The Dual Victimization of Failed Asylum Seekers in the United States Repatriations Process

by

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ABSTRACT

The asylum seeking process in the United States is arbitrary in nature, many aspects of which have been well documented. The legal process rests the burden of proof upon the asylum seeker to demonstrate he or she is truly fleeing persecution to a legal system where asylum seekers are not eligible for free representation. This contributes to a lower rate of success and an uncertain future, due to the limited or no access to employment, education, and health benefits, within the country in which they seek asylum. However, the academic literature pertaining to the repatriation process of the failed asylum seeker in the United States remains relatively unexplored. Consequently, the true failure rate remains unknown. This paper contends that genuine asylum seekers may fall through the cracks, unable to show evidence of their persecution. Thus, repatriations result in a dual victimization of the failed asylum seeker resulting in situations where a genuine case can be exposed to the very same dangers he or she fled in the first place. This is a grave violation of their human rights and the principle of Non-refoulement.

Therefore, this paper argues the theory of the Marginalized Other in Human Rights Law (Simmons 2011) can be extended to the repatriations process of failed asylum seekers in the United States. Using secondary data and reports this thesis breaks down the repatriations process into three components in order to demonstrate how the failed asylum seeker is treated as a Marginalized Other during each point of contact. By addressing the victimization that occurs during the repatriations process this paper concludes the threat posed to the human rights of failed asylum seekers can be minimized.

DEDICATION

Ammi & Thathi

Indrawansa Uncle & Aunty Priyani

Priyaranga and our wonderful family (including Gollum)

For your unconditional love.

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PREFACE

Once we had a country and we thought it fair,
Look in the atlas and you'll find it there:
We cannot go there now, my dear, we cannot go there now.

Went to a committee; they offered me a chair;
Asked me politely to return next year:
But where shall we go to-day, my dear, but where shall we go to-day?

Refugee Blues by W. H. Auden (1939)

CHAPTER 1: INTRODUCTION

Overview

The movement of people from one geographical location to another is not a recent phenomenon; in fact, the great human migration first originated out of Africa, some 80,000 years ago. International migration trends continue to rise as the United Nations Department of Economic and Social Affairs (UNDESA) Population Division notes the number of international migrants worldwide reached an all-time high of 232 million in 2013, from 175 million in 2000 and 154 million in 1990 (UNDESA 2013, 2). People migrate for various reasons—some for economic motivations while others flee unsafe conditions. Volatile climates in one part of the world have forced people to seek refuge in nation states far from their traditional homelands. Increasingly, the lines defining motivations of migrants have blurred, complicating national immigration policies. Conditions of persons requiring protection have intensified in urgency, as policy makers are faced with decisions of political complexity. As receiver countries scramble to decide if they can meet the humanitarian concerns of non-citizens within shifting political landscapes, all migrants have witnessed harsher border controls. In a post 9/11 world, political debate has focused on threats to national security and how to distinguish between economic migrants versus refugees.

Seeking asylum is perhaps one of the few instances when a citizen of one country can seek protection from another, transcending the barriers of citizenship. However, this was not always the case. Nazi atrocities and shortcomings of the international community during World War I created a global awareness for the need for a mechanism that was able to protect individuals fleeing persecution from their own governments. The

Universal Declaration of Human Rights (UDHR) set the foundation for a concrete document towards establishing a common standard for human rights in the world. The most relevant rights affecting asylum seekers as contained in the UDHR are freedom of movement, freedom from torture and cruel punishments, freedom from arbitrary arrest and freedom to a fair trial. An important characteristic of human rights as James Nickel (2007) notes is that they are "international standards of evaluation and criticism unrestricted by political boundaries. They provide standards for criticism by "outsiders" such as international organizations, people and groups in other countries, and foreign governments" (2007, 10). In other words, boundaries between nation states and limitations of citizenship no longer permit human rights violations with impunity; governments are held accountable for how they treat people within and outside their territories.

The establishment of the Convention Relating to the Status of Refugees in 1951 and the Protocol of 1967 offered protections by member states to people fleeing persecution in their homelands. It aimed to ensure the massive losses of human life incurred during World War II would never happen again. In Article 1, Section 1 of the Convention, a refugee is defined as an individual who is persecuted, "for reasons of race, religion, nationality, membership of a particular social group or political opinion and who is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country." This definition has been adopted by individual nation states, as they have enacted their domestic asylum and refugee laws.

Recent statistics and data collected by the United Nations High Commissioner for Refugees (UNHCR) on the global trends for refugee status demonstrate that the year

2014 recorded the highest number of asylum applications in recorded history. Out of the 1.6 million individual asylum applications submitted in 157 countries, 1.47 million were "first instance procedures" while 191,400 were on appeal. The *UNHCR Statistical Year Book* (2014) indicates more than one million decisions on individual asylum applications were issued worldwide in 2014. The combined UNHCR and individual country asylum application procedures estimate a 27% of Refugee Recognition Rate (RRR) of all decisions in 2014, and that the Total Recognition Rate (TTR) was 59%.

With the rising numbers of refugee applications, non-governmental agencies and immigration authorities have been burdened with a heavy workload that has resulted in increased processing times. *The Global Trends Report* (UNHCR 2014) recorded 1.8 million pending asylum applications by the end of 2014 - the highest it has ever recorded in the past 15 years. For the period of 2013-2014, the top three "main destination countries for new asylum seekers" with the highest pending application claims were, South Africa (463,900) and Germany (226, 000) while the United States (187,800) ranked third (UNHCR 2014). The United States registered an estimated 121,200 individual asylum cases in 2014, which was a 44% increase or 36,800 more applications compared to the year before. 42% of the asylum seekers to the United States originated from Mexico and Central America, a 12% increase from 2013. The UNHCR noted the significance of this group compared to other asylum seekers in the world who were "…primarily fleeing violence and persecution perpetrated by transnational organized criminal groups." The same report identified that 14,000 asylum claims elevated Mexico as the top country of origin for asylum seekers in the U.S, followed by 13,700 claims from Chinese nationals, and 10,100 asylum seekers from El Salvador.

As asylum applications have increased, so have the rejection rates. The Department of Justice Asylum Statistics for FY 2010 – 2014 reported that 8,775 cases were granted asylum in 2014 while 9,222 applications were denied. These figures included 138 nationalities of individuals who were granted asylum, and the top three countries where they originated from (as a percentage of total asylum grants) were China (45.31%), India (4.24%) and Ethiopia (3.68%), closely followed by Nepal, Egypt, the Soviet Union and El Salvador. However, the range of applicants who were granted asylum in the United States was not always as diverse and was once limited to refugees from only certain parts of the world.

The United States initially responded to the post-World War II refugee crisis by accepting many European asylum seekers with no formal structure in place (Brown and Scribner 2014, 101). Eventually, the Refugee Act of 1980 was enacted, formalizing relationships between resettlement agencies and the federal government as well as establishing political asylum within the United States legal system. Since then, through a largely considered successful program, the United States has resettled more than two million refugees (102). Although the terms asylum seeker and refugee tend to be used interchangeably, unlike an asylum seeker, a refugee is entitled to specific rights and protections. In contrast to a refugee who is accepted into the United States refugee resettlement program after overseas processing, an asylum seeker often enters the country illegally and applies for asylum either affirmatively or defensively, which is discussed in more detail in Chapter 4. They must undergo a rigorous, extensive process.

The Immigration and Nationality Act (INA), created in 1952, adopted the definition of a refugee from the 1951 convention. Section 208 of the INA establishes the

"statutory standard for asylum." The same provisions are contained in Title 8 of the United States Code (U.S.C) that deals with "Aliens and Nationality" while asylum is contained in section 8 U.S.C 1158. In the "Matter of Acosta," the Interim Decision #2986 stated, "a grant of asylum is a matter of discretion" in the United States. Thus, it is the right of the state to adjudicate asylum. To qualify for asylum, an individual must first fall within the boundaries of the definition of a refugee as contained in section 101(a) (42) of the INA and meet one of its enumerated grounds. The INA established the need to determine "fear of persecution" and for the need for that fear to be "well founded." The statutory requirements are therefore a convoluted procedure, especially for individuals who are unable to secure adequate legal representation. The legal course rests the burden of proof upon the asylum seeker to demonstrate that they are truly fleeing persecution. Because granting of asylum is discretionary even if an asylum seeker is persecuted, he or she could still be ineligible for asylum if they fall within certain categories that disqualify them. This contributes to an uncertain future, with limited or no access to employment, education and health benefits. The processing time of the application can typically take between 2 years to even 10, depending on various factors of the individual asylum case.

If an asylum seeker is found to be ineligible for asylum or fails to provide evidence of their persecution, removal proceedings immediately follow which results in repatriation to their country of origin. Deportations in the United States have remained highly controversial, where the rights of some migrants continue to be undermined in the process. As asylum applications have increased, so have the deportation numbers in the United States. The *Washington Post* reported that the Obama administration appeared to rigorously enforce immigration laws, increasing the deportation quota of the Immigration

and Customs Enforcement (ICE) agency in 2009-2010 to a goal of 400,000 deportations (Spencer and Becker 2010).

The U.S. Commission on International Religious Freedom (USCIRF) reports that a study found asylum case outcomes depend on the official who was evaluating the claim and whether an attorney represented the applicant. Asylum seekers without a lawyer had a much lower chance of being granted asylum (2%) than those with an attorney (25%) (USCIRF 2005). The report urges the incorporation of credible fear and parole mechanisms into "expedited removals" as there is evidence that some asylum seekers are mistakenly repatriated to the country of origin where they were persecuted. Further, it makes several recommendations for a more transparent removal process. Others studies, such as Ramji-Nogales in *Refugee Roulette* (2009) and Kenny and Shrag in *Asylum Denied* (2008), document the many inconsistencies of the United States asylum seeking process. These studies illustrate the urgent need to reconsider the overall repatriation process in the United States of those who fail their asylum claims and the need to monitor the well-being of those who are returned.

Therefore, this paper is an attempt to address the dual victimization failed asylum seekers face in their subsequent repatriation following an arbitrary and challenging adjudication process. A delicate and urgent gap in the forced migration literature pertaining to failed asylum seekers in the United States has been identified; this paper aims to contribute to a greater understanding of the problems that persist in the repatriations process. It is grounded in the belief that a dignified and humane repatriations policy that respects and monitors the human rights of those who are returned ensures the credibility and sustainability of future refugee resettlement programs.

Problem Statement

An asylum seeker must meet the definition of what constitutes as a refugee according to the Refugee Convention and Protocol. If a person falls outside this definition or fails to provide the required evidence to support their case, they are immediately placed in removal proceedings. The system assumes someone who does not meet the definition of a refugee is safe to return to their country of origin, unless they qualify for other types of narrow, temporary relief from removal. Failing these options, there have been instances where asylum seekers who were returned to their countries of origin were subjected to danger. Increasingly, negative decisions are difficult to appeal, requiring further time and money, significantly setting the asylum seeker at a disadvantage. Therefore, this study argues the assumption that failed asylum seekers are safe to return is problematic, and that repatriations require deeper scrutiny from a theoretical perspective using the theory of the Marginalized Other in order to consider improving the existing repatriations system.

Given that the arbitrary nature of the adjudication process of seeking asylum in the United States is well established, a case study of the United States offers an excellent opportunity to consider the repatriations process of failed asylum seekers. This thesis assumes that genuine asylum seekers fall through the cracks, unable to show evidence of their persecution. Thus, repatriations can result in genuine asylum seekers being exposed to the very same dangers they fled in the first place, which is a grave violation of their human rights and the principle of nonrefoulement. Article 33 of the Convention refers to refoulement as the return of people back to a place from which they sought asylum; while a real fear of persecution is still present. The principle of non-refoulement is considered a

major concept of granting asylum protection. Therefore, this thesis contends existing theories related to state sovereignty, and human rights theory alone are insufficient to explain the further victimization of failed asylum seekers in the repatriations process. This paper argues the need to extend the conversation to consider the failed asylum seeker as a Marginalized Other in human rights law to prevent further victimization. To do so, the study will focus on the case of the United States by employing various secondary data post 9/11 to further illuminate United States repatriations in the past few years. Lastly, it will contemplate how the human rights of failed asylum seekers in the repatriation process of can be further strengthened.

In what follows, **Chapter 2** will lay out an overall discussion of the existing theory and studies pertaining to failed asylum seekers. It will explore dominant perspectives of human rights theories and the foundations of modern day international human rights law that have shaped the failed asylum seeker narrative. A review of the literature reveals that the repatriations process of the failed asylum seeker is situated within a theoretical framework of state sovereignty and human rights and at the intersections of a multitude of interdisciplinary topics that are indirectly related to asylum seekers. However, this is inadequate to truly address the issues related to the human rights of failed asylum seekers. The existing theoretical models are unable to explain why there is a gap in monitoring the repatriations of those who may still require protections within an imperfect asylum adjudications system.

Chapter 3 will discuss the reasons for a qualitative research design that employs a case study of the United States. This chapter will explore my personal motivations and interest in the topic under study as well as why extending Simmons' (2011) theory of the

Marginalized Other is appropriate to a case study of failed asylum seeker repatriations in the United States. The study will rely on secondary data and published reports to demonstrate the inadequacies of existing data collection methods to capture the true range of suffering experienced by the failed asylum seeker. The limitations of this study, as well as key terms used, will conclude the chapter.

Chapter 4 will provide a brief overview of Simmons' theory of the *Marginalized Other in Human Rights Law* (2011). The current United States asylum application process will be briefly discussed. By extending the theory of the Marginalized Other, I will consider how the repatriations process results in further marginalization of the failed asylum seeker. The repatriations process will be analyzed in three parts. First, issues that arise when people are apprehended at the border will be discussed. Second, how failed asylum seekers are marginalized in detention and holding facilities will be analyzed. Third, the bureaucratic process of how the resettlement process results in creating further gaps in upholding the human rights of failed asylum seekers will be considered.

Chapter 5 will discuss in light of the findings of this paper, how the human rights of failed asylum seekers in United States repatriations process can be further strengthened. It will conclude by exploring the implications of these findings and recommendations for future research.

CHAPTER 2: BACKGROUND LITERATURE

Any discussion related to migration studies is dominated, quite naturally, by extensive legal discourse and case law. A review of the literature initially began from a perspective of social justice and human rights theory; however, soon discovered that matters relating to asylum and refugee literature are interdisciplinary. I found that the failed asylum seeker is in the unique position of being at an intersection and overlap of these different subjects. Though, none of them adequately address the issues directly faced by the failed asylum seeker during the repatriations process.

For the purpose of this literature review, therefore, I concentrated upon reviewing publications related to the lived experiences of asylum seekers and its practitioners who must adapt to ever-changing immigration policies. The background literature was based on the understanding that asylum seekers are distinct from persons granted refugee status, at the mercy of receiver countries they often enter illegally. Existing literature has given weight to issues such as immigration policy and refugee rights as authorities have tended to freely construct and treat failed asylum seekers as illegitimate migrants, threatening them with immediate expulsion.

A review of the literature on failed asylum seekers and repatriations found that the narrative of repatriations was still a developing area of academic interest. The dominant topics related to asylum seekers ranged from discussions of law and policy, human rights theory, and state sovereignty. Literature that directly addresses failed asylum seeker repatriations have so far concentrated on countries such as Canada, Australia and the United Kingdom and Germany (Burnett 2009; Creighton 2014; Darling 2011; Gibson

2010, ICMPD 2002; Khosravi 2009; Koser et. al 2002; Noll 1999; Phuong 2005; Siva 2009; Tazreiter 2004; Taylor 2006, 2010; Wilkins and Peatling 2012).

It appears literature directly related to the United States repatriations of failed asylum seekers has been dominated by discussions related to refugee rights and resettlement, deportations, and border rights violations (Harvard 2013; Turck 2014; Rabinovitch 2014; Spencer and Becker 2010; Kerwin 2011; Long and Alison 2014). For the purpose of this paper, the following section will discuss a few of the studies related to four broad categories relevant to a discussion of failed asylum seeker repatriations: human rights theory, immigration policy, refugees and asylum, deportations and issues related to state sovereignty.

Human Rights Theory

When turning to the literature on Human Rights, scholars such as Nickel (2007) have approached the subject from a philosophical standpoint and related this inquiry to the Universal Declaration of Human Rights. He manages to bridge the gap between the seemingly contradictory aims of the philosopher who attempts to justify human rights, against the everyday challenges faced by those who must put these ideals into practice. Hannah Arendt famously discussed the 'Rights of Man' in "Origins of Totalitarianism" as she expressed doubts of a universal set of human rights (Arendt 1966, 292-294). Arendt pointed out, although the right of asylum was offered by certain 'civilized countries,' "The trouble arose when the new categories of the persecuted were far too numerous to be handled…the majority could hardly qualify for the right of asylum, which implicitly presupposed political or religious convictions which were not outlawed in the

country of refuge" (292-294). Her words seem relevant even today, as asylum policy debates have become increasingly sensitive, almost to the point of paranoia, as public perceptions of the religious and cultural backgrounds of incoming refugees have shifted as countries of refuge struggle to understand the foreign cultures and circumstances that compel refugees to flee.

To further explore power relations between a nation state over the individual, Foucault's notion of biopolitics as well as Agamben's theory of necropolitics can be considered. During the process of asylum, the state controls whether or not an individual is returned to a place where there is a possibility they may be exposed to violence, and in extreme cases, even risk losing their lives. Similarly, the power of the state over the fate of the asylum seeker is present during the process of fleeing, seeking asylum and final decision, all placed solely within the control of the state. If returned to the country of origin, the fate of the individual is in the hands of the original state he or she attempted to flee. Membe (2003) has argued, "the ultimate expression of sovereignty resides, to a large degree, in the power and capacity to dictate who may live and who must die. Hence, to kill or to allow to live constitute the limits of sovereignty…To exercise sovereignty is to exercise control over mortality and to define life as the deployment and manifestation of power…" (11-12).

Immigration Policy

Studies have examined early immigration policy of the United States, from the use of detention centers and the evolution of refugee resettlement. They demonstrate that the United States has a long history of immigration policy and an adjudication process

that has constantly evolved over time. Zolberg (2006) examined the role played by immigration in the United States as early as the 19th century in *A Nation by Design: Immigration Policy in the Fashioning of America*. He highlights the fact that the United States has always been selective when choosing immigrants while rejecting those who were deemed 'undesirable,' "A nation of immigrants, to be sure, but not just any immigrants. From the moment they managed their own affairs, well before political independence, Americans were determined to select who might join them, and they have remained so ever since" (1). Zolberg's work suggests even before the beginning of the 19th century, the selection of immigrants as "desirable" were based on purely subjective perceptions of policy makers most likely reflecting the sentiments of the general public at the time.

David A. Martin, a leading authority and legal scholar on refugee and asylum policy in the United States has published extensively on early immigration policy and analyzed the effects of the transformation of asylum and refugee law in the past two decades. He has pointed out the political nature of immigration policy, in his discussion of how the coast guard returned Haitian boats under the Bush administration in order to avoid questions during an upcoming election (2003). Martin called for an overhaul of the adjudication process of asylum and analyzed asylum adjudications in the United States extensively in his far-reaching research on the subject. In a study titled, *Reforming Asylum Adjudication: On Navigating The Coast of Bohemia*, Martin (1990) traces the history of political asylum from the 1950s as the adjudicative processes changed. An account of the decision-making process, as well as insights into the challenges faced in the asylum adjudication process, was analyzed in the *Making Asylum Policy: The 1994*

Reforms, where Martin (1995) states that the new policies established the need to ensure asylum officers were specially trained, specializing in asylum cases. He has been sympathetic to the challenges faced by administrators of asylum,

> Asylum determinations provide perhaps the most challenging adjudication known to our administrative law. High stakes ride on the outcome: a secure status in a stable country versus, at best, return to an impoverished and troubled country (for most applicants), and at worst, deportation to a homeland where persecution awaits. The deciding officer or judge must determine what happened in the past in a distant country, based on a deeply imperfect factual record. The only available witness to the crucial individual facts is usually the applicant herself. She may, on the other hand, have reason to exaggerate past abuses or threats in order to gain a favorable ruling. Or she maybe so distraught over past treatment or so fearful of any authority figure that she cannot give a convincing account of her travails. (1995, 728)

Martin (1989) expresses a skeptical view of the limitations of the influence of international law upon migration policy within a nation state. Instead of "governing admission policies directly," Martin argues the role of international law, "may be to improve the effective integration of those whom government have decided…to admit or allow to stay" (578).

Refugees and Asylum Seekers

Academics have noted the vulnerabilities associated with seeking asylum, as opposed to other immigration benefits - "asylum warrants a degree of special care due to the potential that people's lives are at stake in these decisions in ways that do not apply to general immigration decisions" (Tazreita 2004, 41). However, others have noted that distinguishing between the definitions of a refugee and asylum seeker are much more difficult in reality (Freedman 2007, 2). Freedman writes, "the definition of a refugee under international law is someone who has been recognized by a national government or

by the United Nations High Commissioner for Refugees (UNHCR) as deriving international protection" according to the terms defined in the 1951 Refugee Convention. An asylum seeker, on the other hand, is someone who has requested a "particular state to grant him or her refugee status under this convention" (Freedman 2007: 4). Reflecting upon the current tendency to portray clear distinctions between the economic migrant and asylum seeker, and the negative connotations associated with asylum seekers, Freedman further argues that people flee for multiple, often-complicated reasons; it is impossible to draw a distinction as to why people flee (4). However, with the ever-increasing surge of migrants travelling to borders, and the threat of international terrorism and burden upon host countries, chances of an asylum application being approved are very slim in western nations, "some countries in the EU now reject over 90 per cent of asylum claims, and in 2003 Greece reached a total of 99.9 per cent of rejections" (5). These studies highlight the need for a closer examination of the fate of the 99.9 percent of failed asylum seekers who were placed in removal proceedings.

With regards to return and readmission from the United Kingdom, Fekete (2005) is critical of the political nature of the immigration debate. Similar to strategies employed by border authorities in the United States, Fekete is skeptical of policies in the United Kingdom that administer quotas for asylum seekers; he argues this undermines the basis of humanitarian assistance. Burnett (2005) notes the "contradiction in policy between the designation of countries as unsafe for return, and the level of support for those who cannot, consequently, be returned." Thus, discussions on how countries are categorized as 'safe' to return; even though there might be evidence to the contrary – and how this impacts the accountability of countries that deport failed asylum seekers raise many

concerns for human rights practitioners and demonstrate how the individual has very little control over a process that defines the entirety of their future lives.

The asylum adjudication process itself has come under greater scrutiny in the past few years. In *Asylum Denied* Kenny and Ngaruri (2008) share a real life experience of how inefficient and problematic the United States adjudication system is; the account of one man's journey over a span of ten years demonstrates the vulnerability and unnecessary perils asylum seekers are subjected to by the very system that is designed to protect them. In a separate study, Family (2009) has examined the problems within the legal process from individuals to immigration judges themselves, and examined the efficiency of "the phenomenon of filtering individuals away from the adjudication process and then evaluates such diversions from the perspective of administrative process design" (597). Diversions, as Family discusses, can be problematic when related to repatriations of failed asylum seekers. A landmark study titled *Refugee Roulette: Disparities in Asylum Adjudication* (2007) analyzed secondary data of asylum decisions,

> 133,000 decisions involving nationals from eleven key countries rendered by 884 asylum officers over a seven-year period; 140,000 decisions of 225 immigration judges over a four-and-a-half-year period; 126,000 decisions of the Board of Immigration Appeals over a six-year period; and 4215 decisions of the U.S. courts of appeals during 2004 and 2005. (296)

This study found the decision of an asylum case was heavily influenced by the characteristics of the particular immigration judge it was randomly assigned to, as well as the quality of the legal presentation received by the applicant. While the findings urged for better review mechanisms as well as improvements in the adjudication system, the study confirmed the need to further review all aspects of the asylum process, yet the repatriations of failed asylum seekers have remained in the shadows.

Detention, Deportations, and Repatriations

The United States, among other developed nations such as Canada and Australia, have been heavily criticized for their border protection practices that have resulted in placing asylum seekers at greater risk. Many have reported cases where potential asylum seekers were deported even before they were given an opportunity to express "credible fear." In a report titled *Tortured and Detained* (2013) the Center for Victims of Torture (CVT) and the Torture Abolition and Survivor Support Coalition International (TASSC) conducted interviews with asylum seekers who were held in immigration detention in the United States. Some were survivors of torture and were re-traumatized during this process. It exemplifies the need to reevaluate how the very people who are bound to protect them frame asylum seekers as illegitimate migrants. Doug Keller (2012) has argued for the need to critically consider the criminalization of illegal entry, and points out the ineffectiveness of using the criminal justice system to regulate immigration. A misguided attempt at regulating illegal entry, Keller argues, it has not resulted in deterring immigrants; instead, it has merely resulted in costly prosecutions. However, recent immigration reforms have focused on tightening border controls as expedited removals have been employed.

Pistone & Schrag (2001) in *The New Asylum Rule: Improved But Still Unfair* examine the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) that was passed by Congress in 1996. They argue two aspects of the IIRIRA are problematic, the one-year deadline within which a person seeking asylum must file as well as the "expedited removal" process that was introduced. Expedited removals allowed the removal of individuals "without administrative or judicial hearings, of certain persons

who arrive at U.S borders or airports without proper travel documents." They identified the inadequacies even though some provisions allowed for the delay of certain asylum seekers from being removed (2). Pistone & Shrag were concerned with refoulment and therefore, they examined the effects of the IIRIRA upon potential asylum seekers and suggested reforms to the statute (6).

Martin (2000) argued in *Two Cheers for Expedited Removal in the New Immigration Laws* the 1996 reforms of expedited removals should be retained, as they were primarily enacted to deter fraud and establish efficient removal mechanisms of those who attempted illegal entry. O'Callaghen (2001) examined the 1996 reforms from the perspective that expedited removals were detrimental to "true asylum-seekers." O'Callaghen argues those who flee persecution as a potential refugee "must be allowed a fair chance to prove his or her credible fear. Anything less renders any asylum policy meaningless." Thus, the paper argues that any potential for discrimination in the expedited removals should mean "expedited removal must not apply to potential asylum-seekers" (1749). This is a relevant study, given this same argument can be extended to the repatriation of a failed asylum seeker who may continue to need some form of protection during the process of return.

Studies related to the fate of asylum seekers who were rejected from other western nations have been documented. Taylor (2006) criticizes the Australian government and the policies that have resulted in a violation of the rights of those deported. She urges for stronger cooperation in the E.U region to protect refugee interests through interstate dialogue and civil society engagements. Australia has been heavily criticized for its deportation policies and responses to the influx of potential asylum

seekers. The Edward Rice Center (ERC) based in Australia published reports titled *Deported to Danger* (2004 & 2006) pointing out, "often those who face danger on return are persecuted for the very reasons their refugee claim was based." Reports related to failed asylum seeker deportations from Australia have been concerned with human rights violations of those who were repatriated to countries such as Iraq, Syria, Afghanistan. Similarly, The Institute of Race Relations based in the United Kingdom studied immigrant deaths; they conducted a number of studies related to immigration and asylum seeker deaths while in detention. 77 asylum seekers and migrant deaths from 2006 to 2010 were documented. They noted 4 of those deaths resulted in failed asylum seekers who were returned and suspected the numbers of actual deaths were much higher (Athwal 2010).

Some countries have employed bi-lateral agreements to streamline cooperation between countries. Coleman (2004) in a comprehensive study examined the benefits and criticisms of EU readmission policy and third country interests in employing Readmission Agreements to repatriate failed asylum seekers to many developing countries of origin. Fekete (2011) in *Accelerated removals: the human cost of EU deportation policies* is extremely critical of the readmission agreements that were being negotiated, to repatriate failed asylum seekers to certain "safe countries" such as Somalia, as well as Afghanistan and Iraq.

State Sovereignty

Granting of asylum tends to have consequences upon three primary stakeholders, the first being upon the life of the individual, secondly for the host country, and finally

for the country of origin that an asylum seeker flees (Tazreita 2004: 40). Protections offered to non-citizens, and questions of state sovereignty are a core discussion in the question of failed asylum seekers, and repatriations. Scholars have discussed the paradox of the most democratically governed states that are the most vocal defenders of human rights around the world have felt the need to tighten their borders in the last decade (Tazreita 2004, 4). Tazreita has worked extensively on trying to understand the politics of protection (2004). State obligations, state violence and discussion of open and closed borders are examined in *Asylum Seekers and the State* (25-47). The study points to the dilemma of human rights as a universal ideal against individual sovereign rights, and human rights as negative rights, and that the dilemma is further exacerbated when examining the idea of positive rights across borders.

The normative framework that scholars such as Tazreita (2004) have considered in discussing failed asylum seekers and state sovereignty naturally turns upon the issue of refoulement. As defined in the Refugee Convention, refoulment is to return people back to a place they sought asylum from, while a real fear of persecution is still present. The principle of nonrefoulement is considered the main purpose of granting asylum protection. Tazreita points out, the burden of accepting such refugees is also to create an incentive for the international community to engage in steps to alleviate the suffering and human rights violations of originating countries in the first place (Tazreita 2004, 42).

The question is whether countries are obligated to extend their accountability for the well-being of people who do not directly fall within the definition of the Refugee Convention, and, therefore, are denied asylum and deported, only to fall victim to the very reasons they sought asylum from. Given these questions remain problematic

monitoring the human rights of failed asylum seeker repatriations has been an area of study that is still in its early stages of exploration; "The evident gap in establishing the legitimacy of return is seen in the absence of adequate monitoring of individuals after their removal of one state, and return to another" (42).

Conclusion

The literature review documents the arbitrary nature of the asylum seeking process in the United States and some of the key themes that have dominated the discussion of failed asylum seekers and repatriations. The dilemma is the fact that issues related to failed asylum seekers and repatriations have not been adequately addressed. Given the large numbers of asylum applications that are rejected every year, it is startling to note the fate of the failed asylum seeker continues to be marginalized and undocumented in mainstream literature.

The literature discussed above is merely a scratch on the surface of a wide range of issues that affect the well-being of a group of people who are repatriated; at times even though they may meet the enumerated grounds for persecution, they may not qualify due to other factors. They may sometimes simply lack the evidence to successfully prove a case of persecution, which can still mean an individual, is left with a genuine fear of return. A brief review of the literature indicates while the issues of the failed asylum seeker are intertwined in the broader discussion topics, they do not adequately address the issues faced by the failed asylum seeker in the repatriations process. Thus, even in the literature, the issues of the failed asylum seeker have been marginalized. Therefore, the review of the literature supports the need to understand and evaluate repatriation policies

of failed asylum seekers and the urgent need for reforms by contributing to further development of the existing theoretical model. Here, the discussion turns towards a theory of the Marginalized Other.

CHAPTER 3: METHODOLOGICAL APPROACH

Personal Background & Motivation

My specific interest in failed asylum seekers was solidified by a yearlong consultancy position in 2013 with the International Organization for Migration (IOM) in Colombo, Sri Lanka. Working on a project funded by the European Union, the IOM provided technical assistance to the governments of Sri Lanka and Pakistan to operationalize a bi-lateral readmission agreement with the European Union and finalize individual protocols with Member States. The Secretariat Office I coordinated incorporated various agencies and departments within the government as the focal point for all readmission related matters within Sri Lanka. The project was to ensure failed asylum seekers who were repatriated were processed in a timely and efficient manner. It also created a monitoring system within the relevant agencies to create accountability within the government for the safe processing of those who were returned.

Although returns and readmissions were conducted between border management agencies of the relevant countries on a daily basis, my experience allowed me to witness the complicated nature of negotiations when attempting to formalize these operations. During this brief time I was exposed to the power dynamics between nation-states and intricacies of finalizing drafts of agreements and protocols that all parties were satisfied with. I was struck by the sensitive nature of these discussions, and the geopolitical relations of which I was merely a spectator and an outsider. This experience sparked my interest for further academic training related to social justice and human rights. I was particularly struck by the dynamics of protections owed to non-citizens by nation states, and the international laws that guided them.

The Social Justice and Human Rights MA program at ASU is one of a kind. I knew when I joined the program my thesis would explore asylum seekers and state sovereignty issues. My full-time work in a refugee resettlement program in Phoenix placed me in a unique position to gain hands-on experience into the intricacies of the U.S Refugee Resettlement program as well as develop community relations with various agencies that serve under-represented vulnerable populations in Phoenix. With the gentle guidance and advice of my committee Chair and faculty members I was able to narrow down my thesis topic to manageable proportions. Applying the theory of the Marginalized Other to the repatriations process of the United States promised to be a stimulating exercise that would challenge me as a novice graduate student researcher.

The Marginalized Other in the U.S. Repatriations Process

A Theoretical Framework of the Other

When exploring a topic related to failed asylum seekers, the existing human rights framework that identified state obligations owed to non-citizens who are persecuted by their own countries of citizenship intrigued me. After conducting a preliminary literature review, it would not be an exaggeration to say, that I was astounded at what seemed to be the ambiguous state of asylum adjudications in the United States. The imperfect nature of the asylum process has been well established by veteran scholars in the field. I soon discovered academic literature related to the failed asylum seeker repatriations from the United States, however, was rather limited. Further exploration of existing literature revealed the fate of those who failed the test of asylum remains largely unknown and

undocumented. I was convinced there was a need to understand the treatment of failed asylum seekers in the United States repatriations process.

To begin exploration of such a topic with limited literature and data required a consideration of existing theories that could help explain why failed asylum seekers thus far have been ignored, by both policy makers, as well as mainstream academic literature. A few recent studies have argued for the need to apply Critical Race Theory to immigration and refugee issues (Romero 2008, Sanchez and Romero 2010). For instance, Romero (2008) argues, "It is unfortunate that mainstream sociological research has completely ignored the groundbreaking work of critical race theory (CRT), which addresses more relevant issues, such as racial profiling, anti-immigration sentiment, the increased militarization of the US-Mexico border, and the high number of immigrant deaths on the border." I found that Critical Race Theory was influenced by philosophical concepts that rested upon the phenomenology of the "Other," as first introduced by writings of Hegel (1770-1831) in the 18th century and further developed by numerous other theorists since then.

Simmons (2011) in his book *The Marginalized Other in Human Rights Law* was able to bridge the gap between philosophical theory and legal discourse related to the discussion of the Other. Simmon's argued individuals when face to face with human rights practitioners, for instance in a court room in front of a judge – citing *Cham vs. Attorney General* (2006), found themselves vulnerable and without a voice; cauterized in the process. Compellingly, Simmons demonstrated multiple instances within the asylum adjudication process where asylum seekers were unable to control his or her fate and the

very system that was supposed to protect them was unable to safeguard their interests; failing them.

Furthermore, Simmons did not merely identify the marginalization in the asylum adjudication process in human rights law, he also advocated for methods that could assist human rights practitioners to improve the status quo in order to alleviate the suffering of the Marginalized Other (Simmons 2011, 224-227). He argues for the need to engage in the continuous deconstruction and invigoration of the law, while taking in to account the need for the asylum seekers themselves to ascribe their own rights. Simmons calls upon practitioners of human rights to suspend their own cultural and theoretical presuppositions and to understand the limitations of being able to translate grievances in to the law (224-227). Therefore Simmons' application of the Marginalized Other in the United States asylum adjudication process offered me a strong theoretical foundation to build this particular thesis upon a framework that could potentially understand the suffering experiences by failed asylums seekers who have thus far remained largely ignored in the United States repatriations process.

A Case Study of the United States

Given the large amount of literature that has established the arbitrary nature of seeking asylum in the United States, a case study of the repatriations process of the United States offers an exceptional opportunity to further understand the marginalization of the failed asylum seeker during this process. The stark contrast between the protections and treatment afforded to a refugee entering through the refugee resettlement program compared against the treatment offered to an asylum seeker who is unable to qualify for

refugee status is remarkable. Within this context, published data and reports demonstrate certain challenges in the repatriations process, which offers an exemplary opportunity to focus upon the situation faced by the failed asylum seekers. The study, while still limited in its capacity to isolate issues directly faced by asylum seekers, will employ secondary data that is publicly available through sources such as the Department of Justice, USCIS and ICE and other published reports by academic institutions and non-governmental organizations. The study will explore whether applying the lens of the Marginalized Other can alleviate the dilemmas faced by failed asylum seekers in the United States repatriations process.

Limitations & Scope of the Study

As a graduate student thesis topic, this particular subject proved to be challenging given the vast amount of interdisciplinary studies related to refugees and asylum seekers, spanning across international borders, affecting people who originate from various nationalities. Given the rather short timeline associated with this project, I sought to narrow down my interests to ensure it was manageable in scope. I have no background in legal discourse and felt an in-depth understanding of asylum law practice in the U.S. could have benefitted the study further. Issues arising to state sovereignty concerns limited my ability to expand recommendations beyond the United States, to consider final reintegration and resettlement in the countries of origins. Although some scholars have explored the involvement of non-governmental actors to ensure accountability in the process of repatriations overseas, I have limited my scope to consider only issues related

to the repatriations process within the United States. The limitations that constrained this study, I feel, accurately echo the challenging nature of the very subject under study.

Apart from being a full-time student, the inevitable demands of full-time employment have made writing a thesis challenging. Due to this reason, this particular thesis is intended merely as a preliminary step towards truly understanding the nature of repatriations and human rights of the failed asylum seeker as a Marginalized Other. My work at a refugee resettlement agency allowed me an insider's perspective into understanding the process of resettlement experienced by newly arrived refugee families in the U.S contrasted with my interactions with asylees, who are pending their immigration paperwork. These experiences were immensely helpful when comparing between the programs offered to refugees who were accepted into the country as "legal immigrants" as opposed to the asylum seekers pending a decision on their applications, unable to gain any meaningful employment until he or she received an Employment Authorization Document (EAD) from USCIS. I attempted to be mindful of my own possible bias towards interactions in my work with various law enforcement agencies and regarding them with a certain amount of sympathy, given the heavy caseload they themselves are burdened with in their day-to-day work.

The research design was limited by the lack of available statistics and data on repatriations of failed asylum seekers and how they fared after repatriation to their countries of origin. Hence, the focus was upon the repatriations process within the United States, and the additional harm failed asylum seekers were subjected to during their removal to their countries of origin. This paper does not urge for all asylum seekers to be granted asylum. It is built upon the notion that in practice, it is unlikely there will ever be

a perfect asylum adjudication procedure. Given the very nature of asylum adjudication, it is inevitable some people who deserve protection will fail the test of asylum due to insufficiencies in the system and lack of evidence while there will be others who try to game the system. However, mistakes can mean dire consequences. Therefore, a repatriation system that is frequently revisited, constantly monitored, and strengthened over time can act as a final safety net for those falling through the cracks. This paper argues for the need to recognize the inevitability of an imperfect asylum process failing some of the very people it is supposed to protect. Thus, the purpose of this study is to improve understanding of failed asylum seekers in the repatriations process by building upon a theoretical approach that incorporates the Marginalized Other and considering how the repatriations can be strengthened by addressing the victimization during the removals process.

Key Terms

It seems appropriate to clarify some of the key terms employed throughout this paper. For instance, a failed asylum seeker is considered broadly to be an individual who fled their country of citizenship seeking protection, however, did not meet the standards to qualify as eligible for asylum and has exhausted all avenues of redress. The potential applicant may have attempted to indicate they were facing persecution in their country of origin and were denied the request either at a border or through a lengthy adjudication process after having applied either affirmatively or defensively, which is discussed in more detail in Chapter 4 of this thesis.

This paper considers a failed asylum seeker to be an individual who may still require further protection in the repatriations process, distinct from a migrant who entered the country without a visa, and did not express a fear of returning to their country of origin. This paper acknowledges the original fear of return could be purely subjective, and understands this fear may not always fall under the enumerated grounds of persecution. Yet this paper argues that a failed asylum seeker could be more vulnerable to threats to his or her security following their subsequent return than a migrant and face additional reintegration difficulty to their country of origin. As far as repatriations are concerned, I use the term to mean the return of a failed asylum seeker. I use the terms forced removals, involuntary returns, or deportations interchangeably for all other individuals being removed. As other scholars have pointed out, I remain skeptical of the term, "voluntary returns," however the issue does not explicitly arise in this particular thesis discussion (Immigration Action Council 2012).

CHAPTER 4: DISCUSSION

The Theory of the Marginalized Other

Simmons (2011) argues for the need for human rights law to engage in, "patiently listening" (222) to the most vulnerable people, and the need to engage the Marginalized Other so that they are able to define their own rights by "ascribing their own identities" (221). He argues Marginalized Others are "cauterized" in the practice of human rights law by the very institutions that are supposed to protect them and constructs the need for an "anti-hegemonic discourse" to actively include the voice of the Marginalized Other in the law and its practice. Simmons urges human rights workers to "deconstruct the discourse" and offers certain tools that can be employed to improve the rights of those who are without a voice (225-226). Simmons' goal is to provide a "new normative map" when working with the Marginalized Other demonstrating where "the normative violence of law is suspendable": critiquing existing political and legal theory, providing examples of when scholars such as Hannah Arendt have inadvertently "cauterized the Other" (186).

Acknowledging his theory of the Marginalized Other in Human Rights Law is an ideal model, Simmons points out it is "an exercise in *de lege ferende*, what the law ought to be" (220). He urges progress in human rights law must not be taken for granted or result in "triumph..or cause for exuberance" (225). Human rights, as they are known today have a firmly established place in the world since their formal inception following the Universal Declaration of Human Rights which is an encouraging development for practitioners and advocates of social justice compared to decades before. While the struggle continues to ensure all people in different parts of the world are guaranteed these rights, Simmons points out the need to scrutinize these rights so they are "continually

deconstructed" and "reinvigorated" lest we become complacent in our treatment of those who require the most protections.

As Simmons argues, the Marginalized themselves need to "direct the means to address their marginalization," while "too often, human rights lawyers reach primarily for legal solutions, even when they may not be most appropriate or desired. Similarly, all too often the law is employed and it leaves the underlying structural violence un-addressed when more comprehensive strategies (social, economic, political, etc.) are needed" (226). Simmons cautions that uneven power relations still remain and emphasizes the need to constantly evaluate different power dynamics within human rights law (225). Existing hierarchies of power relations, even within the Marginalized, need to be navigated while being "conscious of the difficulties of translating the grievances…into the idiom of the law." Equally, any prejudice or bias must be withheld (226).

Simmons' goal is to provide tools for practitioners to develop "a new foundation for a reinvigorated human rights law (221). Simmons urges ideally, "to craft an asylum law from the perspective of the Other would be to break down this original violence of the Convention's founding moment and grant asylum to anyone facing persecution whether or not it is "on account" of these five grounds" (187). In reality, if denied asylum, the individual faces a state of extreme legal marginalization and is no longer afforded any hope of the protections offered within the boundaries of the Refugee Convention.

Hence, this paper answers Simmons' call to apply the theory of the Marginalized Other to human rights law "at all stages" of work by listening to the voices of those who are marginalized (225) by exploring "comprehensive strategies" in the repatriations

process of failed asylum seekers. By employing the lens of the Marginalized Other, repatriations and subsequent resettlement of failed asylum seekers can be better understood. The following section will begin by laying out the United States asylum adjudication process, followed by a discussion of the current repatriations process of failed asylum seekers as examples of how the failed asylum seeker is transformed in to the Marginalized Other. It will employ secondary data related to repatriations in the United States and consider reports by non-governmental organizations to further highlight deficiencies in the current system.

The Asylum Adjudication Process in the United States

The United States Citizenship and Immigration Services (USCIS) under the Department of Homeland Security (DHS) is mandated to handle all immigration related matters. The Executive Office for Immigration Review (EOIR) within the Department of Justice (DOJ) oversees Immigration courts and the Board of Immigration Appeals (BIA). An application for asylum in the United States can be filed with the USCIS under two categories, either affirmatively or defensively. Regardless of how an individual entered the country, generally, an affirmative application has to be filed with the USCIS within a year from the date of arrival. This form is known as I-589, the Application for Asylum and Withholding of Removal. According to the USCIS website if the application is not approved, and the applicant does not have a "legal immigration status," a Notice to Appear (Form I-862) is issued by the USCIS and the case is referred to an Immigration Judge. At this point, a "*de novo*" or new hearing is conducted, which is independent of

the decision made by USCIS. The website notes, “affirmative asylum applicants are rarely detained by the U.S. Immigration and Customs Enforcement (ICE).”

A defensive asylum application is submitted as a request against being removed from the country. The applicant would already be in removal proceedings through the immigration court with the EOIR. An individual can be in removal proceedings after an affirmative application was found to be ineligible for asylum and was referred to an Immigration Judge by the USCIS. It can also be an individual who was found to be entering the United States at a port of entry without a visa or “in violation of their immigration status” (USCIS) such as overstaying the allotted time on a visa. If an individual who was apprehended by the Customs and Border Protection (CBP) authorities and placed in expedited removal proceedings was found to have “a credible fear of persecution or torture,” he or she may also apply for defensive asylum. Defensive asylum cases are conducted in courtroom-like proceedings, where an individual and his or her attorney can be present, while an attorney employed through the ICE represents the United States government. The judge decides eligibility for asylum, and if denied, eligibility for any other forms of relief such as withholding against removal or protections under the Convention Against Torture is considered. Failing these options, the individual is removed from the country with limited options to appeal this decision.

Some of the key differences between the affirmative and defensive asylum processes are that an affirmative applicant is not under removal proceedings and must provide their own interpreter for the asylum interview. For a defensive application, the Immigration Court will provide an interpreter and the hearing is adversarial. Even if an asylum application appears eligible for asylum, found to have a well-founded fear of

persecution, there are still certain factors that could bar an individual from being granted asylum, according to INA 208(b)(2). What is common to both types of asylum applications is that, if denied, the applicant is placed in removal proceedings and the appeals process can become expensive and even more challenging.

The Three Components of the United States Repatriations Process

How the United States asylum adjudication process results in the marginalization of asylum seekers has been extensively analyzed by Simmons (2011, 173). This paper argues that the asylum seeker can face further "cauterization" during the repatriations process. Some of the same issues Simmons (2011) identifies in the asylum seeking process are then exacerbated when denied and placed in removal proceedings. In this thesis I argue the marginalization of asylum seekers continues through the repatriations process, which results in the dual victimization of the failed asylum seeker within the context of the United States. Thus, this thesis discusses the marginalization process in three distinct components of the asylum repatriation system in order to analyze the potential redress of the marginalization of the failed asylum seeker.

The dual victimization in the repatriations process emerges when the asylum seeker first subjected to a repatriation process that cauterizes and marginalizes them then, becomes invisible in the repatriations process, rendered voiceless and unable to control his or her own fate. This paper focuses on the removals process, after the failed asylum seeker has exhausted all avenues for relief from his or her alleged persecution; it argues that during three distinct components or parts of the repatriations process the failed asylum seeker is transformed in to the Marginalized Other and is further cauterized. As

his or her voice remains insignificant and unheard, the human rights of failed asylum seekers come under serious threat.

The first part is when an individual is placed in expedited removals proceedings directly from a border or point of entry for not possessing a valid visa for entry. Reports have documented instances where some Border Patrol Agents (CBP) have discouraged asylum seekers from applying for credible fear interviews and deported them without due process. The second part is where the individual is placed in detention, while he or she is in removal proceedings, or while awaiting an asylum decision. Under either scenario, the process can take an indefinite amount of time. Third, during the resettlement phase of repatriations the failed asylum seeker has little control over his or her fate: at times deported back to danger, and through these three components of repatriation is transformed into the Marginalized Other.

Between Ports of Entry and Expedited Removals

The United States, along with other developed nations such as Canada, the United Kingdom and Australia, have been heavily criticized for their border protection practices that have resulted in placing asylum seekers at greater risk. Many have reported cases where potential asylum applicants were not given an opportunity to enter the country nor allowed to express "credible fear." Some of these actions have been results of policy decisions implemented by different administrations due to various political agendas. Other reports have cited bias towards asylum seekers originating from certain countries. Increasingly, the United States has framed those attempting to cross the border as "illegal immigrants." Doug Keller (2012) argues for the need to critically consider the

criminalization of border crossings and points out the ineffectiveness of using the criminal justice system to regulate immigration. A misguided attempt at regulating border entry, Keller argues, criminalization of migrants has not resulted in deterring immigrants; instead, it has merely resulted in costly prosecutions. Increasingly, enforcements between ports of entry have focused on curtailing illegal immigrants, which makes it increasingly even more difficult for genuine asylum seekers to gain entry into the country in order to apply for protection.

In direct contrast to being apprehended inside the country, a report published by Human Rights Watch (2014) noted that a migrant apprehended at the border does not always receive a screening within 48 hours. A screening by Border Patrol agents in uniform can occur a few days or hours later with no confidentiality or privacy as interviews are conducted amidst other detainees. Following the release of a report of the removal and return statistics for FY2015, the Secretary of the Department of Homeland Security (DHS) discussed border apprehensions and the priorities of the Department, and stated the focus was upon "convicted criminals and threats to public safety, border security and national security." The report states 225,342 "inadmissible individuals" were stopped from entering the country, which is a 14% increase from 2014. CBP had "prevented" 11,611 "high-risk travelers" from boarding flights to the United States as they were deemed to be "inadmissible" even if they had arrived, which is problematic as it could mean possible asylum seekers were not allowed to enter the country.

The report does not state how many of these individuals attempted to seek safety through asylum. In FY 2015, ICE had "removed or returned" 235,413 total individuals, and 165, 935 were arrested "while or shortly after, attempting to illegally enter the United

States." Given the first priority of the three priority enforcement goals of the DHS includes "unlawful border entrants" coupled in the same category as "convicted felons and aggravated felons," there is a possibility some were genuine asylum seekers, and the assumption they were all treated without any distinction is troubling. Furthermore, the framing of these individuals as "unlawful" and "illegal" in official data and statistics remains even more disconcerting as these repetitive terms are regurgitated in the media and scholarly publications. These terms imply a collective group of criminals as opposed to some who may be in danger of persecution. Simmons (2011) warned against practitioners' bias towards grouping individuals to particular characteristics, for instance "avoid lumping together as collectives" as well as to "suspend cultural presuppositions" as the official reports have done to describe border crossings of distinct individuals (224-227). In fact, individuals apprehended at the border most likely have a multitude of varying, unique reasons that require individual voices to be heard.

When considering other instances where migrants were turned away at the US-Mexico borders a report titled *You Don't Have Rights Here* published by Human Rights Watch (HRW 2014) concluded current United States border policies and practices resulted in placing migrants at serious risk of harm (Werlin 2014). The report included accounts of deported Hondurans and other migrants held in detention by analyzing deportation data obtained through the Freedom of Information Act (FOIA).

> At the US-Mexico border, US immigration officers issue deportation orders to unauthorized migrants in accelerated processes known as "expedited removal" or "reinstatement of removal." These processes include rapid-fire screening for a migrant's fear of persecution or torture upon return to their home country or an intention to apply for asylum. As detailed in this report, this cursory screening is failing to effectively identify people fleeing serious risks to their lives and safety. (HRW 2014)

Werlin (2014) reports that a primary finding by HRW is the violations by the CBP officers and Border Patrol agents who fail to fulfill their duties in identifying individuals in need of genuine protection. The report notes that individuals apprehended near the United States border with Mexico underwent one of two summary deportation processes. The first was the expedited removal process; the other, the reinstatement of removal proceedings for those migrants who have been deported before. The report finds "these processes allow immigration officers to serve as both prosecutor and judge—often investigating, charging and making a decision, all within the course of one day." It is apparent decisions such as these can call into question the ability of CBP officers, burdened with limited resources and overworked with an overwhelming number of immigrants at the border to provide adequate initial screenings without referrals to an Immigration Judge. The Marginalized Other is clearly present in these instances when the very system that is designed to protect individuals from harm fails them, and the practitioners themselves do not rise up to defend them. Thus, would-be asylum seekers who may have survived a perilous journey to a port of entry may never appear before Immigration Judges before they are placed in removal proceedings.

According to these reports, the statistics released by official sources do not reflect how many of these individuals were denied credible fear interviews. These instances demonstrate how the bureaucratic process and the border protection officials suppress the voices of the failed asylum seekers. Furthermore, they become invisible even in the subsequent reporting and reviewing process. These individuals are afforded no redress or avenues to express their grievances when subjected to return at the border. The questionable conduct of the CBP agents remains unchecked and unexamined. As

Simmons argues, practitioners who engage in these services must actively engage in listening to the marginalized, and ensure their voices are heard. Turning to Simmons calls to reinvigorate and reinvent the existing practices it is important to consider how Border Patrol Agents as individuals may be affected by policy demands and operational changes.

Some scholars have examined why strategies of agents at the border have been affected by political agendas of different administrations. Mary Turck on *Aljazeera America* reports new directives by the Obama administration raised the burden of proof for the preliminary stages of asylum processing, reflecting the interest of the administration to lower the number of asylum seekers and to increase deportations numbers. She argues this strategy resulted in a significant drop in the percentage allowed to apply for asylum, from 83 percent in January to 63 percent in July of 2012.

Even more troubling, was that from 2010 to 2012 credible fear interview referrals indicated a bias towards migrants from South America and Mexico by border patrol agents. The data demonstrated that border agents had referred 21 percent of migrants from other countries for credible fear interviews, whereas not as many Mexicans and Central Americans were referred. The figures showed 0.1 percent of Mexicans, 0.8 percent of Guatemalans, 1.9 percent of Hondurans and 5.5 percent of Salvadorans were scheduled for interviews. The same publication cited that a civil rights complaint had noted that Customs and Border Protection (CBP) practices "can be fatal, sending individuals back into environments where they are targeted for extreme violence." Thus, the assumption that people are safe to return following the screening process is problematic.

Studies have attempted to demonstrate the imperfect nature of the screening processes, as time limits allowed to do so have become increasingly narrower, and removals have been accelerated. Kalin (1986) analyzes the "cross-cultural misunderstandings" that occur between officials who review asylum cases and asylum seekers which can be another explanation of how failed asylum seekers are Marginalized. The real life experiences of the asylum seekers provide evidence of this fact:

One man who was deported in September 2014 told Human Rights Watch that when he informed a Border Patrol officer of the threats to his life in Honduras, "he told me there was nothing I could do and I didn't have a case so there was no reason to dispute the deportation…. I told him he was violating my right to life and he said, 'You don't have rights here.' (HRW 2014)

Detention & Holding Facilities

An individual can be held at a detention center while awaiting asylum adjudication or while they are being processed for return to their country of origin. The conditions in which people are held after failing all options for the asylum adjudication process or apprehended at the border leave the asylum seeker vulnerable to harsh conditions, with no distinction made from any other violent criminal offender. As this thesis explores ways in which the failed asylum seeker is further cauterized in the repatriation process, the detention and holding phase does not leave any space for individuals to speak up for themselves, and, therefore, remain marginalized and vulnerable before repatriated back to their countries of origin. Furthermore, it is unclear how many asylum seekers who are pending adjudication are subjected to the same

treatment as convicted felons and serious criminals. Throughout the detention and holding phase data and reports are limited in being able to distinctly identify the scores of failed asylum seekers that may be held up in the repatriations process.

The administration of detention centers has come under heavy criticism in the United States and private firms have been accused of making profits. NPR has reported how asylum seeker families, including women and children, have been detained and treated like criminals. While limited access to legal representation for immigrants in detention has been the main concern, suicides and deaths of those in holding facilities have been reported, exacerbated by conditions that have re-traumatized previous victims of trauma and violence. Detainees are not provided adequate mental health care and indefinite processing time periods leave people's lives in limbo while being held in detention.

ICE reports 250 centers held 425, 000 undocumented immigrants across the United States in 2014. Furthermore, the national immigrant detainee population has risen from 85,000 in 1995 to 425, 728 in 2014. Karaim (2015) notes the majority of those held were awaiting deportation, or a ruling on their case to remain in the country including many women and children who fled gang violence from Central America. The article notes the backlogged immigration system that can result in long waiting times that can last for years. Karaim notes the treatment of 1550 detainees held in Eloy, Arizona, who wear gray uniforms and are held in facilities that are surrounded by high fences and topped by wires. Operated by a large private company, detainees are held in conditions similar to the prison system. They are tasked with completing janitorial chores and menial labor for a few cents an hour. Other reports examine instances where those who

were allowed to return to the community were fitted with tracking devices similar to the treatment of common criminals. In these instances, the marginalization is so complete, that failed asylum seekers are subjected to profit seeking ventures of private companies and are rendered voiceless in how they are treated.

The best example of how the system has rendered people invisible, unable to advocate for his or her own fate, failing to provide any legal recourse through representation has been through the many inaccuracies resulting from various dubious immigration programs conducted by DHS over the years. Under a program called the "Fugitive Operations," a Migration Policy Institute (MPI) study in 2009 documents that this program resulted in detaining individuals who had no criminal record.

Furthermore, citizens of the United States have been deported after being held in detention. A glimpse into greater operational issues, this situation demonstrates the true conditions of the Marginalized Other in the repatriations process: most remarkably, the study notes, "on any given day, up to 1 percent of detainees could be citizens" (Fennegan 2013). If DHS can deport their own citizens, the question of how a failed asylum seeker might be heard in the bureaucratic process remains dubious. The New Yorker provided an investigative piece on the 2008 highly publicized case of Mark Lyttle, a citizen who was rendered voiceless through a system that is designed to ignore the calls of the most vulnerable. This case demonstrates many troubling instances when officials ignored Lyttle while in detention, upon deportation, and subsequent return to a border from where he was deported again.

In one case, Mark Lyttle, a North Carolinian with bipolar disease, was detained for 51 days in 2008 and deported to Mexico after an ICE official concluded his name was an alias, despite his repeated claims he was a U.S. citizen. Lyttle tried to return to the

United States but was denied entrance and spent four months wandering through Mexico and Central America before a police officer in Guatemala found him sleeping on a park bench and took him to the U.S. Embassy, where officials called Lyttle's brother in the United States and quickly determined he was a U.S. citizen. (Finnegan 2013)

Inadequate legal representation has been another key factor that has demonstrated the nature of the level of marginalization faced by asylum seekers and other immigrants in the process. A Stanford Law school study found strong evidence that demonstrates only 7% of detainees were successful in their cases without representation while those with lawyers prevailed 27% in the sample that was studied (2015). The barriers to seeking legal counsel, including knowledge of the adjudication system, and language issues were analyzed. In 2000, a government program called a "stipulated removal program" was investigated and findings were published in a report titled *Deportation without Due Process*. By then, the Stanford Law study found the program to have subjected over 10,000 immigrants for removal. "According to the report, examples of such short-circuiting include poor quality of paperwork translation, no proper explanation of what rights immigrants forfeit by signing the order and, most importantly, no access to lawyers or legal support" (2015). Another study by Stanford Law found families who lived in Northern California for years were not entitled to a lawyer after they were detained while their deportation cases were pending (Srikantiah 2015). "When these immigrants lose their cases, after fighting removal from behind bars and without counsel, they face lengthy or permanent separation from their Northern California families or a return to violence in foreign countries" (Srikantiah 2015).

Appalling conditions of detention centers that hold individuals pending repatriations have also been noted. In a report titled *Tortured and Detained* (2013), the

Center for Victims of Torture (CVT) and the Torture Abolition and Survivor Support Coalition, International (TASSC) conducted interviews with asylum seekers who were held in immigration detention in the United States. Some were survivors of torture and were re-traumatized during this process. It is another indication of how detention centers contribute to further victimization those who may have fled violent and traumatizing experiences, only to find themselves under conditions that resemble prisons. Suicides and deaths during detention and deportation have been reported not just from the United States, but also from different countries, including the United Kingdom and Australia.

The Resettlement Process

Once an individual is placed in removal proceedings, immigration and border authorities must now deal with foreign authorities to implement the necessary paperwork and logistics to return an individual to their country of origin or safe third country. It is during this process while awaiting removal to their countries of citizenship, the failed asylum seeker experiences further challenges imposed upon him or her by various bureaucratic policies. Stakeholders include an unwilling failed asylum seeker, a country that wants to deport the individual as soon as possible, and an unwilling and most of the time uncooperative government that is reluctant to go through the process of verifying the identity of an individual who claims to be a national of their own country.

Thus, the bureaucratic paperwork is dependent upon the understanding that the country of origin is willing to take back its own citizens who failed asylum applications abroad. Countries such as Iran have refused to take back individuals who are forcibly returned from the United Kingdom (The Guardian 2015) and Australia (Karlsen 2015,

2009). Even if willing, immigration laws and internal country processes will require verification of documents to prove in fact the individual under removal proceedings is indeed a citizen of the country they are being repatriated to. It is common knowledge an asylum seeker very rarely is able to retain his or her original passport and documents, if they ever existed, until a time they are in removal proceedings. Furthermore, if the individual has no record of having crossed a border, then border management agencies face other administrative challenges to being able to approve an individual for return. In such instances, failed asylum seekers and border agencies can find themselves in a stalemate; the country they applied for asylum rejected their asylum request, and their country of citizenship refuses or is unable to verify their identity in order to allow their return.

However, being approved to return can mean additional challenges for a failed asylums seeker if they perceive a certain threat to their own safety and security. Thus, the journey does not end when they get off the plane in their country of citizenship. The Guardian has reported countries such as Sri Lanka are known to arrest failed asylum at the time of arrival and charge them with illegally leaving the country according to the immigration laws of the country (2015). Given that failed asylum seekers often times leave their countries by violating some regular immigration law, at times with help from smugglers and forged travel documents, These instances have been criticized by non-governmental organizations and activists, stating some of these instances amounted to violations of the obligation for non-refoulement. Some have been accused of detaining failed asylum seekers upon their return, especially if they are suspected of ties to a terrorist organization, resulting in allegation of torture, harassment, and detention

(Human Rights Watch 2012; UNHCR 2014). In Eritrea, the very act of filing for asylum is considered an act of treason (Amnesty International 2009). Corlett (2005) a freelance writer and journalist met failed asylum seekers who were deported to Pakistan, Iran and Afghanistan to learn about their post-deportation experiences.

There have been reports of returnees being subjected to harm, as countries such as the United Kingdom, Australia, and Canada have come under scrutiny for sending failed asylum seekers back under the assumption they were safe to return. Podesfa (2015) has argued deportations of failed asylum seekers from the United Kingdom amounted to refoulement. The need to monitor and documentation of those who are returned remains crucial in order to counter these claims or assure the rights of failed asylum seekers are secure. Disturbingly, it appears there is no real way to ensure the obligation for nonrefoulement is assured before a failed asylum seeker is repatriated; nor does there appear to be any accountability when those who are returned are subjected to persecution.

A report titled *Unsafe Return* (2011) documented the post return experience of 17 Congolese who were returned from the UK between 2006 and 2011. The report found six of the returnees had fled the country again while the others lived in hiding and in fear and it documented the appalling treatment the failed asylum seekers received at the hands of the authorities. A Congolese Immigration official interviewed for this report stated, "when UK Immigration passed on the names of those to be removed, files in the possession of the Immigration authorities were studied." If the asylum seeker was deemed to be a problem to the state, the secret services would be alerted and the asylum seeker imprisoned. This is corroborated by Dianne Taylor's account of a presidential candidate in the Democratic Republic of Congo (DRC) noted, in a publicly delivered

speech, how returned asylum seekers from the United Kingdom were now considered political threats by the DRC government. According to the ICE Enforcement and Removal Operations report for the fiscal year 2015, 8 Congolese nationals were sent back to the DRC from the United States and it is unclear if those who were sent back had failed asylum claims. The lack of data remains a crucial gap in the failed asylum seeker repatriations policy.

An HRW (2014) study noted the lack of post-resettlement data available on migrants who are deported back to Mexico and Central America; this can be troubling, given the concerns of human rights violations within these nation-states and the fact most of the returnees may have expressed fear of being sent back. Furthermore, the large numbers of migrants detained at the border are found to be second-time "offenders," meaning those who were already sent back and have tried to re-enter the country.

Apart from the very real dangers that have been documented, some amounting to refoulement, failed asylum seekers are subjected to further cauterization and rendered voiceless when they are subjected to an ad hoc, disorganized resettlement and reintegration process that offers no support for those who are returned. After being processed by border agencies, they may have no provisions or place to go after leaving an airport. Apart from trauma and mental health issues that failed asylum seekers may have suffered, during detainment and the journey of return, an individual who lived overseas for a number of years may no longer have any access to financial resources or access to job opportunities. With no support system, and perhaps under the scrutiny of law enforcement or threats from gang members they may have fled, the possibility that a failed asylum seeker might be forced to flee the country again is also a concern. These

issues demonstrate how, throughout the reintegration and return process the failed asylum is subjected to various bureaucratic procedures that leave the individual vulnerable.

CHAPTER 5: CONCLUSION

The very fact the fate of the repatriated failed asylum seeker from the United States has remained insignificant in the mainstream literature thus far, and official statistics continue to exclude them in their publications is an indication of their marginalization. Within the three components of repatriation: at a border point of entry, detention, and resettlement phases, the failed asylum seeker is subjected to bureaucratic processing in the United States conducted by officials who do not at times hear their concerns. The lack of distinction from a criminal offender who is being deported and the assumption of the safety of return despite having indicated otherwise demonstrate the failed asylum seeker is cauterized and treated as a Marginalized Other. In such a setting, it is paramount that the repatriations process within the United States is reconsidered and streamlined from the perspective of the Marginalized Other. This concluding chapter will discuss the implications of these findings and explore possible suggestions for future research to explore strengthening the human rights of failed asylum seekers in the repatriations process.

Towards an Enhanced Repatriations Process

The journey of the asylum seeker who is forced to flee persecution to reach a foreign border seeking protection involves a perilous journey. The exact numbers of those who perish at the mercy of unscrupulous smugglers and traffickers remain unknown. Yet, the harrowing experience does not end when those seeking protection finally reach a border. An entirely different set of challenges is then presented with

increasingly tighter controls on border security. The burden of proof rests upon the asylum seeker to demonstrate they are truly fleeing persecution.

It is tremendously challenging for governments to identify genuine asylum seekers. No matter how sophisticated, the very nature of asylum adjudications and subsequent return to the country of origin will always grapple with borderline cases as the interpretation of laws constantly evolve, and a higher court reverses or upholds lower court decisions. In the United States, granting asylum is a matter of discretion. Research has demonstrated that seeking asylum is highly arbitrary depending upon many factors. Conversely, the repatriation process can result in an individual who has experienced persecution in their home country and experienced a harsh asylum adjudication system face further uncertainty and insecurity. A few publicized cases of failed asylum seekers have shown years later how the courts may overturn precedents and render some previously held judgments invalid. By the time ill-conceived judgments are overturned and laws are redefined, the consequences for an asylum seeker can be too late.

If an individual is denied asylum the failed asylum seeker is repatriated to his or her country of origin. For such individuals, these instances in their lifetimes can mean life or death as lawmakers grapple with the interpretation of words that ultimately define the fate of individual asylum seekers, one case at a time. Given these limitations, this thesis argues the treatment of the failed asylum seekers in the process of repatriations remain inadequate within the current system. Monitoring and streamlining repatriations play a pivotal role in ensuring the obligation for nonrefoulement is fulfilled. A streamlined repatriations process offers one last opportunity to ensure the safety of and accountability for failed asylum seekers. Furthermore, it would ensure a credible returns process that

could guarantee future refugee programs are sustainable by ensuring those who are found ineligible are returned within a system that respects the ambiguity of the asylum process.

The body of academic literature that exists pertaining to the discussion of failed asylum seeker issues is limited in being able to encompass the true nature of suffering experienced by the repatriated asylum seeker. However, this thesis has been able to demonstrate that enough publications have painted a compelling justification of the urgent need to reconsider the treatment of failed asylum seekers in the United States repatriations process. Thus, this thesis applied the theory of the Marginalized Other to better understand the repatriations process of failed asylum seekers using the United States as a case study. For the purpose of this analysis, the repatriation process was scrutinized at each point of contact with the failed asylum seeker during three distinct components of contact with the failed asylum seeker: the first being, an evaluation of an asylum claim at a point of entry at a border; second, during the detention and holding process awaiting removal or a decision on asylum adjudication; and third, during the resettlement stage prior to removal to the country of origin.

It was evident at each of these three points of repatriation, the failed asylum seekers were cauterized without any real ability to be heard or voice their concerns. Further, from the perspective of the Marginalized Other, the failed asylum seeker has no control or choice in shaping his or her own fate in the process of returns. The marginalization in the repatriations process also represents some officials who fail to protect the rights of people. As there is no recourse for a failed asylum seeker to air his or her grievance, those who cauterize the Marginalized Other remain immune from any accountability for their actions.

Using secondary data and published reports it is apparent the failed asylum seeker is afforded few rights as someone who has expressed fear of persecution in the removals process. The assumption of safety to a country deemed safe to return remains problematic. The bureaucratic process of returns does not make any distinction when an asylum seeker is held in detention, compared to other deportees who may have committed violent crimes. The failed asylum seeker simply falls back into an invisible category, without a voice in the repatriations process until returned to his or her country of origin. Furthermore, the true nature of failed asylum seeker repatriations remains unknown, as some asylum seekers may be discouraged in the adjudication process and withdraw their applications. There may be others who simply returned to their countries of origin without ever appealing their cases. Some of this data may be impossible to capture within the current immigration policies.

In addition to Simmons analysis of the United States asylum adjudication process, this thesis demonstrated that the failed asylum seeker is treated as a Marginalized Other during three parts of the repatriations process, resulting in a dual victimization. Most troubling of all, reports suggest in the countries of origin failed asylum seekers are processed and treated differently upon return. The assumption of safety is challenged in these instances. However limitations of this study acknowledge this particular analysis is unable to grapple with the intricate nature of state sovereignty issues and international legal obligations. Understandably, there seems to be no real accountability on the part of the sending country to ensure the well being of the failed asylum seeker assumed safe to return despite the obligation of non-refoulement. This thesis concludes the process of repatriations renders the failed asylum seeker a truly invisible actor during the three

points of contact. Reforms to the existing process must take into account the theory of the Marginalized Other in order to alleviate their suffering.

Viewed through the lens of the Marginalized Other, reforms to the repatriations process are critical to the well-being of failed asylum seekers; albeit authorities should provide more visibility to failed asylum seeker in every aspect of the process. Therefore, recommendations for future research suggest avenues for possible reforms in the repatriations process. Many continue to advocate for reforms in the United States asylum adjudications process and this paper joins Simmons (2011) in his urgent call for practitioners to approach human rights law from the perspective of the Marginalized Other. As discussed earlier, this paper considered Simmons theory of how asylum adjudications in the United States have cauterized the Other; in his analysis Simmons also advocated for human rights practitioners to employ certain tools when working with the Marginalized Other. Scholars have also called for increased monitoring in the failed asylum seeker repatriations process.

The assumption that a failed asylum seeker is safe to return is challenged if his or her safety cannot be verified through a repatriations system that is unable to provide autonomy and safety to those who are returned. Reforms to the repatriations process are crucial to counter a blatantly unfair and unjust asylum system that results in a multiplicity of victimization of the failed asylum seeker. This thesis argued the failed asylum seeker is an example of the Marginalized Other, thus, reforms to the repatriations process must reflect this understanding and strive to counter further cauterization. As long as the bureaucratic process of adjudication and repatriations continue to marginalize the asylum seeker and those who require protections are unable to gain safety under the minimum

standards of the law, these limitations will continue to affect people who may genuinely need some form of protection. Understanding these limitations, the repatriations process must seek to provide a form of redress by incorporating some level of relief and safety by bringing together various stakeholders within the repatriations process of the United States, through an increased understanding of the Marginalized Other as the failed asylum seeker. Based on the findings of this paper following broad recommendations can be considered as a starting point in order to minimize the harm inflicted upon failed asylum seekers in the United States repatriations system.

Recognition of the Failed Asylum Seeker as a Distinct Group

First and foremost the failed asylum seeker must be considered as a distinct group of people that may continue to require special consideration during repatriations; i.e., from being dismissed at a point of entry, distinct from other criminals while held in detention, and considered separately during the resettlement process. Service providers must begin by distinctly recognizing failed asylum seekers apart from other immigrants who have committed grave and serious violations of the law. Furthermore, data of failed asylum seekers must be distinctly recorded, in contrast to other types of deportees prior to being removed.

Given that failed asylum seekers may have been affected by violent and traumatizing experiences, it is possible they may require counseling and other types of psychological support prior to removal. These support services must be included where practitioners are equipped and trained to identify and provide these resources and

services. Furthermore, training various officials cross culturally could also improve their abilities to recognize potential returnees who may require extra care and attention.

A 'Therapeutic Jurisprudence' Approach for Failed Asylum Seeker Repatriations

Professor Cruz (2005) in an insightful paper titled *Validation Through Other Means: How Immigration Clinics Can Give Immigrants a Voice When Bureaucracy Has Left Them Speechless* discussed empowering "administrative participants" when providing legal services to immigrants. She argues,

> The importance of "understanding" is regularly overlooked in designing administrative processes, which are the backbone of due process delivery. Giving administrative participants, in this case immigrants, an opportunity to comprehend what the rules of the game are and how their particular claims are managed by the systems that control the agency is often not a priority... Intangibles, such as validation, transparency, and participation are ignored in the bureaucratic design. Yet, they are very important for individuals who have gone through the immigration process, which many regard as harrowing and Kafkaesque (811-812).

Advocating for a "Therapeutic Jurisprudence" approach for transparency and "voice and validation" for clients, Cruz quotes Wexler (1990; 2000) and defines this approach as "a perspective that regards the law as a social force that produces behaviors and consequences… Whether the law can be made or applied in a more therapeutic way so long as other values, such as justice and due process, can be fully respected."

This paper argues a similar approach must be extended to failed asylum seekers subjected to the repatriations process. If service providers and practitioners involved in the repatriations process are better trained to understand the grievances of the failed asylum seeker, it may help demystify the repatriations process. Then, the situation of the Marginalized Other can be somewhat minimized by providing a level of control to his or

her own fate. The failed asylum seeker can be made aware of the options available and consider plans for is or her subsequent resettlement and reintegration. A therapeutic approach would also mean law enforcement agents and other stakeholders in the repatriations process can be trained to enhance their cultural competency to provide services that are sensitive to traumatized and weary failed asylum seekers.

Inter-governmental Organization Assistance

Governmental cooperation with INGOs and border management agencies, mindful of the potential harms faced by failed asylum seekers may be considered as another option to improve the human rights of those involved in the U.S. repatriations process. For instance, the International Organization for Migration (IOM) works closely with the United States refugee resettlement program. Similarly, certain technical assistance can be provided for border management agencies in order to improve the services offered to failed asylum seekers pending removal. Better training provided to personnel from these border management agencies, and overall inclusiveness for a more transparent process of returns can help demystify a otherwise misunderstood and 'criminalized' group of people. The International Organization for Migration (IOM) engages in facilitating voluntary repatriations from the European Union and similar support could be provided to the United States repatriations process.

Interviews with Failed Asylum Seekers at Point of Exit & Better Legal Representation

This paper argues, in order to empower the voice of the Marginalized Other, exit interviews could be conducted to monitor the well-being of the failed asylum seeker

during the process of repatriations. The option of legal representation could be made available upon return at the airport by connecting various service providers. Advocates providing services specifically for the purpose of returning failed asylums seekers could be encouraged. Agencies such as the International Organization for Migration in the voluntary repatriations program provide services for migrants and have been known to meet and greet the returnees at the point of entry and exit.

Resettlement and Reintegration Services for Failed Asylum Seekers

A resettlement and reintegration plan, similar to the refugee resettlement program that provides job training, language training, cultural reintegration and housing assistance with the involvement of non-governmental agencies and assistance provided by non-profits prior to removal could further strengthen the issues faced by the Marginalized Other. Similar services for skill building, employment training, and economic empowerment prior to removal could further assist the returned asylum seeker prepare t integrate into a more sustainable resettlement solution upon return. While the data to support such initiatives could meet certain challenges at the stages of implementation, such programs could be relevant for countries that have a large number of returnees that are deemed to be safe to return following the end of decades-long conflict. If such countries are deemed safe to return, it is difficult to see why such programs would not be successful. Furthermore, they would be sustainable as Human Rights records improve and country conditions no longer force people to flee searching for refuge as scholars have deliberated on, over the years..

Future Research

This paper advocates for the need to explore creative ways to stretch the boundaries of human rights law to protect those whom it was created to protect. The true nature of the challenges faced by asylum seekers themselves and border management and policy makers is misunderstood and often misinterpreted, convoluted by different political agendas. Therefore, continuous academic research remains crucial to further understand these challenges facing failed asylum seekers in the United States. The theory of the Marginalized Other offers a theoretical approach to understand the most vulnerable in the repatriations process. Thus, future studies could benefit from direct interviews with failed asylum seekers who experience the repatriations process.

This paper acknowledges not all asylum seekers will be granted asylum and limitations of the asylum evaluation process will persist; it also acknowledges there will always be those who attempt to take advantage of the system. It is hoped immigration control can go beyond merely tightening borders and enforcing mass deportations by approaching these issues using the lens of the Marginalized Other. Thus, a holistic approach to immigration control that includes a sophisticated repatriations system could benefit all stakeholders. It is hoped the findings of this preliminary study can contribute towards inspiring future students and researchers to explore tools to curb the problem of monitoring the return of asylum seekers to ensure they are safe in their country of return. No matter how sophisticated, repatriations can never compensate for failings in asylum adjudications or returning an individual to possible harm. By using the lens of the Marginalized Other, repatriations of failed asylum seekers can be improved by exploring

ways to mitigate the dual victimization to protect the human rights of all people who seek protection, even after their asylum claims have been rejected.

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