Mexican *Tarjetas de Visitante por Razones Humanitarias* and Firm Resettlement: A Practice Advisory for Advocates

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The Institute for Women in Migration, AC (IMUMI), is a Mexican NGO that advocates for women migrants and their families within the region of Mexico, the United States, and Central America. We address issues important to migrant women through legal strategies, research, communication, and policy reform.

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I. Introduction

In the context of the Central American exodus (e.g., the "caravans" of people fleeing Central America and traveling in groups through Mexico and to the United States) and the election of President Andrés Manuel López Obrador, the Mexican government began granting the legal status of visitor for humanitarian reasons, commonly known as a "humanitarian visa,"[1] to migrants from Honduras, El Salvador, Guatemala, Nicaragua, Haiti, Brazil, Cuba, and other nations.[2] Recipients of the status are issued a formal migration document, a card known as the *Tarjeta de Visitante por Razones Humanitarias* ("TVRH" or "card of a visitor for humanitarian reasons" in English),[3] with "visitante" written across the top.[4] In late September of 2018, at an employment fair in Tijuana organized in anticipation of the arrival of the first multi-thousand-person group from Central America, the federal government started distributing TVRHs to those who solicited them through an abbreviated application, screening, and

[1] While commonly called "humanitarian visas," the visitor for humanitarian reasons status that the Mexican government has been providing to members of the Central American exodus is not a visa (which allows foreign nationals to enter a country). Visa, CORNELL L. SCH. LEGAL INFO. INST., https://www.law.cornell.edu/wex/visa (last visited May 31, 2019).

[2] *More Than 5000 Migrants Apply for Humanitarian Visa in Mexico*, TELESUR (Jan. 22, 2019) (Venez.), https://www.telesurenglish.net/news/More-Than-5000-Migrants-Apply-for-Humanitarian-Visa-in-Mexico-20190122-0009.html; Jeff Abbott and Sandra Cuffe, *'I do not want to die': Central American Exodus Grows*, AL JAZEERA (Jan. 21, 2019) (Qatar), https://www.aljazeera.com/news/2019/01/die-central-american-exodus-grows-190121220236278.html. *See generally 9 Questions (and Answers) About the Central American Migrant Caravan*, WASHINGTON OFFICE ON LATIN AMERICA (Oct. 25, 2018), https://www.wola.org/analysis/9-questions-answers-central-american-migrant-caravan/; *MSF Pulse: Violence and Migration from Central America – Why Are People Seeking Asylum in the US?,* DOCTORS WITHOUT BORDERS (Oct. 19, 2018) (Can.), http://www.doctorswithoutborders.ca/article/msf-pulse-violence-and-migration-central-american-—-why-are-people-seeking-asylum-us; Rocio Cara Labrador and Danielle Renwick, *Central America's Violent Northern Triangle*, COUNCIL ON FOREIGN RELATIONS (Jun. 26, 2018), https://www.cfr.org/backgrounder/central-americas-violent-northern-triangle; Rachel Dotson and Lisa Frydman, *Neither Security nor Justice: Sexual and Gender-based Violence and Gang Violence in El Salvador, Honduras, and Guatemala,* KIDS IN NEED OF DEFENSE (2017), https://supportkind.org/wp-content/uploads/2017/05/Neither-Security-nor-Justice_SGBV-Gang-Report-FINAL.pdf; Alexander Betts, *Clarifying Survival Migration: A Response*, EUROPEAN POLITICAL SCIENCE (Nov. 28, 2014) (Eng.), https://www.rsc.ox.ac.uk/files/files-1/alex-book-review-symposium-response.pdf/@@download; *Atlas of Migration in Northern Central America*, ECON. COMM'N FOR LATIN AMERICA AND THE CARIBBEAN 5, 20-23 (2018), https://repositorio.cepal.org/bitstream/handle/11362/44288/1/S1801071_en.pdf.

[3] This practice advisory uses "TVRHs" to refer to both the status of visitor for humanitarian reasons and the card documenting that status. Migrants with the status may replace lost or stolen cards. RLM art. 110; *see also Preguntas frecuentes para solicitar la expedición de documento migratorio por renovación*, NAT'L INST. OF MIGRATION (Jan. 1, 2018) (Mex.), https://www.gob.mx/inm/documentos/preguntas-frecuentes-para-solicitar-la-expedicion-de-documento-migratorio-por-renovacion.

[4] *See, e.g.*, Cecilia Sanchez and Liliana Nieto del Rio, *Thousands of Immigrants Arrive in Mexico Seeking New Humanitarian Visas*, THE SYDNEY MORNING HERALD (Jan. 25, 2019), https://www.smh.com.au/world/central-america/thousands-of-immigrants-arrive-in-mexico-seeking-new-humanitarian-visas-20190125-p50tm0.html (showing picture of VHR card, called the *Tarjeta de Visitante por Razones Humanitarias*, or TVRH, in Mexico); Amrit Cheng, *Trump's New Policy Is Stranding Asylum Seekers In Mexico*, ACLU (Mar. 21, 2019), https://www.aclu.org/issues/immigrants-rights/trumps-new-policy-stranding-asylum-seekers-mexico (same).

interview process.[5] Of the 3,966 migrants who received services at the Tijuana Employment Fair, 2,189 received TVRHs, distributed by the National Immigration Institute ("INM").[6] In January of 2019, the government began providing TVRHs to people in Tapachula, Chiapas, where the majority of migrants from Central America enter Mexico, as well as to people in temporary government shelters in cities along the path of the "caravans."[7] According to news reports, government officials threatened people in the temporary government shelters with deportation if they refused to apply for TVRHs,[8] and, throughout the various changes in the government's TVRH programs, those traveling without documentation have continued to be detained and deported.[9] After a pause in the provision of TVRHs in March, the government began providing them in Chiapas again in April, 2019.[10] The government distributed 26,584 TVRHs between December 1, 2018 and April 30, 2019.[11] In comparison, it distributed 8,000 TVRHs from January to November of 2018.[12]

This is not the first time that the Mexican government has responded to the arrival of a large group of migrants by providing TVRHs: in 2016, the government offered TVRHs to thousands of Haitian

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[5] El Colegio de la Frontera Norte, *La caravana de migrantes centroamericanos en Tijuana 2018-2019 (Segunda etapa)*, EL OBSERVATORIO DE LEGISLACIÓN Y POLÍTICA MIGRATORIA 30 (Mar. 25, 2019) (Mex.), https://observatoriocolef.org/wp-content/uploads/2019/03/2o.-Reporte-Caravana-Tijuana.250319_compressed1.pdf.

[6] *Id.*; *see also* Kirk Semple, *'Puedo estar aquí un año, pero mi sueño es americano*, N.Y. TIMES (Dec. 6, 2018), https://www.nytimes.com/es/2018/12/06/caravana-migrante-tijuana-mexico/.

[7] Jeny Pascacio, *Gobierno de Mexico ofrecerá visas humanitarias a migrantes; daría trabajo en estados del Tren Maya*, EL HERALDO DE MEXICO (Jan. 16, 2019), https://heraldodemexico.com.mx/estados/gobierno-de-mexico-ofrecera-visas-humanitarias-a-migrantes-daria-trabajo-en-estados-del-tren-maya/.

[8] *See, e.g.*, *id.*

[9] *See, e.g.*, Colectivo de Observación y Monitoreo de Derechos Humanos en el Sureste Mexicano, *El INM comienza los trámites para otorgar permisos temporales de estancia por razones humanitarias en Mapastepec, Chiapas; al mismo tiempo ejecuta operativos de detención a los caminan sobre la carretera, en domicilios particulares y lugares de empleo*, CÁRITAS DE SAN CRISTÓBAL DE LAS CASAS 2–3 (Apr. 1, 2019), http://www.caritasancristobal.org/wp-content/uploads/2018/10/1-de-abril-Monitoreo-%C3%89xodo-Migrante1.pdf; Colectivo de Observación y Monitoreo de Derechos Humanos en el Sureste Mexicano, *La crisis migratoria y de refugiados continúa mientras aumentan las detenciones de grandes grupos de personas*, CÁRITAS DE SAN CRISTÓBAL DE LAS CASAS (Apr. 14-16, 2019), http://www.caritasancristobal.org/wp-content/uploads/2018/10/Actualizaci%C3%B3n-14_16-abril.pdf.

[10] Enrique Sánchez, *Reinicia mañana el INAMI la entrega de visas humanitarias*, EXCELSIOR (Mar. 31, 2019) (Mex.), https://www.excelsior.com.mx/nacional/reinicia-manana-el-inami-la-entrega-de-visas-humanitarias/1304942.

[11] Salvador Moreno and Noemí Segovia, *El dilema de México: Entre la frontera norte y sur*, CÁMARA DE DIPUTADOS, CENTRO DE ESTUDIOS SOCIALES Y DE OPINIÓN PÚBLICA 45 (May 2019) (Mex.), http://www5.diputados.gob.mx/index.php/esl/content/download/148301/740565/file/CESOP-IL-72-14-CrisisMigratoria-290519.pdf.

[12] *Id.*; Graciela Martínez Caballero, *Migración y Movilidad Internacional de Mujeres en México Síntesis*, UNIDAD DE POLÍTICA MIGRATORIA 19 (2017) (Mex.), http://www.politicamigratoria.gob.mx/work/models/SEGOB/Resource/2797/1/images/MM_2017_ene-dic%202017.pdf; Sarah Kinosian, *Mexico Plans to Shut Its 'Too Successful' Humanitarian Visa Program*, PITTSBURGH POST-GAZETTE (Jan. 29, 2019), https://www.post-gazette.com/news/world/2019/01/28/Mexico-humanitarian-visas-program-Central-American-migrants-asylum-seekers/stories/201901010747.

migrants who journeyed to Tijuana in 2016 and 2017 after the earthquake,[13] though many fewer Haitians ultimately received the status than have members of the Central American exodus.[14] As the Mexican government increases the use of TVRHs to regularize waves of migrants, more asylum seekers will enter the U.S. having been granted this status.

This practice advisory addresses the question of whether receipt of a TVRH in Mexico constitutes "firm resettlement" under U.S. law. While the information herein pertaining to the law should remain accurate, the use of discretion to issue TVRHs has changed from month to month with Mexico's new presidential administration and will likely continue to evolve. Advocates should therefore conduct further research on the implementation of Mexican migration law during the time period that relates to their clients.[15] This practice advisory does not constitute legal advice, nor is it intended as a substitute for independent analysis of the law applicable in the relevant jurisdiction.

II. The Mexican Status of Visitor for Humanitarian Reasons

Though the Mexican government has provided thousands of migrants with the status of visitor for humanitarian reasons since the fall of 2018 through an expedited application, screening, and interview process, that process is not the norm.[16] The *estancia de visitante por razones humanitarias*, or status of visitor for humanitarian reasons, was added to Mexico's Law of Migration in 2011 and can be requested from Mexican consulates abroad, within Mexican detention facilities, Mexican immigration offices, or at the Mexican border.[17] Usually, and according to the law, the status may only be granted after an extensive application and interview process, and only to certain groups for specific rationales: 1) victims or

[13] El Colegio de la Frontera Norte, *Migrantes Haitianos y Centroamericanos en Tijuana, Baja California, 2016-2017. Políticas Gubernamentales y Acciones de la Sociedad Civil*, COMISIÓN NACIONAL DE LOS DERECHOS HUMANOS 71–86 (May 2018) (Mex.), http://www.cndh.org.mx/sites/all/doc/Informes/Especiales/Informe-Migrantes-2016-2017.pdf.

[14] According to INM statistics, 17,932 Haitians entered Mexico in 2016 and the first few months of 2017. As of October 2018, about 3,400 remained in Baja California, and of those, 1,274 had applied for VHR Status but only 609 had received their VHR cards. *¿Qué pasó con los migrantes haitianos en Tijuana?*, HERALDO DE MÉXICO (Oct. 27, 2018), https://heraldodemexico.com.mx/tendencias/que-paso-con-los-migrantes-haitianos-en-tijuana/; *see also* Sammy P., *Little Haiti: The data behind Haitians taking refuge in Tijuana in the age of Trump*, MEDIUM (Nov 8, 2017), https://medium.com/datajournos/little-haiti-the-data-behind-haitians-taking-refuge-in-tijuana-in-the-age-of-trump-e2e4210e9365.

[15] For information on how the "Remain in Mexico" policy—which was instituted on January 24th, 2019 and forces U.S. asylum seekers to wait in Mexico for their U.S. asylum hearings—may impact firm resettlement issues, *see* Reena Arya, et al., *Practice Advisory: Asylum Seekers Stranded in Mexico Because of the Trump Administration's Restrictive Policies: Firm Resettlement Considerations*, CATHOLIC LEGAL IMMIGR. NETWORK, INC. (Apr. 24, 2019), https://cliniclegal.org/sites/default/files/advocacy/Firm-resettlement-PA-04-24-19.pdf.

[16] *See* Ley de Migración [Law of Migration] [LM] art. 52(V), Diario Oficial de la Federación [DOF] 25-06-2011 (Mex.); Reglamento de la Ley de Migración [Regulations of the Law of Migration] [RLM], art. 153, Diario Oficial de la Federación [DOF] 28-09-2012, últimas reformas DOF 23-05-2014 (Mex.); Lineamientos para Trámites y Procedimientos Migratorios [Guidelines for Migration Processes and Procedures] [LTPM], art. 11, Diario Oficial de la Federación [DOF] 11-8-2012 (Mex.).

[17] *See* LM arts. 52, 37, 109(II), 136.

witnesses to a crime in Mexico ("Victims" or "Witnesses");[18] 2) unaccompanied minors;[19] and 3) individuals seeking asylum (refugee status), complementary protection, or political asylum in Mexico (collectively, "Asylum Seekers").[20]

The Law of Migration also provides two criteria that the Secretary of the Interior may use to grant TVRHs at the Secretary's discretion: (1) when there is a humanitarian cause, or (2) when it is in the public interest to regularize the status of the foreign person.[21] There is no statutory definition of what constitutes a public interest, but the Regulations for the Law of Migration (the "Regulations") and the Guidelines for Migration Processes and Procedures (the "Guidelines") provide that a public interest arises when the foreign person's admission is required to help with actions of assistance or rescue in situations of emergency or disaster in Mexico.[22] For "humanitarian cause," the Regulations and Guidelines provide the following situations that qualify: there is a risk to the health or life of the person requiring the person to remain in Mexico;[23] the degree of vulnerability of the person makes it difficult or impossible for them to be deported;[24] the person is pregnant, elderly, disabled, or indigenous;[25] the person is in a situation of danger to their life or integrity due to violence or natural disaster;[26] the person has a direct family member in the custody of the Mexican State and whose authorization is necessary to provide medical or psychological assistance to that family member;[27] the person's intervention is necessary for the identification or recovery of a cadaver;[28] the person needs to assist a direct family member in Mexico with a grave health condition;[29] and the person is a child or adolescent who is subject to proceedings for international child abduction and restitution.[30]

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[18] LM arts. 52(V)(a); RLM art. 137(II); LTPM art. 11(II).
[19] LM arts. 52(V)(b); RLM art. 137(II); LTPM art. 11(II).
[20] LM art. 52(V)(c); RLM art. 137(II); LTPM art. 11(II). "Asylum" and "refugee status" are functionally equivalent in Mexico, and similar to asylum in the U.S. Ley sobre Refugiados, Protección Complementaria y Asilo Político [Law of Refugees, Complementary Protection and Political Asylum] art. 13, Diario Oficial de la Federación [DOF] 27-01-2011, últimas reformas DOF 30-10-2014 (Mex.). "Complementary protection" is non-refoulement protection, similar to withholding of removal or withholding under the United Nations Convention Against Torture ("CAT"). *Id.* "Political asylum" is a form of protection that is completely discretionary on the part of the State, a regional tradition in Latin America. *Id.* at art. 2(I). In this document, "Mexican asylum" will be used to refer to Mexican refugee status, complementary protection status, and political asylum. For more information on the Mexican refugee status, complementary protection status, and political asylum (which is granted by the Secretary of Foreign Relations rather than COMAR), *see* Helen Kerwin, *The Mexican Asylum System in Regional Context*, 33 MD. J. INT'L L. 290 (2018), https://digitalcommons.law.umaryland.edu/mjil/vol33/iss1/13.
[21] LM art. 52(V); RLM art. 137; LTPM art. 11(V)
[22] RLM art. 63(II); LTPM art. 11(V), 28(II).
[23] RLM art. 137(IV)(a); LTPM art. 11(IV)(a).
[24] RLM arts. 63(III) and 144(IV); LTPM art. 11(IV)(b).
[25] RLM art. 144(IV)(b); LTPM art. 50(I)(c)(ii).
[26] RLM art. 144(IV)(d).
[27] RLM art. 137(IV)(b); LTPM art. 11(IV)(c).
[28] *Id.*
[29] RLM art. 137(IV)(c); LTPM art. 11(IV)(d).
[30] RLM art. 144(III); LTPM art. 11(IV)(e). Though not included in the Law of Migration, the Regulations and Guidelines specify two additional categories of people who qualify for TRVHs. The first is those requiring a process to determine statelessness. *See* RLM arts. 63(I), 137(III), 141(III)(c), (IV), 141(IV)(e); LTPM arts. 11(III), 28(I), 50(I)(d); *see generally* Felipe Sánchez Nájera, *Apatridia en México. El uso de la protección internacional como instrumento de la política migratoria*, UNIVERSIDAD

According to the law, upon grant, the status of visitor for humanitarian reasons is valid for one year, after which individuals may renew if the rationale under which they received the status still exists.[31] For example, if someone received a TVRH as a Victim or Witness, their visa may only be renewed until the criminal process is concluded, at which point they must leave the country or request temporary resident status.[32] Holders of TVRHs can extend for an additional year by providing an immigration office with their identification document (usually a passport), filling out an application, and submitting a written explanation of the reason for renewal, i.e., proof that the condition making the person vulnerable still exists.[33]

The INM has neither utilized the full application and interview process laid out in the law when granting TVRHs in the context of the Central American exodus, nor has it or the Secretary of the Interior articulated a rationale under which those migrants have been granted the status.[34] That lack of explanation will create problems when the status expires after one year, because when no basis for the original status and no criteria for renewal have been explained to the migrant or made public, authorities have no foundation upon which to renew that status. Unlike Temporary Protected Status in the U.S., which allows for extensions of the status to be given to all the protected country's nationals who were present in the U.S. on the day of the designation, TVRHs may only be renewed on an individual basis by determining whether the underlying rationale for the grant of status remains.[35] Due to lack of a publicly-articulated rationale from the Secretary of the Interior or the INM for the grants of TVRHs to members of the Central American exodus, it remains unclear on what basis, if any, those recipients will be able to renew their granted status.[36]

The status of visitor for humanitarian reasons does not provide a path to temporary or permanent residence in Mexico. TVRH holders are not precluded from eligibility for temporary or permanent

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IBEROAMERICANA CIUDAD DE MÉXICO (Nov. 2018), https://asiloenmexico.ibero.mx/informes/pdf/ibero-2018-informe-apatridia.pdf (describing the law regarding, and process for determining, statelessness in Mexico). The second is foreign persons on board aircrafts or vessels in international transit and that due to technical difficulties or weather conditions require entrance and to remain in Mexico until there is improvement in these conditions. RLM art. 63(IV); LTPM arts. 11(VI), 28(IV).

[31] LM art. 52(V); RLM art. 153.

[32] LM art. 52(V)(a).

[33] *Preguntas frecuentes para solicitar la regularización por razones humanitarias*, NAT'L INST. OF MIGRATION (May 20, 2016) (Mex.), https://www.gob.mx/inm/documentos/preguntas-frecuentes-para-solicitar-la-regularizacion-por-razones-humanitarias.

[34] The Mexican government did not articulate a rationale for granting TVRHs to thousands of migrants from Haiti either. *See, e.g.*, El Colegio de la Frontera Norte, *supra* note 13, at 71–86.

[35] LM art. 52(V) (describing the process as based on an individual's case). Though not the current system, there have been times in the past when Mexico provided status for all migrants who entered irregularly between certain dates. *See, e.g.*, Programa Temporal de Regularización Migratoria [Temporary Immigration Regularization Program], Diario Oficial de la Federación [DOF] 10-11-2016 (Mex.) (promulgating program to regularize all foreign nationals who entered Mexico before January 09 of 2015 and were living in the country undocumented).

[36] Furthermore, many non-exodus-related obstacles to renewal exist. For example, the paperwork required for renewal is complex and many migrants have had limited access to education. *See* Levi Vonk, *Mexico Isn't Helping Refugees. It's Depriving Them of Their Rights*, FOREIGN POLICY (Feb. 8, 2019), https://foreignpolicy.com/2019/02/08/mexico-isnt-helping-central-american-refugees-its-depriving-them-of-their-rights-caravan-1951-refugee-convention-non-refoulement-honduras-central-america-turkey-syria/.

residence if they qualify as a result of separate legal proceedings or changes in their own circumstances (such as marriage). For example, Asylum Seekers granted TVRHs while their Mexican asylum petitions are processed will receive permanent residence if they are granted asylum in Mexico. That permanent residence will be the product of the rights associated with their asylum status, not with their TVRH.[37] Most migrants to whom the government has granted TVRHs en masse since the fall of 2018 did not apply for Mexican asylum,[38] however, and those that did but then continued to the U.S. had their Mexican asylum cases closed.[39] For the remaining categories—those who obtain TVRHs because they were Victims or Witnesses, unaccompanied children or adolescents, or because they can demonstrate a humanitarian or public interest reason for their stay in Mexico—their TVRHs are not associated with an independent legal process that may result in temporary or permanent residency.[40] Thus, while those with TVRHs are not precluded from gaining subsequent legal status through other processes if they meet the requirements, such as through a Mexican spouse,[41] a child born in Mexico,[42] or sponsorship by a formal employer,[43] holding the TVRHs provides no legal path to or advantage in subsequently obtaining lasting status.

TVRHs allow for multiple entries to Mexico and include work authorization,[44] but because the document does not explicitly state that the holder has permission to work (as temporary resident cards

[37] LM art. 52(V)(c); RLM art. 141 (IV).
[38] El Colegio de la Frontera Norte, *supra* note 5, at 30 (stating that of the migrants who arrived in Tijuana as part of the Central American exodus in the fall of 2018 and started a legal process in Mexico, 84.5% applied for VHR Status, 7% applied for Mexican asylum, .2% (one person) regularized through a Mexican family member, and 8.3% gained status through offers of employment).
[39] *See* Reglamento de la ley sobre refugiados y protección complementaria [Regulations of the Law on Refugees and Complementary Protections] [RLRPC], arts. 24-25, Diario Oficial de la Federación [DOF] 21-02-2012 (Mex.)(stating that those applying for recognition of refugee status or complementary protection must check in weekly; that if an applicant misses two consecutive weeks without justification, their application is considered abandoned; that applications are also considered abandoned if the applicant moves to another Mexican state from the one in which they presented their application without permission from the government entity in charge of refugees; and that abandoned claims are considered closed).
[40] In the case of a TVRH based on a migrant being a minor, migrants may renew until they are 18 years old. RLM art. 153.
[41] LM art. 54 (VI); RLM art. 141(I)(c).
[42] LM art. 54 (VI); RLM art. 141(I)(e).
[43] Sponsorship by a formal employer is exceedingly difficult to obtain when nearly 50% of the Mexican labor force operates outside of the formal sector, a disproportionately high number of unofficial jobs are performed by migrants, and migrants are discriminated against in the workforce. *See* Mary Edith Pacheco and Virgilio Partida, *Changing Jobs in Mexico: Hopping between Formal and Informal Economic Sectors,* INTECHOPEN (Aug. 23, 2017), https://www.intechopen.com/books/unemployment-perspectives-and-solutions/changing-jobs-in-mexico-hopping-between-formal-and-informal-economic-sectors; Anjali Fluery, *The Overlooked: Migrant Women Working in Mexico*, U.N. UNIV. (May 6, 2016), https://unu.edu/publications/articles/the-overlooked-migrant-women-working-in-mexico.html; Oficina del Alto Comisionado de las Naciones Unidas para los Refugiados en México, *Ser una persona refugiada en México*, O.N.U. NOTICIAS MÉXICO (2013), http://www.cinu.mx/minisitio/juventud_2015/Refugiado_en_MX.pdf.
[44] LM art. 52(V) (multiple entries); RLM art. 153 (same); RLM art. 164 (work authorization); *see also* David Welna, *Stuck In Tijuana, Many Central American Migrants Opt For A Job,* NAT'L PUB. RADIO (Nov. 30, 2018), https://www.npr.org/2018/11/30/672342503/stuck-in-tijuana-many-central-american-migrants-opt-for-a-job (discussing work authorization).

do),[45] migrants with TVRHs often face the obstacle of convincing potential employers that they are legally authorized to work. Additionally, all migrants with TVRHs are entitled to receive a *Clave Única de Registro de Población* ("CURP"), the Mexican equivalent of a social security number through which those with legal status in Mexico can access social services.[46] CURPs are supposed to be provided upon issuance of TVRHs,[47] and INM officials have provided CURPs to many members of the exodus in accordance with that rule.[48] In practice, however, a significant number of migrants does not receive a CURP when they receive their TVRHs, and have trouble accessing it later.

Without a CURP, migrants can only access public healthcare for three months for non-urgent conditions.[49] While urgent care is provided at any time, as required by Article 8 of the Law of Migration,[50] what constitutes "urgent" is left to the discretion of the medical providers, and little

[45] LM art. 52(V); *see also Emigrantes en México*, EMIGRANTESENMEXICO.BLOGSPOT.COM (Jun. 2, 2014), http://emigrantesenmexico.blogspot.com/2014/06/renovacion-residente-temporal-por.html (showing picture of Mexican temporary resident card).

[46] *See, e.g.*, ACUERDO para la adopción y uso por la Administración Pública Federal de la Clave Única de Registro de Población, Diario Oficial de la Federación [DOF] 10-23-1996 (Mex.); *El INAMI entrega Tarjetas de Visitante por Razones Humanitarias a miembros de la caravana migrante*, NAT'L INST. OF MIGRATION (Dec. 7, 2018) (Mex.), https://www.gob.mx/inm/prensa/el-inami-entrega-tarjetas-de-visitante-por-razones-humanitarias-a-miembros-de-la-caravana-migrante; Ley General de los Derechos de Niñas, Niños y Adolescentes [General Law of the Rights of Girls, Boys, and Adolescents] art. 20, Diario Oficial de la Federación [DOF] 12-04-2014, últimas reformas DOF 20-06-2018 (Mex.).

[47] Prior to June of 2018, CURPs were very rarely, if ever, given to those who had applied for humanitarian visitor status. *See* Daniela Wachauf, *Aligeran con CURP temporal, estancia legal de migrantes*, 24 HORAS (Aug. 27, 2018) (Mex.), https://www.24-horas.mx/2018/08/27/aligeran-con-curp-temporal-estancia-legal-de-migrantes/. On June 18, 2018, the Official Diary of the Federation published a rule that a temporary CURP would be provided to everyone who has applied for VHR Status. *Instructivo Normativo para la Asignación de la Clave Única de Registro de Población* [Instructions for the Assignment of the Single Code of Population Registration] arts. III(3) and (4), Diario Oficial de la Federación [DOF] 18-06-2018 (Mex.). In the case of those provided the status because they are applying for asylum, a temporary (180-day) CURP is granted as soon as the corresponding document is issued by Mexican Commission for the Assistance of Refugees (COMAR) and will be modified to become permanent as soon as the asylum petition has been approved. *Id.* In the case of those individuals who have requested humanitarian visitor status for the remaining reasons, they are assigned a temporary (up to one-year) CURP as soon as the INM has issued file number. Once the INM has authorized humanitarian visitor status for an individual and the document is issued, the temporary nature of the CURP will be modified to make it permanent. *Id.* at III(5).

[48] Carolina Rivera and Adriana Jimenez, *Registran a 4 mil de nueva caravana migrante; cientos desprecian entrada legal*, MILENIO (Jan. 21, 2019) (Mex.), https://www.milenio.com/estados/registran-4-mil-caravana-migrante-cientos-desprecian-entrada-legal; Registro Nacional de Población e Identificación Personal, *Preguntas frecuentes sobre la Clave Única de Registro de Población Temporal para Extranjeros*, GOBIERNO DE MÉXICO (Apr. 13, 2019), https://www.gob.mx/segob%7Crenapo/acciones-y-programas/preguntas-frecuentes-sobre-la-clave-unica-de-registro-de-poblacion-temporal-para-extranjeros.

[49] Guillermo Rivera, *Las desplazadas del VIH: arriesgan la vida viajando a México para tener medicamento*, VICE (Oct. 10, 2016), https://www.vice.com/es_latam/article/bj4x9m/desplazadas-vih-arriesgan-vida-viajando-mexico-para-medicamento.

[50] "Migrants will have the right to receive unrestricted emergency medical care required to save their lives, independent of their migratory status." Translated from Spanish: "Los migrantes independientemente de su situación migratoria, tendrán derecho a recibir de manera gratuita y sin

documentation exists defining the conditions that doctors consider urgent in different parts of the country.[51] Care for chronic diseases is usually not included as "urgent" healthcare.[52] Additionally, while migrants without CURPs have the right to access education, even migrant children with CURPs often have trouble registering in Mexican schools. [53]

Thus, TVRH holders often find themselves unable to work, access medical services, enroll their children in school, or acquire safe accommodation in Mexico (and no government program focuses on assisting this category of migrant).[54] Furthermore, the TVRH only lasts for one year, after which members of the Central American exodus will be unable to renew the status.[55] Those members of the Central American exodus still in Mexico will likely become undocumented. Despite these realities, there is significant concern that the United States will take the position that TVRHs constitute firm resettlement in Mexico, making holders inapplicable for U.S. asylum.

III. Firm Resettlement Under U.S. Law

In 1996, the U.S. Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (the "IIRIRA"), which included the incorporation of the firm resettlement bar in the U.S. Immigration and Nationality Act (the "INA").[56] Applicants for asylum are statutorily ineligible for asylum if they were "firmly resettled in another country prior to arriving in the United States."[57] There is no statutory definition of the term "firm resettlement," but the Code of Federal Regulations (the "CFR") fills this gap. The CFR states that an individual is considered to be firmly resettled when, "prior to arrival in the United States, [the asylum applicant] entered into another country with, or while

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restricción alguna, cualquier tipo de atención médica urgente que resulte necesaria para preservar su vida." LM art. 8.

[51] *See* Angelika Albaladejo, *Care and the Caravan: the Unmet Needs of Migrants Heading for the US*, BMJ (Dec. 19, 2018), https://www.bmj.com/content/363/bmj.k5315.

[52] *See id.*; *see also* Ietza Bojorquz et al., *¿Cuáles son las necesidades en salud de los migrantes centroamericanos en México?* REGIÓN TRANSFRONTERIZA MÉXICO-GUATEMALA (Mar. 22, 2019), http://www.rtmg.org/post/limitaciones-en-el-acceso-a-servicios-de-salud-de; Maria Blanca López Arellano, *Diagnóstico sobre acceso a servicios de salud para personas migrantes, solicitantes de asilo y refugiadas*, SIN FRONTERAS I.A.P. (Jun. 2014), http://sinfronteras.org.mx/wp-content/uploads/2018/12/Diagnostico_Salud.pdf.

[53] LM art. 8 (providing the right to education, no matter a minor's immigration status); *Niñez en contextos migratorios, inscrita en educación basica en México*, INSTITUTO PARA LAS MUJERES EN LA MIGRACIÓN (2015) (Mex.), http://imumi.org/sep/contexto.html (discussing the obstacles to accessing that right).

[54] *See, e.g.*, Vonk, *supra* note 36.

[55] Currently, authorities have no foundation upon which to renew that status because neither the INM nor the Secretary of the Interior has articulated a rationale under which those migrants received the status in the first place. The government would need to create another targeted program or create and publicize criteria for renewal in order for members of the Central American exodus to renew their TVRHs.

[56] *See In re A–G–G–*, 25 I. & N. Dec. 486, 486 (B.I.A 2011); INA § 208(b)(2)(A)(vi).

[57] 8 U.S.C. § 1158(b)(2)(A)(vi). The statutory bar does not apply to withholding of removal or claims under the CAT. *See* Immigrants' Rights Project, *Asylum Manual for Public Counsel's Volunteer Attorneys*, PUB. COUNSEL LAW CTR. 43–45 (Jan. 2012), http://www.publiccounsel.org/tools/publications/files/AsylumManual.pdf.

in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement . . . ."[58]

On May 12, 2011, the Board of Immigration Appeals (the "BIA") issued a decision that set out the framework for the adjudication of asylum claims pursuant to this definition of firm resettlement.[59] In *In re A–G–G–* ("*A–G–G–*"), the BIA established a four-step framework for firm resettlement cases: first, the burden is on the government to establish *prima facie* evidence of firm resettlement; second, the burden shifts to the applicant to rebut the evidence; third, the judge considers the totality of the evidence; and fourth, the applicant may try to establish that one of the statutory exceptions to the firm resettlement bar apply.

Prior to *A–G–G–*, the BIA had not published any decisions explaining how to analyze the firm resettlement bar as it currently exists in the law. The U.S. Courts of Appeals (the "Circuit Courts" or "Circuits"), however, had issued various decisions analyzing what situations constitute firm resettlement as a bar to asylum. Since *A–G–G–*, some Circuit Courts have adopted the BIA's analysis, while others continue to use their own approach.[60] Many Circuit Courts have not had the opportunity to decide a firm resettlement case since the BIA established its model and may therefore adopt the *A–G–G–* framework when the issue arises.[61]

All U.S. courts recognize permanent residence status,[62] temporary residency with the automatic option for permanent residency,[63] and refugee status among the types of statuses that constitute firm resettlement.[64] Beyond these standard examples, there is division among the Circuit Courts regarding what can be classified as firm resettlement. This report provides guidance for immigration advocates in the U.S. to argue in every Circuit that the receipt of a TVRH in Mexico does not constitute firm resettlement under the IIRIRA.

IV. The BIA's Caselaw Defining Firm Resettlement

In 2011, the BIA considered the question of firm resettlement in *A–G–G–* and created a four-step framework for adjudicators to utilize when deciding firm resettlement cases. The *A–G–G–* framework combines elements of approaches that had been used by the Circuit Courts up to that point, such as

[58] 8 C.F.R. §§ 208.15, 1208.15.
[59] *See A–G–G–*, 25 I. & N. Dec. at 486.
[60] *Compare Naizghi v. Lynch*, 623 F. App'x 53 (4th Cir. 2015) (accepting indirect evidence that Petitioner was firmly established abroad) *with Yang v. U.S. Attorney*, 752 F. App'x 718 (11th Cir. 2018) (continuing to follow "totality of the circumstances" approach).
[61] *See e.g.*, *Ramos Lara v. Lynch*, 833 F.3d 556, 559 (5th Cir. 2016) (declining to decide the validity of BIA's burden shifting framework for determining whether firm resettlement has occurred).
[62] *See e.g.*, *Nahrvani v. Gonzales*, 399 F.3d 1148, 1152 (9th Cir. 2005) (finding firm resettlement where applicant obtained permanent resident status in Germany); *Kongle v. I.N.S.*, 1998 WL 23078, *3 (4th Cir. 1998) (finding resettlement where citizenship had been offered).
[63] *In re D–L– & A–M–*, 20 I. & N. Dec. 409, 414 (B.I.A. 1991) (interim decision denying asylum where applicants' temporary residence permits had option to become permanent). *See also*, *Jianping Ye v. Lynch*, 650 F. App'x 385 (9th Cir. 2016) (denying asylum where there was no evidence that applicant's temporary residence in Ecuador could not be renewed).
[64] *Vang v. I.N.S.*, 146 F.3e 1114, 116–17 (9th Cir. 1998); *Farbakhash v. I.N.S.*, 20 F3d 877, 882 (8th Cir. 1994).

the "direct offer approach," which strictly requires evidence of an offer of permanent status in a third country to find firm resettlement, and the "totality of the circumstances approach," which calls for the consideration of various factors—including a direct offer of firm resettlement and non-offer-based factors—in deciding the same.[65]

The BIA framework includes four clearly-delineated steps.

1) **The Department of Homeland Security ("DHS") introduces *prima facie* evidence of an offer of firm resettlement**. This can be shown through either direct or indirect evidence. "DHS should first secure and produce direct evidence of governmental documents indicating an alien's ability to stay in a country indefinitely, which may include evidence of refugee status, a passport, a travel document, or other evidence indicative of permanent residence."[66] Indirect evidence may include the immigration laws from the country; the length of the individual's stay in that country; family, business, social or economic ties to the country; the receipt of government benefits; or evidence that the individual had legal rights normally given to people with some official status, such as the right to work and enter and exit the country. Indirect evidence should not be afforded weight equal to that afforded direct evidence.[67]
2) **The burden shifts to the applicant**. If DHS meets its burden and provides *prima facie* evidence that the firm resettlement bar applies, the burden then shifts to the asylum applicant to rebut that evidence by demonstrating "by a preponderance of the evidence that such an offer has not, in fact, been made or that he or she would not qualify for it."[68]
3) **The judge considers the totality of the evidence to decide if the applicant prevailed**. The adjudicator should consider, "the totality of the evidence presented by the parties" to determine whether the asylum applicant has successfully rebutted DHS's evidence of an offer of firm resettlement.[69]
4) **The applicant may present additional evidence that one of the statutory exceptions to firm resettlement bar applies**. The exceptions are:

> "(a) [the applicant's] entry into that country was a necessary consequence of his or her flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that country; or
> (b) the conditions of his or her residence in that country were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled."[70]

If the adjudicator determines the applicant has failed to rebut the government's case, the applicant may not be granted asylum unless the applicant can establish by a preponderance of the evidence that they meet one of the regulatory exceptions to a finding of firm resettlement.[71]

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[65] *A–G–G–*, 25 I. & N. Dec. at 501-03; *see also BIA Issues Precedential Decision Regarding The Firm Resettlement Bar To Asylum*, NAT'L IMMIGRATION JUSTICE CTR. (2011), https://immigrantjustice.org/admin_policy/blog/bia-issues-precedential-decision-regarding-firm-resettlement-bar-asylum.
[66] *In re D–X– & Y–Z–*, 25 I. & N. Dec. 664, 665 (B.I.A. 2012).
[67] *A–G–G–*, 25 I. & N. Dec. at 501.
[68] *Id.* at 503.
[69] *Id.*
[70] 8 C.F.R. § 208.15.
[71] *Id.*

This test "focuses exclusively on the existence of an offer."[72] Direct evidence is afforded more weight than indirect evidence, as according the two equal weight would be "inconsistent with the fact that only the government of the intervening country can grant an alien the right to lawfully and permanently reside there."[73] The BIA elaborated:

> In order to make a prima facie showing that an offer of firm resettlement exists, the [government] should first secure and produce direct evidence of governmental documents indicating an alien's ability to stay in a country indefinitely. Such documents may include evidence of refugee status, a passport, a travel document, or other evidence indicative of permanent residence.[74]

If direct evidence is "unavailable," the government may use indirect evidence to show an offer of firm resettlement has been made if "it has a sufficient level of clarity and force to establish that an alien is able to permanently reside in the country."[75]

Immigration Court Practice Pointer

In cases in which the asylum applicant received a TVRH in Mexico, the most important point to focus on before IJ ("IJ") is that this status is temporary in nature and differs from offers of permanent residence under Mexican law. Often, U.S. IJs will not understand the Mexican legal system and will require proof that the TVRH is in fact temporary.

In addition, the BIA explicitly stated in *A–G–G–* that "[t]he rebuttal [to DHS's *prima facie* evidence of an offer of firm resettlement] may include evidence regarding how a law granting permanent residence to an alien is actually applied and why the alien would not be eligible to remain in the country in an official status."[76] In that case, "[t]o rebut the *prima facie* showing by the DHS, the respondent submitted Article 7 of the Nationality Code of Senegal," evidence which resulted in a remand for further consideration by the IJ.[77]

Advocates can use the following materials to prove this point:

1) Judges often want guidance from lawyers in the country at issue. Annexed to this practice advisory is a notarized letter from Margarita Leticia Juárez Aparicio, a Mexican immigration attorney, explaining the status of visitor for humanitarian reasons in the context of Mexican immigration law.
2) Advocates can point to Article 52 (V) of the Law of Migration,[78] which defines the legal status of visitor for humanitarian reasons, and compare with Article 54 of the same, which provides the limited circumstances under which permanent residence is awarded under Mexican law. This can serve to demonstrate that the status being provided to members of the Central American exodus is that of temporary visitor, rather than a permanent resident. Excerpts of the relevant Mexican laws along with their translations are also annexed to this guide.

Regarding which forms of indirect evidence are sufficient to prove or disprove firm resettlement, the BIA did not provide answers, other than to indicate that some types of evidence carry more weight than others. A lengthy period of residence in a third country cannot establish a *prima facie* case of firm

[72] *A–G–G–*, 25 I. & N. Dec. at 501.
[73] *Id.*
[74] *Id.* at 501–2.
[75] *Id.* at 502.
[76] *Id.* at 503.
[77] *See id.* at 505.
[78] LM art. 52(V).

resettlement alone, as "[s]uch a right 'cannot be gained through adverse possession,'"[79] but "[t]he existence of a legal mechanism in the country by which an alien can obtain permanent residence *may* be sufficient to make a *prima facie* showing of an offer of firm resettlement."[80] For an applicant, the BIA only specifies that "[t]he rebuttal [to DHS's *prima facie* evidence of an offer of firm resettlement] may include evidence regarding how a law granting permanent residence to an alien is actually applied and why the alien would not be eligible to remain in the country in an official status."[81]

Furthermore, the law "only require[s] that an offer of firm resettlement was available, not that the alien accepted the offer."[82] Therefore, "evidence that an offer of firm resettlement has been made may not be rebutted if the alien refused to accept an offer of firm resettlement or failed to renew permanent residence, which was possible, for example, through the renewal of a residence permit."[83]
Additionally, in *A–G–G–*, the BIA held that an asylum applicant need not have affirmatively applied for permanent status in a third country for the firm resettlement bar to apply. Evidence that some form of permanent residence status was available to the applicant is sufficient to establish an offer of firm resettlement regardless of whether the applicant has applied for this status.[84] "If an alien who is entitled to permanent refuge in another country turns his or her back on that country's offer by failing to take advantage of its procedures for obtaining relief, he or she is not generally eligible for asylum in the United States."[85] This, presumably, accords with the rule promulgated by several Circuit Courts that an asylum applicant need not have current status in a third country or be able to return there to be considered to have been firmly settled, as "[t]he pertinent regulations specifically focus on resettlement status *prior* to the alien's entry into this country; they thus preclude a deportable alien from bootstrapping an asylum claim simply by unilaterally severing [their] existing ties to a third country after arriving in the United States."[86]

The BIA's subsequent jurisprudence provides some further guidance on how to apply the four-step framework. For example, in *In re D–X– & Y–Z–* ("*D–X– & Y–Z–*") the BIA found the respondent's Permit to Reside in Belize constituted *prima facie* evidence of an offer of firm resettlement and the fact

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[79] *A–G–G–,* 25 I. & N. Dec. at 501 (quoting *Abdille v. Ashcroft,* 242 F.3d 477, 487 (3d Cir. 2001)).
[80] *A–G–G–,* 25 I. & N. Dec. at 501 (explaining that "when an alien is entitled to maintain the resident status permanently as long as it is renewed, firm resettlement should bar the alien from receiving asylum if the renewal of a resident stamp is an administrative requirement as routine as renewing one's passport" (citing *Bonilla v. Mukasey*, 539 F.3d 72, 81 (1st Cir. 2008))).
[81] *Id.* at 503.
[82] *Id.*
[83] *Id.* (*citing Bonilla v. Mukasey*, 539 F.3d 72, 81 (1st Cir. 2008)).
[84] *A–G–G–*, 25 I. & N. Dec. at 486. This could prove problematic for non-Mexican parents of Mexican children, who have path to permanent residence. Troublingly, in *Matter of M–B– Appeal of Vermont Service Center Decision Application: Form I-821, Application for Temporary Protected Status*, a non-precedent decision of the Administrative Appeals Office ("AAO") that interpreted *A–G–G–,* the AAO held that "pursuant to *Matter of A–G–G–,* the evidence that the Applicant married a Lebanese citizen in 1986, and that she could apply for Lebanese citizenship on that basis, constitutes a *prima facie* showing of an offer of firm resettlement by the government of Lebanon." 2018 WL 4407333, 4.
[85] *Id.* (quoting *Elzour*, 378 F.3d at 1152).
[86] *Abdalla v. INS*, 43 F.3d 1397, 1400 (10th Cir. 1994); *see also Tchitchui v. Holder*, 657 F.3d 132, 137 (2d Cir. 2011); *Kongle v. INS*, 133 F.3d 915, 915 (4th Cir. 1998); *Ali v. Reno*, 237 F.3d 591, 596 (6th Cir. 2001); *Firmansjah v. Gonzales*, 424 F.3d 598, 601–04 (7th Cir. 2005); *Sultani v. Gonzales*, 455 F.3d 878, 883–84 (8th Cir. 2006); *Vang v. INS*, 146 F.3d 1114, 1117 (9th Cir. 1998); *Zakaria v. U.S. Atty. Gen.*, 416 F. App'x 890, 892 (11th Cir. 2011) ("The fact that this status was subject to abandonment for remaining outside of Germany for more than six months does not affect our analysis.").

that the permit was obtained fraudulently was not sufficient to rebut the finding of permanent resettlement.[87] The BIA held that "respondent's permit constitute[d] *prima facie* evidence of an offer of firm resettlement" because "[t]he permit allowed her to live in Belize and to travel in and out of that country," she "was able to obtain a nonimmigrant visa to visit the United States by presenting [the] permit along with [a] passport," "she returned to Belize using these documents," and there were no "restrictions on the permit that would limit the holder's ability to work in Belize."[88]

In *D–X– & Y–Z–*, the BIA explained:

> [A]nalysis of firm resettlement 'focuses exclusively on the existence of an offer.' But [the court] also consider[s] indirect evidence that an alien is able to permanently reside in the country, such as the country's residence laws; the length of the alien's stay in the third country; the alien's intent; family ties and business or property connections; social and economic ties; receipt of government benefits or assistance; and whether the alien had legal rights, such as the right to work and enter and exit the country.[89]

The BIA held that the neither respondent's "relatively short residence in Belize, nor her lack of employment in that country rebut[ted] the DHS's evidence, which consists of a facially valid residence permit. She did not work, but she made no claim or showing that it was because she was ineligible to, and her husband did work."[90] In that case, the respondent had traveled to the United States and voluntarily returned to Belize, which undercut "her claim that she obtained the permit for the purpose of enabling her to transit through Belize to seek asylum in the United States . . ."[91]

All Circuits Practice Pointer

Like the Permit to Reside in Belize, the Mexican TVRH also allows for multiple re-entries, and Mexican TVRH holders may work, which some IJs may consider enough to shift the burden. Those two pieces of indirect evidence, however, paired with a complete lack of primary evidence or additional secondary evidence, should not be sufficient to make a *prima facie* showing of an offer of firm resettlement. Advocates should emphasize that the TVRHs, the cards documenting the status of visitor for humanitarian reasons, have an expiration date written on them, and Mexican TVRH holders are called "visitors" (*see* appendix). Advocates can distinguish from *In re D–X– & Y–Z–*: in that case, there was no discussion of the Permit to Reside expiring, while the Mexican TVRH expires after one year.[92]

V. Circuit Court Caselaw Defining Firm Resettlement

Some Circuits have adopted the approach described in *A–G–G–* to determine firm resettlement, while others have continued following their own approaches. Several Circuits have not addressed the question of a firm resettlement approach since *A–G–G–* and it is possible that they will adopt the framework when the question is presented.[93] This practice advisory will first discuss post-*A–G–G–*

[87] *D–X– & Y–Z–*, 25 I. & N. Dec. at 665.
[88] *Id.*
[89] *Id.* at 667.
[90] *Id.* at 667–68.
[91] *Id.*
[92] LM art. 52(V); RLM art. 153.
[93] *See Naizghi v. Lynch*, 623 F. App'x 53, 56 (4th Cir. 2015); *Hanna v. Holder*, 740 F.3d 379, 394 (6th Cir. 2014).

case law for those Circuits that have adopted or addressed the framework, including the ways the relevant Circuits differ from the BIA in their approaches to firm resettlement. Thereafter, it will discuss the Circuits that have yet to rule on firm resettlement after the BIA crafted its approach in *A–G–G–*.

A. Circuits with Post-*A–G–G–* Case Law

The Fourth Circuit: Explicitly Follows the BIA Approach

To date, only the Fourth Circuit has elected explicitly to follow the BIA's approach in *A–G–G–*. In 2015, the Fourth Circuit adopted the BIA's jurisprudence (*A–G–G–* and *D–X– & Y–Z–*) in *Naizghi v. Lynch*, finding that "the government offered sufficient indirect evidence to present a *prima facie* case that [p]etitioner was firmly resettled in Italy…and [p]etitioner did not sufficiently rebut that evidence."[94] The indirect evidence offered consisted of:

> Petitioner's uncontroverted testimony that, by virtue of her ten-year stay in Italy, she was eligible to apply for citizenship pursuant to Italian citizenship law… the duration of [p]etitioner's stay in Italy; her temporary work permit, which she renewed several times; her ability to travel pursuant to the permit; her receipt of government subsidized medical care as a work permit holder; and her ability to obtain housing.[95]

Fourth Circuit Practice Pointer

In *Naizghi*, the petitioner testified that Italian law permits individuals to apply for citizenship after living in Italy for 10 years, and presumably there is no discretion if the 10-year-requirement is met.[96] In contrast, the process to renew the Mexican TVRHs is subject to the discretion of immigration officials, and whether they believe a migrant's need for the status continues. Thus, before the Fourth Circuit, advocates should focus on the fact that no path to permanent residence or citizenship is offered with the Mexican TVRH, and that there is discretion in the decision of whether to renew the status for one more year. Advocates should gather evidence to that effect to rebut indirect evidence the government may offer. It will be important to emphasize the short length of the stay in Mexico, the lack of intent to settle in Mexico, the lack of family ties or business connections in Mexico, the lack of social and economic ties in Mexico, and that migrants with the Mexican TVRH are not eligible for government benefits or assistance or to many of the legal rights normally afforded to people who have some official status (though they do provide the right to work and enter and exit the country). Advocates can focus on the factors relevant to their individual client to build the strongest support for the argument that he or she was never offered permanent resettlement in Mexico.

The Fifth and Sixth Circuits: Qualified Deference to the BIA

The Fifth Circuit seems to follow *A–G–G–*. Prior to *A–G–G–*, the Fifth Circuit had decided a firm resettlement case without defining its approach. In *Tesfamichael v. Gonzales* (2005), the court held that the IJ and BIA erred in finding a petitioner to be firmly resettled in Eritrea because "the evidence appears to be that she had no intention of ever remaining in Eritrea and only stayed there so long as was necessary to arrange onward travel," and "entered Eritrea only because she was forcibly deported there . . . and was thereafter denied the ability to exit by the Eritrean government even though she had

[94] 623 F. at App'x at 58.
[95] *Id.*
[96] *Id.* at 55.

obtained a visa to enter South Africa."[97] This suggests a totality of the circumstances approach. Then, after *A–G–G–* was decided, the court used the BIA's framework in *Ramos Lara v. Lynch* (2016) to find Ramos Lara's time in Mexico was not a necessary consequence of her flight from Bolivia.[98]

Fifth Circuit Practice Pointer
In *Ramos Lara*, the court stated that the question of the validity of the BIA burden-shifting framework was not before the court, as the parties had not challenged it. Advocates should use the BIA approach to argue their cases but beware that the government might challenge that approach.

The Sixth Circuit also defers to the BIA's interpretation of the law. Before *A–G–G–*, the court seemed to follow a soft "direct offer approach": in *Ali v. Reno* (2001), the court found that the BIA did not abuse its discretion in finding that Ali was resettled in Denmark because the Danish government granted her refugee status before she entered Denmark, and she received a Danish passport and a residence permit.[99] "The finding that she received an offer of permanent resident status is buttressed by the evidence that her family has remained in Denmark for over ten years with refugee status."[100]

Following *A–G–G–*, in *Hanna v. Holder* (2014), the Sixth Circuit noted that it was not expressly adopting the framework nor taking a position on whether the *A–G–G–* framework was consistent with the law, but simply deferring to the agency's interpretation.[101] Applying this framework, the court found that the government met its initial burden by providing evidence, including testimony from Hanna's father, that Hanna was granted landed immigrant status (permanent residency) in Canada and Hanna was not able to rebut this substantial evidence.[102]

Sixth Circuit Practice Pointer
Like in the Fifth Circuit, advocates should use the BIA approach to argue their cases but beware that the government might challenge that approach. TVRHs can be distinguished from both the permanent residency granted in *Hanna* and the refugee status granted in *Ali*.

The Ninth Circuit: Implicitly Follows the BIA Approach

The Ninth Circuit has favorably cited *A–G–G–* without explicitly adopting its framework. In *Haghighatpour v. Holder* (2011), the Ninth Circuit seemed to endorse implicitly the BIA's new framework when it pointed out that the BIA had applied its own framework incorrectly:

> In concluding that Haghighatpour was firmly resettled in Germany, *see* 8 U.S.C. § 1158(b)(2)(A)(vi), the BIA failed to apply the offer-based firm resettlement standard articulated in *Maharaj v. Gonzales,* 450 F.3d 961 (9th Cir. 2006) (en banc). Instead, the BIA took a totality of the circumstances approach, expressly giving weight to the number of years Haghighatpour had lived in Germany, as well as his schooling and work in Germany, his marriage to a German citizen, and his travel using German-issued documents. Under *Maharaj* and *In re A–G–G–,* 25 I. & N. Dec. 486 (B.I.A. 2011), the BIA should have focused directly on whether the government had met its burden of "showing that [Haghighatpour] had an offer of some type of official status

[97] *Tesfamichael v. Gonzales*, 411 F.3d 169, 177 (5th Cir. 2005).
[98] *Ramos Lara v. Lynch*, 833 F.3d 556, 560 (5th Cir. 2016).
[99] *Ali v. Reno*, 237 F.3d 591, 595 (6th Cir. 2001).
[100] *Id.*
[101] 740 F.3d at 394.
[102] *Id.*

> permitting him to reside in [Germany] *indefinitely*." *Maharaj,* 450 F.3d at 964 (emphasis added).[103]

The court remanded the case for the BIA "to apply the offer-based framework articulated in *Maharaj* and *Matter of A–G–G–*."[104] In other recent cases, the Ninth Circuit seems to follow the principles of both *A–G–G–* and *Maharaj* without applying the full four-step framework of *A–G–G–*.[105]

Prior to the BIA's decision in *A–G–G–*, the Ninth Circuit followed a version of the "direct offer approach." The court had held that a "lengthy, undisturbed residence in a third country may establish a rebuttable presumption of resettlement," a doctrine it previously had elaborated in *Cheo v. INS* (1996),[106] but that "the presumption did not arise where the petitioner received at least one death threat and faced frequent harassment in the third country to which he fled."[107]

In *Yuehua He v. Gonzales* (2001), another pre-*A–G–G–* case, the court found that the petitioner's nine years of residence in Venezuela, a five-year Venezuelan residence stamp in her Chinese passport, and a "tourist visa requiring yearly renewal" were insufficient to establish firm resettlement.[108] The court reasoned that "a tourist visa requiring yearly renewal suggests temporary, rather than permanent, resettlement," and there was no evidence in the record that "a five-year residence stamp from Venezuela represents an offer of permanent resettlement."[109]

Ninth Circuit Practice Pointer

These cases all support a finding that the Mexican TVRH does not constitute firm resettlement. *Yuehua He*'s language that a visa "requiring yearly renewal suggests temporary, rather than permanent, resettlement" is particularly useful.

In *Zhong v. Ashcroft* (2004), in which the court found that, although "Zhong did receive a 'right of abode'" in Tonga, this was not an "offer of permanent residence status," as "Zhong was required to submit an application for residency that was subject to the discretion of the Tongan Police," and thus he was not firmly resettled in Tonga.[110] In addition, the court found no resettlement in cases in which there was clear evidence that the government of the third country had not made a direct offer of permanent residence. In *Ali v. Ashcroft* (2005), for example, the court adopted the reasoning of the Third Circuit in *Abdille* that "Absent some government dispensation, an immigrant who surreptitiously enters a nation without its authorization cannot obtain official resident status no matter his length of stay, his intent, or the extent of the familial and economic connections he develops. Citizenship or permanent residency cannot be gained through adverse possession."[111] In *Negoescu v. Gonzales* (2006), the court held that even eleven years of legal residence was insufficient to trigger the *Cheo* presumption

[103] *Haghighatpour v. Holder*, 446 F. App'x 27, 30 (9th Cir. 2011), *amended on denial of reh'g*, 2011 U.S. App. Lexis 22011 (2011).
[104] *Id.* at 31.
[105] *See Jianping Ye v. Lynch*, 650 F. App'x 385, 385-86 (9th Cir. 2016).
[106] *Cheo v. INS*, 162 F.3d 1227, 1229 (9th Cir. 1998).
[107] *Camposeco-Montejo v. Ashcroft*, 384 F.3d 814, 820 (9th Cir. 2004) (citation omitted).
[108] *Yuehua He v. Gonzales*, 414 F. App'x 994, 995 (9th Cir. 2011).
[109] *Id.*
[110] *Zhong v. Ashcroft*, 110 F. App'x 818, 820 (9th Cir. 2004).
[111] 394 F.3d 780, 790 (9th Cir. 2005) (quoting *Abdille,* 242 F.3d at 487).

when it was "undisputed that France issued the petitioners residence cards that were valid for eleven years" and were not an offer of permanent residence.[112]

Two other cases from the Ninth Circuit demonstrate that even before adopting *A–G–G–*, the Ninth Circuit would not have considered the Mexican TVRH (which was added to the law in 2011) to constitute firm resettlement. *Camposeco-Montejo v. Ashcroft*[113] and *Hernandez-Garcia v. Ashcroft*,[114] which both involve Guatemalan refugees in Mexico in the 1980s and 1990s and limitations the Mexican government put on their legal status in Mexico, find no permanent resettlement.

In *Camposeco–Montejo* (2004), a Guatemalan national fled with his parents to Mexico in 1982 where he lived in refugee camps, was not allowed to attend Mexican schools, and could not leave the municipality in which the camp was located until 1996 when he was given an "FM3" card which permitted travel outside the municipality and the right to work.[115] Evidence showed that the FM3 card did not confer the right to apply for permanent residency after a certain number of renewals.[116] In *Camposeco-Montejo*, the court concluded that sixteen years of residence in Mexico did not provide substantial evidence of firm resettlement, "as Camposeco did not experience the freedom and lack of persecution that characterized the applicants' stays in *Cheo* and *Vang*, and his stay was not 'undisturbed' because he was restricted to a single municipality, could not attend Mexican schools, and was threatened with repatriation to Guatemala."[117] The fact that Camposeco could renew his FM3 card did not, the court stated, "confer the right to apply for permanent residency."[118]

Ninth Circuit Practice Pointer

The Mexican FM3 card, discussed in *Camposeco-Montejo*, was renewable on yearly basis, and after 10 years, card holders could apply for temporary residence. After four years of temporary residence, they could apply for permanent residence. This differentiates the FM3 cards (which no longer exist in Mexico) from the current TVRH, which does not confer a path to temporary or permanent residency.

Similarly, in another pre-*A–G–G–* case, *Hernandez-Garcia v. Ashcroft* (2005), the court held that Hernandez-Garcia, who had lived in Mexico for 12 years, "successfully rebutted the presumption [of firm resettlement that the duration and circumstances of petitioner's stay may raise] by showing that he had never received an offer of permanent residency or other type of permanent resettlement in Mexico and that 'the conditions of his ... residence in [Mexico] were so substantially and consciously restricted by the authority of the country of refuge that he ... was not in fact resettled.' 8 C.F.R. § 1208.15(b)."[119] The conditions the court referred to were that Hernandez-Garcia "worked clearing the jungle to make roads, in construction, and as a ranch hand on various ranches" and "never went to any of the refugee camps available to Guatemalan refugees in Mexico because he 'didn't like the limitations,'" as the "individuals in those camps had to obtain authorization from immigration authorities before working." Hernandez-Garcia "was not aware that in 1996 the Mexican government

[112] *Negoescu v. Gonzales*, 197 F. App'x 690, 692 (9th Cir. 2006).
[113] 384 F.3d at 818.
[114] *Hernandez-Garcia v. Ashcroft*, 120 F. App'x 79, 80 (9th Cir. 2005).
[115] 384 F.3d at 818.
[116] *Id.*
[117] *Maharaj v. Gonzales*, 450 F.3d 961, 970, 985 n.8 (9th Cir. 2006) (citing *Camposeco-Montejo*, 384 F.3d 814, 820).
[118] *Camposeco-Montejo*, 384 F.3d at 820.
[119] 120 F. App'x at 80.

offered legal residency to Guatemalan refugees, and that two of his brothers were recognized as refugees in Mexico, had work authorization, and received other government assistance."[120]

In *Maharaj v. Gonzales* (2006), the court considered a case in which the petitioners, after fleeing Fiji, had lived in Canada for four years.[121] In Canada, the applicants worked, had three children, sent their children to free public school, and received health benefits. The family had applied for refugee status or asylum in Canada, but, before their application was decided, immigrated to the United States. The court found that the family had not permanently resettled in Canada because DHS did not make "a threshold showing that the [they] had an offer of some type of official status permitting [them] to reside in the third country indefinitely."[122] The court explained that "this showing can be made by direct evidence of an offer issued by the third country's government or, where no direct evidence of a formal government offer is obtainable, by circumstantial evidence of sufficient force to indicate that the third country officially sanctions the alien's indefinite presence." The court clarified that:

> [I]n order to shift the burden to the alien the [circumstantial] evidence must be of sufficient force to show that the alien's length of residence, intent, and ties in the third country indicate that the third country officially sanctions the alien's indefinite presence. The focus does not change; it remains on receipt of *an offer* of permanent resettlement.[123]

The burden then shifts to the petitioner to show that they fall within one of the exceptions, at which point the IJ must consider "the conditions under which other residents of the third country live, and how the applicant was treated by comparison."[124]

The *Maharaj* court also explained that a country's offer of permanent resettlement "may consist of providing a defined class of aliens a process through which they are entitled to claim permanent refuge."[125] Failing to take advantage of the procedures that would obtain permanent refuge to which an immigrant is entitled in a third country leads to ineligibility for asylum in the U.S., while "a mere possibility that an alien might receive permanent refuge through a third country's asylum procedures is not enough to constitute an offer of permanent resettlement."[126] In that case, "Maharaj was in the process of applying for some kind of refugee or asylum status, and walked out on it," but the court commented that "the fact that Canada offers a process for applying for some type of refugee or asylum status is not the same as offering the status itself."[127] An "offer" must be an entitlement, such that "all that remains in the process is for the alien to complete some ministerial act."[128] In Maharaj's case, "DHS [bore] the burden of adducing evidence that indicate[d] the significance Canada attache[d] to the process in which Maharaj was engaged, and to the progress of his application."[129]

In *Maharaj*, the court also found that since "DHS made no showing that offer-based evidence was unobtainable…it had to adduce direct evidence of an offer of some type of permanent

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[120] Brief for Respondent at 7, *Hernandez-Garcia v. Ashcroft*, 120 F. App'x 79 (9th Cir. 2005) (No. 03-71918), 2004 WL 546208.
[121] *Maharaj*, 450 F.3d at 963.
[122] *Id.* at 964.
[123] *Id.* at 976.
[124] *Id.* at 964.
[125] *Id.* at 977 (quoting *Elzour,* 378 F.3d at 1152).
[126] *Id.*
[127] *Id.* at 977.
[128] *Id.*
[129] *Id.*

resettlement."[130] The four-year residence was insufficient, as was the fact that Mr. Maharaj received a work permit and benefits, as there had been no specific showing that that "eligibility for either means that Canadian authorities thereby recognized a right to stay indefinitely in that country."[131]

Ninth Circuit Practice Pointer:
Practitioners can argue that Mexico's TVRH does not constitute an offer of firm resettlement because it is not an "entitlement," such that "all that remains in the process is for the alien to complete some ministerial act." In fact, renewal will be nearly impossible for most members of the Central American exodus who received TVRHs (*see* section II).

The Eleventh Circuit: Does Not Follow the BIA's Approach

The Eleventh Circuit did not adopt the BIA's approach in its post-*A–G–G–* case law. Rather, the court has followed the "totality of the circumstances approach" in addressing firm resettlement questions, although the court has not explicitly stated that this is its preferred method. For example, in *Quanxing Yang v. U.S. Attorney* (2018), the court considered that Yang "lived, attended school, and worked as a businessman in Peru for twenty-five years" before discussing his legal status.[132]

When discussing Yang's legal status, the court noted that Yang first described his status as long term rather than permanent in his credible fear interview and told his interviewer that his status expired in 2020. At his hearing before the IJ, however, Yang stated that he had a permanent resident card from Peru, and that while his status expires every year it can be renewed with a fee. This, the court decided, provided substantial evidence that Yang obtained an offer of permanent residence in Peru. In that case, the court stated that Yang offered no evidence that Peru "severely restricted his status such that he was not in fact firmly resettled there."[133]

Eleventh Circuit Practice Pointer
Advocates should emphasize the temporary nature of the Mexican TVRH, the fact that it is not automatically renewable with a fee, and that there are restrictions on access to healthcare, education, and social services for humanitarian visitors.

B. Circuits with No Post-*A–G–G–* Caselaw on Firm Resettlement

The First, Second, Third, Seventh, Eighth, and Tenth Circuits have varied approaches to deciding the question of firm resettlement, but they have not considered what approach to use since *A–G–G–*. When a relevant case next arises, they may decide to adopt the BIA approach.

[130] *Id.* at 978.
[131] *Id.*
[132] *Quanxing Yang v. U.S. Attorney*, 752 F. App'x 718, 723 (11th Cir. 2018).
[133] *Id.*

First, Second, Third, Seventh, Eighth, and Tenth Circuits Practice Pointer
Advocates in these Circuits can argue that the Mexican TVRH does not constitute firm resettlement under precedent in that Circuit, and—if the *A–G–G–* framework would be more favorable for the client's case and for asylum seekers broadly than the Circuit's current approach—show what the reasoning would be under the framework and argue that the Circuit should adopt the BIA's framework for deciding firm resettlement cases.

The First Circuit: Direct Offer of Permanent Resettlement

The First Circuit follows what is known as the "direct offer approach," which recognizes that firm resettlement cannot be established without an offer of some form of permanent status in a third country. In *Bonilla v. Mukasey* (2008),[134] the First Circuit found the petitioner could not be considered firmly resettled in Venezuela, despite the expired five-year resident stamp in his passport, because there was no direct evidence that Venezuela had ever offered the petitioner permanent residency:

> It may be that renewing the resident stamp is an administrative requirement as routine as renewing one's passport, and that Bonilla was entitled to maintain his resident status permanently as long as he renewed it. If this is the case, then the firm resettlement bar should apply. *See, e.g., Elzour v. Ashcroft,* 378 F.3d 1143, 1152 (10th Cir. 2004) ("If an alien who is entitled to permanent refuge in another country turns his or her back on that country's offer by failing to take advantage of its procedures for obtaining relief, he or she is not generally eligible for asylum in the United States."). But we are left to speculate since the record does not contain any information as to whether the resident stamp, valid for five years, represented an offer of permanent residence.[135]

The court remanded the case so that both parties could "supplement the record with evidence bearing on whether the five-year resident stamp represents an offer of permanent resettlement."[136]

First Circuit Practice Pointer
Advocates should use *Bonilla v. Mukasey* to argue that the burden is on the government to prove that those with TVRHs are "entitled" to renew their status, and therefore the status does not constitute an offer of permanent residence, and that even if they were entitled to renew the status it would still not be an offer of permanent residence. As discussed above, the process for renewing the TVRH is complicated, and is by no means as reliable an outcome as getting one's passport renewed, no path to permanent residency is available through the TVRH.

The Second Circuit: The Totality of the Circumstances Approach

The Second Circuit follows the "totality of the circumstances approach," which considers various factors, including a direct offer of firm resettlement and non-offer-based factors.[137] But note that the

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[134] *Bonilla v. Mukasey*, 539 F.3d 72, 81 (1st Cir. 2008).
[135] *Id.*
[136] *Id.* at 82.
[137] *See Sall v. Gonzales*, 437 F.3d 229, 233 (2d Cir. 2006). Back when the U.S. Court of Appeals for the District of Columbia heard asylum appeals from the district court, it too used a factor-based approach. *See Chinese Am. Civic Council v. Attorney Gen.*, 566 F.2d 321, 328 n. 18 (D.C. Cir. 1977) (considering non-offer-based elements such as the time between flight from country of persecution and application for asylum in the U.S., rather than whether there was an offer of permanent residency). Today, the U.S. District Court for the District of Columbia usually does not have jurisdiction over immigration cases, as pursuant to section 242(b)(2) of the INA, jurisdiction over petitions for review from BIA decisions

Second Circuit has not addressed the issue of firm resettlement since the BIA issued its decision in *A–G–G–*.

In *Sall v. Gonzales* (2006), the Second Circuit found there was insufficient evidence to determine whether the petitioner had been firmly resettled in Senegal and remanded the case for the IJ to consider "the totality of the circumstances, including whether Sall intended to settle in Senegal when he arrived there, whether he has family ties there, whether he has business or property connections that connote permanence, and whether he enjoyed the legal rights-such as the right to work and to enter and leave the country at will-that permanently settled persons can expect to have."[138]

The Second Circuit has acknowledged that "[i]t is not entirely clear…what the government would need to show in order to establish permanent resettlement,"[139] but the court's jurisprudence provides some examples. In another 2006 case, *Makadji v. Gonzales*, the court found that the fact that the petitioner had lived in Mali for ten years with his family and had worked odd jobs there was insufficient to establish firm resettlement because there was no evidence that the Mali government had actually granted him permanent residence.[140] In that case, however, the government of Mali did not officially know of his presence as he had never registered in that country.

The court held in *Jin Yi Liao v. Holder* (2009) that a temporary *Residencia* visa from the Dominican Republic, "which expires after a short period, cannot on its own constitute substantial evidence of an 'offer of permanent resident status' sufficient to establish that an applicant has been 'firmly resettled' in a third country."[141] The court noted that the government must "evaluate the significance of any such visa, along with other factors."[142] Similarly, in *Oumar v. Mukasey* (2008), the Second Circuit held that "an offer of 'provisional' refugee status, without more, is insufficient to establish firm resettlement, particularly where there is no indication in the record that Chad's immigration laws afford permanent legal status to an individual in Oumar's position [with a provisional refugee certificate]."[143]

Second Circuit Practice Pointer
Advocates should cite *Jin Yi Liao* and *Oumar*, which involve a short-term *Residencia* status and a "provisional refugee status," respectively. Similarly, there is no offer of long-term residency for Mexican TVRH holders.

In contrast, in *Tchitchui v. Holder* (2011), the Second Circuit found the totality of the circumstances supported a finding of firm resettlement.[144] There, the court found that the petitioner was firmly resettled in Guatemala because he "had ongoing business activities, could work and travel at will, and had permanent residency status," even though those ties were formed prior to his persecution in

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are to be "filed with the court of appeals for the judicial circuit in which the IJ completed the proceedings," and there are no immigration courts in the District of Columbia. 8 U.S.C. § 1252(b)(2).
[138] 437 F.3d at 235.
[139] *Makadji v. Gonzales*, 470 F.3d 450, 455 (2d Cir. 2006), *as amended* (Jan. 22, 2007).
[140] *Id.* at 458.
[141] *Jin Yi Liao v. Holder*, 558 F.3d 152, 158 (2d Cir. 2009).
[142] *Id.*
[143] *Oumar v. Mukasey*, 283 F. App'x 827, 829 (2d Cir. 2008).
[144] *Tchitchui v. Holder*, 657 F.3d 132, 137–38 (2d Cir. 2011).

Cameroon and his permanent residency in Guatemala had expired during his removal proceedings in the United States.[145]

Second Circuit Practice Pointer

In light of these cases, advocates in the Second Circuit should gather evidence and prepare arguments related to each of the factors outlined in *Sall*: whether the client intended to settle in Mexico when they arrived there, whether they have family ties in Mexico (compared with their ties in the U.S.), whether they have business or property connections in Mexico that connote permanence, and whether they enjoyed the legal rights, including the right to work and to enter and leave the country at will. Advocates should also point to the holdings in *Makadji* and *Oumar* to argue that the clear absence of an offer of permanent residence from Mexico should outweigh any other factors, and that the Mexican TVRH is like the temporary *Residencia* in *Jin Yi Liao*. Finally, advocates should distinguish their client's case from *Tchitchui* by emphasizing their client's lack of permanent residency, business activities, and permanent ties to Mexico.

The Third Circuit: Direct Offer of Permanent Resettlement

In 2001, the Third Circuit explicitly rejected an approach that gives equal weight to "non-offer-based factors" and instead focused its firm resettlement inquiry solely on the existence of an offer of permanent resident status, citizenship, or some other type of permanent resettlement, stating: "on its face, § 208.15 explicitly centers the firm resettlement analysis on the question whether a third country issued to the alien an offer of some type of official status permitting the alien to reside in that country on a permanent basis."[146] If the government cannot provide direct evidence of an offer of permanent residence, "non-offer-based elements" such as the length of stay and ties to the third country may be considered "as a surrogate for direct evidence of a formal offer of some type of permanent resettlement, if they rise to a sufficient level of clarity and force."[147]

In *Abdille v. Ashcroft* (2001), the Third Circuit found that the evidence presented by the government was insufficient to show that the petitioner had been firmly resettled in South Africa.[148] The court remanded the case for further investigation to determine whether the petitioner's fixed, two-year refugee term in South Africa would be converted into a more permanent status.[149]

The government had presented two South African government documents approving Abdille's application for asylum in seeking to make its prima facie case: the first, a Certificate of Exemption entitling Abdille to asylum under South Africa's Aliens Control Act of 1991 for a two-year period of exemption; the second, a "letter from South Africa's Department of Home Affairs addressed to Abdille discussing Abdille's obligations at the conclusion of this two-year refugee period."[150] The court quoted the second document:

> "Please note, however, that if at the end of the period of exemption [i.e., June 24, 2000], you do not wish to leave [South Africa], the onus rests on you to contact the Department for the reviewal of your refugee status or to otherwise legalise your continued stay in [South Africa] before the expiry date of your Certificate. Failure to

[145] *Id.* at 137.
[146] *Abdille*, 242 F.3d at 485.
[147] *Id.* at 487.
[148] *Id.* at 489–90.
[149] *Id.* at 489.
[150] *Id.* at 488.

> do so may render you liable to prosecution in terms of the provisions of the Aliens Control Act, 1991 (Act 96 of 1991)."[151]

The court disagreed with the BIA that this language indicated that "Abdille's refugee status '[would] not simply terminate' at the end of the two-year exemption period" and that "the two documents describing Abdille's refugee status under South African law constitute substantial evidence supporting the conclusion that the government of South Africa granted Abdille an offer of some other type of permanent resettlement," holding rather that "[i]f anything, these records compel the contrary conclusion-i.e., that such an offer of resettlement was, by its terms, only temporary in nature."[152] The fact that from the face of the Certificate of Exemption, "Abdille's legal right to reside in South Africa as a refugee" "carried with it an explicit termination date," and that the Department of Home Affairs letter to Abdille "makes clear that, absent further action on Abdille's part, he would be subject to prosecution under South African law should he choose to remain in South Africa after the expiration of the two-year exemption period," led the court to conclude that, "[g]iven this plain language," the court was "hard-pressed to see how these documents lend support to the BIA's conclusion that Abdille's refugee status 'does not simply terminate' . . . and was in fact of a more permanent nature."[153]

In *Abdille*, the Third Circuit also discussed standards for evidence on foreign law. The court began by explaining:

> "While the information contained in the Certificate of Exemption and the Department of Home Affairs letter to Abdille strongly suggests that the grant of refugee status for a fixed term of two years is something short of an offer of some other type of permanent resettlement, it may be true that under the relevant provisions of South African immigration law, or the application of that law in practice, a refugee's two-year exemption period will often mature into a more permanent status. For instance, it may be that provisions of the Aliens Control Act ease the burden on an alien applying for official permanent resident status if that alien has already received asylum, or that, as a matter of immigration practice, two-year refugees like Abdille routinely receive a form of permanent status if they apply for such status prior to the expiration of the two-year exemption period. The Certified Administrative Record is completely silent on these points, however, and at this stage, in the absence of further evidence, reliance on these contingencies would amount to nothing more than mere speculation."[154]

Remanding the case, the court instructed to the BIA to "further investigate the content of South African immigration law and practice in general," and that it "may resolve the specific question whether, under South African refugee law and practice, the issuance of a Certificate of Exemption granting an alien refugee status for a fixed two-year term amounted to an offer of some other type of permanent resettlement within the meaning of § 208.15."[155]

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[151] *Id.*
[152] *Id.*
[153] *Id.*
[154] *Id.* at 490 (using as an example *Matter of D–L & A–M–,* 20 I. & N. Dec. 409, 411–14, 1991 WL 353529 (B.I.A 1991), in which the BIA found that two Cuban nationals seeking asylum had firmly resettled in Spain, where they had spent six years, based on the Spanish government's official recognition of their legal right to reside in Spain in the form of an official temporary resident status that was renewable each year, "and, importantly, that this temporary residency could be converted to permanent residency once one of the them obtained a work contract).
[155] *Id.* at 490.

The court then elaborated on which party bears the burden of establishing the content of a foreign law.[156] Noting that the BIA had used the longstanding rule that "foreign law is a matter to be proven by the party seeking to rely on it" to place burdens on the government,[157] the court explained that the rule must "be read in conjunction with the INS regulations establishing the general burden of proof allocation with respect to the firm resettlement issue."[158] "[T]he burden allocation regarding firm resettlement is thus evident from the language of § 208.13(c)(2)(ii),"[159] the court continued: the government "bears the initial burden of producing evidence that indicates that the firm resettlement bar applies, and, should the [government] satisfy this threshold burden of production, both the burden of production and the risk of non-persuasion then shift to the applicant to demonstrate, by a preponderance of the evidence, that he or she had not firmly resettled in another country."[160]

The Seventh Circuit: Direct Offer of Permanent Resettlement

In 2004, the Seventh Circuit held that the primary and initial consideration for firm resettlement is whether the petitioner was given an offer of permanent resettlement in another country.[161] Other factors can be considered "only after making a preliminary finding of a genuine offer *vel non* of permanent resettlement, and only then when the applicant seeks to demonstrate that she falls into one of the two exceptions."[162]

In *Diallo v. Ashcroft* (2004), the petitioner had lived and worked in Senegal for four years and shared an apartment there with a friend; however, he testified that he had no formal offer or permission to live or work in the country.[163] The court held that based on this evidence, the petitioner had not firmly resettled in Senegal.[164]

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[156] *Id.*
[157] *Id.* at 490–491 (discussing *Matter of Soleimani*, 20 I. & N. Dec. 99 (B.I.A. 1989), in which the BIA reversed the IJ's finding that an Iranian Jew had firmly resettled in Israel based on the assumption that, because Israel's Law of Return granted all members of the Jewish faith the right to Israeli citizenship, it was probable that the alien had received an offer of resident status, citizenship, or some other type of permanent resettlement from the Israeli government, because, the BIA noted, the record contained no evidence "documenting the nature and purpose of Israel's Law of Return or the specific provisions of that law," and "[f]oreign law is a matter to be proven by the party seeking to rely on it, and the Immigration and Naturalization Service has submitted nothing of record regarding Israel's Law of Return.").
[158] *Id.* at 491.
[159] *Id.* at 491 (quoting 8 C.F.R. § 208.13(c)(2)(ii) (2000) ("If the evidence indicates that one of the above grounds [including the firm resettlement bar] apply to the applicant, he or she shall have the burden of proving by a preponderance of the evidence that he or she did not so act.")).
[160] *Id.* at 491.
[161] *Diallo v. Ashcroft*, 381 F.3d 687, 693 (7th Cir. 2004).
[162] *Id.*
[163] *Id.* at 694.
[164] *Id.* at 697.

Third and Seventh Circuits Practice Pointer Practice Pointer

In these Circuits, advocates can emphasize that Mexican TVRHs are intended to be temporary and do not give permanent status or any path to permanent status. Once the basis of TVRH is no longer present, migrants may only remain in Mexico if they have other immigration claims such as marriage, parentage, or an offer of formal employment. Particularly in the Third Circuit, advocates can reference *Abdille* to argue that the burden of proving that a foreign law or practice constitutes firm resettlement rests on the government. In addition, based on *Abdille*'s discussion of the value of the plain language on documents, the fact that the TVRHs say "visitante," or visitor, and display an expiration date constitutes strong evidence against firm resettlement.

The Eighth Circuit: Direct Offer of Permanent Resettlement and Other Factors

The approach of the Eighth Circuit seems to fall somewhere in between the Circuits that follow the "direct offer approach" and those that follow the "totality of the circumstances approach." In its most recent case on the subject, *Sultani v. Gonzales* (2006), the court summarized:

> While the question of whether a third country formally offered permanent resident status, citizenship, or some form of permanent resettlement is "an important factor and, indeed, the proper place to begin the firm resettlement analysis," in some cases direct evidence of such an offer may be difficult or impossible to procure. Consequently, other factors may be considered to determine whether an alien's stay in a third country was more than simply "a stopover en route to refuge in the United States." *See also Abdille v. Ashcroft,* 242 F.3d 477, 487 (3d Cir. 2001), cited with approval in *Rife,* 374 F.3d at 611, and recognizing that other factors may be considered if evidence of a resettlement offer is unobtainable.[165]

In that case, the court held that the Sultani family was resettled when they were granted refugee status in Australia; the Australian government issued Certificates of Identity that listed their status as refugees and permitted indefinite renewal of that status; the Certificates of Identity indicated that the adults in the Sultani family enjoyed "unrestricted" employment status and were permitted to travel from Australia to the United States and back; and one of the petitioners testified at the deportation proceedings that the family was resettled in Australia.[166] The court then moved on to factors the IJ "may consider other than [an] offer of permanent resettlement to resolve the issue of firm resettlement," including that the family rented an apartment in Melbourne, one of the petitioners obtained employment, the children attended public school, the family had a child in Australia, they traveled freely throughout the city, and they received free medical care and monetary assistance from the government.[167]

In *Rife v. Ashcroft* (2004), the court considered the following factors to conclude that the Rifes were permanently resettled in Israel: the Rifes lived and worked in Israel for three years, receiving substantial government benefits, and left of their own accord; and Israel had offered the family permanent resettlement under the Law of Return, issued certificates evidencing citizenship when they arrived, and issued passports in 1993.[168] Although the Rifes testified that their Israeli citizenship was invalid because they were practicing Christians and had faced cruelty and discrimination in Israel, the court found that this was not sufficient to rebut the finding of firm resettlement because there was "no

[165] *Sultani v. Gonzales*, 455 F.3d 878, 882 (8th Cir. 2006).
[166] *Id.* (internal citations omitted).
[167] *Id.*
[168] *Rife v. Ashcroft*, 374 F.3d 606, 611 (8th Cir. 2004).

evidence that Israel has ever *revoked* the citizenship of an *oleh* ["settler"] upon learning that he or she converted to Christianity."[169]

In *Farbakhsh v. INS* (1994), the Eighth Circuit found the petitioner had been firmly resettled in Spain, though his application for refugee status had been pending for more than three years; he did not have permission to work, attend school, or access government benefits; and he depended on family for financial support.[170] The court based its finding on the petitioner's four-year stay in Spain, his intent to stay in Spain evidenced by his asylum application, and the fact that his brother and sister lived in Spain. Then, without explicitly discussing the exceptions, the court noted that the applicant had passed through several countries en route to the United States, five years had passed between his flight and entry into the United States, Canada had granted him temporary resident status and one year to apply for asylum, his siblings constituted personal ties to Spain, and he had "circumvented orderly refugee procedures by . . . entering the United States without inspection," and had "failed to demonstrate any compelling, countervailing equities in favor of asylum. He is in good health and neither very young nor elderly, and his stated reason for coming to the United States was economic."[171]

Eighth Circuit Practice Pointer

These cases may be problematic for asylum seekers who applied for Mexican asylum, which, unlike the TVRH, provides a path to permanent residency. In those cases, advocates can distinguish the situations of their clients from those of Sultani, Rife, and Farbakhsh: in *Sultani* and *Rife*, the petitioners were *granted* asylum in Australia and Israel, respectively. Simply applying for asylum, therefore, should not trigger the firm resettlement bar. In *Farbakhsh*, the petitioner had applied for but not been granted asylum in a third country, yet advocates can point to the fact that the court considered that application as only one among many factors, factors that could distinguish Farbakhsh's case from that of a client: Farbakhsh's siblings lived in Spain; he had stayed there for four years; he had testified that he came to the United States for economic reasons, undermining his credibility; he was in good health; and he was "neither very young nor elderly."[172]

The Tenth Circuit: Soft Direct Offer of Permanent Resettlement Approach

The Tenth Circuit has not considered the question of firm resettlement since *A–G–G–* and has never explicitly adopted either the "direct offer" or "totality of the circumstances approach," though the court seems to follow a soft "direct offer approach." The court accepts both direct and circumstantial evidence as proof of permanent resettlement,[173] adopting the Ninth Circuit's *Cheo* presumption that "when an alien enjoys a lengthy undisturbed stay in a third country, 'in the absence of evidence to the contrary, it would be a reasonable inference from the duration that [the third country] allowed the [alien] to stay indefinitely,'" and the Third Circuit's acceptance of "non-offer-based elements" "as a surrogate for direct evidence of a formal offer . . . ."[174] Despite the *Cheo* presumption, in *Elzour v. Ashcroft* (2004), the Tenth Circuit held that the petitioner's stay of nearly four years in Canada and his right to work there did not support an inference that he had received some sort of permanent refuge there.[175] The court instead relied on the undisputed evidence that Canada refused to grant the

[169] *Id.*
[170] *Farbakhsh v. INS*, 20 F.3d 877, 880, 882 (8th Cir. 1994).
[171] *Id.* at 882.
[172] *Id.*
[173] *Elzour v. Ashcroft*, 378 F.3d 1143, 1151 (10th Cir. 2004).
[174] *Id.* (quoting *Cheo,* 162 F.3d at 1229).
[175] *Id.*

petitioner asylum or permanent status based on his marriage to a Canadian, and instead tried to deport him.[176]

The court also considered whether Elzour's ability to apply for asylum in Canada was itself an "offer of . . . permanent resettlement" "which Petitioner declined by failing to appear at a mandatory hearing," explaining:

> The firm resettlement bar looks to whether permanent refuge was *offered,* not whether permanent status was ultimately obtained. Refugees may not flee to the United States and receive asylum after having unilaterally rejected safe haven in other nations in which they established significant ties along the way . . . [i]f an alien who is entitled to permanent refuge in another country turns his or her back on that country's offer by failing to take advantage of its procedures for obtaining relief, he or she is not generally eligible for asylum in the United States,… [but] a mere possibility that an alien might receive permanent refuge through a third country's asylum procedures is not enough to constitute an offer of permanent resettlement.[177]

In *Abdalla v. INS* (1994), the Tenth Circuit had held that the fact that the "petitioner lived for some twenty years in the UAE, for which he possessed a 'residence' visa/permit" and had longstanding and significant family ties in the UAE was sufficient evidence of permanent resettlement.[178] The finding was despite the fact that the petitioner's status did not allow him to work in the UAE.[179]

Tenth Circuit Practice Pointer

The Tenth Circuit is similar to Circuits that follow a "totality of the circumstances approach" and considers a broad range of evidence. Advocates should therefore gather evidence and prepare arguments related to any and all factors that can help build a strong case against firm resettlement. The list of factors provided by the BIA is a helpful starting point: the immigration laws or refugee process of the country of proposed resettlement; the length of the foreign national's stay in a third country; the foreign national's intent to settle in the country; family ties and business or property connections; the extent of social and economic ties developed by the alien in the country; the receipt of government benefits or assistance, such as assistance for rent, food, and transportation; and whether the alien had legal rights normally given to people who have some official status, such as the right to work and enter and exit the country.

VI. Exceptions to Firm Resettlement

U.S. regulations include two exceptions to the firm resettlement bar that allow an applicant to qualify for asylum even when an adjudicator has found firm resettlement in a third country:

> (a) his or her entry into that country was a necessary consequence of his or her flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that country; or

[176] *Id.*
[177] *Id.* at 1152.
[178] *Abdalla v. INS*, 43 F.3d 1397, 1399 (10th Cir. 1994).
[179] *Id.*

(b) the conditions of his or her residence in that country were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled.[180]

There are not many cases that meaningfully interpret these factors, and there are no discernably distinct approaches amongst different Circuits, but there are a handful of cases that provide some guidance.

All Circuits Practice Pointer

In addition to the arguments outlined above that asylum applicants with Mexican TVRHs are not firmly resettled, advocates should also prepare arguments for both of these exceptions. In the context of the Central American exodus, migrants should fall within both exceptions. Under the BIA approach, an asylum applicant has the burden to establish by a preponderance of the evidence that an exception to firm resettlement applies.

A. The Three-Pronged "Necessary Consequence" Exception

Courts have made clear that in order to qualify for the first exception, the asylum applicant must satisfy each of the three prongs:[181]

(1) Entry into the third country was a necessary consequence of his or her flight from persecution;
(2) He or she remained in that country only as long as was necessary to arrange onward travel; and,
(3) he or she did not establish significant ties in that country.[182]

Not all of the Circuits have discussed this exception; this document lists only those that have done so. Few Circuits have discussed this exception at length and held explicitly that the petitioner qualified for it.[183] Nevertheless, cases in which the adjudicating court rejects the asylum applicant's eligibility for the exception because they fail to satisfy one or more prongs are instructive as to how courts define each prong and can be used to distinguish from cases of members of the Central American exodus who obtained TVRHs.

The BIA

In *D–X– & Y–Z–* (2012), the only BIA case to apply the exceptions to the facts of the case, the BIA found that the female respondent did not establish the applicability of this exception because she did not remain in Belize only as long as it was necessary to arrange onward travel, since she had, after receiving a Permit to Reside in Belize, "traveled to the United States and voluntarily returned to Belize."[184] For the male respondent, the BIA held that this exception did not apply to him because he

[180] 8 C.F.R. § 208.15.
[181] *Salazar v. Ashcroft*, 359 F.3d 45, 51 (1st Cir. 2004); *Tchitchui*, 657 F.3d at 135; *Mussie v. INS*, 172 F.3d 329, 332 (4th Cir. 1999); *Ramos Lara*, 833 F.3d at 560; *Sultani*, 455 F.3d at 883; *D–X– & Y–Z–*, 25 I. & N. Dec. at 667.
[182] 8 C.F.R. § 208.15.
[183] *Jin Yi Liao*, 558 F.3d at 159; see also *Gwangsu Yun v. Lynch*, 633 F. App'x 29, 30 (2d Cir. 2016) (remanding the case after rejecting the BIA's reasoning that the fact that "Yun (1) stayed in South Korea for two years and (2) held a South Korean passport (and therefore could travel freely)" automatically defeated his eligibility for the exception).
[184] *D–X– & Y–Z–*, 25 I. & N. Dec. at 667.

did "not produce[ ] evidence that he could not have traveled to the United States sooner . . . The female respondent had traveled to the United States a month earlier for a visit, and the male respondent did not establish that he could not have traveled with her at that time or even earlier."[185]

The First Circuit

In *Salazar v. Ashcroft*, the First Circuit reiterated that each of the three prongs must be met for this exception to apply and held that "Salazar plainly failed to provide any evidence to meet the second prong, that he remained in Venezuela 'only as long as was necessary to arrange onward travel,'" and "it was Salazar's burden to establish this point."[186] Salazar explained at his hearing that he had stayed in Colombia for only two months and worked there to be able to continue his trip to the United States, but "he did not offer a similar explanation for the fourteen months he spent in Venezuela," which is where the IJ found him to be permanently resettled.[187] A long length of time spent in a third country may not be determinative, but petitioners bear the burden of showing that the time was necessary to arrange onward travel.

The Second Circuit

One example in which a petitioner was able to satisfy all three prongs is *Jin Yi Liao v. Holder* (2009). Liao fled China after family planning authorities threatened to forcibly abort her baby.[188] Liao traveled to the Dominican Republic because the authorities were actively pursuing her and it was "the country to which she could secure immediate travel."[189] She gave birth to her son there and stayed only long enough to arrange onward travel to the U.S. and recover from the birth.[190] The court first held that the two-month *Residencia* visa that Liao had been granted was insufficient to establish firm resettlement. Moreover, the court found that "Liao established no significant ties in the country during her ten months there. For example, she neither learned the language nor obtained employment."[191] The court explicitly addressed the fact that Ms. Liao was pregnant and had a young child:

> [I]t seems to us absurd that, having gotten into the Dominican Republic, she should have, well along in her pregnancy, tried to enter the United States without documents. It is equally self[-]evident that it takes several months after giving birth before one is able to undertake international travel, even apart from the risks of such travel to a newborn.[192]

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[185] *Id.* at 668 ("Absent from the record is any discussion of how she arranged onward travel or whether she could have prudently done so within six months of obtaining a passport") (citing *Su Hwa She v. Holder,* 629 F.3d 958, 963 (9th Cir. 2010))).
[186] *Salazar*, 359 F.3d at 51.
[187] *Id.*
[188] *Jin Yi Liao*, 558 F.3d at 154.
[189] *Id.* at 159.
[190] *Id.*
[191] *Id.*
[192] *Id.* at 158–9.

Second Circuit Practice Pointer

Judge Calabresi's statement in *Jin Yi Liao v. Holder* that it seems "absurd" that someone "well along in her pregnancy" would be expected to "tr[y] to enter the United States without documents" is powerful language for any case involving migrants who gave birth in a third country. Advocates can point to the reports of shackling, insufficient medical care, and other abuse of detained, pregnant asylum seekers in U.S. detention centers to support that point. In addition, "it takes several months after giving birth before one is able to undertake international travel, even apart from the risks of such travel to a newborn" may be useful language not only for cases involving asylum seekers who gave birth in a third country and who traveled with young children, but also for asylum seekers who spent extended time in a third country due to a medical condition (either theirs or a family member's) that increased the risks of travel.

For the third prong, the ties established in the third country, courts consider various factors. In *Tchitchui v. Holder* (2011), despite the fact that "Guatemala was not a place in which [Tchitchui] felt safe or where he had any desire to settle,"[193] the court found that the asylum applicant could not meet the requirements for a firm resettlement exception because "while in Guatemala, Tchitchui had ongoing business activities, could work and travel at will, and had permanent residency status," which constituted significant ties to Guatemala.[194] The Second Circuit has also noted that "[e]mployment is one of the circumstances that bear on whether an alien has established significant ties in a country; but not all employment shows such ties."[195] The Second Circuit has held that a court must consider all ties established by the asylum applicant "prior to entering the United States, including ties formed prior to the persecution giving rise to the applicant's asylum claim," reading the prong narrowly.[196]

In *Gwangsu Yun v. Lynch* (2016), a petitioner from North Korea had been granted citizenship in South Korea, but argued that he qualified for all three exceptions to the firm resettlement rule.[197] The Second Circuit did not determine whether the applicant met all three prongs of the exception, but remanded the case after rejecting the BIA's reasoning that the fact that "Yun (1) stayed in South Korea for two years and (2) held a South Korean passport (and therefore could travel freely)" automatically defeated his eligibility for the exception.[198] The court noted that "the length of Yun's stay in South Korea cannot defeat his claim under 8 C.F.R § 208.15(a) unless there is substantial evidence that two years was longer than 'necessary to arrange onward travel.'"[199] The court continued:

> Neither the BIA nor the IJ explained why the two-year stay was longer than necessary or addressed Yun's contention that he spent the entire period trying to obtain passage to the United States. Yun asserted that the length of his stay was attributable to his time at a South Korean reeducation camp, as well as the process of obtaining a South Korean passport and U.S. visa. The BIA and IJ decisions lack any citation to the administrative record that would support or undermine Yun's contention.[200]

The court also held that the BIA failed to "state a policy or specify evidence to establish why Yun's possession of a South Korean passport would categorically defeat his claim," and whether acquiring a passport is a *per se* indicator of "substantial ties," when presumably passports are "necessary to arrange

[193] *Tchitchui*, 657 F.3d at 137.
[194] *Id.*
[195] *Gwangsu*, 633 F. App'x at 31.
[196] *Tchitchui*, 657 F.3d at 137.
[197] *Gwangsu Yun,* 633 F. App'x at 30.
[198] *Id.*
[199] *Id.*
[200] *Id.*

onward travel."[201] The court further faulted the BIA for excluding the record evidence that the petitioner was employed from its "substantial ties" analysis, as "employment is one of the circumstances that bear on whether an alien has established significant ties," though "not all employment shows such ties."[202]

Second Circuit Practice Pointer

Gwangsu Yun will be useful to members of the Central American exodus (who may have waited in Mexico for months due to border waitlists and the "Remain in Mexico" program), since the court held that the amount of time spent in the third country is not the deciding factor: it is whether the time was longer than necessary to arrange onward travel. In addition, if the client worked briefly in Mexico, for example to save up money to continue their journey to the U.S., the advocate can point to *Gwangsu Yun* to demonstrate that employment does not necessarily constitute significant ties to a country.

The Fourth Circuit

The Fourth Circuit held in *Kongle v. INS* (1998) that "There was no evidence that [Kongle] remained in France merely long enough to make arrangements to travel onward,"[203] as he entered France in 1967, obtained French resident status and a French Resident Card, traveled to China, Japan, Belgium, Germany and Switzerland, and then entered the U.S. in 1988.[204] Similarly, in *Mussie v. INS* (1999), the court found that the applicant "did not demonstrate that she was in Germany only as long as was necessary to arrange onward travel to the United States, in view of the fact that she lived there for some six years."[205]

The Fifth Circuit

In *Ramos Lara v. Lynch* (2016), the Fifth Circuit found that Ramos Lara's time in Mexico was not a necessary consequence of her flight from Bolivia because "[a]fter being removed to Mexico, she renewed her work visa, lived and worked there for five years as a substitute English teacher, and thereby established 'significant ties' to Mexico."[206] In addition, Ramos Lara "had also previously entered the United States in 2007 for the birth of one of her children" before returning to Mexico, "[a]lthough her children did not go to school in Mexico, they lived with her there," and "[h]er husband often commuted between the United States and Mexico in order to live with Ramos Lara and their children."[207]

The Eighth Circuit

In *Farbakhsh v. INS* (1994), the Eighth Circuit found that "petitioner's stay in Spain was not a stopover en route to refuge in the United States" nor was his arrival in the United States reasonably proximate to his flight from persecution in Iran because he had lived more than four years in Spain without fear of being returned to Iran, had filed a pending application for refugee status there, and his younger brother and younger sister were living in Spain.[208] In *Rife v. Ashcroft* (2004), the court similarly found

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[201] *Id.*
[202] *Id.* at 30–31 (*comparing Sall,* 437 F.3d at 231 (petitioner performed "odd jobs") *with Tchitchui,* 657 F.3d at 134 (petitioner owned and sold two businesses)).
[203] 133 F.3d at 915.
[204] *Id.*
[205] *Mussie*, 172 F.3d at 332.
[206] *Ramos Lara*, 833 F.3d at 560.
[207] *Id.*
[208] *Farbakhsh*, 20 F.3d at 882.

that the family's three years living and working in Israel, during which they received substantial government benefits, "was not a stopover en route to refuge in the United States."[209]

The Ninth Circuit

The Ninth Circuit tends to focus on the length of time spent in the third country, the second prong, when analyzing whether petitioners qualify for this exception. For example, in *Muong v. I.N.S.* (2001), the court only mentions the prong of "as long as was necessary to arrange onward travel," stating that the over six years for which "Muong and his family lived peacefully in New Zealand" was "considerably longer than necessary to arrange onward travel."[210] Similarly, in *Lumio v. I.N.S.* (2001), the court held that Lumio "lived peacefully in Canada for over five years," "considerably longer than necessary to arrange onward travel."[211] This time, the court also mentioned that the petitioner "entered the United States on more than one occasion and then returned to her home in Canada."[212]

Conversely, in *Kaurr v. I.N.S.* (1998), the court held that it was not persuaded by "relatively brief visits in th[ird] countries, standing alone, constitute sufficient evidence to create a presumption that [the Petitioner] was firmly resettled." The court explained that Surgit Singh-Tersem Kaurr's "five, nine, and seven month stays in three different countries appear[ed] to be stopovers en route to refuge in the United States" from India, and that he had only remained in Hong Kong, Colombia, and Mexico "only as long as was necessary to arrange onward travel and ... did not establish significant ties in that nation."[213]

In *Chan v. Lothridge* (1996), the Ninth Circuit briefly mentioned the third prong of whether a petitioner has "significant ties" to the third country in which they have resettled, concluding that Chan had not provided evidence regarding his lack of significant ties to Hong Kong to rebut the presumption of firm resettlement.[214] The court added that Chan's ties to Hong Kong "include[d] a wife, who still live[d] there, and property" and that he had "lived, worked and owned property in Hong Kong for many years."[215] In *Su Hwa She v. Holder* (2010), the court also mentioned the "significant ties" prong—this time stating that "Department of Homeland Security . . . regulations do not define 'significant ties' or otherwise elaborate on the interpretation of this exception—before once again basing its holding that the petitioner did not qualify for this exception on the amount of time spent in the third country.[216] In that case, the court held that She "may [have] be[en] able to carry that burden" "of showing that she meets an exception to the definition," because she may only have stayed in Taiwan as long as was necessary to arrange onward travel.[217] The government had argued that, "She remained in Taiwan longer than the one year necessary to obtain a passport and arrange onward travel" and "that by staying an additional six months, she was able to obtain status as a Taiwanese national."[218] The court replied that while "[d]uration of residence is undoubtedly an important consideration in the firm resettlement analysis," "it must be weighed against Petitioner's testimony that she remained just long enough to arrange travel to the United States. Absent from the record is any discussion of how she arranged onward travel or whether she could have prudently done so within six months of

[209] *Rife*, 374 F.3d at 611.
[210] 22 F. App'x 736, 737 (9th Cir. 2001).
[211] 11 F. App'x 799, 800 (9th Cir. 2001).
[212] *Id.*
[213] 152 F.3d 926 (9th Cir. 1998) (quoting 8 C.F.R. § 208.15(a)).
[214] 81 F.3d 167 (9th Cir. 1996) (internal quotation marks omitted).
[215] *Id.*
[216] 629 F.3d 958, 962 (9th Cir. 2010).
[217] *Id.* at 963–64
[218] *Id.* at 963.

obtaining a passport."[219] Holding that the BIA had failed to explain its firm resettlement finding, the court remanded for clarification.[220]

All Circuits Practice Pointer
The advocate's argument will depend in part on the circumstances of each individual client, but this argument will be particularly strong for clients that used their Mexican TVRHs solely to travel safely through Mexico on their way to the U.S. Under those circumstances, entry into Mexico and possession of a card was a necessary consequence of his or her flight from persecution. Advocates can point to the fact that asylum seekers traveling to the U.S. from Central America via land must pass through Mexico, and that many were forced to accept TVRHs by Mexican officials, who threatened them with deportation if they refused.[221] The argument for this exception will be strongest when the client has spent only a short time in Mexico. Advocates should also highlight, for example, the client's lack of family and friends in Mexico.

B. The "Restrictive Conditions" Exception

The second exception to the firm resettlement asylum bar applies when "the conditions of [the applicant's] residence in that country were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled."[222] The regulations provide a list of factors that adjudicators must consider when evaluating the "restrictive conditions" exception:

- the conditions under which other residents of the country live;
- the type of housing, whether permanent or temporary, made available to the refugee;
- the types and extent of employment available to the refugee;
- the extent to which the refugee received permission to hold property and to enjoy other rights and privileges ordinarily available to others resident in the country, such as
    - travel documentation that includes a right of entry or reentry,
    - education,
    - public relief, or
    - naturalization.[223]

All Circuits Practice Pointer
Advocates should emphasize the conditions in Mexico in order to demonstrate eligibility for this exception. For example, in most if not all cases, evidence that an asylum applicant could not attend school or access healthcare would be indicative that the applicant was not permanently resettled.

In Mexico, Central American migrants do not have equal access to personal freedom, travel, employment, housing, or fair wages.[224] Central American migrants in Mexico are particularly

[219] *Id.*
[220] *Id.* at 964.
[221] *See* Pascacio, *supra* note 7.
[222] 8 C.F.R. § 208.15(b).
[223] *Id.*
[224] *See* Matthew Hall et al., *Legal Status and Wage Disparities for Mexican Immigrants*, NAT'L CTR. FOR BIOTECH. INFO. (Dec. 1, 2010), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4235135/; Fluery, *supra* note 43.

vulnerable to robbery, gang violence, assault, sexual violence, kidnapping, human trafficking, disappearance, and extortion by criminal groups.[225] For example, Central Americans are eight times more likely than Mexicans to be kidnapped in Mexico.[226] Particularly in border areas, violence against migrants has spiked in the last few months.[227] Shelters struggle to provide basic accommodation and many migrant families are forced to sleep on the street, where they are vulnerable to robbery, kidnapping, and extortion.[228] Rather than protect Central American migrants, many Mexican government officials participate in their abuse as well as deport and detain them, often without due process.[229] The U.S. Department of State's 2017 Human Rights Report on Mexico notes "incidents in which immigration agents had been known to threaten and abuse migrants to force them to accept voluntary deportation and discourage them from seeking asylum," as well as "threats, violence, and excessive force against undocumented migrants" in detention centers.[230] Only one percent of crimes against migrants end in conviction.[231]

Migrants also face intense discrimination in Mexico. *El Universal* conducted a survey on Mexicans' perceptions of the "Honduran migrant caravan," in which over 60% of the Mexican population reported that they negatively view the arrival of undocumented Central American migrants to their communities.[232] There have been recent incidents in Tijuana in which locals threatened and attacked

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[224] *Uprooted in Central America and Mexico*, UNICEF (Aug. 2018), https://www.unicef.org/publications/files/UNICEF_Child_Alert_2018_Central_America_and_Mexico.pdf.

[225] *See id.*; *see also* Salvador Moreno and Noemí Segovia, *supra* note 11, at 40.

[226] *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, INTER-AMERICAN COMM'N ON HUMAN RIGHTS (Dec. 30, 2013), http://www.oas.org/en/iachr/migrants/docs/pdf/Report-Migrants-Mexico-2013.pdf.

[227] Miriam Jordan, *Trump Administration Can Keep Sending Asylum Seekers to Mexico, Court Rules*, N.Y. TIMES (May 7 2019), https://www.nytimes.com/2019/05/07/us/asylum-seekers-trump-mexico.html.

[228] *Id.*; *see also* Salil Shetty, *Most Dangerous Journey: What Central American Migrants Face When They Try to Cross the Border*, AMNESTY INT'L, https://www.amnestyusa.org/most-dangerous-journey-what-central-american-migrants-face-when-they-try-to-cross-the-border/ (last visited Jun. 2, 2019); *see also* Steve Dudley, *Transnational Crime in Mexico and Central America: Its Evolution and Role in International Migration*, MIGRATION POLICY INST. (Nov. 2012), https://www.migrationpolicy.org/research/RMSG-CentAm-transnational-crime; Compl. for Declaratory and Inj. Relief, *Innovation Law Lab v. Nielsen*, No. 3:19-CV-00807-RS (N.D. Cal. Feb. 14, 2019), https://www.aclu.org/sites/default/files/field_document/2019.02.14.0001_compl._for_decl._and_inj._relief.pdf.

[229] *See 9 Questions (and Answers) About the Central American Migrant Caravan*, *supra* note 2; *Overlooked, Under-Protected: Mexico's Deadly Refoulement of Central Americans Seeking Asylum*, AMNESTY INT'L 18 (2018), https://www.amnestyusa.org/wp-content/uploads/2018/01/AMR4176022018-ENGLISH-05.pdf.

[230] *2018 Country Reports on Human Rights Practices: Mexico*, U.S. DEP'T OF STATE (Mar. 13, 2019), https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/mexico/; *see also* Salvador Moreno and Noemí Segovia, *supra* note 11, at 40.

[231] Jay Root, *Migrants Seeking Safe Harbor in the U.S. Must First Survive Shootouts and Shakedowns in Mexico*, THE TEXAS TRIBUNE (Oct. 17, 2018), https://www.texastribune.org/2018/10/17/immigrants-trump-mexico-border-asylum-violence.

[232] *Mexicans Discriminate Too*, EL UNIVERSAL (Oct. 23, 2018), https://www.eluniversal.com.mx/english/mexicans-discriminate; *see also* José Gerardo Mejía, *Crece expedición de Tarjetas de Visitantes por Razones Humanitarias*, LA RAZÓN DE MÉXICO (Jun. 3, 2019),

a group of migrants, along with locals and journalists who were protecting them, and migrants have even been shot by men dressed like Mexican federal police officers.[233] Because of how they look and sound, Central American migrants are easily identified by Mexicans, who try to take advantage of the migrants.[234] Migrants are charged more for food and water, kicked out of hotels, forced to bribe bus drivers and endure hassling from Mexican law enforcement.[235] Both migrant men and women in Mexico working in agriculture report that their employers have withheld pay, paid them lower wages than their non-migrant counterparts, and generally failed to comply with the terms of their work contract.[236]

This anti-Central American migrant violence and discrimination, the government's participation in or inability to control it, and the TVRH's limitations on access to social services and legal rights, may constitute conditions "so substantially and consciously restricted" by the government of Mexico as to qualify for this exception to the firm resettlement bar.[237] Different Circuits have different standards for this factor. Not all of the Circuits have discussed this exception; this document lists only those that have done so.

The BIA

In *D–X– & Y–Z–*, the BIA held that the Chinese asylum applicants failed to demonstrate any restrictive conditions in Belize. For the female asylum seeker, the court held that she "presented no evidence of restrictions on her residence in Belize, and there is no indication that she would have had any difficulty residing there indefinitely. She did not claim to have faced any harassment, discrimination, or persecution in Belize."[238] For the male asylum seeker, the court held that this exception did not apply because "he acknowledged that he was not aware of any restrictions placed on his residence."[239]

The Second Circuit

In *Dhoumo v. Board of Immigration Appeals* (2005), the Second Circuit discussed the need to consider each exception individually. The court held that the "IJ failed to make any of the findings of fact relevant to a consideration of 'firm resettlement,' which requires determining whether petitioner had some permanent status in India and, if so, whether India 'substantially and consciously' restricted his conditions of residence."[240] The petitioner had "presented substantial evidence" that this was the case, yet "the IJ did not reach this question."[241] The court granted the petition for review and remanded the

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https://www.razon.com.mx/mexico/crece-expedicion-de-tarjetas-de-visitantes-por-razones-humanitarias-cesop-inm-migracion-no-documentada/ (discussing similar surveys).

[233] *See* Sarah Kinosian, *"Get out of Tijuana": Migrants Face Racist Backlash as Caravan Reaches US Border*, THE GUARDIAN (Nov. 15, 2018) (Eng.), https://www.theguardian.com/world/2018/nov/15/migrant-caravan-tijuana-lgbt-group-locals-reaction; *see also* Root, *supra* note 231.

[234] Root, *supra* note 231.

[235] *Id.*

[236] Fluery, *supra* note 43.

[237] *See* 8 C.F.R. § 1208.15.

[238] *D–X– & Y–Z–*, 25 I. & N. Dec. at 667–68 (holding that "no firm resettlement where the asylum applicant's stay was disrupted by harassment, discrimination, and threats to his physical safety, including a death threat, in the third country to which he had fled before going to the United States") (citing *Andriasian v. INS,* 180 F.3d 1033, 1043 (9th Cir. 1999))).

[239] *Id.* at 668.

[240] *Dhoumo v. Bd. of Immigration Appeals*, 416 F.3d 172, 175–76 (2d Cir. 2005).

[241] *Id.*

case because "the IJ's finding that petitioner did not suffer past persecution in India is not dispositive of whether his conditions of life were substantially and consciously restricted there, which is an entirely separate inquiry."[242]

In *Choephel v. Board of Immigration Appeals* (2007), the court held that the IJ had reasonably found "that the Indian government had not 'substantially [and] consciously restricted' Choephel's residence," because he "(1) was issued an Indian identification document which was valid until 2012 and allowed him to travel abroad; (2) was able to travel throughout India without any difficulty; (3) worked in India as a part-time vendor; and (4) had a house, even if it was burned down by separatists."[243]

The Second Circuit emphasized that all of the statutory factors must be considered when the applicant claims to fall into the "restrictive conditions" exception. Laying out the Circuit's process, in *Nanda Si v. Holder* (2010), the court stated:

> When the government carries its burden of establishing a *prima facie* case of firm resettlement, the burden then shifts to the applicants to show that they meet one of the statutory exceptions to rebut a finding of firm resettlement. The exceptions include establishing that their residence in the country was 'so substantially and consciously restricted' by the country's government so as to preclude resettlement. Here, the BIA erred by failing to consider material evidence regarding whether Si and Min Nyo met their burden of proving an exception to their firm resettlement. Specifically, the agency neglected to consider evidence of the conditions under which the petitioners lived compared to other residents of the country; 'the type of housing ... made available to [petitioners]; the types and extent of employment available to [petitioners]; the extent to which [petitioners] received permission to hold property and to enjoy other rights and privileges, such as travel documentation that includes a right of entry or reentry, education, public relief, or naturalization, ordinarily available to other residents in the country.' While the BIA analyzed much of this evidence in the context of whether the government met its burden of establishing a *prima facie* case of firm resettlement, it did not do so with respect to whether petitioners met their burden of qualifying for an exception to the firm resettlement bar.[244]

The Fourth Circuit

The Fourth Circuit implicitly held that surveillance and "pressure" by the government of the third country are insufficient to fall within the "restrictive conditions" exception. In *Kongle*, the court stated that Kongle "was under the intrusive eye of the French police due to his leadership role in the Laotian resistance movement" such that "[h]is activities ha[d] been closely monitored," and the French government "put[] pressure" on him "to avoid speaking out about the political situation in Laos."[245] Nevertheless, the court stated that Kongle "did not show how his activities were restricted."[246] For example, "[a]lthough he was informed by French police that he could no longer travel, Kongle visited Belgium, Germany and Switzerland with no problems upon reentry."[247] The court noted that Kongle had also been allowed to "travel throughout the world for long periods of time" and he was "permitted

[242] *Id.* at 176.
[243] *Choephel v. Bd. of Immigration Appeals*, 238 F. App'x 678, 680 (2d Cir. 2007).
[244] *Nanda Si v. Holder*, 375 F. App'x 126, 128–29 (2d Cir. 2010) (internal citations omitted).
[245] *Kongle*, 133 F.3d at 915.
[246] *Id.*
[247] *Id.*

to work and travel throughout France."[248] Thus, it seems that in the Fourth Circuit the petitioner must have tried to access rights and been prevented from doing so by the government of the third country. Another major limitation to the "restrictive conditions" exception is the requirement that the government of the third country places restrictions on the petitioner, rather than private citizens. In *Mussie v. U.S. I.N.S.* (1999), the Fourth Circuit found that the circumstances did not meet the exception because "although Mussie introduced ample–and indeed disturbing–evidence of racism by private individuals in Germany, she failed to introduce any evidence that the German government imposed any restrictions on her residency, much less substantial and conscious restrictions."[249]

The Eighth Circuit

In *Sultani v. Gonzales* (2006), the Eighth Circuit rejected the petitioners' arguments that they qualified for either exception. The Sultanis argued that the Australian medical and educational communities were indifferent to their child's special needs. The court held that the petitioners "ha[d] not shown that refugees with special needs were treated any differently than other Australian residents with special needs, or that [the child] was denied medical benefits normally available to other residents."[250]

In *Farbakhsh v. INS* (1994), the court mentioned this exception, but did not clearly analyze it separately.[251] The applicant had argued that "the conditions of his residence in Spain were too restricted to be consistent with firm resettlement," because "his application for refugee status had been pending for more than three years and, because he had not been granted official permission to work or attend school or [receive] government benefits, he had had to depend upon his family for financial support."[252] The court discussed the firm resettlement bar and the two exceptions at once:

> We hold the record supports the Board's finding that petitioner had firmly resettled in Spain. Petitioner had lived more than four years in Spain without fear of being returned to Iran; he initially intended to remain in Spain because he filed an application for refugee status there; his application for refugee status was pending; his younger brother and younger sister were living in Spain. Moreover, petitioner's travels do not suggest that his arrival in the United States in 1987 was reasonably proximate to his flight from persecution in Iran in 1982. In other words, petitioner's stay in Spain was not a stopover en route to refuge in the United States.
>
> We also hold that the Board did not abuse its discretion in denying petitioner's application for asylum. Petitioner passed through several countries (Turkey, Italy, Spain, Portugal, Canada) en route to the United States; in Spain and Canada orderly refugee procedures were in fact available to him. He had applied for refugee status in Spain, and Canada had granted him temporary resident status and one year to apply for asylum. Although petitioner did not have official permission to work or study while he was living in Spain, he was financially supported by his family. He also had personal ties to Spain because his younger brother and younger sister were living in Spain. In addition, petitioner circumvented orderly refugee procedures by using a forged British passport and by entering the United States without inspection.[253]

Often, if Circuit Courts discuss the relevant factors for the exceptions at all, the discussion of these factors is often mixed in with the principal discussion of firm resettlement.

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[248] *Id.*
[249] *Mussie*, 172 F.3d at 332.
[250] *Sultani*, 455 F.3d at 883.
[251] *Farbakhsh*, 20 F.3d at 877.
[252] *Id.* at 882 (citations omitted).
[253] *Id.* at 882 (citations omitted).

The Ninth Circuit

In *Maharaj v. Gonzales* (2006), the Ninth Circuit summarized that "[a]t this stage, the IJ is to consider the conditions under which other residents of the third country live, and how the applicant was treated by comparison."[254] The only cases in which a Circuit Court explicitly held that the current "restrictive conditions" exception may have applied are both from the Ninth Circuit.[255]

In the first, *Siong v. Immigration & Naturalization Service* (2004), the Ninth Circuit considered a case in which an asylum seeker fleeing Laos had lived in France, where he had received written threats and four of his friends had been attacked "based on his activity fighting the Laotian communists."[256] The court noted that "[b]ecause Siong's alleged potential persecutors are not French authorities, it is not clear that his residence in France was 'substantially and consciously restricted by the authority of the country of refuge,'" yet the court held that Siong had established a plausible claim that he was not firmly resettled in France because he "presented credible evidence that he may be subject to persecution in France, and we have stated that 'firmly resettled aliens are by definition no longer subject to persecution.'"[257]

In the second, *Agadzhanyan v. Gonzales* (2006), Agadzhanyan, an ethnic Armenian originally from Azerbaijan, challenged a BIA decision upholding the denial of asylum on the basis that she was firmly resettled in Russia. The court held that "[a]lthough substantial evidence support[ed] the BIA's conclusion that Petitioner was offered citizenship in Russia,"[258] but that the conditions of her residence in Russia "'were so substantially and consciously restricted by the authority of the country of refuge that…she was not in fact resettled.'"[259] The court explained that it made this finding "particularly because of her lack of a *propiska,* which denied her the rights 'ordinarily available to others resident in the country.'"[260] The lack of *propiska*, described in oral arguments as an internal Russian passport, meant that petitioner could not legally work, receive medical care, obtain housing that someone with the *propiska* could obtain, and access other government services.[261]

Ninth Circuit Practice Pointer

The *propiska* from *Agadzhanyan* could be analogized to the Mexican CURP, necessary to receive non-urgent medical care and often to obtain housing. Mexican TVRHs allow visitors to legally work, but for clients who received the TVRH yet never received their CURP, *Agadzhanyan* could provide a useful comparison.

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[254] *Maharaj*, 450 F.3d at 964.

[255] In a third, unpublished decision, the court did not discuss the exception, but declared that the applicant "successfully rebutted the presumption" of firm resettlement that his "stay in a third country may raise" "by showing that he had never received an offer of permanent residency or other type of permanent resettlement in Mexico and that 'the conditions of his … residence in [Mexico] were so substantially and consciously restricted by the authority of the country of refuge that he ... was not in fact resettled.'" *Hernandez-Garcia*, 120 F. App'x at 80 (citation omitted).

[256] *Siong v. INS*, 376 F.3d 1030, 1039 (9th Cir. 2004).

[257] *Id.* at 1040 (quoting *Yang*, 79 F.3d at 939).

[258] *Agadzhanyan v. Gonzales*, 176 F. App'x 879, 880 (9th Cir. 2006) (citing *Nahrvani*, 399 F.3d at 1151–52).

[259] *Id.* (quoting *Ali*, 394 F.3d at 780) (citation omitted).

[260] *Id.* (quoting 8 C.F.R. § 208.15(b)).

[261] Transcript of Oral Argument, *Babayevna Agadzhanyan v. Gonzales*, 176 F. App'x 879 (9th Cir. Ct. of App. 2006) (No. 03-73713).

In finding that petitioners did not qualify for this exception, the Ninth Circuit has emphasized the importance of state actors being those that perpetrate the persecution or discrimination. In *Rahmani v. INS* (2002), the court held that the petitioner's "experiences with individual acts of discrimination by racist groups and xenophobic citizens do not compel a finding that the German government 'substantially and consciously restricted' his residence and precluded resettlement."[262] Similarly, in *Hamdani v. I.N.S.* (2003), the court stated that the Hamdani family, nationals of Afghanistan, "clearly met the 8 C.F.R. § 208.15(b) definition of 'firm resettlement.'"[263] The court explained:

> "[The Hamdanis] were granted refugee status in Britain, and lived there for 15 years without restrictions on their residence or travel. They were able to secure employment, own a business, buy their own home, and send their children to public school. Three of the Petitioners were born as British citizens. The entire family was issued government travel documents which permitted freedom of travel outside the [United Kingdom], as well as freedom to return."[264]

This finding was made despite the Hamdani family's argument that they were entitled to asylum from the U.K. because of racist persecution, citing the murder of a nephew by racist "skinheads" or "British nationalists," vandalism, and threats.[265] The perpetrators were not British authorities, however, and the court noted that the British government took action against those responsible.[266]

In addition, the denial of one type of government benefit will likely be insufficient to qualify for this exception. In *Behnam v. Ashcroft* (2002), the Ninth Circuit held that the petitioner did not qualify for a firm resettlement exception even though she could not be naturalized and had to wait five years on a waiting list before attending university, because her rights to housing, employment, property, or public relief were not substantially affected.[267] Property and employment were also factors in *Chan v. Lothridge* (1996), in which the court concluded that Chan's resettlement in Hong Kong was not "consciously and substantially restricted" by the Hong Kong government because he "admit[ed] he lived, worked and owned property in Hong Kong for many years," "seem[ed] to have had the right to travel abroad," and "failed to present any evidence at all of restriction by the Hong Kong government."[268]

The Tenth Circuit

In *Navidi-Masouleh v. Ashcroft* (2004), the Tenth Circuit held that "[i]n the resettlement context, the INS may consider only whether the country in which the petitioner may have been firmly resettled is extending him the same rights and privileges as it extends to other residents there," and that the petitioner bears the burden of showing that inequality.[269]

The Eleventh Circuit

In *Quanxing Yang v. U.S. Attorney* (2018), the court held that "Yang [did] not offer evidence that the government in Peru severely restricted his status such that he was not in fact firmly resettled there," noting that "he lived, attended school, and worked as a businessman in Peru for twenty-five years."[270]

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[262] *Rahmani v. INS*, 32 F. App'x 246, 247 (9th Cir. 2002).
[263] 66 F. App'x 131, 133 (9th Cir. 2003).
[264] *Id.* at 132–33.
[265] *Id.* at 133.
[266] *Id.*
[267] *Behnam v. Ashcroft*, 49 F. App'x 684, 685 (9th Cir. 2002).
[268] 81 F.3d at 167 (quoting 8 C.F.R. § 208.15(b)).
[269] *Navidi-Masouleh v. Ashcroft*, 107 F. App'x 856, 860–61 (10th Cir. 2004).
[270] *Quanxing Yang*, 752 F. App'x at 723.

VII. Conclusion

Although the case law and the prevailing analytical approach both differ by Circuit, immigration advocates in the United States representing asylum seekers who were granted TVRHs in Mexico have strong arguments against the application of the firm resettlement bar, no matter the Circuit. Immigration advocates in all Circuits can argue the Mexican TVRHs do not, and never have, conferred a path to permanent status in Mexico.

For Circuits that have adopted the BIA's framework, *D–X– & Y–Z–* may present problems with some IJs, as the Mexican TVRH allows for multiple reentries and includes work authorization. Advocates in these Circuits can emphasize that TVRHs expire after one year, while in *D–X– & Y–Z–* there was no discussion of the permit expiring. Further, Mexican TVRH holders are called "visitors" (*see* appendix), a word used to denote temporary status. Moreover, *A–G–G–* makes explicit that evidence showing "how a law granting permanent residence to an alien is actually applied and why the alien would not be eligible to remain in the country in an official status" is relevant for rebutting the government's *prima facie* case.[271] Advocates can therefore introduce as evidence the expert declaration and translations of Mexican immigration laws appended below to demonstrate to the adjudicator that their client would not have had access to lasting status.

For advocates in Circuits that have not adopted the BIA's approach, the Circuit's case law and the BIA framework can both be utilized to argue that the Mexican TVRH does not constitute firm resettlement. In addition, if the *A–G–G–* framework would be more favorable for their client's case and for asylum seekers broadly than the Circuit's current approach, advocates can argue that the Circuit should adopt the BIA's framework for deciding firm resettlement cases.

In addition to arguing that U.S. asylum applicants with the Mexican legal status of visitor for humanitarian reasons are not firmly resettled, advocates can prepare arguments for both statutory exceptions to firm resettlement. In the context of the Central American exodus, migrants should fall within both exceptions. Although arguments should be tailored to each individual client, many advocates will be able to present some, if not all, of the following arguments: the client needed to pass through Mexico in order to enter the United States via land; the client only stopped in certain places to wait for safe passage through Mexico, their turn to present for asylum as part of the U.S.'s metering system, or their U.S. asylum hearing as part of the U.S.'s "Remain in Mexico" program; and the client did not establish any ties to Mexico. In addition, advocates can present evidence demonstrating that Central American migrants face intense discrimination and violence in Mexico.

As the law in the area of firm resettlement is still developing, advocates in all Circuits should prepare all applicable arguments in the alternative and affirmatively present evidence to demonstrate both the state of the law in Mexico and the facts relevant to each individual client's case.

[271] *D–X– & Y–Z–*, 25 I. & N. Dec. at 503.

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Expert Declaration Provided by the Institute for Women in Migration - Instructions

This expert declaration is being provided to you via the Institute for Women in Migration (IMUMI). We authorize you to submit this declaration or a copy of it before the immigration court or asylum office only in conjunction with a specific case for which you have completed the **Form for Declaration Submission at forms.gle/8LNtvKguewviwj628, and have committed to updating the Form upon case resolution**. Please do not submit this declaration or a copy of it in any cases for which you have not completed the Form for Declaration Submission and committed to update the Form upon case resolution.

Because of our tracking requirements and our need to keep Ms. Juárez Aparicio apprised of the number and types of cases in which her testimony is being submitted under penalty of perjury, IMUMI does not authorize submission of her declaration or a copy of it in any cases without a completed Form for Declaration Submission.

Thank you for your understanding. If you have any questions, please contact us at derechoeua@imumi.org.

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Institute for Women in Migration

Statement of Gretchen Kuhner Regarding Attached Expert Declaration

I, Gretchen Kuhner, am the director of the Institute for Women in Migration (IMUMI), based in Mexico City. Margarita Leticia Juárez Aparicio, a staff attorney with IMUMI and an expert in Mexican immigration law, wrote the attached declaration and signed it on May 15, 2019. Ms. Juárez Aparicio has authorized IMUMI to publicly release and disseminate copies of the attached declaration. Practitioners may only submit the declaration in court upon completion of the Form for Declaration Submission. IMUMI provides copies of the original document in support of individual asylum claims and other humanitarian relief. I certify that the attached is a true copy of the original document, which is on file with our office. A certified Spanish translation of Ms. Juárez Aparicio's declaration is also on file with our office.

Gretchen Kuhner, Esq.

June 4, 2019
Date

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Declaration of Margarita Leticia Juárez Aparicio,
Expert on Mexican Immigration Law

I, Margarita Leticia Juárez Aparicio, declare as follows:

I. Introduction

1. My name is Margarita Leticia Juárez Aparicio. I am an immigration attorney with the Institute for Women in Migration ("IMUMI" for its Spanish acronym) in Mexico City and am an expert in Mexican immigration law. My Mexican professional license number is 10317855.
2. I graduated with a degree in law from the Universidad del Valle de México, with law studies certificate from the National Autonomous University of Mexico. I also received a diploma in Constitutional Procedural Law from the Ibero America University Foundation of Constitutional Law and Politics, and a diploma in Federal Administrative Trial Litigation from the Institute of Human Development.
3. Before working at IMUMI, I worked for 10 years as a Legal Coordinator for Sin Fronteras, a Mexican immigration non-profit organization. There, I represented migrants seeking refugee status in Mexico as well as in matters relating other types of immigration status and access to identity documents such as birth registration for children born to undocumented migrants in Mexico. I also gave presentations on gender, migration, and asylum to a variety of government officials and private entities, including universities, international governmental organizations, and national governmental authorities. In addition, I prepared information for the visits of the Special Rapporteur on Human Rights of Migrants of the United Nations and the Special Rapporteur on the Rights of Migrant Workers of the Inter-American Commission on Human Rights (February 2002 and August 2002, respectively).
4. I have also published articles on Mexican policy and legislation, and prepared analyses used in legislative reforms regarding immigration framework. In addition, I have provided trainings on the Mexican Law of Migration to various entities, including Civil Registry officials (through the Secretary of the Interior), and as a consultant with UNICEF.
5. I have worked at IMUMI for nine years, during which time I have provided direct representation and legal advice to hundreds of vulnerable migrants, assisting them to obtain immigration status in Mexico and to access identity documents and education. During my time at IMUMI, I have helped 250 migrants receive the status of visitor for humanitarian reasons and accompanying cards (*Tarjetas de Visitantes por Razones Humanitarias*, or "TVRHs") in Mexico. The applications I have submitted for the status of visitor for humanitarian reasons span all of the bases for the status.[1]
6. As an immigration attorney who has practiced for almost 20 years in Mexico, I am knowledgeable about law as it pertains to the status of visitor for humanitarian reasons,[2]

[1] 1) victims or witnesses to a crime in Mexico; 2) individuals seeking political asylum, refugee status or complementary protection; 3) unaccompanied children and adolescents; and 4) individuals who can demonstrate a humanitarian or public interest reason for regularizing their stay in Mexico.

[2] Ley de Migración [Law of Migration] [*hereinafter* LM] art. 52(V), Diario Oficial de la Federación [DOF] 25-06-2011 (Mex.),

commonly referred to as a humanitarian visa.[3] This status has been available through individual applications since 2011, and the Mexican government provided them en masse to the Central American exodus starting in the fall of 2018.

II. The Status of Visitor for Humanitarian Reasons in the Context of the Central American Exodus

7. In the context of the Central American exodus and the election of President Andrés Manuel López Obrador, in late September of 2018 the Mexican government began granting the legal status of visitor for humanitarian reasons to migrants from Honduras, El Salvador, Guatemala, Nicaragua, Haiti, Brazil, Cuba, and other nations who applied through an abbreviated application, screening, and interview process.[4] As of February 11th, 2019, the

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www.diputados.gob.mx/LeyesBiblio/ref/lmigra/LMigra_orig_25may11.pdf and Ley_de_Migracion_en_Ingles.pdf; Reglamento de la Ley de Migración [Regulations of the Law of Migration] [*hereinafter* RLM], arts. 137, 153, Diario Oficial de la Federación [DOF] 28-09-2012, últimas reformas DOF 23-05-2014 (Mex.), www.diputados.gob.mx/LeyesBiblio/regley/Reg_LMigra.pdf.

[3] While commonly called "humanitarian visas," the status of visitor for humanitarian reasons is not a visa (which allows foreign nationals to enter a country). *Visa*, CORNELL L. SCHOOL LEGAL INFO. INST., https://www.law.cornell.edu/wex/visa (last visited May 31, 2019).

[4] *More Than 5000 Migrants Apply for Humanitarian Visa in Mexico*, TELESUR (Jan. 22, 2019) (Venez.), https://www.telesurenglish.net/news/More-Than-5000-Migrants-Apply-for-Humanitarian-Visa-in-Mexico-20190122-0009.html; Jeff Abbott and Sandra Cuffe, *'I do not want to die': Central American Exodus Grows*, AL JAZEERA (Jan. 21, 2019) (Qatar), https://www.aljazeera.com/news/2019/01/die-central-american-exodus-grows-190121220236278.html. *See generally 9 Questions (and Answers) About the Central American Migrant Caravan*, WASHINGTON OFFICE ON LATIN AMERICA (Oct. 25, 2018), https://www.wola.org/analysis/9-questions-answers-central-american-migrant-caravan/; *MSF Pulse: Violence and Migration from Central America –Why Are People Seeking Asylum in the US?,* DOCTORS WITHOUT BORDERS (October 19, 2018) (Can.), http://www.doctorswithoutborders.ca/article/msf-pulse-violence-and-migration-central-american-—-why-are-people-seeking-asylum-us; Rocio Cara Labrador and Danielle Renwick, *Central America's Violent Northern Triangle*, COUNCIL ON FOREIGN RELATIONS (June 26, 2018), https://www.cfr.org/backgrounder/central-americas-violent-northern-triangle; Rachel Dotson & Lisa Frydman, *Neither Security nor Justice: Sexual and Gender-based Violence and Gang Violence in El Salvador, Honduras, and Guatemala,* KIDS IN NEED OF DEFENSE (2017), https://supportkind.org/wp-content/uploads/2017/05/Neither-Security-nor-Justice_SGBV-Gang-Report-FINAL.pdf; Alexander Betts, *Clarifying Survival Migration: A Response*, EUROPEAN POLITICAL SCIENCE (Nov. 28, 2014) (Eng.), https://www.rsc.ox.ac.uk/files/files-1/alex-book-review-symposium-response.pdf/@@download; *Atlas of Migration in Northern Central America*, ECON. COMM'N FOR LATIN AMERICA AND THE CARIBBEAN at 5, 20–23 (2018), https://repositorio.cepal.org/bitstream/handle/11362/44288/1/S1801071_en.pdf; El Colegio de la Frontera Norte, *La caravana de migrantes centroamericanos en Tijuana 2018-2019 (Segunda etapa)*, EL OBSERVATORIO DE LEGISLACIÓN Y POLÍTICA MIGRATORIA at 30 (March 25, 2019) (Mex.), https://observatoriocolef.org/wp-content/uploads/2019/03/2o.-Reporte-Caravana-Tijuana.250319_compressed1.pdf.

INM had granted TVRHs to 13,270 migrants[5]—more than the number of TVRHs than the INM issued in all of 2017.[6]

8. While the Mexican government provided thousands of migrants with TVRHs in late 2018 and the early months of 2019 through an expedited application, screening, and interview process, that it not the usual procedure for obtaining this status. National legislation establishes specific categories of persons for whom the INM will authorize the status of visitor for humanitarian reasons:
   - A victim of or witness to a crime committed in Mexico;[7]
   - An unaccompanied child or adolescent;[8] and
   - A person seeking political asylum, recognition of refugee status, complementary protection, or statelessness status until their immigration situation is resolved.[9]
9. The law also provides for two criteria that the Secretary of the Interior may use discretionarily to authorize the status of visitor for humanitarian reasons: when there is a humanitarian or public interest cause requiring the regularization of the foreign person.[10]
10. Those people who possess the TVRH may exit and re-enter Mexico.[11]

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[5] *Finaliza Programa Emergente de emisión de Tarjetas de Visitante por Razones Humanitarias*, Nat'l Inst. of Migration (Feb. 12, 2019) (Mex.), https://www.gob.mx/inm/articulos/finaliza-programa-emergente-de-emision-de-tarjetas-de-visitante-por-razones-humanitarias?idiom=es.

[6] Graciela Martínez Caballero, *Migración y Movilidad Internacional de Mujeres en México Síntesis*, UNIDAD DE POLÍTICA MIGRATORIA, at 19 (2017) (Mex.), http://www.politicamigratoria.gob.mx/work/models/SEGOB/Resource/2797/1/images/MM_2017_ene-dic%202017.pdf; Sarah Kinosian, *Mexico Plans to Shut Its 'Too Successful' Humanitarian Visa Program*, PITTSBURGH POST-GAZETTE (Jan. 29, 2019), https://www.post-gazette.com/news/world/2019/01/28/Mexico-humanitarian-visas-program-Central-American-migrants-asylum-seekers/stories/201901010747.

[7] RLM art. 137(I); Lineamientos para Trámites y Procedimientos Migratorios [Guidelines for Migration Processes and Procedures] [*hereinafter* LTPM], art. 11(I), Diario Oficial de la Federación [DOF] 11-8-2012 (Mex.), http://dof.gob.mx/nota_detalle.php?codigo=5276967&fecha=08/11/2012.

[8] LM art. 52; RLM art. 137(II); LTPM art. 11(II).

[9] LM art. 52; RLM art. 137(III); LTPM art. 11(III). "Asylum" and "refugee status" are functionally equivalent in Mexico, and similar to asylum in the U.S. *See* Ley sobre Refugiados, Protección Complementaria y Asilo Político [Law of Refugees, Complementary Protection and Political Asylum] art. 2(VII) at 28-31, Diario Oficial de la Federación [DOF] 27-01-2011, últimas reformas DOF 30-10-2014 (Mex.). "Complementary protection" is non-refoulment protection, similar to withholding of removal or withholding under the CAT. *Id.* "Political asylum" is a form of protection that is completely discretionary on the part of the State, a regional tradition in Latin America. *Id.* at art. 2(I). For more information on the Mexican refugee status, complementary protection status, and political asylum (which is granted by the Secretary of Foreign Relations rather than the Mexican Commission for the Assistance of Refugees (COMAR)), *see* Helen Kerwin, *The Mexican Asylum System in Regional Context*, 33 MD. J. INT'L L. 290 (2018), https://digitalcommons.law.umaryland.edu/mjil/vol33/iss1/13.

[10] RLM art. 137; LTPM art. 11.

[11] LM art. 52(V); RLM art. 153.

11. The status of visitor for humanitarian reasons includes work authorization.[12] There are obstacles to obtaining this right, however. The TVRH does not state that its holder has the right to work and many employers do not know of that right. I have spoken with dozens of migrants with the TVRH who were unable to find employment because potential employers did not believe they had permission to work.
12. All migrants with the status of visitor for humanitarian reasons are entitled to receive a *Clave Única de Registro de Población* (CURP) (the Mexican equivalent of a social security number through which those with legal status in Mexico can access social services).[13] CURPs should be provided at time of issuance of the TVRH.[14] In practice, however, a significant number of migrants do not receive their CURP when they are issued their TVRH and have trouble accessing it later. Through my professional connections in Tapachula, a municipality in southern Mexico where the federal government began providing TVRHs to members of the Central American exodus in January, I know that initially the INM was not providing CURPs simultaneously with the TVRH. The INM started providing CURPs simultaneously and did so increasingly through the end of February. For the thousands who did not receive their physical CURP card or their CURP number, however, they will have difficulties accessing them. They should be able to obtain both at any INM office; nevertheless, most members of the exodus are not aware of that,

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[12] RLM art. 164. *See also* David Welna, *Stuck In Tijuana, Many Central American Migrants Opt For A Job,* NAT'L PUB. RADIO (Nov. 30, 2018), https://www.npr.org/2018/11/30/672342503/stuck-in-tijuana-many-central-american-migrants-opt-for-a-job.

[13] *See, e.g.*, *ACUERDO para la adopción y uso por la Administración Pública Federal de la Clave Única de Registro de Población*, Diario Oficial de la Federación [DOF] 10-23-1996 (Mex.); *El INAMI entrega Tarjetas de Visitante por Razones Humanitarias a miembros de la caravana migrante*, NAT'L INST. OF MIGRATION OF MEXICO (Dec. 7, 2018), https://www.gob.mx/inm/prensa/el-inami-entrega-tarjetas-de-visitante-por-razones-humanitarias-a-miembros-de-la-caravana-migrante; Ley General de los Derechos de Niñas, Niños y Adolescentes [General Law of the Rights of Girls, Boys, and Adolescents] art. 20, Diario Oficial de la Federación [DOF] 12-04-2014, últimas reformas DOF 20-06-2018 (Mex.).

[14] *Instructivo Normativo para la asignación de la Clave Única de Registro de Población* [Instructions for the Assignment of the Single Code of Population Registration], Diario Oficial de la Federación [DOF] 18-06-2018 (Mex.). Prior to June of 2018, CURPs were very rarely, if ever, given to those who had applied for the status of visitor for humanitarian reasons. *See* Daniela Wachauf, *Aligeran con CURP temporal, estancia legal de migrantes*, 24 HORAS (Aug. 27, 2018), https://www.24-horas.mx/2018/08/27/aligeran-con-curp-temporal-estancia-legal-de-migrantes/. On June 18, 2018, the Official Diary of the Federation published a rule that a temporary CURP would be provided to everyone who has applied for humanitarian visa status. *Id.* at arts. III(3) and (4). In the case of those proportioned the status because they are applying for asylum, a temporary (180-day) CURP is granted as soon as the corresponding document is issued by COMAR and will be modified to become permanent as soon as the asylum petition has been approved. *Id.* In the case of those individuals who have requested the status of visitor for humanitarian reasons based on one of the other grounds, they are assigned a temporary (up to one-year) CURP as soon as the INM has issued a file number. As soon as the INM has authorized the status of visitor for humanitarian reasons for an individual and the document is issued, the temporary nature of the CURP will be modified to make it permanent. *Id.* at art. III(5).

do not have access to an INM office, and/ or may encounter one of the many INM officials who often do not follow the rules and refuse to provide assistance.

13. Without the CURP, migrants can access public healthcare for only three months for non-urgent conditions.[15] While urgent care is provided at any time, as required by Article 8 of the Mexican Law of Migration,[16] what constitutes "urgent" is left to the discretion of the medical providers, and little documentation exists regarding the conditions that physicians consider urgent in different parts of the country.[17] Care for chronic diseases, such as diabetes, for example, is usually not included as an "urgent" medical condition.[18]
14. Migrants without CURPs have the right to access education. Even with CURPs, however, migrant children often have trouble registering in Mexican schools.[19] I have seen hundreds of children barred entry to public schools based on administrative obstacles such as lack of current parental IDs or lack of enrollment in a healthcare plan, even though the law provides for school admission.
15. Usually, the status of visitor for humanitarian reasons is granted for one year, after which individuals may renew that status if the basis on which they received the status still exists.[20] For example, if someone received the card because they were a victim of, or witness to, a crime in Mexico, the card may only be renewed until the criminal process is concluded, at which point they must leave the country or request temporary or permanent resident status depending on the individual situation.[21] In the case of a TVRH based on the fact that the migrant is an unaccompanied child or adolescent, migrants may renew only until they are 18 years old.[22]
16. To renew the status of visitor for humanitarian reasons for an additional year, applicants must provide an immigration officer with their identification document (usually a passport), fill out an application, and submit a written explanation of the reasons for renewal from a governmental entity, i.e., proof that the condition making one vulnerable

[15] Guillermo Rivera, *Las desplazadas del VIH: arriesgan la vida viajando a México para tener medicamento*, VICE (Oct. 10, 2016), https://www.vice.com/es_latam/article/bj4x9m/desplazadas-vih-arriesgan-vida-viajando-mexico-para-medicamento.

[16] "Migrants have the right to receive unrestricted emergency medical care required to save their lives, independent of their migratory status." Translated from Spanish: "Los migrantes independientemente de su situación migratoria, tendrán derecho a recibir de manera gratuita y sin restricción alguna, cualquier tipo de atención médica urgente que resulte necesaria para preservar su vida." LM art. 8.

[17] *See* Angelika Albaladejo, *Care and the caravan: the unmet needs of migrants heading for the US*, BMJ (Dec. 19, 2018), https://www.bmj.com/content/363/bmj.k5315.

[18] *Id*.

[19] LM art. 8 (providing the right to education, no matter a minor's immigration status); *Niñez en contextos migratorios, inscrita en educación basica en México*, INSTITUTO PARA LAS MUJERES EN LA MIGRACIÓN (2015), http://imumi.org/sep/contexto.html (discussing the obstacles to access that right).

[20] LM art. 52(V); RLM art. 153.

[21] LM art. 52(V)(a).

[22] RLM art. 153.

still exists.[23] Renewal is granted on an individual basis depending on whether the underlying rationale for the status remains.[24]

17. The status of visitor for humanitarian reasons does not accrue time towards temporary or permanent residence, as other Mexican migration statuses may do. Someone may renew their humanitarian status for any number of years and still have no way to obtain temporary or permanent residency.

III. Renewal of the TVRH in the Context of the Central American Exodus

18. In addition to the categories of victims of or witnesses to a crime committed in Mexico;[25] unaccompanied children and adolescents;[26] and people seeking political asylum, refugee status, or complementary protection,[27] the law also provides for two criteria that the Secretary of the Interior may use discretionarily to authorize the condition of visitor for humanitarian reasons: when there is a humanitarian or public interest cause requiring the regularization of the foreign person. There is no statutory definition of what constitutes a "public interest cause," but the Regulations of the Law of Migration and the Guidelines for Migration Processes and Procedures provide that a public interest cause arises when the foreign person's admission is required to help with actions of assistance or rescue in

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[23] *Preguntas frecuentes para solicitar la regularización por razones humanitarias*, NAT'L INST. OF MIGRATION OF MEXICO (May 20, 2016), https://www.gob.mx/inm/documentos/preguntas-frecuentes-para-solicitar-la-regularizacion-por-razones-humanitarias.

[24] LM art. 52(V) (describing the process as based on an individual's case). In this way, the Mexican visitor for humanitarian reasons status is unlike the Temporary Protected Status in the United States, which, when extended by the U.S. government, allows all of the protected country's nationals who were present in the U.S. on the day of the designation to maintain their status. Though not the system now, there have been times in the past when Mexico provided status for all migrants who entered irregularly between certain dates. *See, e.g.*, Programa Temporal de Regularización Migratoria [Temporary Immigration Regularization Program], Diario Oficial de la Federación [DOF] 10-11-2016, http://www.dof.gob.mx/nota_detalle.php?codigo=5456183&fecha=11/10/2016 (promulgating a program to regularize all foreign nationals who entered Mexico before January 9, 2015 and were living in the country without documentation).

[25] *Programa Temporal de Regularización Migratoria*, [DOF] 10-11-2016; RLM art. 137(I); LTPM art. 11(I).

[26] LM art. 52; RLM art. 137(II); LTPM art. 11(II).

[27] LM art. 52; RLM art. 137(III); LTPM art. 11(III). "Asylum" and "refugee status" are functionally equivalent in Mexico, and similar to asylum in the U.S. *See* Ley sobre Refugiados, Protección Complementaria y Asilo Político [Law of Refugees, Complementary Protection and Political Asylum] art. 2(VII), 28-31, Diario Oficial de la Federación [DOF] 27-01-2011, últimas reformas DOF 30-10-2014 (Mex.). "Complementary protection" is non-refoulment protection, similar to withholding of removal or withholding under the Convention Against Torture. *Id.* "Political asylum" is a form of protection that is completely discretionary on the part of the State, a regional tradition in Latin America. *Id.* at art. 2(I). For more information on the Mexican refugee status, complementary protection status, and political asylum (which is granted by the Secretary of Foreign Relations rather than the Mexican Commission for the Assistance of Refugees (COMAR)), *see* Kerwin, *supra* note 9.

situations of emergency or disaster in the national territory.[28] For "humanitarian cause," the Regulations provide the following criteria to qualify: there is a risk to the health or life of the person that requires them to remain in national territory;[29] the level of vulnerability of the person makes it difficult or impossible for them to be deported;[30] the person is pregnant, elderly, disabled, or indigenous;[31] foreign persons in a situation of danger to their life or integrity due to violence or natural disaster;[32] persons who have a direct family member in the custody of the Mexican State and whose authorization is necessary to provide medical or psychological assistance to that family member, or whose intervention is necessary for the identification or recovery of a cadaver;[33] the person needs to assist a direct family member with a grave health condition who is located in the national territory;[34] or the person is a child or adolescent who is the subject of proceedings for international child abduction and restitution.[35]

19. If the Secretary of the Interior created a document describing the basis for the early-2019 program that provided TVRHs to thousands of members of the Central American exodus, that document was never made public. Nor were rationales for the approval of the documents provided to the migrants as they applied for or obtained their TVRHs. The rationale underlying those statuses and the documenting cards, therefore, remains unknown.
20. If there exists a non-public, internal document stating a reason for the provision of the status to thousands of members of the Central American exodus, that reason is likely the Secretary of the Interior's determination of the existence of a "humanitarian cause requiring the regularization of the foreign persons." This can be presumed based on the process of elimination. The migrants in the exodus had not, generally, reported crimes in Mexico to Mexican authorities; for the unaccompanied children or adolescents, if they were given the status of visitor for humanitarian reasons, it was generally not after a best interest determination (required for children and adolescents to qualify for the status); the migrants in the exodus had not, generally, applied for political asylum, refugee status, complementary protection, or recognition as stateless persons before they were provided the status of visitor for humanitarian reasons; and the migrants in the exodus were generally not entering to assist with an emergency such to warrant the grant of the status of visitor for humanitarian reasons based on public interest. Thus, it is probable that the Secretary of the Interior authorized the grant of the status based on a humanitarian cause, but that is not confirmed.
21. There is, in addition, no public document stating the criteria through which members of the Central American exodus could renew their TVRHs, based on a humanitarian cause or any other basis. If a humanitarian cause was the underlying rationale, it could be based on their participation in a "caravan," their presence without documents in the south of Mexico, lack of resources, the conditions in their home countries (of which there were many, TVRHs were granted to migrants from non-Central-American countries who happened to arrive

[28] RLM art. 63(II); LTPM art. 11(V), 28(II).
[29] RLM art. 137(IV)(a); LTPM art. 11(IV)(a).
[30] RLM arts. 63(III), 144(IV); LTPM art. 11(IV)(b).
[32] RLM art. 144(IV)(b); LTPM art. 50(I)(c)(ii).
[32] RLM art. 144(IV)(d); LTPM art. 50(I)(c)(iv).
[33] RLM art. 137(IV)(b); LTPM art. 11(IV)(c).
[34] RLM art. 137(IV)(c); LTPM art. 11(IV)(d).
[35] LTPM art. 11(IV)(e).

with the "caravans"), etc., but without a basis being made public there is no way to know. There will be no means, therefore, to prove that the basis still exists in order to renew the status. Presuming humanitarian cause was the justification for the program, to renew a status based on a humanitarian cause, applicants must present a document from an authority addressing their continued level of vulnerability. When no basis for the original status and no criteria for renewal have been explained to the migrant or made public, authorities have no foundation on which to renew such a document, even if there existed the will to do so. Thus, when their TVRHs expire one year after issuance, based on my experience, members of the Central American exodus will not be able to renew their status.

22. Mexican immigration law history provides some evidence for this conclusion. Between 2000 and 2008, the Mexican government created six regularization programs for undocumented migrants in Mexico, with statuses that lasted one year.[36] For the first five programs, no criteria for renewal were elaborated in the law. While working in immigration law during that period, I was able to observe that migrants who were regularized under these first five programs were, generally, unable to renew their status after it expired. Based on my observations, about 10% of migrants during that period regularized through one of the subsequent, temporary programs, rather than renew the status they had already been given, and the remaining 90% remained in Mexico undocumented. Those who presented themselves to the INM to renew their statuses were usually told that there was no way to renew. Many migrants whose statuses expired lost their jobs, were unable to receive medical care, and lost access to social services. Some of those people, especially those in the south of Mexico, were subject to detention and deportation.
23. Unlike the first five programs, due to pressure by civil society and experience with the errors from the previous programs, in 2008, the government did include criteria and procedures for renewal in the temporary regularization law, which gave many more migrants the possibility of renewal.
24. In contrast to the 2008 regularization program, the current administration decided to temporarily regularize the members of the Central American exodus through the provision of TVRHs, which were first created in 2011 and not contemplated for provision to large groups in crises. The administration did so without promulgating a new law or regulation and did not provide the criteria and procedures that would allow for renewal. Thus, like the pre-2008 regularization programs, migrants will probably not be able to renew their TVRHs after they expire in late 2019 and early 2020.
25. Another impediment to renewal that often arises is the variance, and lack of communication, between the INM's offices. The TVRH allows migrants to travel throughout Mexico, but offices of the INM differ greatly between different regions. Many delegations of the INM, those not on the direct path of the exodus, have not been involved in providing TVRHs on that scale. While the law states that migrants may apply for a TVRHs in any of the INM's offices, I have heard of many cases of migrants trying to apply for the card or to replace lost or stolen cards in INM offices around the country being told by INM officials that the program only existed in Tapachula. The INM does not keep digital files on the migrants who were provided TVRHs during the exodus, only a basic data sheet, which has also created barriers for migrants renewing immigration statuses in different offices than the one from which they obtained their status.

[36] Lorena Cano Padilla, *Los Programas de Regularización Migratoria en México*, SIN FRONTERAS, I.A.P. at 25-31 (2012), https://sinfronteras.org.mx/docs/inf/programas-regularizacion.pdf.

26. In addition, even if members of the Central American exodus had a basis on which to renew their status and the required documents, the status renewal process is complicated and bureaucratic, and very difficult for the vast majority of migrants to complete without legal assistance. There are very few lawyers who specialize in renewing the status of visitor for humanitarian reasons, and so the vast majority of migrants who received this status as part of the exodus likely will be unable to renew their status.

IV. Application for Alternative Status

27. One of the rationales under which people may receive the status of visitor for humanitarian reasons allows for status holders to eventually become temporary or permanent residents: those granted the status of visitor for humanitarian reasons while their asylum petitions are being processed will be granted permanent residence if they win asylum in Mexico.[37]
28. There is no such legal path to temporary or permanent residence for those granted the status of visitor for humanitarian reasons based on the remaining rationales, including a "humanitarian cause." Therefore, unless the Mexican government acts and creates an additional program, members of the exodus will likely be left with no legal status if they are still in Mexico one year after they were granted the status of visitor for humanitarian reasons.
29. Those with the status of visitor for humanitarian reasons are not precluded from gaining subsequent legal status through other processes if they meet the requirements, such as through a Mexican spouse, a child born in Mexico,[38] or sponsorship by a formal employer.[39] Nevertheless, having had a TVRH provides no advantage in obtaining an alternative, lasting status. Migrants must independently qualify for one of these alternative routes to residency, and undergo the corresponding process, in order to be offered lasting legal status in Mexico.

V. Conclusion

30. Because Mexican authorities did not articulate a legal rationale for the program of providing the status of visitor for humanitarian reasons to thousands of members of the Central American exodus, it remains unclear on what basis, if any, those migrants could renew that status. Those who try will likely face obstacles, including that they will not be able to prove the underlying conditions continue to exist without knowing the conditions upon which their status is based. Thus, when the one-year TVRHs expire in the early months of 2020, those who received them will likely be left with no legal status in Mexico.

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[37] LM art. 52(V)(c); RLM art. 141(IV).

[38] *See* LM art. 54 (VI); RLM art. 141(I).

[39] Sponsorship by a formal employer is exceedingly difficult to obtain when nearly 50% of the Mexican labor force operates outside of the formal sector, a disproportionately high number of unofficial jobs are performed by migrants, and migrants are discriminated against in the workforce. *See* Mary Edith Pacheco and Virgilio Partida, *Changing Jobs in Mexico: Hopping between Formal and Informal Economic Sectors,* INTECHOPEN (Aug. 23, 2017), https://www.intechopen.com/books/unemployment-perspectives-and-solutions/changing-jobs-in-mexico-hopping-between-formal-and-informal-economic-sectors; Anjali Fluery, *The Overlooked: Migrant Women Working in Mexico*, U.N. UNIV. (May 6, 2016), https://unu.edu/publications/articles/the-overlooked-migrant-women-working-in-mexico.html.

JURAT

UNITED MEXICAN STATES)
MEXICO CITY) SS:
EMBASSY OF THE UNITED)
STATES OF AMERICA)

Subscribed and sworn to before me this day that the affiant understood the instrument on which the affiant made an identifying mark in my presence.

Margarita Leticia Juarez Aparicio
(Type name of individual)

(Signature of Consular Officer)

Bridget Binder
ACS Deputy Chief-Passport Unit
U.S. Embassy Mexico City

(Type name of Consular Officer)

Consul of the United States of America

MAY 1 5 2019
(Date)

PRESIDENTIAL COMMISSIONS ARE PERMANENT

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Dirección: Privada de 55

Entidad Federativa: Ciudad de México

C.P. _____ Teléfono: _____

DOMICILIO DEL TITULAR / HOLDER'S ADDRESS
ADRESSE DU TITULAIRE

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MEXICANA

Fecha de nacimiento / Date of birth / Date de naissance
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Sexo / Sex / Sexe
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imumi
Instituto para las Mujeres en la Migración A.C.

Translated Excerpts of the Mexican Law of Migration, Regulations of the Law of Migration, and Guidelines for Migration Processes and Procedures

Ley de Migración/Law of Migration

Artículo 8. Los migrantes podrán acceder a los servicios educativos provistos por los sectores público y privado, independientemente de su situación migratoria y conforme a las disposiciones legales y reglamentarias aplicables. Los migrantes tendrán derecho a recibir cualquier tipo de atención médica, provista por los sectores público y privado, independientemente de su situación migratoria, conforme a las disposiciones legales y reglamentarias aplicables. Los migrantes independientemente de su situación migratoria, tendrán derecho a recibir de manera gratuita y sin restricción alguna, cualquier tipo de atención médica urgente que resulte necesaria para preservar su vida. En la prestación de servicios educativos y médicos, ningún acto administrativo establecerá restricciones al extranjero, mayores a las establecidas de manera general para los mexicanos.	Article 8. Migrants may access educational services provided by the public and private sectors, regardless of their migratory status and in accordance with the applicable legal and regulatory provisions. Migrants will have the right to receive any type of medical attention, provided by the public and private sectors, regardless of their migratory status, in accordance with the applicable legal and regulatory provisions. Migrants, regardless of their immigration status, will have the right to receive, free of charge and without any restriction, any type of urgent medical attention that is necessary to save their life. In the provision of educational and medical services, no administrative act will establish restrictions on foreigners, greater than those generally established for Mexicans.
Artículo 37. Para internarse al país, los extranjeros deberán: I. Presentar en el filtro de revisión migratoria ante el Instituto, los documentos siguientes: a. Pasaporte o documento de identidad y viaje que sea válido de conformidad con el derecho internacional vigente, y b. Cuando así se requiera, visa válidamente expedida y en vigor,	Article 37. To enter the country, foreigners must: I. Present the following documents in the migratory review filter before the Institute: a. Passport or an identity or travel document that is valid in accordance with current international law and b. When required, validly issued and operative visa, in accordance

en términos del artículo 40 de esta Ley; o c. Tarjeta de residencia o autorización en la condición de estancia de visitante regional, visitante trabajador fronterizo o visitante por razones humanitarias II. Proporcionar la información y los datos personales que las autoridades competentes soliciten en el ámbito de sus atribuciones. III. No necesitan visa los extranjeros que se ubiquen en alguno de los siguientes supuestos: a. Nacionales de países con los que se haya suscrito un acuerdo de supresión de visas o que no se requiera de visado en virtud de una decisión unilateral asumida por el Estado mexicano; b. Solicitantes de la condición de estancia de visitante regional y visitante trabajador fronterizo; c. Titulares de un permiso de salida y regreso; d. Titulares de una condición de estancia autorizada, en los casos que previamente determine la Secretaría; e. Solicitantes de la condición de refugiado, de protección complementaria y de la determinación de apátrida, o por razones humanitarias o causas de fuerza mayor, y f. Miembros de la tripulación de embarcaciones o aeronaves comerciales conforme a los compromisos internacionales	with article 40 of this Law, or c. Residency card or authorization with status of regional visitor, border worker visitor, or visitor for humanitarian reasons II. Provide the information and the personal data that the competent authorities request within the scope of their jurisdiction. III. Foreigners in any of the following situations do not need a visa: a. Nationals of countries which have subscribed to a visa suppression agreement or do not require visas by virtue of a unilaterally assumed decision by the Mexican state; b. Applicants for regional visitor or border worker visitor status; c. Holders of a permit to leave and return; d. Holders of authorized status, in cases the Secretary [of the Interior] previously determined; e. Applicants for refugee status, complementary protection or statelessness determination, or for humanitarian reasons or causes of force majeure, and f. Members of boat or commercial aircraft crews compliant with the international commitments assumed by Mexico.

asumidos por México.	
Artículo 42. La Secretaría podrá autorizar el ingreso de extranjeros que soliciten el reconocimiento de la condición de refugiado, asilo político, determinación de apátrida, o por causas de fuerza mayor o por razones humanitarias, sin cumplir con alguno de los requisitos establecidos en el artículo 37 de esta Ley.	Article 42. The Secretary [of the Interior] may authorize the entrance of foreigners who apply for recognition of refugee status, political asylum, determination of statelessness, or for causes of force majeure or for humanitarian reasons, without meeting some of the requirements established in Article 37 of this Law.
Artículo 52. V. VISITANTE POR RAZONES HUMANITARIAS. Se autorizará esta condición de estancia a los extranjeros que se encuentren en cualquiera de los siguientes supuestos: a. Ser ofendido, víctima o testigo de algún delito cometido en territorio nacional. Para efectos de esta Ley, sin perjuicio de lo establecido en otras disposiciones jurídicas aplicables, se considerará ofendido o víctima a la persona que sea el sujeto pasivo de la conducta delictiva, independientemente de que se identifique, aprehenda, enjuicie o condene al perpetrador e independientemente de la relación familiar entre el perpetrador y la víctima. Al ofendido, víctima o testigo de un delito a quien se autorice la condición de estancia de Visitante por Razones Humanitarias, se le autorizará para permanecer en el país hasta que concluya el proceso, al término del cual deberán salir del país o solicitar una nueva condición de estancia, con derecho a entrar y salir del país cuantas veces lo desee y con permiso para trabajar a cambio de una remuneración en el país. Posteriormente, podrá solicitar la	Article 52. V. VISITOR FOR HUMANITARIAN REASONS. This status may be authorized for foreigners who find themselves in any of the following situations: a. Being the offended, victim, or witness of a crime committed in national territory. For the purposes of this Law, without prejudice of what is established in other applicable legal provisions, the person who is the passive subject in the criminal conduct will be considered the offended or the victim, regardless of whether they identify, apprehend, prosecute or convict the perpetrator and regardless of the family relationship between the perpetrator and the victim. The offended, victim or witness of the crime, who is authorized for a Visitor for Humanitarian Reasons stay, will be authorized to remain in the country until the process is concluded, at the end of which they must leave the country or request a new status of stay, with the right to enter and leave the country however many times they want and with permission to work in exchange for remuneration in the country. Afterward, one can apply for permanent resident status.

condición de estancia de residente permanente; b. Ser niña, niño o adolescente migrante no acompañado, en términos del artículo 74 de esta Ley. c. Ser solicitante de asilo político, de reconocimiento de la condición de refugiado o de protección complementaria del Estado Mexicano, hasta en tanto no se resuelva su situación migratoria. Si la solicitud es positiva se les otorgará la condición de estancia de residente permanente, en términos del artículo 54 de esta Ley. También la Secretaría podrá autorizar la condición de estancia de visitante por razones humanitarias a los extranjeros que no se ubiquen en los supuestos anteriores, cuando exista una causa humanitaria o de interés público que haga necesaria su internación o regularización en el país, en cuyo caso contarán con permiso para trabajar a cambio de una remuneración.	b. Being an unaccompanied child or adolescent migrant, according to Article 74 of this Law. c. Being an applicant for political asylum, recognition of refugee status or complementary protection from the Mexican State, until their immigration situation is resolved. If the application is approved, they will be granted permanent resident status, according to article 54 of this Law. The Secretary [of the Interior] can also authorize the status of visitor for humanitarian reasons to foreigners who are not in the above situations, when there exists a humanitarian cause or public interest that necessitates their admission or regularization in the country, in which case they will have permission to work in exchange for remuneration.
VII. RESIDENTE TEMPORAL. Autoriza al extranjero para permanecer en el país por un tiempo no mayor a cuatro años, con la posibilidad de obtener un permiso para trabajar a cambio de una remuneración en el país, sujeto a una oferta de empleo con derecho a entrar y salir del territorio nacional cuantas veces lo desee y con derecho a la preservación de la unidad familiar por lo que podrá ingresar con o solicitar posteriormente la internación de las personas que se señalan a continuación, quienes podrán residir regularmente en territorio nacional por el tiempo que dure el permiso del residente temporal: a. Hijos del residente temporal y los hijos del cónyuge, concubinario o concubina, siempre y cuando sean niñas, niños y	VII. TEMPORARY RESIDENT. Authorizes the foreigner to remain in the country for a period of time no greater than four years, with the possibility to obtain permission to work in exchange for remuneration in the country, subject to an offer of employment with the right to enter and leave the national territory as many times as they wish and with the right to the preservation of the family unit, with which one may enter with or later request for the admission of the people listed below, who may reside legally in the national territory for the duration of the temporary resident permit: a. Children of the temporary resident and the children of the spouse or domestic partner, as long as they are children or adolescents who have not married, and

adolescentes y no hayan contraído matrimonio, o se encuentren bajo su tutela o custodia; b. Cónyuge; c. Concubinario, concubina o figura equivalente, acreditando dicha situación jurídica conforme a los supuestos que señala la legislación mexicana, y d. Padre o madre del residente temporal. Las personas a que se refieren los incisos anteriores serán autorizados para residir regularmente en territorio nacional bajo la condición de estancia de residente temporal, con la posibilidad de obtener un permiso para trabajar a cambio de una remuneración en el país sujeto a una oferta de empleo, y con derecho a entrar y salir del territorio nacional cuantas veces lo deseen. En el caso de que el residente temporal cuente con una oferta de empleo, se le otorgará permiso para trabajar a cambio de una remuneración en el país, en la actividad relacionada con dicha oferta de empleo. Los extranjeros a quienes se les otorgue la condición de estancia de residentes temporales podrán introducir sus bienes muebles, en la forma y términos que determine la legislación aplicable.	are under the resident's guardianship; b. Spouse; c. Domestic partner or equivalent figure, as long as the legal situation is in accordance with the situations indicated in Mexican law, and d. Father or mother of the temporary resident. The people referred to in the preceding paragraphs may be authorized to reside legally in the national territory under the status of temporary resident, with the possibility to obtain permission to work in exchange for a remuneration in the country, subject to an offer of employment with the right to enter and leave the national territory as many times as one wishes. In the event that the temporary resident receives an offer of employment, permission to work will be granted in exchange for a remuneration in the country, in the activity related to said offer of employment. The foreigners who are granted the status of temporary resident may introduce their movable property, in a way that is in accordance with the applicable legislation.
Artículo 54. Se otorgará la condición de residente permanente al extranjero que se ubique en cualquiera de los siguientes supuestos: I. Por razones de asilo político, reconocimiento de la condición de refugiado y protección complementaria o por la determinación de apátrida, previo cumplimiento de los requisitos establecidos en esta Ley, su Reglamento y demás disposiciones jurídicas aplicables; II. Por el derecho a la preservación de la	Article 54. The status of permanent resident will be granted to any foreigner who is in any of the following situations: I. For reasons of political asylum, recognition of refugee status and complementary protection or for the determination of statelessness, prior compliance with the requirements established in this Law, its Regulations and other applicable legal provisions; II. For the right to preservation of the family unit in accordance with article 55

	unidad familiar en los supuestos del artículo 55 de esta Ley;
III.	Que sean jubilados o pensionados que perciban de un gobierno extranjero o de organismos internacionales o de empresas particulares por servicios prestados en el exterior, un ingreso que les permita vivir en el país;
IV.	Por decisión del Instituto, conforme al sistema de puntos que al efecto se establezca, en términos del artículo 57 de esta Ley;
V.	Porque hayan transcurrido cuatro años desde que el extranjero cuenta con un permiso de residencia temporal;
VI.	Por tener hijos de nacionalidad mexicana por nacimiento, y
VII.	Por ser ascendiente o descendiente en línea recta hasta el segundo grado de un mexicano por nacimiento. Los extranjeros a quienes se les otorgue la condición de estancia de residentes permanentes tendrán la posibilidad de obtener un permiso para trabajar a cambio de una remuneración en el país sujeto a una oferta de empleo, y con derecho a entrar y salir del territorio nacional cuantas veces lo deseen. Asimismo, los residentes permanentes podrán introducir sus bienes muebles, en la forma y términos que determine la legislación aplicable. Las cuestiones relacionadas con el reconocimiento de la condición de refugiado, el otorgamiento de la protección complementaria y la determinación de apátrida, se regirán por lo dispuesto en los tratados y convenios internacionales de los cuales sea parte el Estado mexicano y demás leyes aplicables.

	of this Law;
III.	For those who are retired or pensioned by a foreign government or international organizations or by private companies for services rendered abroad, an income that permits them to live in the country;
IV.	By decision of the Institute, in accordance with the point system established for this purpose, according to article 57 of this Law;
V.	Because four years have passed since the foreigner obtained his or her temporary resident status;
VI.	Having children of Mexican nationality by birth, and
VII.	For being the ancestor or descendent in a direct line to the second degree of a Mexican by birth. Foreigners who are granted permanent resident status will have the possibility to obtain a work permit in exchange for remuneration in the country subject to an offer of employment, and with the right to enter and leave the national territory as many times as they wish. Also, permanent residents may enter with their personal property, in the manner and terms determined by applicable legislation. Issues related to recognition of refugee status, the granting of complementary protection and the determination of a stateless person shall be governed by the provisions of international treaties and agreements to which the Mexican State is a party and other applicable laws.

Artículo 109. Todo presentado, en su caso, tendrá los siguientes derechos desde su ingreso a la estación migratoria: I. Conocer la ubicación de la estación migratoria en la que se encuentra alojado, de las reglas aplicables y los servicios a los que tendrá acceso; II. Ser informado del motivo de su ingreso a la estación migratoria; del procedimiento migratorio; de su derecho a solicitar el reconocimiento de la condición de refugiado o la determinación de apátrida; del derecho a regularizar su estancia en términos de los artículos 132, 133 y 134 de la presente ley, en su caso, de la posibilidad de solicitar voluntariamente el retorno asistido a su país de origen; así como del derecho de interponer un recurso efectivo contra las resoluciones del Instituto; III. Recibir protección de su representación consular y comunicarse con ella. En caso de que el extranjero desee recibir la protección de su representación consular, se le facilitarán los medios para comunicarse con ésta lo antes posible; IV. Recibir por escrito sus derechos y obligaciones, así como las instancias donde puede presentar sus denuncias y quejas; V. Que el procedimiento sea sustanciado por autoridad competente y el derecho a recibir asesoría legal, ofrecer pruebas y alegar lo que a su derecho convenga, así como tener acceso a las constancias del expediente administrativo migratorio; VI. Contar con un traductor o intérprete para facilitar la comunicación, en caso de que no hable o no entienda el español;	Article 109. The following rights are afforded to all who enter the migratory station: I. To know the location of the station in which they find themself staying, the applicable rules and the services to which they have access; II. To be informed of the reason for one's entry in the migratory station; of the migration proceedings; of one's right to request refugee status or statelessness determination; of the right to regularize one's status in terms of articles 132, 133 and 134 of this law, in one's case, the possibility to request voluntary assisted return to one's country of origin; the right to an effective appeal against the resolutions of the Institution; III. To communicate with and receive the protection and representation of one's consulate; to have facilitated the means by which to communicate with one's consulate as soon as possible; IV. To receive in writing one's rights and obligations as well as the government offices in which one can submit complaints; V. That the proceeding be substantiated by a competent authority and the right to receive legal assistance, submit evidence and plead in accordance with one's rights as well as access the records of the immigration administration; VI. In cases in which one does not speak or understand Spanish, to speak with a translator or interpreter to facilitate communication; VII. To access telephonic communication; VIII. To receive during one's stay a dignified space, food, basic supplies for one's

VII.	Acceder a comunicación telefónica;
VIII.	A recibir durante su estancia un espacio digno, alimentos, enseres básicos para su aseo personal y atención médica en caso de ser necesario;
IX.	Ser visitado por sus familiares y por su representante legal;
X.	Participar en actividades recreativas, educativas y culturales que se organicen dentro de las instalaciones;
XI.	No ser discriminado por las autoridades a causa de su origen étnico o nacional, sexo, género, edad, discapacidad, condición social o; económica, estado de salud, embarazo, lengua, religión, opiniones, preferencias sexuales, estado civil o cualquier otra circunstancia que tenga por objeto impedir o anular el reconocimiento o el ejercicio de los derechos y la igualdad real de oportunidades de las personas;
XII.	Recibir un trato digno y humano durante toda su estancia en la Estación Migratoria;
XIII.	Que las Estaciones Migratorias cuenten con áreas de estancia separadas para mujeres y hombres, garantizando en todo momento el derecho a la preservación de la unidad familiar, excepto en los casos en los que la separación sea considerada en razón del interés superior de la niña, niño o adolescente;
XIV.	Que las Estaciones Migratorias cuenten con áreas separadas para niñas, niños y adolescentes migrantes no acompañados para su alojamiento en tanto son canalizados a instituciones en donde se les brinde una atención adecuada, y
XV.	Las demás que se establezcan en
	personal hygiene and medical attention when needed;
IX.	To be visited by one's family and legal representation;
X.	To participate in recreational, educational and cultural activities that are organized within the facilities;
XI.	To not be discriminated against by the authorities on the basis of ethnic or national origin, sex, gender, age, disability, social or economic status, health, pregnancy, language, religion, opinions, sexual orientation, marital status or any other circumstance that infringes on or violates the recognition or exercise of all persons' rights and equality of opportunities;
XII.	To receive dignified and humane treatment during one's entire stay in the Migratory Station;
XIII.	That the Migratory Station provide separate spaces for men and women, guaranteeing at all times the right to the preservation of the family unit except in cases in which separation is considered to be in the best interest of the child or adolescent;
XIV.	That the migratory stations provide separate accommodations for unaccompanied children and adolescents while they are channeled to facilities with adequate care, and
XV.	Whatever else is established in general provisions issued by the Secretary [of the Interior].

disposiciones de carácter general que expida la Secretaría.	
Artículo 136. El Instituto no podrá presentar al extranjero que acuda ante el mismo a solicitar la regularización de su situación migratoria. Para el caso de que el extranjero se encuentre en una estación migratoria y se ubique en los supuestos previstos en los artículos 133 y 134 de esta Ley, se les extenderá dentro de las veinticuatro horas siguientes, contadas a partir de que el extranjero acredite que cumple con los requisitos establecidos en esta Ley y su Reglamento, el oficio de salida de la estación para el efecto de que acudan a las oficinas del Instituto a regularizar su situación migratoria, salvo lo previsto en el artículo 113 en el que se deberá respetar el período de reflexión a las víctimas o testigos de delito. El Instituto contará con un término de treinta días naturales, contados a partir del ingreso del trámite correspondiente, para resolver sobre la solicitud de regularización de la situación migratoria.	Article 136. The Institute cannot oblige a foreigner that presents themself at their office to apply for regularization of their migratory status. In the case in which a foreigner finds themself in a migratory station under one of the situations listed in articles 133 and 134 of this Law, beginning when the foreigner affirms that they fulfill the requirements established in this Law and its Regulation, they will be granted within 24 hours an official departure document so that they can present themself at the offices of the Institute in order to regularize their migratory status, save for the provision in article 113 in which the period of reflection for victims or witnesses of crimes should be respected. The Institute will count a term of 30 calendar days, starting with the admission of the corresponding application, to resolve the application of regularization of the migratory situation.

Reglamento de la Ley de Migración/Regulations of the Law of Migration

Artículo 63. La autoridad migratoria podrá autorizar por razones humanitarias mediante acta de internación debidamente fundada y motivada, el ingreso de personas extranjeras que no cumplan con alguno de los requisitos de internación y se ubiquen en alguno de los siguientes supuestos: I. Ser solicitante de la condición de refugiado, de asilo político o que requiera iniciar un procedimiento de	Article 63. The migratory authority may authorize for humanitarian reasons through a duly found and motivated certificate of admission, the entrance of foreigners that do not meet some of the admission requirements and find themselves in some of the following situations: I. Being an applicant for refugee status, political asylum or requiring the initiation of a statelessness determination

determinación de apátrida; II. Por interés público, a la persona extranjera cuya internación se requiera para apoyar en acciones de auxilio o rescate en situaciones de emergencia o desastre en el territorio nacional; III. Por causa humanitaria, a la persona extranjera que por riesgo a la salud o vida propias, o por su situación de vulnerabilidad no pueda ser devuelto a su país de origen, o no pueda continuar con su viaje, o IV. Por causa de fuerza mayor, a la persona extranjera a bordo de aeronaves o embarcaciones en tránsito internacional, y que por contingencia técnica o condiciones climatológicas, requieran ingresar y permanecer en el país hasta el restablecimiento o mejora de dichas condiciones. Lo anterior conforme al procedimiento previsto en el artículo 62 de este Reglamento. En estos casos, el acta de internación deberá sustentarse en la comparecencia de la persona extranjera, documentales de instituciones públicas o privadas y la previa consulta en las listas de control migratorio, o en las disposiciones administrativas de carácter general que hayan sido emitidas por la Secretaría y publicadas en el Diario Oficial de la Federación.	procedure; II. For the public interest, a foreign person whose admission is required to support help or rescue actions in emergency or disaster situations in the national territory; III. For humanitarian causes, a foreign person that due to a risk to their health or life, or due to a situation of vulnerability cannot be returned to their country of origin or cannot continue on their journey, IV. For a cause of force majeure, a foreign person on board of aircrafts or vessels in international transit, and due to technical contingency or weather conditions, requires entrance and to remain in the country until the restoration or improvement of these conditions. The above is in accordance with the procedure provided in article 62 of this Regulation. In these cases, the admission must be sustained by the appearance of the foreigners, documentation of public or private institutions and the prior consultation in the migratory control lists, or in the general administrative provisions that have been issued by the Secretary [of the Interior] and published in the Official Diary of the Federation.
Artículo 116. La Secretaría en coordinación con la Secretaría de Relaciones Exteriores podrá suscribir instrumentos internacionales con dependencias u órganos de otros países y con organismos internacionales, en materia de retorno asistido, seguro, digno, ordenado y humano de	Article 116. The Secretary [of the Interior] in coordination with the Secretary of Foreign Relations may sign international documents with departments or bodies of other countries and with international organizations, in terms of assisted, safe, dignified, orderly, and humane return of foreigners who

extranjeros que se encuentren irregularmente en territorio nacional, de conformidad con las disposiciones jurídicas aplicables.	are unlawfully in national territory, in accordance with the applicable legal provisions.
Artículo 137. La condición de estancia de visitante por razones humanitarias prevista en el artículo 52, fracción V, de la Ley se podrá autorizar a la persona extranjera que demuestre alguno de los siguientes supuestos: I. Ser ofendido, víctima o testigo de un delito cometido en el territorio nacional, cuando dicha circunstancia sea reconocida por la autoridad competente; II. Ser niña, niño o adolescente no acompañado, en términos del artículo 74 de la Ley; III. Ser solicitante de asilo político o solicitante del reconocimiento de la condición de refugiado o de protección complementaria. También serán consideradas las personas extranjeras que no cuenten con documentos que permitan determinar su nacionalidad o residencia y que por ello deba seguirse un procedimiento de determinación de apátrida, o IV. Que se encuentre en alguna de las siguientes hipótesis de causa humanitaria: a. Exista riesgo a su salud o vida propias y requiera permanecer en el territorio nacional; b. Tenga en el territorio nacional a un familiar directo bajo custodia del Estado mexicano y sea necesaria su autorización para prestarle asistencia médica, psicológica, o bien, su intervención para	Article 137. The condition of the status of visitor for humanitarian reasons provided in article 52, part V, of the Law may authorize the foreigner who demonstrates one of the following situations: I. Being the offended, victim or witness of a crime committed in the national territory, when said circumstance is recognized by the competent authority; II. Being an unaccompanied child or adolescent, according to article 74 of the Law; III. Being a political asylum applicant or being an applicant of recognition of refugee status or complementary protection. Foreigners who do not have documents that allow the determination of their nationality or residency will also be considered, and therefore a procedure to determine statelessness must follow, or IV. One finds oneself in one of the following situations of humanitarian cause: a. A risk to one's health or life exists and requires one to remain in the national territory; b. One has a direct relative in custody of the Mexican State in the national territory, and authorization is necessary to provide medical or psychological assistance, or intervention to identify or retrieve a cadaver, or c. One must attend a direct family member in a grave state of health who is in the national territory.

reconocimiento o recuperación de cadáver, o c. Requiera asistir a un familiar directo en estado grave de salud que se encuentre en el territorio nacional. Lo anterior, conforme al procedimiento y requisitos previstos en las disposiciones administrativas de carácter general que emita la Secretaría y que serán publicadas en el Diario Oficial de la Federación.	The foregoing, is in accordance with the procedure and requirements set forth in the general administrative provisions issued by the Secretary [of the Interior] and published in the Official Diary of the Federation.
Artículo 141. Las personas extranjeras con situación migratoria regular en el territorio nacional pueden cambiar de condición de estancia en los siguientes supuestos: I. El visitante o residente temporal podrá cambiar a la condición de estancia de residente permanente, por vínculo familiar, cuando: a. Sea niña, niño o adolescente, cuya patria potestad o tutela se encuentre a cargo de un mexicano o de un residente permanente; b. Sea hijo de mexicano que haya nacido en el extranjero y no haya ejercitado su derecho para ostentar la nacionalidad mexicana, de conformidad con el artículo 30 de la Constitución Política de los Estados Unidos Mexicanos; c. Sea cónyuge, concubina o concubinario o figura equivalente de mexicano o de residente permanente, que acredite dos años de estancia regular en el territorio nacional	Article 141. The foreigners with legal migratory situations in the national territory can change the condition of their stay in the following situations: I. The visitor or temporary resident may change the condition of the stay to permanent resident, by family relationship, when: a. One is a child or adolescent whose parental authority or guardianship is in the care of a Mexican or a permanent resident; b. One is a child of a Mexican who was born abroad and has not exercised their rights to hold Mexican nationality, in accordance with article 30 of the Political Constitution of the United Mexican States; c. One is a spouse, domestic partner or equivalent figure of a Mexican or a permanent resident who can demonstrate two years of lawful stay in the national territory as a temporary resident and subsistence of the relationship during the same

como residente temporal y subsistencia del vínculo por el mismo período. El cómputo de los dos años inicia a partir de que el cónyuge, concubina o concubinario o figura equivalente adquiere la condición de estancia de residente temporal por el vínculo con el mexicano o con el residente permanente;	period. The calculation of the two years begins when the spouse, domestic partner or the equivalent figure acquires the status of temporary resident from the relationship to the Mexican or the permanent resident;
d. Sea hermano de mexicano o de un residente permanente, cuando se trate de niña, niño o adolescente que no haya contraído matrimonio y se encuentre bajo su representación legal, o	d. One is a sibling of a Mexican or of a permanent resident, in the case of a child or adolescent who has not married and is under his/her legal representation, or
e. Sea abuelo, abuela, padre, madre, hijo, hija, nieto, o nieta de mexicano por nacimiento.	e. One is a grandfather, grandmother, father, mother, son, daughter, grandson, or granddaughter of a Mexican by birth.
II. El visitante o residente temporal estudiante podrá cambiar a la condición de estancia de residente temporal, por vínculo familiar, cuando se ubique en alguno de los supuestos de unidad familiar del residente temporal;	II. The visitor or temporary student resident may change the status to that of temporary resident, by a family relationship, in a situation involving family unity of a temporary resident temporary resident;
III. El visitante sin permiso para realizar actividades remuneradas, visitante con permiso para realizar actividades remuneradas, visitante con fines de adopción, visitante regional o el visitante trabajador fronterizo podrá cambiar a la condición de estancia de visitante por razones humanitarias, cuando:	III. The visitor without permission to perform remunerative activities, visitor with permission to perform remunerative activities, visitor with adoption purposes, regional visitor or a border worker visitor may change the status of stay to visitor for humanitarian reasons, when:
a. Sea ofendido, víctima o testigo de un delito cometido en el territorio nacional, cuando dicha circunstancia sea reconocida por la autoridad competente;	a. Being the offended, victim, or witness of a crime committed in the national territory, when said circumstance is recognized by the competent authorities;
	b. Being an unaccompanied child or adolescent, according to article 74 of the Law;

b. Sea niña, niño o adolescente no acompañado, en términos del artículo 74 de la Ley; c. Sea solicitante de asilo político, solicitante de la condición de refugiado, o bien, requiera seguir un procedimiento de determinación de apátrida; d. Exista riesgo a la salud o a la vida de la persona extranjera y requiera permanecer en el territorio nacional; e. Tenga en el territorio nacional un familiar directo bajo custodia del Estado mexicano y sea necesaria su autorización para prestarle asistencia médica, psicológica, o bien, su intervención para reconocimiento o recuperación de cadáver, o f. Requiera asistir a un familiar directo en estado grave de salud que se encuentre en el territorio nacional.	c. Being a political asylum applicant, refugee status applicant, or needs to continue with the procedure of determining statelessness; d. There is a risk to one's health or life that requires the foreigner to remain in the national territory; e. One has a direct relative in custody of the Mexican State in the national territory and authorization is necessary to provide medical or psychological assistance, or intervention to identify or retrieve a cadaver, or f. One must attend a direct family member in a grave state of health who is in the national territory.
IV. El visitante por razones humanitarias podrá cambiar a la condición de estancia de residente permanente, cuando obtenga reconocimiento de la condición de refugiado o protección complementaria, asilo político o determinación de apátrida;	IV. The visitor for humanitarian reasons may change the status of stay to permanent resident when they obtain recognition of refugee status or complementary protection, political asylum, or determination of statelessness;
V. El visitante por razones humanitarias, en caso de ofendido, testigo o víctima de un delito cometido en el territorio nacional podrá cambiar a la condición de estancia de residente temporal, cuando concluya el proceso correspondiente;	V. The visitor for humanitarian reasons, in the case of being the the offended, witness, or victim or a crime committed in the national territory may change to the status of temporary resident, when the corresponding process concludes;
VI. El residente temporal y el residente temporal estudiante podrán cambiar a la	VI. The temporary resident and the temporary resident student may change to the status of permanent resident when: a. They qualify according to the point system; b. They are retired or pensioners who receive sufficient resources from outside the country that allow them to live in the national

condición de residente permanente, cuando: a. Califiquen conforme al sistema de puntos; b. Sean jubilados o pensionados que perciban del exterior recursos suficientes que le permitan vivir en el territorio nacional, o c. Hayan transcurrido cuatro años desde que cuentan con la condición de estancia de residente temporal. VII. El residente temporal estudiante puede cambiar en cualquier momento a la condición de estancia de residente temporal. Lo anterior, previo cumplimiento de los requisitos previstos en las disposiciones administrativas de carácter general que emita la Secretaría y que serán publicadas en el Diario Oficial de la Federación.	territory, or c. Four years have passed since they received their temporary residency. VII. The temporary resident student can change in any moment to the status of temporary resident. The foregoing is in accordance with the procedure and requirements set forth in the general administrative provisions issued by the Secretary [of the Interior] and published in the Official Diary of the Federation.
Artículo 144. La regularización de situación migratoria podrá autorizarse a la persona extranjera que se encuentre en situación migratoria irregular por incumplimiento a las disposiciones jurídicas aplicables, cuando demuestre alguno de los siguientes supuestos: I. Tener vínculo con mexicano o con persona extranjera residente temporal o permanente en el territorio nacional, conforme a las hipótesis de unidad familiar previstas en la Ley en el artículo 111 de este Reglamento; II. Ser identificado por la autoridad migratoria o por la autoridad competente como víctima o testigo de algún delito grave cometido en el	Article 144. The regularization of the migratory situation may authorize the foreigner who finds themself in an unlawful migratory situation for non-compliance with the applicable legal provisions, when one of the following situations is demonstrated: I. Having a link with a Mexican or with a foreigner who is a temporary or permanent resident in the national territory, according to the situation of family unity provided in the Law in article 111 of this Regulation; II. Being identified by the migratory authority or by the competent authority as a victim or witness of a grave crime in the national territory;

territorio nacional;

III. Ser niña, niño o adolescente que se encuentre sujeto a un procedimiento de sustracción y restitución internacional, siempre y cuando el trámite sea solicitado por sus padres o tutores;

IV. Que su grado de vulnerabilidad dificulte o haga imposible su deportación o retorno asistido y esto se acredite fehacientemente. Se indican de manera enunciativa, más no limitativa, los siguientes casos:

a. Niñas, niños y adolescentes migrantes no acompañados, cuando así convenga a su interés superior y en tanto se ofrecen alternativas jurídicas o humanitarias temporales o permanentes al retorno asistido;
b. Mujeres embarazadas, adultos mayores, personas con discapacidad o indígenas;
c. Personas extranjeras que acrediten sufrir una alteración grave a la salud y el traslado a su país implique riesgo a su vida;
d. Personas extranjeras en situación de peligro a su vida o integridad por violencia o desastre natural, o
e. Solicitantes de la condición de refugiado, de asilo político o que inicien procedimiento para la determinación de apátrida, hasta en tanto concluye el procedimiento respectivo.

V. Por tener documento migratorio con vencimiento no mayor a sesenta días naturales;

VI. Por realizar actividades distintas a las

III. Being a child or adolescent who is subject to an international child abduction and restitution procedure, as long as the procedure is requested by their parents or guardians;

IV. One's level of vulnerability makes one's deportation or assisted return difficult or impossible, and this is reliably proven. The following cases include but are not limited to the following:

a. Unaccompanied migrant children or adolescents, when this is in their best interest and while temporary or permanent legal or humanitarian alternatives to assisted return are offered;
b. Pregnant women, elderly adults, people with disabilities, or indigenous people;
c. Foreigners who suffer a grave health condition and the transfer to their country would entail risk to their life;
d. Foreigners in a situation that endangers their life or integrity because of violence or natural disaster,
e. Applicants for refugee status, political asylum or those who initiated the process for statelessness determination, until the respective procedure ends.

V. Having a migratory document with an expiration in less than 70 calendar days;

VI. For performing activities distinct from those authorized, and thereby ceasing to satisfy the requirements for which a certain condition of stay was granted;

VII. For having obtained an official departure document from the migratory station,

autorizadas y con ello haya dejado de satisfacer los requisitos por los cuales se le otorgó determinada condición de estancia; VII. Por haber obtenido oficio de salida de la estación migratoria, conforme a los supuestos del artículo 136 de la Ley; VIII. Por alcanzar el plazo de sesenta días hábiles en la estación migratoria y que se ubique en las hipótesis previstas en el artículo 111 de la Ley conforme a lo siguiente: a. Que no exista información fehaciente sobre su identidad y/o nacionalidad, o exista dificultad para la obtención de los documentos de identidad y viaje; b. Que los consulados o secciones consulares del país de origen o residencia requieran mayor tiempo para la expedición de los documentos de identidad y viaje; c. Que exista impedimento para su tránsito por terceros países u obstáculo para establecer el itinerario de viaje al destino final, o d. Que exista enfermedad o discapacidad física o mental médicamente acreditada que imposibilite viajar a la persona extranjera presentada.	according to the situations of article 136 of the Law; VIII. For reaching the term of 60 business days in the migratory station and which is found in the hypothesis provided in article 111 in the Law according to the following: a. There is not reliable information about their identity and/or nationality, or there is difficulty obtaining identity and travel documents; b. The consulates or consular sections of the country of origin or residency require more time to issue identity and travel documents; c. An impediment to travel through third party countries or an obstacle to establish a travel itinerary to the final destination exists, or d. A medically accredited sickness or a physical or mental disability makes travel impossible for the foreigner presented.
Artículo 153. Las personas extranjeras que cuenten con la condición de estancia de visitantes por razones humanitarias podrán solicitar las renovaciones que sean necesarias hasta que concluya el proceso o la causa que originó el otorgamiento de la condición de estancia. El documento migratorio	Article 153. Foreigners who have the status of visitor for humanitarian reasons may request necessary renewals until the process or the cause that led to the granting of the condition of stay concludes. The migratory document that proves the status of visitors for humanitarian reasons, will imply

que acredite la condición de estancia de visitante, por razones humanitarias, implicará el derecho de su titular para realizar entradas y salidas múltiples del territorio nacional.	the right of its holder to make multiple entries and exits from the national territory.
Artículo 164. Las personas extranjeras titulares de la condición de estancia de residente temporal o de residente temporal estudiante, cuando se trate de estudios de nivel superior, posgrado e investigación, podrán obtener permiso de trabajo en el territorio nacional en términos de lo previsto en este Reglamento. Tienen permiso de trabajo las personas extranjeras titulares de una condición de estancia obtenida por oferta de empleo. En el caso de los residentes temporales, se deberá indicar expresamente en la tarjeta cuando tienen permiso de trabajo. Los titulares de las condiciones de estancia de visitante por razones humanitarias y de residente permanente cuentan implícitamente con permiso de trabajo.	Article 164. Foreigners holding the status of temporary resident or temporary resident student, when it comes to higher level studies, postgraduate and research, may obtain permission to work in the national territory in accordance with the provisions in this Regulation. Foreigners holding a condition of stay obtained from an offer of employment have permission to work. In the case of temporary residents, when they have permission to work it must be expressly indicated on their card. Those holding the status of visitors for humanitarian reasons or permanent residency have implicit permission to work.

Lineamientos para Trámites y Procedimientos Migratorios/Guidelines for Migration Processes and Procedures

Artículo 11. La condición de estancia de visitante por razones humanitarias prevista en el artículo 52, fracción V de la Ley se podrá autorizar a la persona extranjera que demuestre alguno de los siguientes supuestos: I. Ser ofendido, víctima o testigo de un delito cometido en territorio nacional, cuando dicha circunstancia sea reconocida por la autoridad competente.	Article 11. The condition of the status of visitor for humanitarian reasons provided for in article 52, section V of the Law may be authorized to the foreign person who demonstrates any of the following situations: I. Being the offended, victim or witness of an offense committed in national territory, when said circumstance is recognized by the competent authority. II. Being an unaccompanied child or adolescent, in terms of article 74 of the Law.

II. Ser niña, niño o adolescente no acompañado, en términos del artículo 74 de la Ley.	III. Be an applicant for refugee status, political asylum status or require a procedure to determine statelessness.
III. Ser solicitante de la condición de refugiado, de asilo político o que requiera iniciar un procedimiento de determinación de apátrida.	IV. For humanitarian reasons, in terms of article 52, section V, last paragraph of the Law, when: a. There exists a risk to the health or life of the foreign person and requires them to remain in the national territory. b. The level of vulnerability makes a deportation or assisted removal difficult or impossible. c. Have in the national territory a direct relative in the custody of the State and their authorization is necessary to provide medical, psychological, or intervention for recognition or recovery of the body. d. Required to assist a direct family member in grave state of health that is in national territory. e. Be a child or adolescent who is subject to a procedure of abduction or international restitution.
IV. Por causa humanitaria, en términos del artículo 52, fracción V, último párrafo de la Ley, cuando: a. Exista riesgo a la salud o vida de la persona extranjera y requiera permanecer en territorio nacional. b. Su grado de vulnerabilidad dificulte o haga imposible su deportación o retorno asistido. c. Tenga en territorio nacional a un familiar directo bajo custodia del Estado y sea necesaria su autorización para prestarle asistencia médica, sicológica, o bien, su intervención para reconocimiento o recuperación de cadáver. d. Requiera asistir a un familiar directo en estado grave de salud que se encuentre en territorio nacional. e. Sea niña, niño o adolescente que se encuentre sujeto a un procedimiento de sustracción o restitución internacional.	V. For public interest in terms of article 52, section V, last paragraph of the Law, when the foreign person supports actions of aid or rescue in emergency situations or disaster in the national territory.
V. Por interés público en términos del artículo 52, fracción V, último párrafo de la Ley, cuando la persona extranjera apoye en acciones de auxilio o rescate en situaciones de emergencia o desastre en territorio nacional.	VI. For reasons of force majeure when the foreign person is on board aircrafts or vessels in international transit, and that due to technical contingency or weather conditions requires entrance and to remain in the national territory until the

VI. Por causa de fuerza mayor cuando la persona extranjera se encuentre a bordo de aeronaves o embarcaciones en tránsito internacional, y que por contingencia técnica o condiciones climatológicas requieran ingresar y permanecer en el territorio nacional hasta el restablecimiento o mejora de dichas condiciones. Para el otorgamiento de esta condición de estancia se estará a lo señalado en las fichas de trámite que correspondan. La persona extranjera documentada en la condición de estancia de visitante por razones humanitarias, podrá permanecer en dicha condición de estancia hasta que concluyan los motivos que originaron su otorgamiento, debiendo promover en tiempo las renovaciones necesarias de su documento migratorio. Cuando concluyan las causas que motivaron el otorgamiento de esta condición de estancia, la persona extranjera podrá solicitar en los casos aplicables, cambio de condición de estancia o salir del territorio nacional.	restoration or improvement of these conditions. The granting of this condition of stay will be as indicated in the corresponding lists of procedural requirements. The foreign person documented in the condition of the status of visitor for humanitarian reasons, may remain in such condition of stay until the reasons that originated its granting conclude, and must further in time the necessary renewals of their immigration document. When the causes that led to the granting of this condition are completed, the foreign person may request, in applicable cases, change of stay status or leave the national territory.
Artículo 28. En los lugares destinados al tránsito internacional de personas, la autoridad migratoria podrá autorizar por razones humanitarias mediante acta de internación debidamente fundada y motivada, el ingreso de personas extranjeras que no cumplan con alguno de los requisitos de internación y se ubiquen en alguno de los siguientes supuestos: I. Ser solicitante de la condición de refugiado, de asilo político o que requiera iniciar un procedimiento de determinación de apátrida.	Article 28. In places designated for international transit, the migratory authority may authorize for humanitarian reasons through a duly founded and motivated certificate of admission, the entrance of foreigners that do not meet some of the admission requirements and find themselves in some of the following situations: I. Being an applicant for refugee status, political asylum or requiring the initiation of a procedure to determine statelessness; II. For the public interest, a foreign person whose admission is required to support help or rescue actions in emergency or

II. Por interés público, a la persona extranjera cuya internación se requiera para apoyar acciones de auxilio o rescate en situaciones de emergencia o desastre en territorio nacional. III. Por causa humanitaria, a la persona extranjera que por riesgo a su salud, a su vida, o por su situación de vulnerabilidad no pueda ser devuelto a su país de origen, o no pueda continuar con su viaje. IV. Por causa de fuerza mayor, a la persona extranjera a bordo de aeronaves o embarcaciones que arriben al territorio nacional en tránsito internacional, y que por contingencia técnica o condiciones climatológicas requieran ingresar y permanecer en territorio nacional hasta el restablecimiento y mejora de dichas condiciones. En estos casos, el acta de internación deberá sustentarse en la comparecencia de la persona extranjera, documentales de instituciones públicas o privadas y la previa consulta en las listas de control migratorio. Se considera que una persona extranjera no reúne los requisitos de internación, cuando no acredita los previstos en alguna de las fichas trámite de los artículos 23, 24, 25, 26 y 27 de los presentes Lineamientos.	disaster situations in the national territory; III. For humanitarian causes, a foreign person that due to a risk to their health or life, or due to a situation of vulnerability cannot be returned to their country of origin or cannot continue on their journey, IV. For a cause of force majeure, a foreign person on board aircrafts or vessels that arrive to national territory in international transit, and due to technical contingency or weather conditions, require entrance and to remain in the country until the restoration or improvement of these conditions. In these cases, the certificate of admission should be sustained in the formal appearance of the foreigner, documentation of public or private institutions and the prior consultation in the migratory control lists. It is considered that a foreigner does not meet the requirements of admission when they cannot provide what is required in some of the lists of procedural requirements in articles 23, 24, 25, 26, and 27 of the Guidelines.

Artículo 50. Ficha del trámite para la regularización de situación migratoria en la modalidad, regularización por razones humanitarias.	Article 50. List of procedural requirements for the regularization of the migratory situation in the modality, regularization for humanitarian reasons.

Caso en el que se presenta:	Aplicable a la persona extranjera en situación migratoria irregular que se ubica en alguna de las hipótesis de razones o causas humanitarias señaladas en el apartado de criterios de la presente ficha de trámite.
Fundamento jurídico:	Artículos 3, fracciones I, VI, XI, XXVII, XXIX; 10, 16 fracción III; 39, fracción I; 43, 52, fracciones V, VII, VIII y IX, 66, 74, 77, 79, 92, fracciones I y III; 126, 128, 130, 131, 132, fracción I; 133 fracciones I, II, III, IV y V, 135, 136, 144 fracciones II, III, IV, V y VI; y 145 de la Ley; 1, 3, fracciones VI y VII; 143, 144, 145, 146, 147, 148 y 182 del Reglamento.
Forma de presentación:	Formato para solicitar trámite migratorio de estancia.
Lugar donde se presenta:	Oficinas de atención a trámites del Instituto.
Monto de los derechos:	El previsto en el artículo 10 de la Ley Federal de Derechos. El visitante por razones humanitarias se encuentra exento de pago, en términos del artículo 16 de la Ley Federal de Derechos.
Plazo máximo de resolución:	30 días naturales.
Vigencia de la autorización:	1 año.

Case in which it is presented:	Applicable to a foreign person in an unlawful migratory situation that is located in any of the hypotheses of humanitarian reasons or causes indicated in the section of criteria of this list of procedural requirements.
Legal grounds:	Articles 3, sections I, VI, XI, XXVII, XXIX; 10, 16 section III; 39, section I; 43, 52, sections V, VII, VIII y IX, 66, 74, 77, 79, 92, sections I y III; 126, 128, 130, 131, 132, section I; 133 sections I, II, III, IV and V, 135, 136, 144 sections II, III, IV, V and VI; and 145 of the Law; 1, 3, sections VI and VII; 143, 144, 145, 146, 147, 148 and 182 of the Regulation.

Excepciones al artículo 15-A de la LFPA:	Se requiere original de todos los documentos señalados en requisitos.

Requisitos:

1. Original y copia del pasaporte, del documento de identidad y viaje o del documento oficial expedido por autoridad de su país de origen, que contenga cuando menos, nombre de la persona extranjera, nacionalidad, fecha de nacimiento y fotografía.
2. Documento migratorio en caso de que la persona extranjera haya tenido una condición de estancia.
3. Comprobante del pago de la multa que le haya determinado la autoridad conforme a lo previsto en el artículo 145 de la Ley, salvo que se encuentren en alguno de los supuestos que dicho precepto expresamente señala como exentos.
4. Presentar los documentos que acrediten alguno de los siguientes supuestos:
    a. Documental pública expedida por autoridad competente de la que se derive la calidad de víctima o testigo de un delito grave cometido en territorio nacional, o acuerdo emitido por la autoridad migratoria con base en la manifestación de la persona extranjera y demás elementos de los que se derive el carácter de testigo o víctima de ésta;
    b. Constancia de recibo de la solicitud por parte de la SRE, cuando se trate de un solicitante de asilo político;
    c. Copia de la constancia emitida por la COMAR, cuando se trate de un solicitante de la condición de refugiado;
    d. Constancia de inicio del procedimiento de determinación de apátrida emitida por la autoridad migratoria, cuando se trate de determinación de apátrida;

Form of presentation:	Form to request migratory procedure of stay.
Place where it is presented:	Offices of procedural assistance of the Institute
Sum charged for the rights:	Provided in article 10 of the Federal Law of Rights. The visitor for humanitarian reasons is exempt from payment, in terms of article 16 of the Federal Law of Rights.
Maximum term of resolution:	30 calendar days.
Validity of the authorization:	1 year.
Exceptions to article 15-A of the LFPA:	It is required to provide an original of all documents indicated in the requirements.

Requirements:

1. Original and copy of passport, of the identity and travel document or of the official document issued by the authority of the country of origin, containing at

e. Documental que acredite el inicio de procedimiento de restitución emitido por la SRE, o bien por la autoridad judicial, en el caso de niñas, niños o adolescentes que se encuentren sujetos a un procedimiento de sustracción y restitución internacional, o
f. Documento emitido por institución pública que acredite el grado de vulnerabilidad que dificulte o haga imposible la deportación o retorno asistido de la persona extranjera; recomendación de la COMAR o del Alto Comisionado de las Naciones Unidas para los Refugiados, o solicitud en papel membretado de la representación consular o diplomática del país de origen o residencia del menor o petición por escrito del Sistema Nacional para el Desarrollo Integral de la Familia, Sistemas Estatales DIF o del Distrito Federal, en el caso de niñas, niños y adolescentes migrantes no acompañados cuando así convenga a su interés superior.

5. Original de oficio de salida para regularización cuando se trate de una persona extranjera que acreditó los demás requisitos en la estación migratoria.

Criterios de resolución:

I. Se podrá autorizar la regularización de situación migratoria en la condición de estancia de visitante por razones humanitarias a la persona extranjera que se encuentre en alguno de los siguientes supuestos:
   a. Ser identificado por la autoridad migratoria o por la autoridad competente, como víctima o testigo de algún delito grave cometido en territorio nacional
   b. Ser niña, niño o adolescente que se encuentre sujeto a un procedimiento de sustracción y restitución internacional;
   c. Que su grado de vulnerabilidad dificulte o haga imposible su deportación o retorno

least the name of the foreign person, nationality, date of birth and photograph.

2. Migratory document in case the foreigner has had a condition of stay.
3. Proof of payment of the fine that the authority has determined in accordance with the provisions of article 145 of the Law, unless they are in any of the situations expressly stated as exempt.
4. Present the documents that are proof of any of the following situations:
   a. Public documentation issued by the competent authority from which the quality of victim or witness of a grave crime committed in national territory is derived, or agreement issued by the migration authority based on the presentation of the foreign person and other elements from which the character of the witness or victim are derived;
   b. Proof of receipt of the request by the SRE, in the case of an applicant for political asylum;
   c. Copy of the certificate issued by COMAR, in the case of an applicant for refugee status;
   d. Proof of initiation of the statelessness determination procedure issued by the migration authority, in the case of determination of statelessness;
   e. Documentary evidence of the initiation of the restitution procedure issued by the SRE, or by the judicial authority, in the case of children or adolescents who are subject to a procedure of abduction and international restitution, o
   f. Document issued by a public institution that certifies the degree of vulnerability that hinders or makes impossible the deportation or assisted return of the

asistido, como los casos que se indican de manera enunciativa más no limitativa:

i. Niñas, niños, y adolescentes migrantes no acompañados cuando así convenga a su interés superior y en tanto se ofrecen alternativas jurídicas o humanitarias temporales o permanentes, al retorno asistido;
ii. Mujeres embarazadas, adultos mayores, personas con discapacidad o indígenas;
iii. Personas extranjeras que acrediten sufrir una alteración grave a la salud y el traslado a su país implique riesgo a su vida, o
iv. Personas extranjeras en situación de peligro a su vida o integridad por violencia o desastre natural.

d. Solicitantes de la condición de refugiado, de asilo político o que inicien procedimiento para la determinación de apátrida, hasta en tanto concluye el procedimiento respectivo.

II. La autoridad migratoria tomará en cuenta lo previsto en los ordenamientos federales y estatales vigentes en materia penal sobre delitos graves, para emitir el acuerdo a que hace referencia el inciso a, del numeral 4 del apartado de requisitos de la presente ficha de trámite.

III. En la entrevista que realice la autoridad migratoria a la persona extranjera interesado, se determinará el monto de la multa a la que se haga acreedor considerando los elementos previstos en el artículo 73 de la LFPA y lo previsto en el artículo 145 de la Ley.

IV. En el caso de personas extranjeras titulares de oficio de salida para regularización, no se llevará a cabo la entrevista y no se presentarán requisitos, salvo los señalados en los numerales 1 y 5, en el entendido de que los demás se acreditaron en la estación migratoria.

foreign person; recommendation of the COMAR or the United Nations High Commissioner for Refugees, or request on letterhead of the consular or diplomatic representation of the country of origin or residence of the minor or written request of the National System for the Integral Development of the Family, State DIF systems or those of the Federal District, in the case of unaccompanied migrant children and adolescents when this is in their best interest.

5. Original departure document for regularization in the case of a foreign person who accredited the other requirements in the migratory station.

Resolution Criteria:

I. The regularization of migratory status in the condition of visitors stay for humanitarian reasons may be authorized to the foreign person who is in any of the following situations:
   a. Be identified by the immigration authority or by the competent authority, as a victim or witness of a grave crime committed in national territory;
   b. Be a child or adolescent who is subject to a procedure of abduction and international restitution;
   c. That their degree of vulnerability makes it difficult or impossible for them to be deported or have an assisted return, as in the cases that are indicated but not limited to:
      i. Unaccompanied migrant children and adolescents when it is in their best interest and while temporary or permanent legal or humanitarian alternatives are offered, to assisted return;

V. En caso de resolución positiva, la autoridad migratoria informará a la persona extranjera que presente los requisitos correspondientes, para la expedición de documento migratorio por autorización de condición de estancia en términos del artículo 37 de los presentes Lineamientos.

VI. Si la resolución es negativa, deberá otorgar un plazo de hasta treinta días naturales a efecto de que la persona extranjera salga del territorio nacional. En ningún caso, el plazo señalado será inferior al de quince días hábiles, para dejarle a salvo su derecho de interponer recurso de revisión

Información importante para el usuario:

- La situación migratoria de un migrante no impedirá el ejercicio de sus derechos y libertades reconocidos en la Constitución, en los tratados internacionales de los cuales sea parte el Estado mexicano.
- En los casos de autorización, se expedirá tarjeta de visitante por razones humanitarias por una temporalidad de un año. Si la persona extranjera requiere mayor temporalidad para concluir el proceso o no han concluido las causas que motivaron la autorización, podrá solicitar las renovaciones que sean necesarias.

ii. Pregnant women, older adults, individuals with disabilities, or indigenous persons;
iii. Foreign persons who prove suffering a grave health condition and the transfer to their country implies risk to their life, or
iv. Foreign persons in situations dangerous to their life or integrity due to violence or natural disaster.

d. Applicants for refugee status, political asylum or who initiate proceedings for the determination of statelessness, until the respective procedure ends.

II. The immigration authority will take into account the provisions of current federal and state regulations in criminal matters regarding grave crimes, in order to issue the agreement referred to in subparagraph a, of numeral 4 of the list of procedural requirements section.

III. In the interview conducted by the immigration authority with the interested foreign person, the amount of the fine for which the foreign person is responsible will be determined, considering the elements set forth in article 73 of the LFPA and the provisions of article 145 of the Law.

IV. In the case of foreign holders of an official departure document for regularization, the interview will not be conducted and no requirements will be presented, except those indicated in numerals 1 and 5, with the understanding that the others were accredited at the immigration station.

V. In the event of a positive resolution, the migration authority will inform the foreign person to submit the corresponding requirements, for the issuance of a migratory document by authorization of condition in terms of article 37 of these Guidelines.

VI. If the resolution is negative, a period of up to thirty calendar days will be granted for the foreign person to

	leave the national territory. In no case will the aforementioned period be less than fifteen working days, in order to safeguard their right to file an appeal for review. **Important Information for the User:** ● The immigration status of a migrant will not impede the ability to exercise their rights and freedoms recognized in the Constitution or in the international treaties of which the Mexican State is a party. ● In the cases of authorization, a card for visitor for humanitarian reasons will be issued for a period of one year. If the foreign person requires more time to complete the process or the causes that motivated the authorization have not concluded, the person can apply for the necessary renewals.

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Instituto para las Mujeres en la Migración (IMUMI), A.C.
Institute for Women in Migration

I, Molly Goss, hereby declare that I am fluent in the English and Spanish languages, and I certify that the above excerpts of the Mexican Law of Migration, Regulations of the Law of Migration, and Guidelines for Migration Processes and Procedures in the English language are true and accurate translations of the above excerpts of the Mexican Law of Migration, Law of Migration Regulations, and Guidelines for Migration Processes and Procedures in the Spanish language.

Executed on 4th of June, 2019, in Mexico City, Mexico.

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