it does not allow for travel outside the United States, and it does not provide any opportunity to apply for immediate family members to join under derivative status. *See* Circumvention of Lawful Pathways, 88 Fed. Reg. 31,314 (May 16, 2023) (preamble noting that, unlike asylum, family members are not eligible for derivative grants of withholding or CAT)⁴; Asylum (derivatives):

Asylum, Wex, Legal Info. Inst., Cornell L.

⁴ The section of the preamble to the regulation cited discusses existing law and not the underlying Circumvention of Lawful Pathways rule contained in the regulations themselves which were recently vacated. *See E. Bay Sanctuary Covenant v. Biden*, 683 F. Supp. 3d 1025 (N.D. Cal. 2023), *stayed pending appeal*, No. 23-16032 (9th Cir. Aug. 3, 2023), *vacated and remanded sub nom. E. Bay Sanctuary Covenant v. Trump*, No. 23-16032 (9th Cir. Apr. 10, 2025), *vacatur reaffirmed on remand*, No. 4:18-cv-06810-JST (N.D. Cal. May 7, 2026).

Sch., <https://www.law.cornell.edu/wex/asylum> (last visited May 21, 2026). Furthermore, to establish eligibility for withholding of removal, the applicant must meet a higher threshold burden of proof, demonstrating it is more likely than not that she will face future persecution on account of one of the protected categories under the refugee definition. 8 C.F.R. § 1208.16(b). Importantly for this discussion, a grant of withholding follows from the issuance of an order of removal, which carries with it the risk of prolonged detention⁵, and provides no guarantee that the individual granted withholding ultimately will not be removed to a country other than the country or countries from which withholding of removal was granted.

Withholding of removal grantees may work legally with a work permit, and historically, they were typically allowed to remain in the United States, for decades in some cases. But as recent history has demonstrated, withholding is not a durable protection status. Instead, it is a precarious status that does not necessarily guard against the harm of refoulement it was designed to prevent. Refugees International and Human Rights First have been monitoring third country removals of individuals who have been granted Withholding of Removal or relief under the Convention

⁵ For example, the highly publicized case of Kilmar Abrego Garcia, involves a man who was granted withholding of removal to El Salvador, but the United States government wrongfully removed him to El Salvador, then detained him, and has continued to pursue removal to numerous third countries. See Alan Feuer, *Abrego Garcia Is Released From ICE Detention After Judge's Order*, THE NEW YORK TIMES, (Dec. 11, 2025), <https://www.nytimes.com/2025/12/11/us/politics/abrego-garcia-released.html?searchResultPosition=1>.

Against Torture. Refugees International and Human Rights First, “Banished by Bargain: Third Country Deportation Watch,” <https://www.thirdcountrydeportationwatch.org/> [hereinafter, RI and HRF, Third Country Deportation Watch]. To date, they have documented over a dozen agreements allowing for removal of individuals from the United States with final orders of removal to third countries, including those who have been granted orders of withholding, as well as the stories of some of those removed who are at risk of chain refoulement or have already been subjected to ongoing refoulement.⁶

The reported stories of individuals forcibly sent to Ghana only to be subjected to chain refoulement to their home countries despite orders of withholding of removal from U.S. immigration judges are illustrative of the precarity of protection afforded by such a grant. They include the story of a nurse, the mother and grandmother to U.S. citizens, who came to the United States as a refugee having fled persecution in her native Sierra Leone more than thirty years ago, who was sent without notice to Ghana, and then forcibly returned to Sierra Leone, despite an order

⁶ The RI and HRF Third Country Deportation Watch site contains links Stories, RI and HRF, Third Country Deportation Watch – Stories, <https://www.thirdcountrydeportationwatch.org/stories>, as well as a tracker for updated information on Third Country and Asylum Cooperative Agreements, notes specific to each country agreement, and information on reported removals, RI and HRF, Third Country Deportation Watch, Tracker Chart (updated May 5, 2026), <https://docs.google.com/spreadsheets/d/1ELPQrSxLGJp2ea9CX9UyLI7Hrm--pulkygLDwfU91o8/edit?gid=0#gid=0>.

of withholding to that country. *See*, RI and HRF, Third Country Deportation Watch: Ghana, <https://www.thirdcountrydeportationwatch.org/ghana>. *See also*, Robbie Corey-Boulet & Emmanuel Bruce, *Ghana Took in Trump's Deported West Africans. Then It Forced Them Home*, REUTERS (Jan. 16, 2026) (updated Jan. 17, 2026), <https://www.reuters.com/world/africa/ghana-took-trumps-deported-west-africans-then-it-forced-them-home-2026-01-16/>; Adam Mahoney, *Deportee Attempts Suicide as U.S.–Ghana Transfer Deal Unravels*, IN THESE TIMES (Nov. 18, 2025), <https://inthesetimes.com/article/west-african-attempts-suicide-deportation-immigration-trump-ghana-migrants>.

Similar experiences of persons forcibly removed to third countries where they confront detention, danger, and the very real risk of refoulement further demonstrate the risk of chain- or indirect refoulement which accompany indefinite but insecure and impermanent offers of protection, such as withholding of removal. In practice, persons granted withholding of removal in the United States are currently at risk of chain refoulement to the country from which the United States previously granted them protection, as well as to a range of other violations of their human rights in the process and as a result of their removal to third countries with which they have no connection. *See, e.g.*, Julia Ingram, *South American Man Facing ICE Deportation to the Congo Says He Feels “Like a Person Who Has No Value”*, CBS NEWS (May 1, 2026), <https://www.cbsnews.com/news/south-american-man-ice-deportation->

[congo/](https://www.abc7.com/post/us-immigration-news-donald-trump-administration-deports-gay-woman-fled-morocco-cameroon-where-homosexuality-is-illegal/18634877/); Monika Pronczuk, *U.S. Deported Gay Asylum-Seeker to Third Country Where Homosexuality Is Illegal*, ABC7 (Feb. 22, 2026), <https://www.abc7.com/post/us-immigration-news-donald-trump-administration-deports-gay-woman-fled-morocco-cameroon-where-homosexuality-is-illegal/18634877/>.

As the examples above illustrate, the Board’s sweeping exclusion of persons deemed “firmly resettled,” and excluded from the more durable protection of asylum, creates a heightened risk of prohibited “chain” refoulement whereby persons granted withholding may find themselves subject to removal to third countries “where protection against non-refoulement is not ensured, or to countries which may refuse entry, and which may refoule such persons to the country where they fear persecution.” U.N. High Comm’r for Refugees, *European Series: An Overview of Protection Issues in Europe: Legislative Trends and Positions Taken by UNHCR* 93, 96 (1995). When the Board’s standard divorces the analysis from whether an applicant has genuine, durable protection, it transforms the bar from a tool of proper allocation into a tool of exclusion that directly jeopardizes the guarantee of the right to non-refoulement, to which the United States is obligated.

Article 33(1) of the Refugee Convention prohibits any Contracting State from expelling or returning a refugee “to the frontiers of territories where his life or freedom would be threatened” on account of a protected ground. Refugee

Convention art. 33(1). The Convention Against Torture likewise prohibits return to a state where there are substantial grounds for believing the person would face torture. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 3(1), Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter CAT]. Congress codified this obligation in 1998. Foreign Affairs Reform and Restructuring Act, Pub. L. No. 105-277, § 2242, 112 Stat. 2681-822 (codified as note to 8 U.S.C. § 1231).⁷

The United States’ *non-refoulement* obligation extends beyond direct refoulement to encompass indirect or “chain” *refoulement*—the transfer of a refugee

⁷ Article 22(8) of the American Convention on Human Rights also firmly prohibits *refoulement*: “In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinion.” Organization of American States, American Convention on Human Rights art. 22(8), Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter ACHR]. The right to *non-refoulement* within the Americas has recently been reinforced in Principle 6 of the *Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking*. Organization of American States Inter-American Commission on Human Rights, *Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking*, Res. 04/19 (Dec. 7, 2019) [hereinafter Inter-American Principles]. Member States of the African Union have adopted a similar *non-refoulement* provision: “No person shall be subjected ... to measures such as rejection at the frontier, return or expulsion, which would compel him to return ... to ... a territory where his life, physical integrity or liberty would be threatened.” Organization of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa (“OAU Convention”) art II.3, 10 September 1969, 1001 U.N.T.S. 45.

to a third country that may itself fail to ensure *non-refoulement* protections, or that may refuse entry and further *refoule* the individual to the country where they fear persecution.

The duty not to *refoule* is ... recognized as applying to refugees irrespective of their formal recognition, *thus obviously including asylum seekers whose status has not yet been determined*. It encompasses *any measure attributable to a State which could have the effect of returning an asylum-seeker or refugee to the frontiers of territories where his or her life or freedom would be threatened, or where he or she would risk persecution. This includes ... indirect refoulement*.

U.N. High Comm’r for Refugees, *Note on International Protection*, U.N. Doc. A/AC.96/951, ¶ 16 (Sept. 13, 2001) (emphasis added). *See also* U.N. High Comm’r for Refugees, *An Overview of Protection Issues in Europe: Legislative Trends and Positions Taken by UNHCR*, European Series, vol. 1, no. 3, at 96 (1995) (“A state that sends an asylum-seeker or a refugee to a place from which s/he may be sent onward to face persecution, acts in breach of the principle of non-refoulement.”); ICRC, *Note on Migration and the Principle of Non-Refoulement*, 99 Int’l Rev. Red Cross 345, 349 (2018); *Hirsi Jamaa v. Italy*, App. No. 27765/09, Eur. Ct. H.R., ¶¶ 23, 147 (Feb. 23, 2012).

The United States’ ability to exclude persons from the protection must be circumscribed in a manner that guards against both direct and indirect or “chain” *refoulement*, consistent with permitted exclusions under the Refugee Convention. The Board’s unprecedented expansion of the firm resettlement bar subjects not just

T■■■■, but an extraordinary number of individuals, to third country removal whereby they are being placed at a significant risk of “chain” refoulement.

B. Temporary and Contingent Statuses Implicated by the Board’s Decision Demonstrate the Potential Scope of Its Impact and the Large Categories of Individuals Who Could Be Deprived of Lawful Protection.

Temporary statuses under U.S. immigration law that could form the basis for a finding of firm resettlement under the Board’s decision in this case if offered to an asylum applicant in another country demonstrate the untenable results of the Board’s expansive standard. The following are examples of such statuses.

i. Implicated Temporary Statuses or Permissions to Live and Work Under U.S. Law

Temporary Protected Status (TPS). TPS allows eligible nationals of designated countries to live and work in the United States for a limited period due to conditions in their home countries. *See* 8 U.S.C. § 1254a(a)(1). TPS is renewable and may last for decades, but it confers neither permanent resident status nor a path to citizenship. 8 U.S.C. § 1254a(b)(2), (b)(3)(C). Indeed, the statute expressly provides that a TPS holder “shall not be considered to be permanently residing in the United States under color of law.” *Id.* § 1254a(f)(1). The Secretary of Homeland Security may terminate a country’s designation at any time conditions warranting it no longer exist. *Id.* § 1254a(b)(3)(B).

Under the Board’s logic in this case, a TPS holder’s indefinite right to remain could be characterized as “firm resettlement.” But current efforts to terminate TPS designations and deport individuals who currently hold TPS demonstrate the fallacy of that notion. Since returning to office, the Trump administration has moved to terminate TPS designations for all thirteen countries whose designations came up for review, affecting more than one million people. *See* Josh Gerstein, *Immigrants with temporary legal status could score slim win at Supreme Court*, POLITICO (Apr. 29, 2026), <https://www.politico.com/news/2026/04/29/temporary-protected-status-immigrants-protections-supreme-court-00898947>. Pending litigation demonstrates the precarity of status offered, and the risks individuals and their family members would face if alternative pathways for protection were eliminated.

- **Venezuela:** The Supreme Court twice stayed injunctions blocking TPS termination for approximately 300,000 Venezuelan nationals, allowing deportations to proceed even as the merits remain unresolved. *Noem v. Nat’l TPS All.*, 145 S. Ct. 2728 (2025); 146 S. Ct. 23 (2025); *see* Jackson, J., dissenting, 146 S. Ct. at 24–25.
- **Haiti:** DHS terminated Haiti’s TPS designation—in place since 2010—affecting roughly 353,000 nationals. A district court enjoined the termination, finding racial animus substantially likely, and the Supreme Court granted certiorari before judgment. *Miot v. Trump*, 2026 WL 266413, at *28–30

(D.D.C. Feb. 2, 2026); *Trump v. Miot*, No. 25-1084, Order (U.S. Mar. 16, 2026).

- **Syria:** DHS terminated Syria’s TPS designation—in place since 2012—and a district court blocked the action, noting that Noem had sought to end TPS “for virtually every country that has come up for consideration.” *Doe v. Noem*, No. 25-cv-10133 (S.D.N.Y. Nov. 19, 2025); *Mullin v. Doe*, No. 25-1083, Order (U.S. Mar. 16, 2026).
- **Other countries:** Federal courts have stayed or vacated TPS terminations for Burma, South Sudan, Ethiopia, Somalia, Honduras, Nepal, and Nicaragua. *See* Application for Stay at 2–3, *Trump v. Miot*, No. 25A999 (U.S. Mar. 11, 2026); CUSP, *TPS Litigation Updates*, <https://www.wearecusp.org/campaigns/tps-litigation-updates/>.

Deferred Action for Childhood Arrivals (DACA). Likewise, individuals who came to the United States as children and have been granted the right to work, to travel with advance permission, and reside in the United States without accruing unlawful status, are nonetheless not in lawful status and have no path to permanent status. In fact, the Board recently held that it was error for an immigration judge to terminate removal proceedings against a DACA recipient based on DHS’s argument that “deferred action does not confer any right or entitlement to remain in or reenter

the United States and does not prohibit DHS from moving forward with removal proceedings.” See *Matter of Santiago-Santiago*, 29 I&N Dec. 589 (BIA 2026).

ii. Temporary Statuses Afforded in Other Countries

The impracticability of the Board’s standard is equally apparent when examining temporary protection schemes in other countries that provide the same facially available rights but fall far short of offering the durable protection mandated by the firm resettlement bar.

Temporary Humanitarian Visa Status for Individuals Returned to Mexico under the Migration Protection Protocols (MPP). Individuals returned to Mexico under MPP were eligible for temporary humanitarian visas (Tarjetas de Visitante por Razones Humanitarias) authorizing them to live and work in Mexico pending U.S. proceedings. See 8 U.S.C. § 1225(b)(2)(C); Ley de Migración, Arts. 52(V), 74 (D.O.F. 2011). The status was neither durable nor protective: Human Rights First documented at least 1,544 cases of murder, rape, kidnapping, and assault against MPP returnees; only 7.5% secured legal representation; and barely 1% of completed cases resulted in relief. Human Rights First, *Delivered to Danger* (Feb. 2021), <https://humanrightsfirst.org/library/delivered-to-danger-illegal-remain-in-mexico-policy-imperils-asylum-seekers-lives-and-denies-due-process/>. The program’s entire premise was to allow asylum seekers temporary presence in Mexico pending U.S. proceedings, see *Biden v. Texas*, 597 U.S. 785, 793–94 (2022),

yet individuals granted such visas in Mexico would potentially be captured within the Board's framework, effectively denying asylum to the very persons the program was designed to protect.

Haitians residing in Brazil. More than 100,000 Haitians received humanitarian visas after the 2010 earthquake, later converted into renewable residence permits. *See* Lei n° 13.445, Arts. 30–31 (Braz.). Those permits were automatically revoked after two years' absence, Decreto n° 9.199, Art. 135(III) (Braz.), and Brazil revoked the Haitian-specific program entirely on January 1, 2026. The Ninth Circuit rejected arguments that the Brazilian visa evidenced firm resettlement. *See Sylvestre v. Garland*, No. 20-71316, 2021 WL 2453043, at *1 (9th Cir. June 9, 2021) (vacating *Matter of K-S-E-*, 27 I&N Dec. 818 (BIA 2020)).

Protracted displacement in border countries. Sixty-seven percent of the world's refugees are hosted in neighboring countries, overwhelmingly in low- and middle-income nations with limited capacity to guarantee durable rights. UNHCR, *Global Trends Report 2024*, at 2 (2025). Their presence is precarious, subject to periodic crackdowns, and accompanied by restrictions on movement, employment, and services. *See* Center for Global Development, *Asylum Access & Refugees International, 2022 Global Refugee Work Rights Report*, at 5–8. Pakistan's ongoing mass expulsion of Afghan refugees—more than 1.5 million forcibly returned since 2023, many holding Proof of Registration cards or Afghan Citizen Cards that

nominally authorized their stay—illustrates the point. *See* Amnesty Int’l, *Pakistan: Government Must Stop Ignoring Global Calls to Halt Unlawful Deportation of Afghan Refugees* (Apr. 2024); FIDH et al., *Afghanistan/Iran/Pakistan: Mass Refoulement of Afghan Refugees* (July 23, 2025). The revocation of that permission and expulsion to Afghanistan reveals the absence of durable protection in what had been an indefinitely renewable permissive status—precisely the type encompassed by the Board’s decision in this case.

The above examples illustrate situations in which individuals possess either some form of permission—based on an individualized or a categorical status—to live and work in a third country, yet clearly do not enjoy the durable, nationality-equivalent protection that the firm resettlement bar was designed to identify. Application of the firm resettlement bar in these circumstances would invert its purpose by denying asylum precisely where meaningful refuge has not yet been found.

CONCLUSION

The firm resettlement bar, properly understood within the framework of the Refugee Convention, the 1967 Protocol, and the Refugee Act of 1980, applies only where an individual has secured genuine, durable protection equivalent to nationality in a third country. The Board’s expansion of this bar to encompass indefinite but non-permanent permissions to remain contravenes the United States’ international

obligations, departs from the historical understanding of the doctrine, and creates an impracticable standard that will erroneously deny protection to refugees who remain in genuine need of asylum.

For the foregoing reasons, *Amicus* respectfully urges this Court to reverse the Board's decision.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) because it contains 6,272 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).
2. This brief complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it has been prepared in a proportionally spaced Times New Roman typeface using Microsoft Word, in 14-point size.

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CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2026, the foregoing was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Second Circuit using the appellate ACMS system. All participants in the case are registered ACMS users and will be served by the system.

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