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“Heal Thyself.” —An Argument for Granting Asylum to Healthcare Workers Persecuted During the 2014 West African Ebola Crisis

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“HEAL THYSELF.”*—AN ARGUMENT FOR GRANTING ASYLUM TO HEALTHCARE WORKERS PERSECUTED DURING THE 2014 WEST AFRICAN EBOLA CRISIS

Bethany Echols**

ABSTRACT

This article argues for a change in United States asylum policy at a time when change is needed most. Those seeking asylum must prove that they fear persecution in their home country based on one of five protected categories and that their government is the persecutor or is unable to control the actions of the persecutors. Multiple articles have recognized that the “particular social group” is the most difficult category of asylum seeker to analyze. Not only do the standards for particular social groups (PSGs) vary among circuit courts, but judicial consistency is lacking.

This article focuses on a particular PSG, healthcare workers from recently Ebola-stricken West Africa. During the 2014 Ebola crisis, these healthcare workers faced discrimination and violence due to their association with western medicine. Hospitals were frequently threatened and ransacked. Multiple accounts of violence against local and international healthcare workers were recorded by Doctors Against Borders, the Centers for Disease Control, and the international media. However, because of the inconsistencies in asylum law and the ever-present political influence in what originates as a humanitarian process, it is unlikely for these PSGs to be found asylum-eligible. This highlights the need for a more consistent and humanitarian-based asylum policy with less political influence.

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* Luke 4:23.

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I. INTRODUCTION

THE world's largest Ebola outbreak began in West Africa in 2014.¹ From 2014 to 2016, an estimated 28,616 cases of infection were reported in multiple countries around the world, resulting in 11,310 deaths.² The outbreak primarily hit West Africa—specifically the countries of Guinea, Liberia, and Sierra Leone.³ Not only was this area ill-equipped to respond to the crisis, but political action and cultural differences engendered hatred for practitioners of Western medicine among

1. See generally *Ebola Outbreaks 2000-2017*, CTRS. FOR DISEASE CONTROL AND PREVENTION [hereinafter *Ebola Outbreaks*], <https://www.cdc.gov/vhf/ebola/outbreaks/history/summaries.html> [<https://perma.cc/3MNH-MBFY>] (last updated July 28, 2017).

2. *Outbreaks Chronology: Ebola Virus Disease*, CTRS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/vhf/ebola/outbreaks/history/chronology.html> [<https://perma.cc/8RFK-H3UW>] (last updated July 28, 2017).

3. *Id.*

West Africans, which lead to widespread violence against local and international healthcare professionals.⁴ Though the widespread Ebola outbreak ended in 2016,⁵ the stigma remains and has left many local healthcare professionals with no choice but to leave their country.

United States asylum law requires a person seeking asylum to be a refugee who has been persecuted or fears persecution because of “race, religion, nationality, membership in a particular social group, or political opinion.”⁶ Of all protected characteristics, membership in a particular social group has been the least well-defined and most difficult to achieve. Not unlike much of asylum law, Immigration Judge and Board of Immigration Appeals (BIA) decisions regarding particular social group status have varied dramatically over time and each federal court of appeals has interpreted BIA decisions differently.⁷ Much of the variety in particular social group decisions has been based on the interpretation of requirements for particular social group status, namely (1) social visibility, (2) particularity, and (3) the definition of “past persecution.” Because of these difficulties, very few particular social groups are consistently recognized.

This article focuses on these inconsistent asylum decisions, judicial discretion, and a lack of clear interpretive rules as the barriers to the elusive particular social group status. The lack of consistent decisions has provided a less than reliable precedent for asylum seekers. The changing political climate and the stronghold that political influence plays in asylum decision making and discretion has also prevented asylum for those who may have previously been granted asylum. Additionally, a misguided reliance on State Department-created country conditions information has led to the denial of asylum due to the belief that the persecution has ended. Part II of this article briefly summarizes the historical background of Western African medicine, the 2014 Ebola crisis, and the persecution faced by healthcare workers. Part III introduces the historical background and development of asylum law, analyzes its current application and issues with inconsistency, defining its requirements, discretion, and political influence. Part IV introduces and critiques the development of the particular social group in U.S. asylum in comparison to international asylum law, its requirements, and its often-inconsistent rulings. Part V constructs a particular social group for Ebola crisis healthcare workers

4. Terrence McCoy, *Why the Brutal Murder of Several Ebola Workers May Hint at More Violence to Come*, WASH. POST: MORNING MIX (Sept. 19, 2014), https://www.washingtonpost.com/news/morning-mix/wp/2014/09/19/why-the-brutal-murder-of-eight-ebola-workers-may-hint-at-more-violence-to-come/?utm_term=.164eac174661.

5. *Ebola Outbreaks*, *supra* note 1; see also ACAPS, EBOLA OUTBREAK IN WEST AFRICA: CHALLENGES TO THE REINTEGRATION OF AFFECTED GROUPS INTO COMMUNITIES 1 (Nov. 11, 2015).

6. 8 U.S.C. § 1101(a)(42) (2012).

7. *Particular Social Group Practice Advisory: Applying for Asylum After Matter of M-E-V-G- and Matter of W-G-R*, NAT'L IMMIGRANT JUST. CTR. 2 (Jan. 2016) [hereinafter *Applying for Asylum*], <https://www.immigrantjustice.org/sites/immigrantjustice.org/files/PSG%20Practice%20Advisory%20and%20Appendices-Final-1.22.16.pdf> [https://perma.cc/FV83-24C8].

using current standards and suggests that the inconsistencies of asylum law and particular social group determinations be remedied by following international precedent, ridding judicial discretion of political bias, and applying analogous arguments from currently recognized particular social groups.

II. A BRIEF HISTORY OF WEST AFRICAN HEALTH CARE AND THE 2014 EBOLA CRISIS

A. HEALTH CARE IN WEST AFRICA AND THE ENDURING DISTRUST OF WESTERN MEDICINE

*“I often say a great doctor kills more people than a great general.”*⁸

In 2004, Western-trained doctors and medical workers were sentenced to death on charges of intentionally infecting Libyan children with H.I.V.⁹ For years, Africans have feared Western medicine and healthcare providers on the belief that they intentionally administer “deadly agents under the guise of providing health care.”¹⁰ Well-published events going back to the 1970s have rooted this fear of Western medicine throughout Africa.¹¹ This distrust led to a fear of seeking preventative and curative medicine.¹² Many avoid entering hospitals for fear of contracting diseases or being intentionally infected.¹³ This distrust also encourages the use of traditional medicines and healthcare methods, which lead to the precise results the African community hopes to avoid: the spread of disease, infection, and death.¹⁴

The World Health Organization (WHO) states that a minimum of 2.5 health workers is necessary for every 1,000 people for healthcare systems to be stable.¹⁵ According to WHO, the West African countries of Guinea, Sierra Leone, and Liberia all have a median age of 19 and an overall life expectancy around age fifty.¹⁶ The most common causes of death are

8. PETER McDONALD, *THE OXFORD DICTIONARY OF MEDICAL QUOTATIONS* 59 (2004) (attributed to Baron Gottfried Wilhelm von Leibnitz, 1646–1716).

9. Harriet A. Washington, *Why Africa Fears Western Medicine*, N.Y. TIMES (July 31, 2007), <http://www.nytimes.com/2007/07/31/opinion/31washington.html> [https://perma.cc/PE58-QERG].

10. *Id.* at ¶ 1.

11. *Id.* at ¶ 4.

12. *Id.* at ¶¶ 5–6.

13. *Attacks on Health Facilities, Staff, Patients: Lack of Monitoring, Protection, Justice Impede Access*, HUM. RTS. WATCH (May 20, 2015, 1:00 AM) [hereinafter *Attacks on Health Facilities*], <https://www.hrw.org/news/2015/05/20/attacks-health-facilities-staff-patients> [https://perma.cc/H7M5-PLA6]; *Emergencies Preparedness, Response: Factors That Contributed to Undetected Spread of the Ebola Virus and Impeded Rapid Containment*, WORLD HEALTH ORGANIZATION [WHO] (Jan. 2015) [hereinafter *Emergencies Preparedness*], <http://www.who.int/csr/disease/ebola/one-year-report/factors/en/> [https://perma.cc/LRA3-4W4P].

14. *Emergencies Preparedness*, *supra* note 13.

15. *Health Workforce Requirements for Universal Health Coverage and the Sustainable Development Goals*, 17 HUMAN RESOURCES FOR HEALTH OBSERVER [WHO] 8, 10 (2016), <http://www.who.int/hrh/resources/health-observer17/en/>.

16. *Liberia: WHO Statistical Profile*, WHO (Jan. 2015), <http://www.who.int/gho/countries/lbr.pdf?ua=1> [https://perma.cc/2FGG-RW5U]; *Guinea: WHO Statistical Profile*, WHO

lower respiratory infections (i.e., pneumonia or bronchitis), human immunodeficiency virus (H.I.V.), tuberculosis, and malaria, among other infectious diseases.¹⁷ Most of these are easily prevented or treated by vaccines, antibiotics, or other medications. However, current WHO health reports state that Guinea, Sierra Leone, and Liberia “have the lowest human development indexes and [are] among the weakest health system infrastructures in the world.”¹⁸ In each of these countries, the health workforce density was, at most, less than 3.7 healthcare workers per 10,000 people, a dramatic disparity from WHO’s minimum.¹⁹ World Bank reported one doctor for every 70,000 people in Liberia, every 45,000 in Sierra Leone, and every 10,000 in Guinea—compared to one for every 410 people in the U.S.²⁰ The lack of essential elements in the public health system infrastructure, health workforce, and government funding has often left these countries vulnerable to serious and life-threatening diseases.²¹ Because of a lack of government resources and trained doctors who choose to stay and practice in their home countries, as well as the cultural background of the community, Western medicine is not widely successful.²²

B. THE EBOLA CRISIS OF 2014

1. Ebola

According to the Centers for Disease Control (CDC), Ebola Virus Disease (Ebola) is “a rare and deadly disease” caused by a viral infection, often fatal to humans.²³ Ebola was discovered in 1976 near the Ebola River, and four of the five virus strains occur in animal hosts native to Africa.²⁴ Ebola is contracted through direct contact with broken skin or mucous membranes or with blood or bodily fluids of a person who is sick or has died from Ebola.²⁵ One can also contract Ebola through contact with objects contaminated with such bodily fluids, infected animals, and

(Jan. 2015), <http://www.who.int/gho/countries/gin.pdf?ua=1> [https://perma.cc/ZWA8-QMN9]; *Sierra Leone: WHO Statistical Profile*, WHO (Jan. 2015), <http://www.who.int/gho/countries/sle.pdf?ua=1> [https://perma.cc/36N4-BF5S].

17. *See supra* note 16.

18. Haitham Shoman et al., *The Link Between the West African Ebola Outbreak and Health Systems in Guinea, Liberia and Sierra Leone: A Systematic Review*, 13 *GLOBALIZATION AND HEALTH* 1, 2 (Jan. 4, 2017), <http://doi.org/10.1186/s12992-016-0224-2> [https://perma.cc/UYK7-LNSU].

19. *See id.*

20. Nassos Stylianou, *How World’s Worst Ebola Outbreak Began with One Boy’s Death*, *BBC NEWS* (Nov. 27, 2014, 12:32 AM), <http://www.bbc.com/news/world-africa-30199004> [https://perma.cc/HV62-THLY].

21. *Id.*

22. *Emergencies Preparedness, supra* note 13.

23. *About Ebola Virus Disease*, *CTRS. FOR DISEASE CONTROL & PREVENTION* [hereinafter *About Ebola*], <https://www.cdc.gov/vhf/ebola/about.html> [https://perma.cc/C9F2-T4F8] (last updated Dec. 27, 2017); *see also Ebola Virus Disease*, WHO [hereinafter *Ebola Virus Disease*], <http://www.who.int/mediacentre/factsheets/fs103/en/> [https://perma.cc/G5PR-SZGX] (last updated Jan. 2018).

24. *About Ebola, supra* note 23.

25. *Id.*

possibly through unprotected sex.²⁶ Symptoms of Ebola include fever, severe headache, muscle pain, weakness, fatigue, diarrhea, vomiting, abdominal pain, and unexpected internal and external bleeding.²⁷ Humans are not infectious until they develop symptoms, which appear within two to twenty-one days after exposure.²⁸ Diagnosis must be done through careful laboratory testing to prevent transmission by healthcare professionals who can distinguish the symptoms from similar infectious diseases that plague West Africa, such as malaria and typhus.²⁹

Since Ebola is a virus, there are no antibiotics that can treat it.³⁰ Additionally, unlike influenza or H.I.V., there are no FDA approved vaccines or antivirals available to treat Ebola.³¹ Therefore, recovery depends on supportive care, provided in a sterile and reactive hospital setting to prevent further infection, and the patient's own immune response.³² The average fatality rate of Ebola is 50%.³³ Both the CDC and WHO agree that preventing Ebola infection and transmission relies on maintaining careful hygiene; avoiding contact with the infected and items they have come in contact with; avoiding funeral or burial rituals that require the handling of a body; and raising awareness of symptoms, risk factors, and protective measures through community engagement.³⁴

2. *The 2014 West African Outbreak*

The 2014 West African Ebola outbreak was the largest in history.³⁵ The outbreak “killed five times more than all other known [] outbreaks combined” and was the deadliest since its discovery.³⁶ The outbreak started in December 2013 when a two-year-old in Guinea contracted Ebola and died, spreading the disease to his family and his village.³⁷ It lasted until

26. *Id.*

27. *Signs and Symptoms*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/vhf/ebola/symptoms/index.html> [<https://perma.cc/PX5K-LS4T>] (last updated Nov. 2, 2014).

28. *Id.*

29. *Id.*

30. *Be Antibiotics Aware: Smart Use, Best Care*, CTRS. FOR DISEASE CONTROL & PREVENTION, www.cdc.gov/features/antibioticuse/index.html [<https://perma.cc/C4AB-T4FV>] (last updated Dec. 15, 2017).

31. *Treatment*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/vhf/ebola/treatment/index.html> [<https://perma.cc/Y7N9-9RFQ>] (last updated July 22, 2015).

32. *Id.*

33. *Ebola Virus Disease*, *supra* note 23.

34. *Prevention*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/vhf/ebola/prevention/index.html> [<https://perma.cc/L92N-WPJX>] (last updated July 22, 2015); *Ebola Virus Disease*, *supra* note 23.

35. *Ebola Outbreaks*, *supra* note 1.

36. *Ebola: Mapping the Outbreak*, BBC NEWS (Jan. 14, 2016) [hereinafter *Mapping the Outbreak*], <http://www.bbc.com/news/world-africa-28755033> [<https://perma.cc/3E9G-L4BG>].

37. Holly Yan & Esprit Smith, *Ebola: Who is Patient Zero? Disease Traced Back to 2-Year-Old in Guinea*, CNN (Jan. 21, 2015, 6:40 PM), www.cnn.com/2014/10/28/health/ebola-patient-zero/index.html [<https://perma.cc/7VV3-FP8X>].

2016 when the last cases in three particular countries were reported.³⁸ The epidemic perpetuated further issues with local healthcare systems, education, and the economy.³⁹ Ebola spread easily throughout communities in West Africa because of damage to public health infrastructure, poor transportation and communication systems, a porous local and international border, and cultural beliefs.⁴⁰ Urban centers also played a role in transmission, most notably in Sierra Leone.⁴¹

3. Government and International Relief Group Actions

In response to the crisis, West African governments passed laws closing the borders, quarantining areas of the country, reducing access to health care, and subjecting those who treated themselves at home or buried loved ones to face legal consequences.⁴² Multiple international relief organizations dispatched healthcare and aid workers to combat the disease, educate the community, and raise awareness.⁴³ Many international human rights organizations have considered the actions of the West African governments to be violations of human rights. These heavy restrictions also bred fear and resentment in the affected communities.⁴⁴

4. Societal Reactions

Efforts by local governments and international health organizations to control Ebola and educate the community were hindered by the resistance from local communities, who have a history of suspicion towards outside intervention.⁴⁵ West Africans, who lacked much understanding of the virus, feared that the government and the West had introduced this disease into their communities.⁴⁶ People refused to go to the hospital,

38. *Situation Report: Ebola Virus Disease*, WHO (Jun. 10, 2016), http://apps.who.int/iris/bitstream/10665/208883/1/ebolasitre_10Jun2016_eng.pdf?ua=1; *Ebola: Mapping the Outbreak*, *supra* note 36.

39. *See West Africa: Respect Rights in Ebola Response*, HUM. RTS. WATCH (Sept. 15, 2014, 9:59 AM), <https://www.hrw.org/news/2014/09/15/west-africa-respect-rights-ebola-response> [<https://perma.cc/NCC8-BYWM>].

40. *See Emergencies Preparedness*, *supra* note 13.

41. *See Ebola Crisis: Sierra Leone Law Makes Hiding Patients Illegal*, BBC NEWS (Aug. 23, 2014) [hereinafter *Ebola Crisis: Sierra Leone*], <http://www.bbc.com/news/world-africa-28914791> [<https://perma.cc/YN4L-2ZB5>].

42. *Id.*; Monica Mark, *West African Countries Announce New Measures to Stop Ebola Spread*, THE GUARDIAN (July 28, 2014, 14:41), <https://www.theguardian.com/science/2014/jul/28/west-africa-measures-stop-ebola-spread> [<https://perma.cc/7P3F-J6NG>].

43. *Ebola*, DRS. WITHOUT BORDERS, <http://www.doctorswithoutborders.org/our-work/medical-issues/ebola>; *Ebola Virus Disease*, WHO, <http://www.who.int/mediacentre/factsheets/fs103/en/> [<https://perma.cc/3JME-DZE8>] (last updated Jan. 2018).

44. Monica Mark, *West African Countries Announce New Measures to Stop Ebola Spread*, THE GUARDIAN (July 28, 2014, 2:41 PM), <https://www.theguardian.com/science/2014/jul/28/west-africa-measures-stop-ebola-spread> [<https://perma.cc/7P3F-J6NG>].

45. Nossos Stylianou, *How World's Worst Ebola Outbreak Began with One Boy's Death*, BBC NEWS (Nov. 27, 2014), <http://www.bbc.com/news/world-africa-30199004> [<https://perma.cc/HV62-THLY>].

46. *See AMNESTY INT'L, AMNESTY INTERNATIONAL REPORT 2015/16: THE STATE OF THE WORLD'S HUMAN RIGHTS 319* (2016).

preferring at-home treatment.⁴⁷ This fear only made access to healthcare even worse.⁴⁸

Violence against Western healthcare workers, hospitals, and health organization workers started during the crisis.⁴⁹ International healthcare workers, local hospitals and staff, and those responsible for burying the dead were all targeted for violence.⁵⁰ In Guinea, doctors and aides from Doctors Without Borders/Médecins Sans Frontières were met at the edge of a community by men with machetes and guns.⁵¹ They were later found dead, having been dragged off the road and killed.⁵² In Sierra Leone, a hospital was surrounded by an angry mob who threatened to burn it down and remove the patients. In Liberia, armed men attacked a quarantine clinic, which led to the escape of thirty patients and looting of infected items from the clinic.⁵³ Hospitals and clinics were attacked and avoided.⁵⁴ Regardless of a doctor or nurse's duty to care for the ill, the stigma and violence caused many to leave work—especially the fear of retributive violence from the families of the deceased.

5. *Stigma and Persecution Continue*

*“Where there’s a doctor it is always a bad sign.
Even when they are not doing the killing themselves
it means a death is close”*⁵⁵

According to the U.S. State Department Reports for 2015 and 2016, stigma and discrimination against Ebola survivors and medical responders still remains.⁵⁶ WHO has created a project in Sierra Leone to rebuild

47. *Ebola Crisis: Sierra Leone*, *supra* note 41; Monica Mark, *West African Countries Announce New Measures to Stop Ebola Spread*, THE GUARDIAN (Jul. 28, 2014, 2:41 PM), <https://www.theguardian.com/science/2014/jul/28/west-africa-measures-stop-ebola-spread> [https://perma.cc/7P3F-J6NG].

48. Mark, *supra* note 47.

49. Adam Nossiter, *Fear of Ebola Breeds a Terror of Physicians*, N.Y. TIMES (July 17, 2014), <https://www.nytimes.com/2014/07/28/world/africa/ebola-epidemic-west-africa-guinea.html?mcubz=3> [http://perma.cc/3TEW-DTZ5]; *Attacks on Health Facilities*, *supra* note 13.

50. Terrence McCoy, *Why the Brutal Murder of Several Ebola Workers May Hint at More Violence to Come*, WASH. POST (Sept. 19, 2014), https://www.washingtonpost.com/news/morning-mix/wp/2014/09/19/why-the-brutal-murder-of-eight-ebola-workers-may-hint-at-more-violence-to-come/?utm_term=.a85dc6fc1020 [perma.cc/TZ99-9CWN]; Jacque Wilson, *8 Killed in Guinea Town Over Ebola Fears*, CNN (Sept. 19, 2015, 3:18 PM), <http://www.cnn.com/2014/09/19/health/ebola-guinea-killing/index.html> [perma.cc/3KAZ-WK6M].

51. Wilson, *supra* note 50.

52. *Id.*

53. *Attacks on Health Facilities*, *supra* note 13.

54. *Report: Armed Men Attack Liberia Ebola Clinic, Freeing Patients*, CBS NEWS (Aug. 17, 2014, 3:45 PM) [hereinafter *Armed Men Attack*], <https://www.cbsnews.com/news/report-armed-men-attack-liberia-ebola-clinic-freeing-patients/> [http://perma.cc/V4UX-NSUY].

55. MARGARET ATWOOD, *ALIAS GRACE* 27 (1996).

56. U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., *Country Reports for Human Rights Practices for 2015: Guinea* 27 (2015); U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., *Country Reports for Human Rights Practices for 2015: Liberia* 23 (2015); U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., *Country Reports for Human Rights Practices for 2015: Sierra Leone* 12 (2015); U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., *Country Reports for Human Rights Practices for 2016: Guinea*

trust within communities towards this affected group.⁵⁷ It also continues to focus on disease and prevention education.⁵⁸ Regardless of these continuing efforts, West African healthcare providers have arrived in the United States seeking asylum from the violence and stigma.

III. OVERVIEW OF UNITED STATES ASYLUM LAW

A. HISTORICAL ORIGINS AND DEVELOPMENT

The origin of United States asylum law traces back to the founding and settling of the country by immigrants, as well as the belief in the “American Dream.”⁵⁹ Starting in 1875, the government began to enact immigration restrictions, but statutes were explicitly adopted for refugees at the end of World War II.⁶⁰ World War II forced the United States to reevaluate its immigration system, due to its failure to provide a solution for many fleeing fascist European regimes.⁶¹ This led to an era of liberal immigration policy, which was more responsive to the victims of oppression.⁶² In 1950 the office of the United Nations High Commissioner for Refugees (UNHCR) was created to help World War II refugees.⁶³

In 1952, Congress created a specific statutory provision, the Immigration and Nationality Act of 1952 (INA), that gave the Attorney General the authority to withhold deportation of an alien if the alien would be subject to physical persecution.⁶⁴ From the 1950s to 1980, foreign policy openly dominated asylum determinations, and refugees fleeing Communist countries were favored.⁶⁵ This would not be the first or the last time that foreign policy would play a role in the refugee determination process. In 1968, the U.S. became a party to the United Nations Protocol Relating to the Status of Refugees (Protocol), which bound the U.S. to the provisions of the United Nations Convention Relating to the Status of Refugees (Convention).⁶⁶ The Protocol is an international treaty embodying the essential provisions of the 1951 Refugee Convention.⁶⁷ The Convention adopted a general definition of the term “refugee” to end the

25 (2016); U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Country Reports for Human Rights Practices for 2016: Liberia 28 (2016); U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Country Reports for Human Rights Practices for 2016: Sierra Leone 12 (2016).

57. ACAPS, *supra* note 5, at 1, 3–6.

58. *Id.*

59. Maureen O’Connor Hurley, *The Asylum Process: Past, Present, and Future*, 26 NEW ENG. L. REV. 995, 1000 (1992).

60. *Id.*

61. *Id.* at 1001–02.

62. *Id.*

63. *History of UNHCR*, UNHCR, <http://www.unhcr.org/en-us/history-of-unhcr.html> [<https://perma.cc/6R7Z-XKSS>] (last visited Sept. 29, 2018).

64. Immigration and Nationality Act, ch. 477, § 243(h), 66 Stat. 163, 214 (1952) (codified as amended at 8 U.S.C. §§ 1101–1524 (2012)).

65. O’Connor Hurley, *supra* note 59, at 1005–06.

66. *Id.* at 1006–08.

67. Anthony Asuncion, *INS v. Cardoza-Fonseca: Establishment of a More Liberal Asylum Standard*, 37 AM. U. L. REV. 915, 922–23 (1988).

practice of distinguishing between aliens on the basis of their national origin.⁶⁸ This prohibited the use of politics, race, convenience, or any of many other conceivable considerations to justify distinguishing among aliens facing objectively similar threats.⁶⁹ Additionally, the Protocol adopted a definition of “persecution” as a “threat to one’s life or freedom” and allowed a refugee to apply for asylum if he originally fled his country because of persecution or if he is unable to return because persecution has arisen since his departure.⁷⁰ In its Handbook on Procedures and Criteria for Determining Refugee Status, the UNHCR states its humanitarian principle as:

[A] person who—or whose family—has suffered under atrocious forms of persecution should not be expected to repatriate. Even though there may have been a change of regime in his country, this may not always produce a complete change in the attitude of the population, nor, in view of his past experiences, in the mind of the refugee.⁷¹

This created a refugee status based on the idea of past persecution.⁷²

Congress made no changes to conform to these Conventions, and domestic policy continued to be inconsistent with international law until Congress forced compliance with the Protocol when it passed the Refugee Act of 1980.⁷³ The Refugee Act of 1980 clearly defined the process for asylum in the United States.⁷⁴ To apply for asylum, the person must qualify as a refugee and be present in the United States or at the border seeking entry.⁷⁵ Prior to the Refugee Act, the word “asylum” never appeared in U.S. immigration laws, and the definition of “refugee” did not match the UN Protocol definition.⁷⁶ The Refugee Act finally incorporated international law standards and created a uniform process for resolving asylum claims.⁷⁷ Immigration and Naturalization Service (INS), the BIA, and federal courts of appeals play key roles in the asylum process because they determine which applicants are eligible for asylum status.⁷⁸ The enactment of the Refugee Act furthered the “long held perception of the United States as a haven for refugees escaping oppression.”⁷⁹

68. Sophie H. Pirie, *The Need for a Codified Definition of Persecution in United States Refugee Law*, 39 STAN. L. REV. 187, 196 (1988).

69. *Id.*

70. Asuncion, *supra* note 67, at 923.

71. Rebecca H. Gutner, *A Neglected Alternative: Toward a Workable Standard for Implementing Humanitarian Asylum*, 39 COLUM. J.L. & SOC. PROBS. 413, 417–18 (2006).

72. *Id.* at 417.

73. Asuncion, *supra* note 67, at 924–25.

74. *Id.* at 925.

75. *Id.*

76. *Id.* at 927.

77. *Id.* at 925.

78. Pirie, *supra* note 68, at 188.

79. Asuncion, *supra* note 67, at 926.

B. ASYLUM REQUIREMENTS AND PROCESS

Any alien who is physically present in the U.S. or at the U.S. border may apply for asylum.⁸⁰ This excludes aliens who may be removed to a “safe third country”⁸¹ or those from countries where the circumstances have changed.⁸² This also excludes those who themselves persecuted any person on account of the protected characteristics, those convicted of a particularly serious crime, or a serious non-political crime.⁸³ To be eligible for asylum, the alien must meet the definition of refugee.⁸⁴ A refugee is:

[A]ny person who is outside any country of such person’s nationality . . . and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.⁸⁵

The purpose of the definition was to “give statutory meaning to our national commitment to human rights and humanitarian concerns” by broadly defining the term and making it permissive.⁸⁶ The burden of proof is on the applicant to establish her status as a refugee by establishing that race, religion, nationality, membership in a particular social group, or political opinion was or will be the central reason for her persecution.⁸⁷ This can be accomplished through her own testimony, which is persuasive and refers to specific facts sufficient to demonstrate she is a refugee, but may require corroboration, provided by the applicant if reasonably possible, if the trier of fact doubts the credibility of the applicant.⁸⁸ The trier of fact may also rely on material provided by the State Department, such as annual Country Reports, USCIS offices, or other credible sources, such as international organizations, private voluntary agencies, news organizations, or academic institutions.⁸⁹ Credibility is determined by the totality of the circumstances and is entirely up to the discretion of the trier of fact.⁹⁰

The requirements for asylum eligibility thus break down in the following steps: (i) demonstrating a well-founded fear of persecution, (ii) a “but for” nexus between that persecution and a protected asylum ground, and (iii) a lack of state protection, defined as either an inability or unwilling-

80. 8 U.S.C. § 1158(a)(1) (2012).

81. *Id.* § 1158(a)(2)(A).

82. *Id.* § 1158(a)(2)(D).

83. *Id.* §§ 1158(b)(2)(A)(i)–(iv).

84. 8 U.S.C. § 1101(a)(42) (2012).

85. *Id.*

86. Wendy B. Davis & Angela D. Atchue, *No Physical Harm, No Asylum: Denying a Safe Haven for Refugees*, 5 TEX. F. ON C.L. & C.R. 81, 81 (2000) (citation omitted).

87. 8 U.S.C. § 1158(b)(1)(B)(i).

88. *Id.* § 1158(b)(1)(B)(ii).

89. 8 C.F.R. § 208.12(a) (2017).

90. 8 U.S.C. § 1158(b)(1)(B)(iii).

ness of the state to protect the asylum group.⁹¹ “The applicant may qualify as a refugee either because . . . she has suffered past persecution or because she has a well-founded fear of future persecution.”⁹² Courts have struggled to define the standards for “well-founded fear” and “persecution” as neither is defined by statute or regulation.⁹³ Additionally, while nearly all protected asylum grounds have an obvious meaning, membership in a particular social group is the least well-defined and has the most disparity among its decisions. The following sub-section discusses the confusion surrounding the well-founded fear of persecution requirement, as well as the troubling effects of discretion and appellate deference, before tackling the ever-changing development of particular social group determinations in Section V.

1. *Persecution—Past, Present, and Future*

Persecution, though the “fundamental concept at the core of the refugee definition,”⁹⁴ was never defined by the INA, regulations, or the UNHCR Convention or Protocol.⁹⁵ Therefore, the duty to define this term has been left to the BIA and the federal courts of appeals.⁹⁶ Though this creates a lenient and permissive definition of persecution, it leads to uncertainty in asylum decisions. Even the U.S. Supreme Court has noted that a “more comprehensive definition of persecution would be beneficial.”⁹⁷ This leads to the enduring questions of what is persecution and how much is enough. “If persecution is at the core of refugee protection, then harm is at the core of persecution.”⁹⁸ Therefore, harm is important but is considered on a case by case basis. The harm required for persecution includes both the tangible and intangible, though the tangible is often deemed more worthy and leads to a granting of asylum more often than the intangible.⁹⁹ Additionally, a single incident may sometimes be enough to satisfy the requirements of persecution, and at other times it may not.

The U.N. High Commissioner noted that while there is no universal definition of persecution, “a threat to life or freedom on account of [the protected grounds] *is always persecution*. Other serious violations of human rights for the same reasons would also constitute persecution.”¹⁰⁰ Regulations declare that an asylum applicant may qualify as a refugee if she has suffered past persecution or has a well-founded fear of persecu-

91. Jillian Blake, *Getting to Group Under U.S. Asylum Law*, 90 NOTRE DAME L. REV. ONLINE 167, 168 (2015).

92. 8 C.F.R. § 208.13(b).

93. 8 U.S.C. §1101(a)(42)(A) (2012).

94. Scott Rempell, *Defining Persecution*, 2013 UTAH L. REV. 283, 283 (2013).

95. A. Roman Boed, *Past Persecution Standard for Asylum Eligibility in the Seventh Circuit: Bygones are Bygones*, 43 DEPAUL L. REV. 147, 157 (1993).

96. Rempell, *supra* note 94, at 283–84.

97. *Id.* at 286.

98. *Id.* at 292.

99. *Id.*

100. Boed, *supra* note 95, at 175 (emphasis added).

tion.¹⁰¹ A well-founded fear of persecution is found if the applicant has a fear of persecution in the country, there is a reasonable possibility that she will suffer persecution upon return to that country, or she is unable or unwilling to return to that country or avail herself of that country's protections because of such fear.¹⁰² No well-founded fear of persecution will be found if the person could have relocated within the country or could have been "firmly resettled" elsewhere.¹⁰³ This creates a rebuttable presumption of a well-founded fear of persecution, which includes a fear of future persecution, that may be rebutted if the trier of fact finds, by a preponderance of the evidence, that there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear on account of the protected grounds or if the applicant could avoid future persecution by relocating to another part of her country of nationality, and it would be reasonable to expect that applicant to do so.¹⁰⁴ This provides the trier of fact with broad discretion to grant or deny status as a refugee, and thus asylum. The trier of fact also has discretion to grant asylum if the applicant has demonstrated compelling reasons for being unwilling or unable to return to her country because of the severity of the past persecution or if she has established that there is a reasonable possibility that she may suffer other serious harm upon return to that country.¹⁰⁵

One of the reasons a trier of fact might choose to use his discretion to deny an applicant asylum is based on whether there has been a "fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in the applicant's country."¹⁰⁶ As this is up to the discretion of the trier of fact, changes in country conditions can often be based on current politics, presidential goals, foreign policy, and State Department Country Reports, which may fall prey to political bias.¹⁰⁷ At times, these biased sources confuse the reality of circumstances in native countries. State Department reports may declare that crucial events are over when the country is still feeling the long-term effects of the event, which may still create persecution. The U.N. Protocol, which is only a persuasive authority for U.S. courts and immigration law, provides that "only a fundamental, durable change in conditions *in the applicant's country of origin* may remove the basis of an applicant's fear of persecution and thus deprive her of refugee status."¹⁰⁸

An additional consideration lies in harms that have been committed and, in the mind of the trier of fact, may not be able to occur again. This has been the argument against classifying Female Genital Mutilation

101. 8 C.F.R. § 208.13(b) (2017).

102. *Id.* § 208.13(b)(2).

103. *Id.* § 208.13(b)(2)(C).

104. *Id.* §§ 208.13(b)(1)(i)(A)–(B).

105. *Id.* §§ 208.13(b)(1)(iii)(A)–(B).

106. *Id.* § 208.13(b)(1)(i)(A).

107. *Id.* § 208.13(b)(2)(C).

108. Susannah C. Vance, *An Enduring Fear: Recent Limitations on the Past Persecution Ground for Asylum*, 91 KY. L.J. 957, 998 (2003) (emphasis added).

(FGM) as persecution.¹⁰⁹ While those facing a risk of future FGM have been classified as refugees and often granted asylum,¹¹⁰ many women who have fled their countries after being subjected to past FGM have been denied.¹¹¹ These courts have argued that the “unrepeatable, one-time act of FGM is the ‘fundamental change in circumstances’” that warrants mandatory denial of asylum.¹¹² Currently, the courts of appeals are split on the proper theoretical analysis of these types of claims.¹¹³ The Third, Fifth, and Seventh Circuits have followed the Singular Harm Theory where FGM is viewed as a harm that can occur only once.¹¹⁴ Therefore, since the harm cannot reoccur, courts often find this to be a “fundamental change in circumstances,” so the presumption of a well-founded fear of persecution has been rebutted and asylum is denied.¹¹⁵ This theory can also be combined with the decision to overlook broader circumstances surrounding the decision not to return to one’s home country outside of the harm itself, such as a “prevalent culture of oppression.”¹¹⁶ Additionally, it ignores the fact that FGM can be repeated, and often is, as well as the lifelong medical and psychological effects of the procedure.

Next is the Continuing Persecution Theory, adopted by the Second, Eighth, and Ninth Circuits, which recognizes that a claim of past persecution and harm can provide a valid basis for asylum.¹¹⁷ Courts often make this decision based on the “imbedded” oppressive culture of the nation the applicant fears returning to.¹¹⁸ “The Second Circuit also supports the notion that even if an act is considered a one-time harm, it cannot be used to rebut the presumption” because the applicant “may still be at risk for other acts of persecution based on the same grounds.”¹¹⁹ The Second and Eighth Circuits agreed that nothing in the statute or regulatory frameworks require the future threats to be the same form, act, or harm

109. See Smruti Govan, *Recognizing the Need for Reform: Asylum Law Standards for Victims of Past Female Genital Mutilation*, 23 TEMP. INT’L & COMP. L.J. 379, 386 (2009).

110. *In re Kasinga*, 21 I. & N. Dec. 357, 365–68 (B.I.A. 1996).

111. Govan, *supra* note 109, at 380. FGM is a cultural practice and social convention that involves the partial or total removal of the external female genitalia. See *Female Genital Mutilation*, WHO, <http://www.who.int/mediacentre/factsheets/fs241/en/> [https://perma.cc/7HWJ-EVMH] (last updated Jan. 2018). There are four types of FGM, each with varying degrees of removal; therefore, a woman subjected to a prior partial removal may be subjected to further removal. *Id.* In countries where FGM is practiced, it is often performed as a preparation for womanhood and marriage, as well as to ensure adherence to cultural ideals of femininity, modesty, and cleanliness. *Id.* FGM is most commonly practiced by secret societies and performed outside of a healthcare facility. *Id.* FGM has no health benefits and only leads to complications and health risks, such as infection, problems urinating, complications during childbirth, and death. *Id.*

112. Govan, *supra* note 109, at 386.

113. *Id.* at 389–96.

114. *Id.* at 389–92.

115. *Id.* at 397.

116. *Id.* at 391.

117. *Id.* at 392–96.

118. *Id.* at 393.

119. *Id.* at 403.

as the past persecution.¹²⁰ This halts the argument that a “fundamental change” has occurred when the one-time event has been conducted.

2. *Discretion, Deference, and Disparities*

Immigration judges and asylum officers may grant or deny asylum in the exercise of their discretion.¹²¹ Therefore, an alien may qualify as a refugee and establish a well-founded fear but still be denied asylum. Looking back to persecution and the BIA’s decision in *Matter of Chen*, the court is allowed discretion when analyzing whether a past persecution claim can be the basis for the likelihood of present or future persecution.¹²² Additionally, the court said “there may be cases where the favorable exercise of discretion is warranted for humanitarian reasons even if there is little likelihood of future persecution” which often arises out of “severe past persecution.”¹²³ Often, discretion may be influenced by political influences and biases.

Immigration judges’ resources are frequently limited and consist mostly of government publications, though they may be presented with information from human rights groups by a well-prepared and represented applicant.¹²⁴ It has been noted that when the U.S. “was politically allied with the country of the asylum applicant, the State Department appeared to be blind to any documented human rights violations of that country”—therefore, State Department Country Reports would be silent on instances of persecution.¹²⁵ Often, perceived changes in country conditions, as reported in State Department reports, have led to the denial of asylum.¹²⁶ Judges are not currently “prohibited from making discretionary rulings on the basis of foreign policy interests or political opinion.”¹²⁷ Thus, discretion is problematic because it is vague, unsupported by facts, and often denies relief to those fleeing persecution. As the standard of review by circuit courts of BIA decisions is the abuse of discretion standard, overturning discretionary decisions is extremely difficult.¹²⁸ This discretionary system and its political motivations have turned the once permissive asylum application process into one full of institutional barriers.¹²⁹

120. *Id.* at 402–03.

121. 8 C.F.R. §§ 208.14(a)–(b) (2017).

122. Timothy P. McIlmail, *Toward a More Reasonably Rebutted Presumption: A Proposal to Amend the Past Persecution Asylum Regulation – 8 C.F.R. § 208.13(B)(1)*, 12 GEO. IMMIGR. L.J. 265, 269 (1998).

123. *Id.*

124. O’Connor Hurley, *supra* note 59, at 1034.

125. *Id.* at 1048.

126. Davis & Atchue, *supra* note 86, at 95.

127. Kathryn A. Dittrick Heebner, *Protecting the Truly Persecuted: Restructuring the Flawed Asylum System*, 39 U.S.F. L. REV. 549, 563 (2005).

128. *Id.* at 564; Kate Aschenbrenner, *Discretionary (In)Justice: The Exercise of Discretion in Claims for Asylum*, 45 U. MICH. J.L. REFORM 595, 609 (2012).

129. Laura Isabel Bauer, *They Beg for Our Protection and We Refuse: U.S. Asylum Law’s Failure to Protect Many of Today’s Refugees*, 79 NOTRE DAME L. REV. 1081, 1084 (2004).

IV. PARTICULAR SOCIAL GROUP

An additional barrier to asylum is satisfying the nexus or but-for requirement. This requires the applicant to connect her past persecution or well-founded fear of persecution to a protected ground under the definition of refugee.¹³⁰ The least clearly defined and most difficult to satisfy protected ground is membership in a particular social group.

A. HISTORICAL DEVELOPMENT AND REQUIREMENTS

The definition of refugee was defined by the UN Protocol of 1951 to include the five protected grounds; however, while the main four are easily defined, membership in a particular social group was not defined explicitly by either Congress or the Protocol.¹³¹ It is widely believed that this protected ground was included in the definition as an afterthought.¹³² Therefore, defining particular social group has been the responsibility of case law.

The first case to analyze the meaning and requirements of a particular social group is *Matter of Acosta*, which recognized the absence of legislative history surrounding the term, as well as the UNHCR suggestion that membership in a particular social group “connotes persons of similar backgrounds, habits, or social status.”¹³³ The court also held that persecution based on this ground may frequently overlap with other grounds.¹³⁴ In *Acosta*, the BIA applied the doctrine of *ejusdem generis*¹³⁵ and interpreted membership in a particular social group to mean “persecution that is directed toward an individual who is a member of a group of persons all of whom share a common, immutable characteristic. The shared characteristic might be an innate one . . . or in some circumstances it might be a shared past experience”¹³⁶ It also declared that the characteristic that defines the group must be determined on a case by case basis.¹³⁷ This characteristic, being immutable, should be one that is “beyond the power of an individual to change” or is “so fundamental to his identity or conscience” that he cannot or should not be required to change.¹³⁸ In this way, *Acosta* equated the particular social group to the other grounds in the INA.¹³⁹ By 2000, all federal courts of appeals adopted this

130. 8 U.S.C. § 1101(a)(42)(A) (2012).

131. *In re Acosta*, 19 I. & N. Dec. 211, 232 (B.I.A. 1985).

132. *Id.*

133. *Id.* at 233.

134. *Id.*

135. “Of the same kind, class, or nature. In statutory construction, the ‘*ejusdem generis* rule’ is that where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned.” *Ejusdem Generis*, BLACK’S LAW DICTIONARY (2d ed. 1910).

136. *Acosta*, 19 I. & N. Dec. at 233.

137. *Id.*

138. *Id.* at 234.

139. *Id.* at 233.

standard.¹⁴⁰

In 2002, the UNHCR published guidelines regarding particular social group status which advocated for a disjunctive test.¹⁴¹ However, the guidelines were and remain a more permissive standard than what the United States has adopted over time. Its suggested standard for a particular social group was “a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society.”¹⁴² Additionally, it recommended that particular social group analysis should still be undertaken if an applicant alleges a social group that is based on a characteristic that does not meet the *Acosta* standard.¹⁴³ The guidelines advise that, while the category of particular social group cannot be a catchall, there is no closed list of the groups which may satisfy particular social group requirements and that the term “should be read in an evolutionary manner, open to the diverse and changing nature of groups in various societies and evolving international human rights norms.”¹⁴⁴ In 2000, U.S. Citizenship and Immigration Services (USCIS) promulgated a proposed regulation to attempt to define the requirements for particular social groups.¹⁴⁵ This regulation pulled from previous particular social group interpretation decisions and would have adopted the *Acosta* standard and a list of non-exclusive relevant factors, which would have incorporated factors that had previously divided Circuit Court decisions.¹⁴⁶

In 2008, the BIA decided two cases in which it rejected gang-based asylum claims based on two new requirements—social visibility and particularity—which were added to the particular social group analysis.¹⁴⁷ This means that a viable particular social group must be based on an immutable characteristic and be both socially visible and particularly defined.¹⁴⁸ Particularity refers to the definition of the group “in a manner sufficiently distinct” so that it “would be recognized . . . as a discrete class of persons.”¹⁴⁹ Therefore, the group cannot be “too amorphous . . . to create a benchmark for determining group membership” and must be defined with clear and objective words or be narrow and homogenous.¹⁵⁰ Years later, the BIA clarified “social visibility” not as a literal standard but as “social distinction” where groups must be easily recognized and

140. *Applying for Asylum*, *supra* note 7.

141. UNHCR, *Guidelines on International Protection: “Membership of a particular social group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, U.N. Doc. HCR/GIP/02/02 (May 7, 2002) [hereinafter *Guidelines on International Protection*], <http://www.unhcr.org/3d58de2da.pdf>.

142. *Id.* at ¶ 11.

143. *Id.* at ¶ 2.

144. *Id.* at ¶ 3.

145. Asylum and Withholding Definitions, 65 Fed. Reg. 76,588 (Dec. 7, 2000).

146. *Id.*

147. *Applying for Asylum*, *supra* note 7.

148. *Id.*

149. *Id.*

150. *Id.* (quoting *In re E-A-G-*, 24 I. & N. Dec. 591, 584 (B.I.A. 2008)).

perceived in society.¹⁵¹ Additionally, these decisions included troubling dicta about particularity, finding that a group failed because it “could include persons of any age, sex, or background,” despite previously stating that groups need not be homogenous.¹⁵² This left open questions as the new test seemed to confuse prior decisions’ accepted particular social groups that would no longer be viable. Currently, all courts of appeals have adopted these additional requirements¹⁵³ except for the Ninth,¹⁵⁴ the Seventh,¹⁵⁵ and the Third.¹⁵⁶

B. CURRENT LAW AND DISPARITIES

Even those circuits that have adopted the social distinction and particularity requirements feature slight differences in their interpretation and application.¹⁵⁷ This has often led to conflicting BIA and circuit precedent.¹⁵⁸ The BIA has a long-standing policy of following circuit precedent in any case arising within that circuit.¹⁵⁹ Most significantly, the two circuits that have most strongly criticized the additional requirements—the Third and the Seventh—have yet to recognize the BIA decisions that created that test as binding.¹⁶⁰ Obvious disparities within the courts’ decisions and analysis of asylum claims have drawn the attention of not only the immigration law community but widespread media. The New York Times published an article in 2007, which shed light on a study conducted by three law professors who analyzed 140,000 immigration judge decisions and found vast differences in the handling and the outcomes of cases, some with comparable factual circumstances.¹⁶¹ The study said that the difference in the outcome of the case could come from the random assignment of a case to a particular judge.¹⁶² The study found that someone who has fled China seeking asylum in immigration court in Orlando, Florida, has a 76% chance of success, while the same refugee would have a 7% change in Atlanta, Georgia.¹⁶³ Additionally, the study found disparities among judges sitting in the same court and hearing similar asylum

151. *In re M-E-V-G-*, 26 I. & N. Dec. 227, 236 (B.I.A. 2014).

152. *Id.*

153. *See Lizama v. Holder*, 629 F.3d 440, 447 (4th Cir. 2011); *Scatambuli v. Holder*, 558 F.3d 53, 59 (1st Cir. 2009); *Davila-Mejia v. Mukasey*, 531 F.3d 624, 628 (8th Cir. 2008); *Koudriachova v. Gonzales*, 490 F.3d 255, 261 (2d Cir. 2007); *Castillo-Arias v. Att’y Gen.*, 446 F.3d 1190, 1198–99 (11th Cir. 2006).

154. *See Perdomo v. Holder*, 611 F.3d 662, 667–68 (9th Cir. 2010).

155. *See Gatimi v. Holder*, 578 F.3d 611, 617 (7th Cir. 2009); *Ramos v. Holder*, 589 F.3d 426, 430 (7th Cir. 2009).

156. *Valdiviezo-Galdamez v. Att’y Gen.*, 663 F.3d 582, 603–04 (3d Cir. 2011).

157. *Applying for Asylum*, *supra* note 7.

158. *Id.*

159. *In re K-S-*, 20 I. & N. Dec. 715, 718 (B.I.A. 1993).

160. *Applying for Asylum*, *supra* note 7.

161. Julia Preston, *Big Disparities in Judging of Asylum Cases*, N.Y. TIMES (May 31, 2007), <http://www.nytimes.com/2007/05/31/washington/31asylum.html> [<http://perma.cc/T49C-YP33>].

162. *Id.*

163. *Id.*

cases.¹⁶⁴

Undoubtedly, these disparities are due not only to judges' personal opinions or experience, but also due to the different approaches adopted by the BIA and courts of appeals. According to research done by TRAC at Syracuse University, asylum decision disparity has increased in most immigration courts since the publishing of the New York Times article.¹⁶⁵ Twelve of the sixteen courts surveyed had at least a 27% increase in decision disparity.¹⁶⁶

Due to its seat in California, the Ninth Circuit is the most active federal court reviewing asylum decisions.¹⁶⁷ It is thought to be more progressive, however, its differences with the BIA have only contributed to the confusion within asylum law.¹⁶⁸ While it originally adopted the new factors, it now considers them as “factor(s) to consider” rather than requirements.¹⁶⁹ Additionally, the Seventh Circuit has rejected the BIA's social distinction requirement because it has been inconsistent in its decisions.¹⁷⁰ The court equates this requirement to “pinning a target [on the applicants'] backs” to identify themselves as being a member of a particular social group.¹⁷¹ The court found this criterion to be implausible because members of a targeted group often “take pains to avoid being socially visible.”¹⁷² The Seventh Circuit also rejected the particularity requirement.¹⁷³ The Third Circuit has also found these requirements problematic because they are inconsistent with BIA precedent, and the BIA has failed to give a “principled reason” for these new requirements.¹⁷⁴

1. *Particular Social Groups Recognized—Relief for Some*

Some particular social groups that have been recognized using the *Acosta* definition are persecuted or targeted families,¹⁷⁵ socially distinguishable clans,¹⁷⁶ women not yet subject to FGM,¹⁷⁷ the LGBT community,¹⁷⁸ Cameroonian widows,¹⁷⁹ and Christian women who oppose Islamic garb.¹⁸⁰ Family, clan membership, and “kinship ties” have been

164. *Id.*

165. *Asylum Outcome Increasingly Depends on Judge Assigned*, TRAC IMMIGRATION (Dec. 2, 2016), <http://trac.syr.edu/immigration/reports/447/> [<https://perma.cc/Y78J-HJTK>].

166. *Id.*

167. O'Connor Hurley, *supra* note 59, at 1022, n.236.

168. *Id.* at 1022.

169. *Perdomo v. Holder*, 611 F.3d 662, 667 (9th Cir. 2010).

170. *Gatimi v. Holder*, 578 F.3d 611, 615 (7th Cir. 2009).

171. *Id.* at 616.

172. *Id.* at 615.

173. *Ramos v. Holder*, 589 F.3d 426, 430–31 (7th Cir. 2009).

174. *Valdiviezo-Galdamez v. Att'y Gen.*, 663 F.3d 582, 608 (3rd Cir. 2011).

175. *Crespin-Valladares v. Holder*, 632 F.3d 117, 124–25 (4th Cir. 2011); *Demiraj v. Holder*, 631 F.3d 194, 198 (5th Cir. 2011); *Torres v. Mukasey*, 551 F.3d 616, 630 (7th Cir. 2008).

176. *In re H-*, 21 I. & N. Dec. 337, 343 (B.I.A. 1996).

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

178. *In re Toboso-Alfonso*, 20 I. & N. Dec. 819, 822 (B.I.A. 1990).

179. *Ngengwe v. Mukasey*, 543 F.3d 1029, 1034 (8th Cir. 2008).

180. *Yadegar-Sargis v. INS*, 297 F.3d 596, 598 (7th Cir. 2002).

found to be “paradigmatically immutable . . . innate and unchangeable.”¹⁸¹ As mentioned previously, young women who have not yet been subject to FGM have been found to be a particular social group because the characteristics of being a young woman and having intact genitalia are “so fundamental to the individual identity of a young woman.”¹⁸² Finally, the “westernized” person has been widely accepted by courts as a “cognizable social group” because the group is visible and specific in society due to the group’s refusal to conform to social norms.¹⁸³ Courts have found this group to be sufficiently narrow.¹⁸⁴

2. *Particular Social Groups Denied—A Confusing Collection*

The groups that have been rejected particular social group status have some obvious reasons for rejection and some that are extremely unclear. These groups include confidential informants,¹⁸⁵ young men who refuse recruitment into gangs,¹⁸⁶ and those defined solely by broad characteristics, such as youth, gender, poverty, and homelessness.¹⁸⁷ Broadly defined groups and groups that are not visible, like confidential informants, clearly fail to meet the standards for a particular social group. The Ninth Circuit formulated a particular social group spectrum with “immediate members of a certain family” as the prototypical particular social group and a “class of young, urban, working-class males of military age who are politically neutral” as lacking the cohesive homogeneity required.¹⁸⁸ The courts fear that allowing a group defined by broad characteristics will open the doors of asylum to all members of a gender, profession, or class.¹⁸⁹

V. CONSTRUCTING A PARTICULAR SOCIAL GROUP FOR THE HEALTHCARE WORKERS OF THE 2014 WEST AFRICAN EBOLA OUTBREAK

As healthcare workers who fled their countries for the U.S. begin to apply for asylum, membership in a particular social group will be the only protected ground under which they can apply. Since achieving particular social group status remains elusive due to inconsistent case law, the negative influence of political bias on decision-making, and insecurity about the meaning and requirements of a particular social group, constructing a particular social group for these healthcare workers will be nearly impos-

181. *Crespin-Valladares v. Holder*, 632 F.3d 117, 124 (4th Cir. 2011).

182. *In re Kasinga*, 21 I. & N. Dec. 357, 366 (B.I.A. 1996).

183. *Yadegar-Sargis*, 297 F.3d at 605; *Fatin v. INS*, 12 F.3d 1233, 1241 (3d Cir. 1993).

184. *Fatin*, 12 F.3d at 1241.

185. *In re C-A-*, 23 I. & N. Dec. 951, 960 (B.I.A. 2006).

186. *In re S-E-G*, 24 I. & N. Dec. 579, 583–84 (B.I.A. 2008); *Ramos-Lopez v. Holder*, 563 F.3d 855, 861 (9th Cir. 2009).

187. *Gao v. Gonzalez*, 440 F.3d 62, 69 (2d Cir. 2006); *Escobar v. Gonzales*, 417 F.3d 363, 368 (3d Cir. 2005).

188. *Vicente v. INS*, No. 98-71132, 2000 U.S. App. LEXIS 29893, at *3 (9th Cir. Aug. 4, 2000).

189. *Id.* at *4.

sible without consistent, humanitarian-focused decisions regarding the requirements for recognizing a particular social group. Additionally, by adopting the Continuing Persecution Theory, these healthcare workers may be able to construct a valid particular social group based on unbiased country conditions.

A. SATISFYING THE ELEMENTS AND ARGUING FOR CHANGE

1. *Well-Founded Fear of Persecution*

Though persecution lacks definition, much of the precedent shows that persecution: (1) is a threat to life or freedom; (2) is defined by harms, both tangible and intangible; (3) can be a feature, but not the only, defining feature, of the particular social group; and (4) can be based on past persecution suffered by the applicant. Past persecution will be found if the applicant establishes they have suffered a persecution in the past on the basis of protected grounds and is unable or unwilling to return or avail herself of the protection of her country, creating a presumption of a fear of future persecution.¹⁹⁰ However, the persecution must (1) be targeted toward the group and not society at large, and (2) be either continuous or serious enough to afford the applicant with well-founded fear.

When constructing a particular social group, the harms faced must be analyzed to see if they meet the definition of persecution.¹⁹¹ The ability of the asylum seeker to avail the protection of the native country must also be considered.¹⁹² Looking at the harms faced by the West African healthcare workers, they and their hospitals were the targets of threats and violence during and for some time after the outbreak.¹⁹³ Local healthcare providers, burial workers, and international health agencies were targets of threats and violence due to a societal fear that they had brought the disease with them. Threats of violence included meeting healthcare workers at the edge of town with rocks, machetes, and guns.¹⁹⁴ Episodes of minor violence included the throwing of rocks at healthcare or burial workers and damaging medical vehicles.¹⁹⁵ Often violence was focused on the healthcare institutions, like the burning of a health clinic because locals feared it was working to spread the disease, or mob violence at another health clinic. Serious violence, like the mass assassination of a healthcare delegation attempting to raise Ebola awareness, also occurred.¹⁹⁶ Undoubtedly, these were cases of retributive violence because healthcare workers were blamed for the deaths of family members or for breaking health and burial traditions. This group faced harms, both tangible and intangible, that threatened their lives and freedom.

190. 8 C.F.R. § 208.13(b)(1) (2017).

191. *Id.*

192. *Id.*

193. McCoy, *supra* note 50; Wilson, *supra* note 50; *Attacks on Health Facilities*, *supra* note 13; *Armed Men Attack*, *supra* note 54.

194. *See supra* note 193.

195. *See id.*

196. *See id.*

The next step in the analysis is the inability of the state to provide or offer protection from this persecution.¹⁹⁷ Each country affected in the 2014 outbreak is well-known internationally for the corruption and inefficacy of its police.¹⁹⁸ Though police were ordered to protect hospitals during the outbreak, violence against these healthcare workers continued. This shows an inability of those in this group to avail themselves of the protection of their country.¹⁹⁹ Therefore, because these groups have demonstrated that they have been persecuted against and cannot avail themselves of the protections of their country, they have a presumption of a well-founded fear of future persecution.²⁰⁰

Though an argument may be raised that, due to the ending of the Ebola outbreak, there has been a “fundamental change in circumstances” that rebuts this presumption, international groups note the continuing social stigma against healthcare workers and those involved in the Ebola crisis.²⁰¹ Threats of violence still exist and programs have been put in place to dispel the social stigma still faced by healthcare workers and burial workers.²⁰² Additionally, enduring distrust of Western medicine and Western medicine practitioners continues.²⁰³

In spite of this overwhelming evidence, political bias and judicial disparity may yet act as a barrier to refuting the argument of change in circumstances. Considering the current political climate surrounding immigration²⁰⁴ and the rise of American nationalistic views,²⁰⁵ this barrier may be even greater. A solution to these anti-humanitarian barriers would be to follow the lead of international opinions like that of the UNHCR, which refuses to reject applicants based on their country of origin and only recognizes a change in condition when there has been a “fundamental, durable change.”²⁰⁶ An additional solution would be to require a more in-depth analysis of current country conditions outside of U.S. State Department reports, which may fall prey to political bias.

Similar to refuting arguments that have been raised for women subjected to FGM, it can be argued that this persecution is ongoing and can be repeated even in the absence of the outbreak.²⁰⁷ Looking at the Single Harm Theory, which is obviously short-sighted, the argument against

197. 8 U.S.C. § 1101(a)(42)(A) (2012).

198. See AMNESTY INT’L, *supra* note 46, at 1, 172–74, 318–20.

199. 8 U.S.C. § 1101(a)(42)(A).

200. 8 C.F.R. § 208.13(b)(1) (2017).

201. ACAPS, *supra* note 5, at 1, 4–6.

202. *Id.*

203. Washington, *supra* note 9.

204. Eli Watkins & Abby Phillip, *Trump Decries Immigrants from “Shithole Countries” Coming to US*, CNN (Jan. 12, 2018, 9:53 AM), <https://www.cnn.com/2018/01/11/politics/immigrants-shithole-countries-trump> [<http://perma.cc/5TWH-JD8C>].

205. Elizabeth Bruenig, *Trump’s Solution to America’s Crisis: Nationalism*, WASHINGTON POST (Jan. 30, 2018), https://www.washingtonpost.com/opinions/trumps-solution-to-americas-crisis-nationalism/2018/01/30/db5f15f4-062f-11e8-94e8-e8b8600ade23_story.html?utm_term=.8ce4ab2dc27f [<http://perma.cc/7UHK-TVSS>].

206. Vance, *supra* note 108, at 991.

207. Govan, *supra* note 109, at 386–87; ACAPS, *supra* note 5, at 1, 3–6.

group status for these healthcare workers would be that the circumstances surrounding the harm—the 2014 Ebola crisis—have ended.²⁰⁸ However, the harm faced by healthcare workers during the Ebola crisis did not and will not end simply because the 2014 Ebola outbreak ended.²⁰⁹

Additionally, current country condition reports, including those from the State Department, report continuing violence and stigma against these healthcare workers up to the last two years.²¹⁰ Therefore, the Continuing Persecution Theory would provide the most logical analysis of the harm faced by this group.²¹¹ Under this theory, though the 2014 Ebola Outbreak ended, the persecution faced by these healthcare workers can continue based on the current conditions of the country.²¹² Additionally, the future threats of persecution they face, though related to their membership in the group, can be in a different form than the ones they faced previously.²¹³

2. *The Nexus Requirement—Constructing a Valid Particular Social Group*

Even if this group can satisfy the persecution requirement, the greatest difficulty arises in establishing these healthcare workers as a valid particular social group. Under current U.S. asylum law, a particular social group must (1) share an immutable characteristic, (2) be socially visible or distinct, and (3) be particular.²¹⁴ However, as mentioned previously, even these requirements have not been uniformly followed by asylum officers, immigration judges, and courts of appeals.²¹⁵ Even the strongest arguments focused on distinguishing this group from invalid particular social groups and comparing it to valid particular social groups would lead to disparate results.²¹⁶ Therefore, utilizing the UNHCR unified-disjunctive analysis would yield the strongest and most consistent analysis of a particular social group. This analysis adopts a single standard that incorporates both the *Acosta* immutable characteristic and the social visibility requirements.²¹⁷ Under the UNHCR's definition,

[A] particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental

208. ACAPS, *supra* note 5, at 1, 3–6.

209. *Id.*

210. *Id.*; *see supra* note 56 and accompanying text.

211. Govan, *supra* note 109, at 387.

212. *See id.*

213. *See id.*

214. *Scatambuli v. Holder*, 558 F.3d 53, 58 (1st Cir. 2009).

215. *Valdiviezo-Galdamez v. Att’y Gen.*, 663 F.3d 582, 586 (3d Cir. 2011); *Perdomo v. Holder*, 611 F.3d 662, 667 (9th Cir. 2010); *Gatimi v. Holder*, 578 F.3d 611, 614 (7th Cir. 2009).

216. Preston, *supra* note 161.

217. UNHCR, *supra* note 141, at ¶ 10.

to identity, conscience [,] or the exercise of one's human rights If a claimant alleges a social group that is based on a characteristic determined to be neither unalterable or fundamental, further analysis should be undertaken to determine whether the group is nonetheless perceived as a cognizable group in that society.²¹⁸

This provides multiple opportunities for a group to be analyzed as valid under both standards. Additionally, the UNHCR standards specifically allow persecution to be a relevant factor in the definition and visibility of a group.²¹⁹ UNHCR standards also do not require groups to be cohesive or particular, instead focusing solely on whether there is a common element shared by group members.²²⁰ The following sections will address each requirement in turn and analyze how each would be handled under current U.S. immigration law and the UNHCR standards.

a. Common, Immutable Characteristic

There are three “common” or “immutable” characteristics shared by these healthcare workers: (1) Western medical knowledge or training, (2) being a former healthcare worker during the Ebola outbreak, and (3) being threatened with violence or being a victim of the violence that emerged from the fear of Western medicine. First, in *Rojas-Contreras v. Attorney General of the U.S.*, the Third Circuit held that the BIA should consider whether the claim of healthcare providers who “possess specialized knowledge and expertise” and medical knowledge that cannot be changed or rid of would qualify as immutable characteristics.²²¹ The knowledge and training possessed by these healthcare workers are similarly immutable and deserves to be considered by the courts as a common, immutable characteristic.

Second, courts have held that employment alone is not an immutable characteristic because it can be ended at any time without disturbing a fundamental characteristic.²²² However, courts have held that former employment cannot be changed and is, therefore, an appropriate immutable characteristic for a particular social group.²²³ This characteristic is immutable because a person cannot cease to be a former employee, this is a group they will always be a part of. Conversely, the UNHCR definition of common characteristic defines it as “one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience [,] or the exercise of one's human right.”²²⁴ This definition differs from the current U.S. definition because it adds the exercising of a human right as a factor. The right to employment or work has long been considered a human right.²²⁵

218. *Id.* at ¶¶ 11–12 (emphasis in original).

219. *Id.* at ¶¶ 14–15.

220. *Id.*

221. *Rojas-Contreras v. Att’y Gen.*, 188 Fed. App’x 121, 125 (3d Cir. 2006).

222. *Sepulveda v. Gonzalez*, 464 F.3d 770, 772 (7th Cir. 2006).

223. *Id.*

224. UNHCR, *supra* note 141, at ¶ 11.

225. *See Supreme Court of N.H. v. Piper*, 470 U.S. 274, 281 (1984).

Therefore, under the UNHCR standard, employment and former employment may be considered a valid common, immutable characteristic.

Finally, though the harm faced by a group cannot be the sole defining factor of the particular social group, both current U.S. asylum law and the UNHCR standards allow the harm faced to be one of the defining factors of the group.²²⁶ Therefore, the common threat or realization of violence because of their roles in treating the Ebola crisis might be considered a factor when analyzing common, immutable characteristics. Utilizing current U.S. asylum law and judicial precedent, the outcome on this factor is unclear. Differences in circuit opinion make predicting outcomes virtually impossible. However, under the UNHCR, even if this group is found to not have a common, immutable characteristic, it still has a chance to satisfy the requirements of a particular social group.

b. Social Visibility/Distinction

Social visibility or distinction is the second required factor under current U.S. asylum law and an alternate factor under the UNHCR. Because it requires a showing that the group is distinct or visible in the applicant's home country, there must be evidence to prove this group's perceptibility in their native society. As previously mentioned, Western medicine and its suppliers have a long history of distrust in Africa.²²⁷ Countless media outlets²²⁸ and international relief and humanitarian groups²²⁹ recognized that these healthcare workers were targeted and persecuted because of their known identification and employment as healthcare workers. Like women who have not been subjected to FGM²³⁰ and Christian or Western women in Islamic countries,²³¹ these healthcare workers would be readily distinguishable in their society because their Western methods defy tradition. Therefore, under the UNHCR analysis, this group achieves valid particular social group status, even if it is not found to share a common, immutable characteristic. Under current U.S. law, the group must still satisfy the final requirement of particularity.

c. Particularity

Particularity, as shown by the Ninth Circuit's rejection of a "class of young, urban, working-class males of military age who are politically neutral," focuses on the members of the group.²³² Groups defined too broadly are seen to lack particularity;²³³ therefore, the more homogenous

226. UNHCR, *supra* note 141, at ¶ 10.

227. Washington, *supra* note 9.

228. *Attacks on Health Facilities*, *supra* note 49; *Emergencies Preparedness*, *supra* note 13.

229. See *supra* note 16 and accompanying text.

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

231. *Yadegar-Sargis v. INS*, 297 F.3d 598, 603 (7th Cir. 2002).

232. *Vicente v. INS*, No. 98-71132, 2000 U.S. App. LEXIS 29893, at *3 (9th Cir. Aug. 4, 2000).

233. *Gao v. Gonzales*, 440 F.3d 62, 68 (2d Cir. 2006); *Escobar v. Gonzales*, 417 F.3d 363, 367 (3d Cir. 2005).

and cohesive a group, the more likely it is to be particular. Since the violence experienced by those involved in the Ebola outbreak targeted healthcare and medical aid workers, this was not so diffuse as to make it wide-spread persecution across a beleaguered country. However, this group may not meet the particularity requirement because groups which include multiple races, genders, and backgrounds of people have not been considered valid. Since this group might include both local and international healthcare workers, men and women, the young and the old, and people in different fields of work in healthcare, the group's validity may be destroyed.

This again shows the superiority of the UNHCR's approach, which would consider this group valid based on its common characteristic *or* its social distinction. This approach has rejected the requirement of a "cohesive" or particular group and has also refused to deny a group based on its size.²³⁴ This approach is not argued to be permissive and make the particular social group a catchall category. It is meant to further the purpose of asylum law that has been integral since its inception: protecting human rights.

3. *Advancing Several Formulations*

Unfortunately, immigration judges and asylum officers still have the discretion to grant or deny asylum, which has been known to be arbitrary.²³⁵ Therefore, a final method for meeting the particular social group requirements comes from the Seventh Circuit's opinion in *Cece v. Holder*.²³⁶ This holding recognized the ability to "advance several formulations of the 'particular social group' at issue."²³⁷ This allows an applicant multiple opportunities to sufficiently articulate her group to meet the requirements of asylum. Therefore, a group made up of Western African healthcare workers who were persecuted against during the Ebola Crisis of 2014 because of their membership as healthcare workers can be reformulated in varying ways to satisfy particular social group requirements. This can be done by limiting the scope of the group to the specific countries affected to satisfy the particularity requirement. For example, the group could be limited to specific types of jobs (doctor, nurse, burial workers), or, because harm can be a defining factor of a group, to specific situations of persecutory harm. This can also be achieved by clarifying that these healthcare workers practice Western medicine, as opposed to traditional versions. Since there is such an enduring distrust against Western medicine and its proponents in traditional African culture, this would undoubtedly satisfy the social distinction/visibility requirement.²³⁸

234. UNHCR, *supra* note 141, at ¶ 10–12.

235. 8 C.F.R. §§ 208.14(a)–(b) (2017).

236. *Cece v. Holder*, 733 F.3d 662, 670 (7th Cir. 2013) (citing *In re Kasinga*, 21 I. & N. Dec. 357 (B.I.A. 1996)).

237. *Id.*

238. *Washington*, *supra* note 9.

VI. CONCLUSION

Though the Ebola outbreak has ended, the persecution, stigma, and violence suffered by healthcare workers continue. Additionally, studies show that violence toward healthcare workers has increased internationally, mostly in places facing conflict or political unrest,²³⁹ and that the public's trust in doctors and medicine is waning.²⁴⁰ The most recent attacks closely mirror those experienced by the healthcare workers during the Ebola crisis: destruction and looting of hospitals and clinics; intimidation, assault, and killing of healthcare workers; obstruction of access to healthcare, and blockage of humanitarian actors.²⁴¹ Because they have faced and continue to face clear and demonstrable persecution that has been well-documented in both mainstream media and country condition reports, healthcare workers satisfy the well-founded fear of persecution requirement for asylum. However, this is contingent upon judicial discretion influenced by prejudice and political bias.

These healthcare workers meet the status of a particular social group because they are members of a highly trained and intelligent class who possess medical knowledge, which they cannot leave behind as easily as one could leave a job. Though their group may include a variety of genders and professions, it is sufficiently particular because the group is restricted to this single outbreak in this region of the world. Additionally, it is socially distinct because of the widespread knowledge and distrust of those who work in Western medicine in Africa. Regardless of these unclear, divergent requirements, these healthcare workers and many other proposed groups would meet the status of a particular social group under the UNHCR guidelines, which are followed widely in international immigration law. Thus, if the U.S. is to be held to its humanitarian goals, it should dispel its political bias, excessive judicial deference, and conflicting decisions, and instead adopt the UNHCR disjunctive approach and apply precedential decisions to future particular social groups.

239. Jason Beaubien, *Report: Health Workers Attacked In 23 Countries Last Year*, NPR (May 3, 2017, 12:02 AM), <https://www.npr.org/sections/goatsandsoda/2017/05/03/526601059/report-health-workers-attacked-in-23-countries-last-year> [<https://perma.cc/6K2L-5BQX>]; *Impunity Must End: Attacks on Health in 23 Countries in Conflict in 2016*, SAFEGUARDING HEALTH (May 3, 2017) [hereinafter *Impunity Must End*], <https://www.safeguardinghealth.org/sites/shcc/files/SHCC2017final.pdf> [<https://perma.cc/F5UL-6AXM>]; see S.C. Res. 2286, ¶ 1, U.N. Doc. S/Res/2286 (May 3, 2016) (“[The United Nations] [s]trongly condemns act of violence, attacks and threats against the wounded and sick, medical personnel and humanitarian personnel exclusively engaged in medical duties . . . as well as hospitals and other medical facilities, and deplores the long-term consequences of such attacks”).

240. Dhruv Khullar, *Do You Trust the Medical Profession?*, N.Y. TIMES (Jan. 23, 2018), <https://www.nytimes.com/2018/01/23/upshot/do-you-trust-the-medical-profession.html> [<http://perma.cc/4S3C-HPAD>].

241. *Impunity Must End*, *supra* note 239.