

“HOW IRANIANS ARE BARRED FROM THE WEST THROUGH REACTIVE
VISA POLICIES FUELED BY POLITICS”

*Nicolas Garon**

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I am an advocate for inclusion, equity, and freedom and presenting the struggles of those afar to my colleagues here in the United States. I thank all my brave friends in Iran for helping inspire pieces of this article, and all the compassionate ears who listened. Thank you to Sophie, my professors along the way, and my friends who face retribution should they be named.

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I. INTRODUCTION

In its Q3 2022 Global Ranking, the Henley Passport Index ranked the passport of Iran 102nd out of 112.¹ The ranking is based on the number of each citizen’s visa-free destinations via ordinary passports. Through Iran’s passport, visa-free access for Iranians is granted by only a few nations in the entire Americas,² one of those nations being an ally of Iran: Venezuela.³ Zero countries in the European landmass, excluding the Eurasian nations of Georgia⁴ and Turkey,⁵ offer visa-free access. Africa, Oceania, and Asia are the only populated continents which contain at least one nation that provides visa-free access to Iranian citizens.⁶ At face value, this creates extreme difficulty for Iranian citizens due to the low volume of visa-free destinations.

The lack of visa-free travel is only the most visible aspect of the scrutiny that Iranian nationals experience relative to pursuit of travel. Regardless of visa type, travel to countries in the West is made seemingly impossible for Iranians. Numerous systematic challenges, such as nationality bias in visa and travel policy, abnormally extensive visa stipulations, and difficulties in visa processes against the Iranian people hinder them at every level. Additionally, during massive internal conflict and looming threats to the well-being of Iran’s people, European embassies in Tehran have not only made no effort to enhance access to visas and consular assistance to Iranian nationals but have toughened the process. This article will primarily focus on the nonimmigrant entry bias against Iranians, as well as visa policies from the United States and European Union, the implications of such policies, and overlapping tendencies in visa regimes. More specifically, the complicated visa process that limits Iranians’ access to transit and other visa types, the stigma and bias faced, and the questionable national security benefits of the U.S.’s actions against Iranians. It also draws attention to the increased scrutiny of Iranian citizens by European Embassies during protests, as well as the motives behind the implementation of transit visa policies. Further, this article highlights the defensive attitudes of foreign governments towards potential future asylum claims, and an ethical analysis of how and why certain visa laws/policies are challenging for Iranians, and suggested remedies.

¹ *The Official Passport Index Ranking*, HENLEY & PARTNERS, <https://www.henleyglobal.com/passport-index/ranking> (last visited Jan. 18, 2023).

² *Iran Passport Dashboard*, PASSPORT INDEX, <https://www.passportindex.org/passport/iran/> (last visited Jan. 18, 2023).

³ Moises Rendon, Antonio De La Cruz, & Claudia Fernandez, *Understanding the Iran-Venezuela Relationship*, CTR. FOR STRATEGIC & INT’L STUD. (June 4, 2020), <https://www.csis.org/analysis/understanding-iran-venezuela-relationship>; *Iran Passport Visa Free Countries List 2023*, VISAINDEX.COM, <https://visaindex.com/visa-requirement/iran-passport-visa-free-countries-list/> (last visited Jan. 18, 2023).

⁴ *Georgian Visa Information*, MINISTRY OF FOREIGN AFFS. OF GEOR., <https://www.geoconsul.gov.ge/en/entering-georgia> (last visited Jan. 18, 2023).

⁵ *Visa Information For Foreigners*, REPUBLIC OF TÜRKIYE MINISTRY OF FOREIGN AFFS., <https://www.mfa.gov.tr/visa-information-for-foreigners.en.mfa> (last visited Jan. 18, 2023).

⁶ *Id.*

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II. CHALLENGES OF THE U.S. VISA REGIME FOR IRANIANS

U.S. law prevents nationality-based bias.⁷ Nevertheless, instances of this form of disenfranchisement appear often. Executive decisions, specifically the 2017 Trump Travel Bans, show examples of nationality-based disenfranchisement from the U.S. government against Iranians and others.⁸ Through both executive decisions and visa bias, Iranians have fallen victim to nationality bias in visa issuance with a lack of legitimate justification.

The travel bans gained publicity globally, were condemned by over 100 foreign policy experts,⁹ and resulted in a dissent by a majority of surveyed American citizens.¹⁰ The legal issues within faced prompt checks via proposed legislation,¹¹ as well as judiciary injunction wherein bans were blocked.¹² Through checks and balances, this form of bias on grounds of nationality and religion collided with effective and quick pushback. However, large citizenship-bias in visa decision-making against Iranians, and other nationals, occurs in high quantities behind doors with little to no oversight, nor the right to appeal for the applicant.¹³

The rejections of U.S. visas by consular officers are unreviewable and hence virtually absolute, with Iranians being denied at a greater rate than other countries.¹⁴ Prior to the implementation of travel bans, visa refusals for Iranians and nationals from other countries affected by the bans was already significant,¹⁵

⁷ Civil Rights Division, *Federal protections against national origin discrimination*, U.S. DEP. 'T OF JUST. (July 11, 2023), <https://www.justice.gov/crt/federal-protections-against-national-origin-discrimination-1>.

⁸ The University of Texas Immigration and Ethnic History Society, *Muslim Travel Ban*, IMMIGR. HIST. (Oct. 30, 2023, 5:09 PM), <https://immigrationhistory.org/item/muslim-travel-ban/>; Kathryn Watson & Zak Hudak, *Trump says he'd bring back "travel ban" that's "even bigger than before,"* CBS NEWS (Oct. 30, 2023, 5:16 PM) <https://www.cbsnews.com/news/trump-bring-back-travel-ban-muslim-countries/>; *Adjusted Refusal Rate – B-Visas Only By Nationality, Fiscal Year 2019*, U.S. DEP. 'T OF STATE – BUREAU OF CONSULAR AFFS., <https://travel.state.gov/content/dam/visas/statistics/non-immigrant-statistics/refusalrates/fy19.pdf> (last visited Oct. 30, 2023).

⁹ Lara Jakes, *Trump's Revised Travel Ban Is Denounced by 134 Foreign Policy Experts*, N.Y. TIMES (Mar. 11, 2017), <https://www.nytimes.com/2017/03/11/us/politics/trump-travel-ban-denounced-foreign-policy-experts.html>.

¹⁰ Jennifer Agiesta, *CNN/ORC poll: Majority oppose Trump's travel ban*, CNN (Feb. 3, 2017, 4:04 PM), <https://www.cnn.com/2017/02/03/politics/donald-trump-travel-ban-poll/index.html>.

¹¹ See Press Release, Ilhan Omar, House of Representatives, House Passes NO BAN Act to Prevent Future Muslim Bans (Apr. 21, 2021), <https://omar.house.gov/media/press-releases/house-passes-no-ban-act-prevent-future-muslim-bans>.

¹² Zainab Ramahi, *The Muslim Ban Cases: A Lost Opportunity for the Court and A Lesson for the Future*, 108 CAL. L. REV. 557, 559 (2020).

¹³ Donald S. Dobkin, *Challenging the Doctrine of Consular Nonreviewability in Immigration Cases*, 24 GEO. IMMIGR. L.J. 113, 119 (2010).

¹⁴ *Adjusted Refusal Rate – B-Visas Only By Nationality, Fiscal Year 2018*, U.S. DEP. 'T OF STATE – BUREAU OF CONSULAR AFFS., <https://travel.state.gov/content/dam/visas/statistics/non-immigrant-statistics/refusalrates/fy19.pdf> (last visited Jan. 19, 2023).

¹⁵ See One-Pager, Chris Coons, Senate, NO BAN Act, National Origin-Based Antidiscrimination for Nonimmigrants Act, <https://www.coons.senate.gov/imo/media/doc/no%20ban%20act%20one-pager.pdf> (last visited Jan. 19, 2023).

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but a sharp rise occurred during the bans and in the period that followed their injunction.¹⁶ Though the bans were stopped, the refusals still increased, specifically in B visa refusals.¹⁷ Those nationals from countries such as Syria and Iran have experienced fewer dismissals during President Biden’s administration. This may suggest refusal trends are consistently higher for these nationalities but can also increase because of guidelines sent to foreign consular posts by specific administrations to reflect their immigration stances, rather than remaining impartial and fair.

Such refusals fail to be subjected to multi-agency oversight, from departments other than the U.S. State Department visa office and are only available under request from a consular officer. Doctrine, such as consular nonreviewability, prevents the applicant from having the right of judicial review.¹⁸ In some cases, U.S. policy is not to respond to applicants after denials, including situations in which they are denied due to immigrant intent issues.¹⁹ In somewhat of a globally anomaly, U.S. nonimmigrant visas refusals are hard to overturn, whereas Schengen visa appeals can be appealed, and an overturned decision grants a visa immediately.²⁰

A. Lack of Visa-Free Transit and No International Sterile Zone

The U.S. serves as a land of opportunity for many things, and, at minimum, as a strategic hub for connecting flights. Eight of the ten busiest airports in the world by traffic are in the U.S.²¹ Transiting through the U.S. connects many of those living in the Eastern Hemisphere to destinations in the Caribbean, Central and South America, Oceania, and more. Iranian travelers wishing to visit some of the few nations in the western hemisphere—that they are permitted to without visas—may subject them to a layover in the U.S., Europe, or Canada, which makes Caribbean, Latin American, and South American travel impossible without visas.

Many international airports around the world have an international zone, sometimes referenced as the international area or international transit zone. Passengers arriving in a country via air are usually able to disembark from the original flight and proceed to the next flight without passing through passport

¹⁶ *Adjusted Refusal Rate – B-Visas Only By Nationality, Fiscal Year 2017*, U.S. DEP.’T OF STATE – BUREAU OF CONSULAR AFFS., <https://travel.state.gov/content/dam/visas/statistics/non-immigrant-statistics/refusalrates/fy%2017.pdf> (last visited Jan. 19, 2023).

¹⁷ *Adjusted Refusal Rate – B-Visas Only By Nationality, Fiscal Year 2020*, U.S. DEP.’T OF STATE – BUREAU OF CONSULAR AFFS., <https://travel.state.gov/content/dam/visas/statistics/non-immigrant-statistics/refusalrates/fy20.pdf> (last visited Jan. 19, 2023).

¹⁸ Dobkin, *supra* note 13.

¹⁹ *Visa Refusals*, U.S. EMBASSY & CONSULATES IN THE U.K., <https://uk.usembassy.gov/visas/non-immigrant-visa-faqs/visa-refunds/> (last visited Sept. 28, 2023).

²⁰ *Visa Rejected?*, STUDY AND LIFE IN GERMANY, <https://germanystudy.net/visa-rejected/comment-page-2/> (last visited Sept. 28, 2023).

²¹ *List of busiest airports by passenger traffic*, WIKIPEDIA (2023), https://en.wikipedia.org/w/index.php?title=list_of_busiest_airports_by_passenger_traffic&oldid=1132262627 (last visited Jan. 19, 2023).

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control. This area has simply been defined as the “area you stay in if you are changing planes during a transfer.”²² Some countries consider accessing and entering this zone as not entering the country, since the passenger is never processed through passport control and admitted by an officer at the entry port.²³

Many countries with large airports such as Brazil,²⁴ the United Arab Emirates,²⁵ and Panama,²⁶ exclude any transit visa requirements if a traveler's only intention is transiting without leaving the international zone, usually within a time frame of four to twenty-four hours, allowing them an airside privilege. Russia, for example, does have a transit visa for multi-day layovers, yet one is not required if transiting for under twenty-four hours.²⁷

During the global lockdown of COVID-19, travel to the EU was limited for many nationalities, where some could only enter for compelling reasons.²⁸ Passengers whose only purpose in the Schengen area was transiting in the international zone for under twenty-four hours satisfied the requirement of a “compelling reason” and could also forgo any vaccination requirements.²⁹ This highlights the significance, and perhaps even necessity of transiting, and shows that liberal transit policy is not impossible for governments to implement. In other words, transit entry requirements can be mended, perhaps easily. Further, the reason entry documents like vaccination proof and visas are typically not required in the international zone is because access to this zone does not entitle one to access the country (formally entering past immigration), so entry requirements may be irrelevant.

Whether a country has sovereignty over the international zone, and if the area is truly a “no-man's land” has been disputed.³⁰ Understandably, these zones are handled differently between countries.³¹ Nevertheless, governments in the EU

²² *Leaving the international transit zone at Amsterdam Schiphol Airport*, GOV'T OF THE NETHERLANDS, <https://www.netherlandsworldwide.nl/transiting-airport-netherlands/international-transit-zone-schiphol> (last visited Jan. 19, 2023).

²³ *Id.*

²⁴ *Visa for transit in Brazil*, MINISTÉRIO DAS RELAÇÕES EXTERIORES (May 15, 2023, 9:36 AM), <https://www.gov.br/mre/pt-br/embaixada-nova-delhi/embassy-of-brazil-in-new-delhi/visas/transit-visa-vivis>.

²⁵ *Less than 4 hours*, ABU DHABI AIRPORT, <https://www.abudhabiairport.ae/en/passenger-guide/transit/things-to-do/less-than-4-hours> (last visited Jan. 19, 2023).

²⁶ *Frequently Asked Questions*, PANAMA CONSULATE, <https://panamamissionindia.com/frequently-asked-questions-panama-consulate-india/> (last visited Jan. 19, 2023).

²⁷ *Transit Visa*, CONSULAR SECTION OF THE RUSSIAN EMBASSY IN POLAND, <https://warsaw.kdmid.ru/en/russian-visa/transit-visa/> (last visited Jan. 21, 2023).

²⁸ *A comprehensive guide to travel restrictions across Europe*, POLITICO (Dec. 3, 2021, 11:32 AM), <https://www.politico.eu/article/coronavirus-guide-europe-travel-restrictions-explained/>.

²⁹ *Certificate to Travel*, FRANCE IN AUSTRALIA, https://au.ambafrance.org/IMG/docx/compelling_reasons.docx?14152/1402e73b2d18225e482961f5a353d318c5983127 (last visited Jan. 19, 2023).

³⁰ Jesús Duva, *The myths behind airport transit areas: are they really a no man's land?*, EL PAÍS ENGLISH EDITION (2013), https://english.elpais.com/elpais/2013/06/27/inenglish/1372357556_111094.html (last visited Jan 19, 2023).

³¹ *Id.*

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have explicitly mentioned that transiting passengers in the international zone have not yet entered the county.³²

However, the U.S. is different and cannot allot the benefit of unencumbered transit. Somewhat of a global anomaly, the U.S. and Canada do not have these international zones within their airports,³³ whereas Schengen area international airports do. Because there are no zones like this in U.S. international airports, every passenger is required to “clear” immigration upon arrival.³⁴ U.S. visa policy requires a C type transit visa for those whose intentions are only international transit,³⁵ unless they are a citizen of Canada or Bermuda, or eligible for a visa-waiver.³⁶ The U.S. requires an in-person application process for a transit visa, meaning applicants must appear at a U.S. Consulate or Embassy.³⁷ There is no U.S. e-visa for Iranian citizens, which is a visa that can be completed fully online and requires no in-person interview or document drop-off.

The Immigration and Nationality Act requires interviews to be conducted for applicants.³⁸ This is particularly challenging for Iranians, as they, and North Korea, are one of two total countries in the world, with a population of over three million, who do not host a U.S. Embassy or Consulate.³⁹

Some applicants have found relief in the visa process through the U.S. State Department's waiver of mandated via interviews.⁴⁰ However, those who are eligible are few, and first-time Iranian applicants are not eligible.⁴¹ Applicants within some programs can fulfill the requirements for certain eligible visa types, such as Fulbright, AMIDEAST, TechWomen, and U.S. State Department exchange programs. However, Fulbright Grants are not available to Palestinian Territories (Gaza), Iran, Iraq, Lebanon, Libya, Qatar, Syria, or Yemen.⁴² AMIDEAST Iran has

³² GOV'T OF THE NETHERLANDS, *supra* note 22; *Airport Transit Visa*, FRANCE-VISAS.GOUV.FR, <https://france-visas.gouv.fr/en/airport-transit-visa> (last visited Nov. 4, 2023).

³³ Ben Schlappig, *Clearing Immigration At US Airports: How It Works*, ONE MILE AT A TIME (July 23, 2023), <https://onemileatathetime.com/guides/clearing-immigration-us-airport/>.

³⁴ *Id.*

³⁵ *Transiting the United States*, U.S. EMBASSY & CONSULATES IN THE U.K., <https://uk.usembassy.gov/visas/transiting-the-united-states/> (last visited Jan 19, 2023).

³⁶ *Id.*

³⁷ *Transit Visa*, U.S. DEP.'T OF STATE – BUREAU OF CONSULAR AFFS., <https://travel.state.gov/content/travel/en/us-visas/other-visa-categories/transit.html> (last visited Jan 19, 2023).

³⁸ 8 U.S.C. § 1202(h) (2021).

³⁹ *Countries Where There Are No US Embassy or Consulate*, IMMIGR. DIRECT, <https://www.immigrationdirect.com/immigration-articles/countries-where-there-is-no-us-embassy-or-consulate/> (last visited Jan. 19, 2023).

⁴⁰ *Important Announcement on Waivers of the Interview Requirement for Certain Nonimmigrant Visas*, U.S. DEP.'T OF STATE – BUREAU OF CONSULAR AFFS., <https://travel.state.gov/content/travel/en/news/visas-news/important-announcement-on-waivers-of-the-interview-requirement-for-certain-nonimmigrant-visas.html> (last visited Jan. 19, 2023).

⁴¹ *Id.*

⁴² U.S. FULBRIGHT PROGRAM, <https://us.fulbrightonline.org/> (last visited Sept. 28, 2023).

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no options for Iranians who want to apply,⁴³ nor does TechWomen.⁴⁴ Further, as of May 30, 2023, Iran is not an option on the State Department’s exchange program home country dropdown menu.⁴⁵ Once again, the U.S. government is responsible for giving privileges to some countries and disenfranchising others.

A question to be answered is why a transit visa with merely the purpose of “immediate and continuous transit through the U.S.,” is needed, with such extensive requirements.⁴⁶ Screening U.S. visa applicants is indeed important and has had benefits, such as tracking overstay possibilities in the U.S.⁴⁷ Requirements for transit visas in the U.S. seem to be non-discriminatory because universal requirements exist for all passengers, however, they are exceedingly harder for Iranians to meet.

B. Consular Desert: No U.S. Embassy in Iran

Relative to the strain of the in-person requirement of the application process for U.S. visas, no physical diplomatic missions of the U.S. exist⁴⁸ inside Iran following the 1979 Hostage Crisis in Tehran,⁴⁹ creating a desert of consular assistance within the country. Iranians residing in Iran desiring a nonimmigrant visa to the United States must locate a consulate or embassy in a nation elsewhere to attend their interview, provided they are not interview-exempt.⁵⁰

Luckily, there are no restrictions in which consular area or district an applicant can apply.⁵¹ The U.S. Virtual Embassy in Iran has confirmed that Iranians can apply for a nonimmigrant visa in any U.S. embassy or consulate that processes nonimmigrant visas, further mentioning that “U.S. Embassy Ankara, U.S. Embassy Yerevan, and U.S. Consulate General Dubai are staffed with Farsi-speaking consular officers who are most familiar with Iranian applicants and country conditions.”⁵² This is a benefit, as consular functions of diplomatic missions are usually reserved for residents of that consular district.⁵³

⁴³ *Find a Program for You*, AMIDEAST, <https://www.amideast.org/course-finder> (last visited Sept. 28, 2023).

⁴⁴ *TechWomen Eligibility and Application Overview*, EXCHANGE PROGRAMS, <https://exchanges.state.gov/non-us/program/techwomen> (last visited Sept. 28, 2023).

⁴⁵ BUREAU OF EDUC. AND CULTURAL AFFS. EXCH. PROGRAMS, <https://exchanges.state.gov/non-us/> (last visited Sept. 28, 2023).

⁴⁶ U.S. DEP.’T OF STATE, *supra* note 37.

⁴⁷ *Homeland Security: Overstay Tracking Is a Key Component of a Layered Defense*, U.S. GOV’T ACCOUNTABILITY OFF. (Oct. 16, 2023), <https://www.gao.gov/products/gao-04-170t>.

⁴⁸ *Why Virtual Embassy Tehran?*, U.S. VIRTUAL EMBASSY IRAN, <https://ir.usembassy.gov/tehran/> (last visited Jan. 19, 2023).

⁴⁹ *Timeline: U.S. Relations With Iran*, COUNCIL ON FOREIGN RELS., <https://www.cfr.org/timeline/us-relations-iran-1953-2022> (last visited Jan. 19, 2023).

⁵⁰ *Nonimmigrant Visas*, U.S. VIRTUAL EMBASSY IRAN, <https://ir.usembassy.gov/visas/nonimmigrant-visas/> (last visited Jan. 19, 2023).

⁵¹ *Id.*

⁵² *Id.*

⁵³ Vienna Convention on Consular Relations art. 5, Apr. 24, 1963, 21 U.S.T. 77.

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C. *Wait Times*

Provided that a traveler can access and fully complete a U.S. visa application, an interview will be conducted, but often with extensive wait times. The U.S. State Department published a global Visa Wait Times webpage which states that the “estimated wait time to receive an interview appointment at a U.S. Embassy or Consulate can change weekly and is based on actual incoming workload and staffing.”⁵⁴ The list, which was last updated December 28, 2022, states that wait times for B1/B2 visas in Ankara are 226 days, in Dubai 456 days, and in Yerevan 351 days, with potentially shorter wait times depending on the visa types.⁵⁵

D. *Isolated Without a Passport in Country of Application*

Provided that an Iranian applicant can secure and attend an appointment, they will be trapped within the country of application for the duration of the visa processing time, as their travel document will be in possession of the diplomatic post during processing.⁵⁶ The time that Iranians must spend waiting in the country of application tacks onto the wait times listed in the previous section. Additionally, the time waiting for processing and delivery may take weeks,⁵⁷ which is not feasible for most who work or have full-time obligations of any kind. Unless they are exempt, no digital, e-visa,⁵⁸ or visa waiver⁵⁹ from the U.S. is available to Iranian citizens, meaning that in-person interviews paired with other time-consuming requirements previously mentioned must be completed for every application for any type of visa.⁶⁰

E. *Scrutiny and High Chances of Refusal*

In recent years, U.S. federal executive orders could be considered to have stacked the odds against Iranians for obtaining visas and traveling to the U.S.

⁵⁴ *Global Visa Wait Times*, U.S. DEP.’T OF STATE – BUREAU OF CONSULAR AFFS. (Nov. 20, 2023), <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/global-visa-wait-times.html>.

⁵⁵ *Id.*

⁵⁶ *Processing Times and Return of Passport*, U.S. EMBASSY & CONSULATES IN THE U.K., <https://uk.usembassy.gov/visas/fiancee-2/processing-and-return-of-passport/> (last visited Oct. 30, 2022).

⁵⁷ *Processing Times & Return of Passport*, U.S. EMBASSY & CONSULATES IN THE U.K., <https://uk.usembassy.gov/visas/tourism-visitor/processing-times/#:~:text=If%20a%20visa%20application%20is,courier%20without%20attending%20an%20interview#:~:text=If%20a%20visa%20application%20is,courier%20without%20attending%20an%20interview> (last visited Sept. 28, 2023).

⁵⁸ *Temporary (Nonimmigrant) Workers*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (Jan. 11, 2023), <https://www.uscis.gov/working-in-the-united-states/temporary-nonimmigrant-workers>.

⁵⁹ *Visa Waiver Program*, U.S. DEP.’T OF STATE – BUREAU OF CONSULAR AFFS., <https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visa-waiver-program.html> (last visited Feb. 7, 2023).

⁶⁰ 8 U.S.C. § 1202(h) (2021).

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altogether, as seen in U.S. State Department data.⁶¹ Iranians are disenfranchised for nonimmigrant travel into the U.S, but what must be discerned is if these measures can be justified by national security, foreign affairs, or other interests, rather than stigma.

During the 2017 implementation of the “Trump Travel Bans,”⁶² which chronologically consisted of “EO-1 to EO-4,” Iranians were added in the first group of banned nations⁶³ and were never removed in the three subsequent executive orders as other nationalities were.⁶⁴ Thousands of Iranians faced family separations due to the bans,⁶⁵ including an Iranian mother whose five-year-old child, a U.S. citizen, was detained in an American airport and deemed to be a possible security risk during the travel bans.⁶⁶ These bans displayed nationality-based bias that proposed federal legislation sought to eliminate.⁶⁷

Debate regarding the causation for barring Iranians from travel under EO2 (Executive Order 13780) proved to be a massive flaw in logic. The reason cited for including Iran was that “[t]he government in Iran regularly fails to cooperate with the United States Government in identifying security risks; is the source of significant terrorist threats; is state sponsor of terrorism; and fails to receive its nationals subject to final orders of removal from the United States.”⁶⁸ Despite this, the travel bans still allowed Iranians under student (F and M categories) and exchange visitor (J category) visas to enter during the timeframe of the travel bans.⁶⁹ Judicial opinion linked the severity of these accusations with entry clearance for these categories as contradictory.⁷⁰ The injunction in *State v. Trump* blocked EO2 because federal district Judge Derrick K. Watson felt the bans were

⁶¹ BUREAU OF CONSULAR AFFS., *supra* notes 14, 16–17.

⁶² International Refugee Assistance Project, *The Evolution of the Muslim Ban*, URBAN JUST. CTR. (Jan. 31, 2018), <https://refugeerights.org/wp-content/uploads/2018/02/The-Muslim-Bans-An-Overview-3.pdf>.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Saeed Jalili & Forough Alaei, *Thanks to Trump’s Travel Ban, Iranian Families Have Been Separated and Isolated For Years*, FOREIGN POL’Y (Apr. 6, 2020, 5:50 AM), <https://foreignpolicy.com/2020/04/06/trump-travel-muslim-ban-separated-iranian-families-have-self-isolation-for-years/>.

⁶⁶ *Iranian-origin boy, 5, detained at US airport for hours*, DECCAN CHRON. (Feb. 1, 2017), <https://www.deccanchronicle.com/world/america/010217/iranian-origin-boy-5-detained-at-us-airport-for-hours.html>.

⁶⁷ H.R. 2214, 116th Cong. (2020).

⁶⁸ *Fact Sheet: The President’s Proclamation on Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats*, HOMELAND SEC. (July 30, 2021), <https://www.dhs.gov/news/2017/09/24/fact-sheet-president-s-proclamation-enhancing-vetting-capabilities-and-processes>.

⁶⁹ *Muslim Ban Fact Sheet*, AM. CIV. LIBERTIES UNION, https://www.aclu.org/sites/default/files/field_document/muslim_ban_fact_sheet.pdf (last visited Jan. 19, 2023).

⁷⁰ See Press Release, David Y. Ige, Governor of Hawaii, & Douglas S. Chin, Hawaii Attorney General, Hawaii Blocks Third Trump Travel Ban (Oct. 17, 2017), <https://ag.hawaii.gov/wp-content/uploads/2017/01/news-release-2017-140.pdf>.

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discriminatory.⁷¹ Additionally, disagreement was raised on Trump’s lawful use of 8 U.S. Code § 1182, a statute giving latitude to the President to restrict entry against non-citizens,⁷² citing “inconsistencies and unexplained findings,” relative to the justification of these bans.⁷³ The justification of selection of the banned nations revealed gaping holes upon further analysis and seemed to show arbitrary selection. The relationship between policymaking decisions and the selected countries was called “obscure,” in the injunction.⁷⁴ Further, EO3 was found to lack sufficient evidence that such entry of nationals would be a detriment to the U.S.⁷⁵

The preservation of national security is a defense frequently raised by the U.S., as seen through the questionable justification for the invocation of § 1182 and in the first three words of EO1’s title, “Protecting the Nation.”⁷⁶ In these vicious bans against travel, data seems to show that addressing applicants largely on their nationality is flawed and of no advantageous benefit to U.S. national security. Hopefully, this finding will be reflected in visa review.

From 2008–2015, the odds of being murdered in a terrorist attack from a foreign-born terrorist in the U.S. were 1 in 104.2 million.⁷⁷ In 2015 alone, the murder rate in the U.S. was 1 in 25,000.⁷⁸ Further evidence, compiled at the request of the U.S. Department of Homeland Security (DHS), found citizenship to be “Likely an Unreliable Indicator of Terrorist Threat to the United States.”⁷⁹ This paper, although seemingly not widely discussed, may be the most supportive argument against the flawed practice of targeting nationalities in a punitive way by nationality alone in travel ambitions. Even through analysis in this paper of the terror groups from each nation blacklisted by EO1, Iran and three other countries were determined to “remain regionally focused” and were not identified in the list of nations whose radical groups “pose a threat of attacks in the United States.”⁸⁰ The report also added that few of the impacted countries have terrorist groups that

⁷¹ State v. Trump, 265 F. Supp. 3d 1140, 1145 (D. Haw. 2017).

⁷² *Id.*

⁷³ *Id.* at 1157.

⁷⁴ *Id.* at 1156 n.16.

⁷⁵ *Id.* at 1158.

⁷⁶ *Id.* at 1146.

⁷⁷ Alex Nowrasteh, *More Americans Die in Animal Attacks than in Terrorist Attacks*, CATO AT LIBERTY BLOG (Mar. 8, 2018, 12:07 PM), <https://www.cato.org/blog/more-americans-die-animal-attacks-terrorist-attacks>.

⁷⁸ FBI, *Uniform Crime Reporting Program: Murder* (2015), <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/offenses-known-to-law-enforcement/murder> (last visited Feb. 4, 2023).

⁷⁹ Federation of American Scientists, *Citizenship Likely an Unreliable Indicator of Terrorist Threat to the United States*, INTEL. RES. PROGRAM, <https://irp.fas.org/eprint/dhs-7countries.pdf> (last visited Jan. 19, 2023); Rick Jarvis, *DHS memo contradicts threats cited by Trump’s travel ban*, USA TODAY (updated Feb. 25, 2017, 3:36 PM) <https://www.usatoday.com/story/news/2017/02/24/dhs-memo-contradict-travel-ban-trump/98374184/>.

⁸⁰ Federation of American Scientists, *Citizenship Likely an Unreliable Indicator of Terrorist Threat to the United States*, INTEL. RES. PROGRAM, <https://irp.fas.org/eprint/dhs-7countries.pdf> (last visited Jan. 19, 2023).

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threaten the West.⁸¹ The report found that since March 2011, of the individuals related to federal terrorism allegations inspired by foreign terrorist organizations, over half were native-born U.S. citizens, and the remaining accused were foreign-born.⁸² No country represented more than 13.5% of the total.⁸³ Data from other sources show that Iran was not among the top origin countries for foreign-born individuals in the DHS report.⁸⁴ Further, data from 1975–2017 show that nationals from countries banned by EO1 have caused in zero deaths in U.S. domestic terrorism incidents, combined.⁸⁵

Through analyzed data, U.S. national security appears to face no large gains through nationality-based disenfranchisement against Iran. Despite this, higher visa refusal rates still followed. Two years following the 2017 birth of the travel bans, visa refusal rates reflected America’s unwillingness to accept Iranians. The U.S. State Department published three years of online data of B visa refusal ratings by nationality, each titled “Adjusted Refusal Rate – B-Visas Only By Nationality,” listing B visa refusals per nationality from 2019–2021.⁸⁶ Each year, the U.S. denied an astonishing volume of Iranian B visa applications. In 2019, 86.58% of Iranian citizens who applied for B visas were denied.⁸⁷ In 2020, Iran had the second highest number of denials of any nationality, behind Comoros, at a rate of 85.88%.⁸⁸

To illustrate how high these numbers are, from fiscal years 2013–2021, refusal averages for B2 visas exceeded 50% in only three of those years.⁸⁹ Further, the notion of the visa lottery being a true “lottery” might not apply equally to Iranians. Their chances of obtaining US visas were documented to be as substantial as almost one in seven.⁹⁰ In comparison, the odds of winning the visa lottery stand at about 11%,⁹¹ and its outcomes confer permanent residency,⁹² not solely short-term nonimmigrant travel. This reflects a significant divergence in status without a substantial difference in odds.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Alex Nowrasteh, *Terrorists by Immigration Status and Nationality: A Risk Analysis, 1975–2017*, CATO INSTITUTE (May 7, 2019), https://www.cato.org/sites/cato.org/files/pubs/pdf/pa_866_edit.pdf.

⁸⁶ BUREAU OF CONSULAR AFFS., *supra* notes 14, 16–17.

⁸⁷ BUREAU OF CONSULAR AFFS., *supra* note 14.

⁸⁸ BUREAU OF CONSULAR AFFS., *supra* note 17.

⁸⁹ *B2 Visa Stamping Statistics: Approval, Refusal Rates Worldwide, by Country*, VISA GRADER (Nov. 2023), <https://visagrader.com/visa-approvals-and-refusals/B2>.

⁹⁰ BUREAU OF CONSULAR AFFS., *supra* note 17.

⁹¹ Shilpa Malik & Boris Ignachkov, *H1B Lottery Results: The Definitive Guide on 2023–2024 Lottery Chances*, VISANATION (Oct. 12, 2023), <https://www.immi-usa.com/h1b-lottery-2016-results-chances-process/>.

⁹² *Green Card Through the Diversity Immigrant Visa Program*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (Jan. 11, 2018), <https://www.uscis.gov/green-card/green-card-eligibility/green-card-through-the-diversity-immigrant-visa-program>.

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In January 2021, President Biden revoked EO2⁹³ via his “Proclamation on Ending Discriminatory Bans on Entry to the United States.”⁹⁴ Sadly, a high number of refusals continued. 2021 saw a dip in the previously witnessed strictness of the U.S. State Department, as it denied only 66.81% of Iranian citizens’ B visas.⁹⁵

Pertaining to foreign policy gain and not domestic security, Anthony Cordesman, the Emeritus Chair in Strategy at the Center for Strategic and International Studies (CSIS), stated that the travel bans were “rushed out” and that “no effort was really made to consider what the strategic impact was in any of those seven countries.”⁹⁶

Another risk to be addressed when trying to understand the motive behind such bans and restrictions are overstay possibilities. The risk of an applicant overstaying a nonimmigrant visa is the most pertinent concern of a visa officer.⁹⁷ Luckily, this is not a problem for Iranian citizens. According to a 2020 DHS report, Iranian B visa holders did not have many overstay issues, with a total overstay rate of 7.74%.⁹⁸

Upon arrival at an international airport, security threats can be screened. The role of immigration officers⁹⁹ in applying varying security measures at airports, such as Dubai International (DXB),¹⁰⁰ along with the use of AI, can all offer benefits.¹⁰¹ While some countries in the EU do not require visas at all for certain nationalities, the question remains as to whether visas are so imperative for security

⁹³ Jacob Sapochnick, *President Biden Signs Proclamation Revoking Trump Era Muslim Ban – including Executive Order 13780, and Proclamations 9645, 9723, and 9983*, VISA LAWYER BLOG (Jan. 25, 2021), <https://www.visalawyerblog.com/president-biden-signs-proclamation-revoking-trump-era-muslim-ban-including-executive-order-13780-and-proclamations-9645-9723-and-9983/>.

⁹⁴ President Joseph R. Biden Jr., *Proclamation on Ending Discriminatory Bans on Entry to The United States*, THE WHITE HOUSE (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-ending-discriminatory-bans-on-entry-to-the-united-states/>.

⁹⁵ *Adjusted Refusal Rate – B-Visas Only By Nationality, Fiscal Year 2021*, U.S. DEP. ’T OF STATE – BUREAU OF CONSULAR AFFS., <https://travel.state.gov/content/dam/visas/statistics/non-immigrant-statistics/refusalrates/fy21.pdf> (last visited Jan. 19, 2023).

⁹⁶ Vox, *Trump’s immigration ban actually makes it harder to fight terrorism*, YOUTUBE (Feb. 3, 2017), <https://www.youtube.com/watch?v=cwhuwxe9gu>.

⁹⁷ *The travel ban, the court orders and what’s actually happening*, CATHOLIC LEGAL IMMIGR. NETWORK, INC. (June 29, 2017), <https://cliniclegal.org/resources/travel/travel-ban-court-orders-and-whats-actually-happening>.

⁹⁸ U.S. Customs and Border Protection, *Fiscal Year 2020 Entry/Exit Overstay Report*, HOMELAND SEC. (Sept. 30, 2021), https://www.dhs.gov/sites/default/files/2021-12/cbp%20-%20fy%202020%20entry%20exit%20overstay%20report_0.pdf.

⁹⁹ *Border and Aviation Security*, HOMELAND SEC., <https://www.dhs.gov/xlibrary/scitechmobilizinginnovation/border-and-aviation-security.html> (last visited Sept. 28, 2023).

¹⁰⁰ *Airports are building more resilient security infrastructure*, BUILT ENV’T (May 19, 2022), <https://www.cm-today.com/news/property-management/airports-are-building-more-resilient-security-infrastructure>.

¹⁰¹ Madhurjya Chowdhury, *How AI Enhances Security Systems in Airports?*, ANALYTICS INSIGHT (Aug. 1, 2022), <https://www.analyticsinsight.net/how-ai-enhances-security-systems-in-airports/>.

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purposes to warrant such staunch reservations.¹⁰² The answer to this question may vary depending on factors such as a country’s history of asylum claims or visa fraud, as these can cause significant disenfranchisement to those residing within the nation.

Visa refusal rates and the Trump White House travel ban on Iranians appear to neither benefit American national security nor foreign policy, nor do they present a logical and glaring reason for implementing such measures in the first place. It appears likely that the cause of such drastic bias in nonimmigrant visits to the U.S. by Iranian nationals is stigma.

F. No Leniency: The Iranian Stigma in Visa Issuance

Affiliation with Iran alone could subject anyone traveling to the U.S. to extra woes. The stigma of Iran and other nations on Trump’s former travel bans may be the basis for scrutiny bestowed against those nations, rather than from valid security concerns. When referencing the travel bans, Lawfare Blog reported that “[c]ountries that did end up banned overlapped with those that Trump had publicly disfavored.”¹⁰³

Stigma related to Iran and the issuance of U.S. visas can affect all people with any Iranian connections. In addition to the high numbers of visa refusals of Iranian citizens, highlighted in data from the U.S. State Department, the upper echelon of political elites is no exception.¹⁰⁴ Iran’s top foreign Minister, Javad Zarif, was declined a visa by the U.S. to attend a United Nations Security Council meeting in 2022.¹⁰⁵ Since Iran’s government is nefarious and affiliated to terrorism, it is relieving to see that the regime’s direct representatives are not impervious to the visa rejections.¹⁰⁶ The scrutinization of direct representatives of Iran—rather than disconnected and innocent citizens—makes more sense, due to the government’s affiliation with state-sponsored terrorism. However, Zarif’s trip had legal protection via the headquarters agreement.

The 1947 U.N. “headquarters agreement” demands and provides the requirement that foreign diplomats be granted access to the United Nations,

¹⁰² Council Regulation 2018/1806, Listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, 2018 O.J. (L 303) 59, Annex II; *Who Need a Schengen Visa to Travel to the EU?*, SCHENGENVISA INFO, <https://www.schengenvisa.info.com/who-needs-schengen-visa/> (last visited Nov. 4, 2023).

¹⁰³ Harsha Panduranga & Faiza Patel, *Trump’s Travel Ban Did Not Make Americans More Safe*, THE LAWFARE INST. (Feb. 22, 2021, 1:01 PM), <https://www.lawfareblog.com/trumps-travel-ban-did-not-make-americans-more-safe>.

¹⁰⁴ BUREAU OF CONSULAR AFFS., *supra* notes 14, 16–17.

¹⁰⁵ Steve Holland & Michelle Nichols, *U.S. denies Iran’s Zarif a visa to attend U.N.: U.S. official*, REUTERS (Jan. 7, 2020, 10:50 AM), <https://www.reuters.com/article/us-iraq-security-un-zarif/u-s-denies-irans-zarif-a-visa-to-attend-u-n-u-s-official-iduskbn1z605t>.

¹⁰⁶ Bureau of Counterterrorism, *State Sponsors of Terrorism*, U.S. DEP.’T OF STATE, <https://www.state.gov/state-sponsors-of-terrorism/> (last visited Feb. 7, 2023).

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headquartered in New York.¹⁰⁷ The U.S. can deny these visas for “security, terrorism and foreign policy” reasons, which was possibly the reason for Zarif’s denial.¹⁰⁸

Furthermore, former NATO chief Javier Solana, a pioneer in the Iran nuclear deal,¹⁰⁹ was denied a U.S. visa waiver due to visiting Iran “on or after [March 1, 2011].”¹¹⁰ Visiting Iraq, Syria, Iran, Sudan, Libya, Somalia, and Yemen during or after this date invalidates visa waiver eligibility for some, a policy enacted under the Obama Presidency.¹¹¹

III. CHALLENGES OF THE E.U. VISA REGIME FOR IRANIANS

Article 21 of the Charter of Fundamental Rights of the European Union (“CFR”) prohibits any bias or discrimination based on nationality.¹¹² Its effectiveness in reinforcing these measures, however, remains to be seen. This chapter covers issues of disenfranchisement by nationality against Iranians in the visa regime of the EU Member States. The EU shares many similarities with the U.S. with respect to the travel policies that harm Iranians.

For Schengen visas, in 2018, a 9.6% average of visas were refused Iranian applicants for European visas were reported to have a 29.39% refusal rate.¹¹³ These reasons can be attributed to the specific citizenship bias from which Iranians suffer. Iran’s political image in Western states is mostly negative due to its complex history and relationship with the United States. This unfortunately leads to nationality-based bias which undermines Article 21 of the CFR.

Consular deserts are less of a problem for Iranians traveling to the Schengen area, as European embassies do operate in Tehran.¹¹⁴ However, denials in the EU due to citizenship bias, overgeneralization, financial burdens, and attitudes toward asylum are akin to those in the U.S. Furthermore, recent years have revealed a trend of EU embassies in the Middle East being more punitive toward nationals from countries with recent civil protests, suggesting an over-speculation of possible

¹⁰⁷ Agreement Between the United States of America and the United Nations Respecting the Headquarters of the United Nations art. V, sec. 15, June 26, 1947, 61 Stat. 3146.

¹⁰⁸ Reuters, *supra* note 105.

¹⁰⁹ Suzanne Maloney, *Javier Solana on Iran: “The Challenge Is Big, But A Solution Is Possible,”* BROOKINGS (Apr. 16, 2014), <https://www.brookings.edu/blog/markaz/2014/04/16/javier-solana-on-iran-the-challenge-is-big-but-a-solution-is-possible/>.

¹¹⁰ Sam Jones, *Ex-Nato chief refused visa waiver to US because of Iran trips*, THE GUARDIAN (June 25, 2018, 7:39 AM), <https://www.theguardian.com/world/2018/jun/25/ex-nato-chief-javier-solana-refused-visa-waiver-to-us-iran-trips>.

¹¹¹ *Id.*

¹¹² Charter of Fundamental Rights of the European Union, Title III, art. 21, 2010 O.J. (C 83) 389.

¹¹³ Prabhu Balakrishnan, *Top 10 Schengen states with highest visa refusals*, BEST CITIZENSHIPS (Feb. 14, 2020), <https://best-citizenships.com/2020/02/14/top-10-countries-with-highest-schengen-visa-refusals/>.

¹¹⁴ *Information of embassies and foreign missions residing in the Islamic Republic of Iran*, ISLAMIC REPUBLIC OF IRAN MINISTRY OF FOREIGN AFFS., <https://en.mfa.gov.ir/portal/catalogsearch/78> (last visited Jan. 20, 2023).

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asylum claims. Lastly, the EU transit visa policy, in addition to having international zones of airports, spotlights nationality bias with possible motives.

A. *Long Wait Times*

Long waiting periods are commonplace for Schengen visas. Appointments in Iran, and the East in general, are notably lengthy. An article published in Turkey highlighted how “[r]ejection of Schengen visas and long delays in appointments for applications worry Turkish citizens who have to wait for months for entry to EU countries, only to be refused access.”¹¹⁵ Similar issues were raised in India¹¹⁶ and Iran.¹¹⁷

Furthermore, the scarcity of available appointments has given rise to the use of sophisticated software bots specifically designed to expedite appointment reservations. Third-party sellers, arguably aware of the difficulty and scarcity of available appointments, sell appointment spots retrieved by bots, compounding the difficulty inherent in securing appointments for ordinary people.

In addition to these challenges, if a visa applicant succeeds in securing an appointment with a preferred embassy, there remains a risk of the application being rejected. The applicant is then thrust into an intricate appeals process, which varies by member state, characterized by complexities and legal formalities that can extend over several months.¹¹⁸ Applicants may endure a prolonged period of uncertainty as they await a final decision. Opting for the judicial course of action in these scenarios, in countries like Germany, often entails incurring significant legal expenses, presenting a considerable financial burden for Iranians, and other nationalities facing significant economic issues at home.¹¹⁹

Like in the U.S., transiting Iranians face similar hardships imposed by the arguably harsher and more discriminatory visa regime policies of the EU Member States. Both the U.S. and the EU prohibit Iranians, and people from other nationalities, from transiting through airport international zones without completing a robust in-person visa application. However, the layout of EU airports could prevent this practice.

¹¹⁵ *EU visa delays break up Turkish families, harm tourism*, DAILY SABAH (May 31, 2023, 2:29 PM), <https://www.dailysabah.com/politics/eu-affairs/eu-visa-delays-break-up-turkish-families-harm-tourism>.

¹¹⁶ Seema Sachdeva, *Visa delays dampener for Europe travel*, TRIBUNEINDIA NEWS SERV. (May 1, 2023, 7:57 PM), <https://www.tribuneindia.com/news/features/visa-delays-dampener-for-europe-travel-503378>.

¹¹⁷ Samiya Hasanlu, *Schengen visa troubles from Iran to Türkiye*, IRANIAN STUDENTS NEWS AGENCY (June 16, 2023, 8:02), <https://www.isna.ir/news/1402031609618/>.

¹¹⁸ *Remonstration Procedure*, GERMAN EMBASSY YAOUNDE (Mar. 25, 2021), <https://jaunde.diplo.de/cm-en/service/remonstration-procedure/2444194>; Aykut Elseven, *Failure to Act: Speeding up German Visa/Residence Permit Decisions*, SCHLUN & ELSEVEN (Oct. 4, 2020), <https://se-legal.de/failure-to-act-speeding-up-german-visa-residence-permit-decisions/?lang=en>.

¹¹⁹ *Visa Rejected?*, STUDY AND LIFE IN GERMANY, <https://germanystudy.net/visa-rejected/comment-page-2/> (last visited Nov. 4, 2023).

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As mentioned, unlike in Canada and the U.S., sterile/international areas do exist in Schengen area airports.¹²⁰ For EU Member States, this allows transit without formal entry into the country. Since entry into the country does not require transit, and passengers would never need to go through passport control, Member States would seemingly reflect the visa free transit policy of many of the aforementioned nations. However, they do not.

Airports in the Schengen area have the capacity for seamless transit without leaving the international zone. However, many European nations implement nationality-based restrictions on free transit, wherein, selective transit visa requirements are born, based solely on nationality.¹²¹ Some nationalities are banned from transiting through certain Member States, while others are banned from them all.¹²²

The reasoning behind these nationalities being on the EU transit visa “blacklist” is not because they do not have visa-free access ordinarily. Some nationalities required to present visas to travel to the Schengen Zone, such as Syrians and Egyptians, can transit through some Member States without a transit visa, while some visa-required nationalities can transit through all Member States.¹²³

According to the Directorate-General for Migration and Home Affairs of the European Commission, transit rules for third-party passengers depends on citizenship, though exemptions do exist.¹²⁴ Regardless of nationality, some exemptions for transit visa include holding a valid visa or residence permit issued by a Schengen state.

Regarding transit visas in the EU Member States, specific nationalities are exempt from the requirement of presenting a visa when traveling to some Member States.¹²⁵ Despite some relief in exemptions mentioned, the Directorate-General for Migration and Home Affairs of the European Commission has released additional and specific requirements for twelve countries, including Iran, barring all from entering the international zone of any Member State without a visa.¹²⁶ This “absolute” list blockades Iranians and other nationalities from accessing any EU

¹²⁰ *Airport Transit Visa*, FRANCE-VISAS.GOUV.FR, <https://france-visas.gouv.fr/en/web/france-visas/airport-transit-visa> (last visited Jan. 20, 2023).

¹²¹ *List of third countries whose nationals are required to be in possession of an airport transit visa when passing through the international transit area of airports situated on the territory of one/some Member States*, EUROPEAN COMMISSION, https://web.archive.org/web/20221122224321/https://home-affairs.ec.europa.eu/system/files/2022-11/Annex%207B_en.pdf (last visited Jan. 20, 2023).

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Who must apply for a Schengen visa*, EUROPEAN COMMISSION, https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/visa-policy/who-must-apply-schengen-visa_en (last visited Jan. 20, 2023).

¹²⁵ EUROPEAN COMMISSION, *supra* note 121.

¹²⁶ *Common list of third countries listed in Annex I to Regulation (EC) no 539/2001*, EUROPEAN COMMISSION, https://home-affairs.ec.europa.eu/system/files/2021-08/annex_7a_atv_common_list_en.pdf (last visited Jan. 20, 2023).

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Member State airports, therefore, rendering the citizens within this list disenfranchised.

Regulation 531 of European Parliament and of the Council lists citizens of the following nations who are required to possess an airport transit visa when passing through the international transit area of airports situated on the territory of the Member States: Afghanistan, Bangladesh, Democratic Republic of the Congo, Eritrea, Ethiopia, Ghana, Iran, Iraq, Nigeria, Pakistan, and Sri Lanka.¹²⁷

Despite international zones existing in EU airports, which is a notable improvement from the U.S., there should be free transit requirements for Iranians and all nationalities to better align with the Charter’s objectives of non-discrimination. Free transit in Member States is currently only allowed for certain nationalities. Iran, amongst other states, is forbidden from free transit for all Member States which directly contradicts the non-discriminatory principle. The cherry-picking of nationalities appears arbitrary and subjects various nationalities to unjust discrimination. Member States, and their transit visa policy, provide no entry and subject specific nationalities to various amounts of restriction.

B. The Financial Burden of Transit Visas

The transit visa process is not easy procedurally. The European Commission themselves have cited both the complexity of Schengen visas and inconsistent or prohibitive cost issues.¹²⁸ Since Schengen visas allow free movement within the Schengen Zone, the process of visa applications is somewhat consistent from country to country, although not entirely uniform.¹²⁹ For example, Spain restricts not only the twelve “blacklisted” countries but also includes an additional sixteen countries—many of which are impoverished and high refugee populations—to the subset of countries requiring transit visas to enter and directly exit Spain’s international zone.¹³⁰

This is not unique to Spain. Over half of all EU Member States have added at least one additional country to twelve-nationality “blacklist” to its country-specific transit visa requirements.¹³¹ Anytime a visa is needed in unnecessary situations, such as in airport transit, this subjects Iranians to another visa application, which statistically they are at odds against.

An absolute visa requirement to travel, thus restricting the ability to merely transit through the international zone of any Member State, poses massive hardships for nationals of the “blacklisted” states. Financially, the price of a visa, though seemingly low, can present challenges for indigent applicants should they

¹²⁷ *Id.*

¹²⁸ *Schengen visa: Political agreement on digitalisation of visa application*, EUROPEAN COMMISSION (June 13, 2023), https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3220.

¹²⁹ *Travelling in the EU*, EUROPEAN UNION, https://european-union.europa.eu/live-work-study/travelling-eu_en (last visited Jan. 20, 2023).

¹³⁰ *Id.*

¹³¹ EUROPEAN COMMISSION, *supra* note 121.

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not receive a fee waiver. A visa fee of eighty euros is requisite,¹³² notwithstanding the fact that four of the twelve nations required to present a transit visa when traveling through the EU have been listed among the top ten poorest countries in the world,¹³³ and others have some of the world’s highest youth unemployment rates.¹³⁴ This eighty euro visa fee is nearly a month’s minimum wage in Iran, reported to be approximately \$250, as of 2022,¹³⁵ imposing a significant burden on Iranian travelers.

In 2023, the Iranian Rial fell to the world’s weakest currency,¹³⁶ which makes any financial-related issue especially burdensome for Iranians. In addition to the transit visa fee, medical insurance is also required. Each nation within the Schengen area sets their own daily or weekly requirement for financial solvency.¹³⁷

Finally, the eighty-euro fee, in the example of France, is the same price as a tourist visa to visit metropolitan France. Both are over eight times more expensive than a visa to visit an overseas territory of France, which is processed at the same place, French Embassies or Consulates, and both grant entry to French soil.¹³⁸ However, the overseas French visa does not grant Schengen transit privileges—while the Dutch Caribbean visa does.¹³⁹ In the case of Germany, some nationals of Armenia, Azerbaijan, and Russia can receive an over 50% off discount on visas—showing that a deviation from the high price is possible and relative financial help may be available to some nations.¹⁴⁰

C. Possible Motivations Behind Bias in Transit Visas

The possible motives behind the transit visa austerities are as complex as the restrictions imposed. The EU transit visa, like the U.S. C visa, lacks utility to the bearer, and the benefit to the countries requiring them is unclear. An EU transit

¹³² *Id.*

¹³³ *Poorest Countries in the World 2023*, WORLD POPULATION REVIEW, <https://worldpopulationreview.com/country-rankings/poorest-countries-in-the-world> (last visited Jan. 20, 2023).

¹³⁴ @spectatorindex, Twitter (July 8, 2023, 6:17 AM), <https://twitter.com/spectatorindex/status/1677638054776025089?s=46>.

¹³⁵ *Iran Sets Next Year’s Minimum Monthly Wage at \$250 A Month*, IRAN INT’L (March 10, 2022), <https://www.iranintl.com/en/202203104075>.

¹³⁶ *Weakest Currencies in The World in 2023*, INDIA TODAY, <https://www.indiatodayne.in/visualstories/webstories/weakest-currencies-in-the-world-in-2023-57153-21-08-2023> (last visited Sept. 28, 2023).

¹³⁷ *Means of Subsistence for Schengen Visa*, SCHENGENVISA INFO, <https://www.schengenvisa.info/schengen-visa-application-requirements/means-subsistence/> (last visited Nov. 17, 2023).

¹³⁸ *Visa Fees*, MINISTÈRE DE L’INTÉRIEUR, <https://france-visas.gouv.fr/documents/d/france-visas/frais-de-visa-anglais> (last visited Sept. 28, 2023).

¹³⁹ *Do I need an airport transit visa for the Netherlands?*, GOV’T OF NETHERLANDS, <https://www.netherlandsworldwide.nl/visa-the-netherlands/visa-required-transit-netherlands> (last visited Sept. 28, 2023).

¹⁴⁰ *Germany Visa Fees*, GERMANY VISA, <https://www.germany-visa.org/visa-fees/> (last visited Dec. 14, 2023).

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visa allows a traveler a maximum stay of twenty-four hours at the airport—twenty-nine times shorter than what a U.S. transit visa allows¹⁴¹ and allows no entry to the EU.¹⁴²

An immigration officer is unlikely to check the transit visa at the airport. Many European international airports, like Paris’s Charles De Gaulle, are designed to allow international transit to take place with minimal disruption or delay to most passengers by eliminating the need to pass through passport control with designated lines for transiting passengers such that they bypass the queue that verifies vaccination cards, visas, and other information.¹⁴³ Aside from an x-ray of their carry-on, these passengers may never speak to or present any documents to anyone before arriving at their next gate. The existence of these streamlining procedures for international travelers merely passing through begs the question of why a transit visa is required for only some nationalities.

On the list of nationalities fully blocked from all EU transit, three of the twelve are among the top ten countries in producing most refugees in the world as of 2021.¹⁴⁴ On the other hand, the transit visa application must contain “documents corroborating the applicant's intention not to enter the territory of any Member State.”¹⁴⁵ The uselessness of the transit visa to the bearer, lack of need for such a visa from EU, and scattered and random restrictions from Member States suggest partiality. It raises the question of whether these transit visa difficulties—posing an increased burden against a particular list of citizenships—are an effort to prevent potential refugees from entering the EU.

Some Member States have safeguarded places where asylum may be claimed, such as EU maritime and land borders. Nationality-based disenfranchisement in accessing EU borders have been reported in the Spanish exclave of Melilla.¹⁴⁶ There, Sub-Saharan Africans were reportedly denied use of the border for asylum, while others were not.¹⁴⁷ Another example of Europe keeping the border out of reach is that Greece forcefully denied maritime

¹⁴¹ United States Foreign Affairs Manual, 9 FAM 402.4 Transit Visas – C Visas, U.S. DEP.’T OF STATE (Sept. 12, 2023), <https://fam.state.gov/fam/09FAM/09FAM060106.html>.

¹⁴² *Transit Schengen Visa*, SCHENGENVISA INFO, <https://www.schengenvisa.info.com/transit-schengen-visa/> (last visited Jan. 20, 2023); *Transit Visa*, U.S. DEP.’T OF STATE – BUREAU OF CONSULAR AFFS., <https://travel.state.gov/content/travel/en/us-visas/other-visa-categories/transit.html> (last visited Nov. 11, 2023).

¹⁴³ *Maps of Paris-Charles de Gaulle Airport*, PARIS-AÉROPORT, <https://www.parisaeroport.fr/en/passengers/access/paris-charles-de-gaulle/terminals-map> (last visited Jan. 20, 2023).

¹⁴⁴ *Refugees by Country 2023*, WORLD POPULATION REVIEW, <https://worldpopulationreview.com/country-rankings/refugees-by-country> (last visited Jan. 20, 2023).

¹⁴⁵ *Airport transit visas*, MINISTERIO DE ASUNTOS EXTERIORES, UNIÓN EUROPEA Y COOPERACIÓN, <https://www.exteriores.gob.es/Consulados/boston/en/ServiciosConsulares/Paginas/Consular/Visado-de-transito-aeroportuario.aspx> (last visited Dec. 15, 2023).

¹⁴⁶ Santiago Saez, *Melilla: No asylum for black men*, INFOMIGRANTS (Nov. 16, 2017), <https://www.infomigrants.net/en/post/6101/melilla-no-asylum-for-black-men>.

¹⁴⁷ *Id.*

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migrants,¹⁴⁸ who should have been protected under international law against this measure.¹⁴⁹

The European Union Agency for Asylum’s Border Procedures for Asylum Applications in EU+ Countries explicitly mentioned the ability of claiming asylum in the international zone.¹⁵⁰ Section Two provides that “[a]pplications for international protection may be made at the border of an EU+ country or in a transit zone before an applicant enters the territory.”¹⁵¹ The process is known as an airport procedure.¹⁵² It is probable that EU+ countries use the airport transit visa to further limit the ability of asylum claims.

Data was collected from citizens who claimed asylum at German airports between 2020 and 2022.¹⁵³ In 2020, six of the ten nationalities with the highest airport procedure rates are required to apply transit visas to enter Germany; in 2021, the ratio increased to six out of eight.¹⁵⁴ This suggests a trend by Member States to use transit visas to limit asylum applications.

It is plausible that trends of airport procedures by nationality inform the selection of countries included in EU transit visa requirements. Despite the legality of airport procedures, the multitude of visa challenges, particularly in visa requirements for the international zone, may be an attempt to prevent asylum claims, with citizenship-partiality.

There may be no relationship between the fact that the nationalities which EU states restrict are also nationalities with high percentages of refugee claims when compared to other countries who have more travel freedom. It is possible the EU’s policies are not intended to restrict asylum requests from those nationalities. The refugee potential from these countries may have been irrelevant in the creations of these policies. However, the EU explicitly specifies and grants the ability to Member States that they can impose, at their discretion, the airport transit visa as a defensive blockade towards individuals due to immigration issues.¹⁵⁵

¹⁴⁸ Patrick Kingsley & Karam Shoumali, *Taking Hard Line, Greece Turns Back Migrants by Abandoning Them at Sea*, N.Y. TIMES (Oct. 26, 2021), <https://www.nytimes.com/2020/08/14/world/europe/greece-migrants-abandoning-sea.html>.

¹⁴⁹ *The principle of non-refoulement under international human rights law*, UNITED NATIONS HUMAN RIGHTS, <https://www.ohchr.org/sites/default/files/documents/issues/migration/globalcompactmigration/theprinciplenon-refoulementunderinternationalhumanrightslaw.pdf> (last visited Jan. 20, 2023).

¹⁵⁰ *Border Procedures for Asylum Applications in EU+ Countries*, EUROPEAN ASYLUM SUPPORT OFFICE, <https://euaa.europa.eu/sites/default/files/publications/border-procedures-asylum-applications-2020.pdf> (last visited Jan. 20, 2023).

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ Paula Hoffmeyer-Zlotnik & Marlene Stiller, *Border Procedure (Border and Transit Zones)*, EUROPEAN COUNCIL ON REFUGEES AND EXILES (June 4, 2023), <https://asylumineurope.org/reports/country/germany/asylum-procedure/procedures/border-procedure-border-and-transit-zones/>.

¹⁵⁴ *Airport Transit Visa*, GERMAN MISSIONS IN THE U.S. (Nov. 2023), <https://www.germany.info/blob/917514/29c468eca75052c9c91a8635284f6340/airport-transit-country-list-data.pdf>.

¹⁵⁵ Council Regulation 810/2009, establishing a Community Code on Visas, Chapter III, art. 21, 2009 O.J. (L 243/1) 5.

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Regulation 810/2009 of the European Parliament and of the Council establishing a Community Code on Visas (“Visa Code”) sets a baseline that should be assessed when an applicant “presents a risk of illegal immigration or a risk to the security of the Member States and whether the applicant intends to leave the territory of the Member States before the expiry of the visa applied for,” further specifying that “[i]t is necessary to set out rules on the transit through international areas of airports in order to combat illegal immigration.”¹⁵⁶ The regulation further provides, “[i]n urgent cases of mass influx of illegal immigrants, individual Member States may require nationals of third countries other than those referred to in paragraph [one] to hold an airport transit visa when passing through the international transit areas of airports situated on their territory.”¹⁵⁷ The regulation is indicative of the EU’s intent to use the transit visa to counter immigration. With trends of countering efforts of legal asylum within the EU, it is possible that the transit visa attempts to prevent legal asylum claims. Examples of this defensive migration stance from the EU Embassies in Iran and Lebanon have occurred, even toward applicants with strong travel history (no overstays and/or previously issued visas).¹⁵⁸

Furthermore, the same EU regulation has criteria on the issuance of airport transit visas. Similar to the “overcoming of immigrant intent” in U.S. visa policy, such requirements include considering the integrity and reliability of the applicant, general intent, and matters that are as uncontrollable as the economic situation in the applicant’s country.¹⁵⁹ This is unfortunate because many nations on the transit visa “blacklist” are economically disadvantaged.¹⁶⁰

In fact, socio-economic statuses and immigrant intent work together as a negative force multiplier against citizens in economically challenged countries. While this multiplier is the operational procedure within the EU, this is a hazardous way to approach regulation on airport transit visas. A handbook from the EU wrote “[t]he assessment of the applicant’s intention to leave the territory of the Member State before the expiry of the visa depends mainly on the stability of his/her socio-economic situation in his country of residence: stability of the employment, of the financial situation, of the family ties.”¹⁶¹

These issues are also covered in Regulation 2018/1806 of the European Parliament and of the Council which lists “the third countries whose nationals must

¹⁵⁶ *Id.* at 12.

¹⁵⁷ *Id.*

¹⁵⁸ Farah-Silvana Kanaan, ‘*Purpose insufficiently demonstrated, ‘reasonable doubt’: Lebanese travelers grounded by rising number of EU, US visa rejections*, L’ORIENT TODAY (Jul. 29, 2022, 12:56 PM), <https://today.lorientlejour.com/article/1307133/purpose-insufficiently-demonstrated-reasonable-doubt-lebanese-travelers-grounded-by-rising-number-of-eu-us-visa-rejections.html>.

¹⁵⁹ *Id.*

¹⁶⁰ *GDP per Capita, Current Prices*, INT’L MONETARY FUND, <https://www.imf.org/external/datamapper/ngdpc@weo/oemdc/advect/weoworld> (last visited Mar. 28, 2023).

¹⁶¹ *Handbook for the Processing of Visa Applications and the Modification of Issued Visas*, EUROPEAN COMMISSION (Jan. 28, 2020), at 52, https://home-affairs.ec.europa.eu/system/files/2020-06/visa_code_handbook_consolidated_en.pdf.

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be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.”¹⁶² Considerations include “illegal immigration, public policy, security, economic benefits, particularly in relation to tourism and foreign trade, and the Union’s external relations with relevant third-party countries.”¹⁶³ This demonstrates discrimination which originates from the standing and operation of the third-party government and whether that government conducts itself well, domestically or internationally. All are valid criteria for judgmental decisions through codified regulations. The regulation covers many other topics on visas, including lawful use of previous visas, visa fees, supporting documents, secure data transfer, recourse to honorary consuls, and special visa procedures and conditions for nations hosting an Olympic or Paralympic Games.¹⁶⁴

A visa applicant proving their true intentions is especially difficult and that type of requirement is present in this EU regulation and in U.S. visa procedure. Further, when imposing restrictions during times of high immigration, the requirement to prove the integrity and genuine intent of the applicant—which is subjective—and the institutional attempts to curb immigration via visa stringency do not ameliorate such chances for applicants.

Whether intentional or not, the airport visa imposition hurts the chances of travel through Schengen Member States for all people. Refugees attempting to utilize the Schengen area as a transit point to another country of asylum outside of the Schengen area will face increased difficulties as a result of this strictness.

This EU regulation gives further discretion to Member States, relevant to airport transit visas, stating that, things such as the “period of grace” for such visas can be not granted for such a period, for vague reasons, such as public policy and international relations of any Member State.¹⁶⁵ This shows the recurring theme of extreme latitude given to visa officer and the actions of a nation causing equity to be stripped away from ordinary people.

Overall, a question may arise as to whether requiring an airport visa is a good hedge to prevent illegal immigration at all. Entry is not permitted with this visa type, claiming asylum is a human right,¹⁶⁶ and subjecting citizens of any nationality to endure such arduous processes and inconvenience is not ethically worth the possibility of stopping immigrants. Further, the EU claims the most common form of irregular migrants originally enter the EU legally on short-stay visas but remain in the EU for economic reasons.¹⁶⁷ The transit visa is not the same as a short-term visa and does not allow the ability of migrants to enter any Member State’s territory. This means that embassies are legally permitted to act in a

¹⁶² Council Regulation 2018/1806, listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, 2018 O.J. (L303) 59, at 1.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Council Regulation 810/2009, *supra* note 155.

¹⁶⁶ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

¹⁶⁷ *Irregular migration and return*, EUROPEAN COMMISSION, https://home-affairs.ec.europa.eu/policies/migration-and-asylum/irregular-migration-and-return_en (last visited Mar. 27, 2023).

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defensive and anticipatory manner by imposing restrictions due to influxes of immigration. The relationship between international airports and the role of airport transit visas regarding the prevention of illegal immigration seems flawed.

Circumspection relevant to visa issuance and difficulty is not only common but permitted under the aforementioned policies.

D. Post Protest Harshness of European Embassies in Tehran via Visa Decisions

National unrest followed the unjust murder of Masha Amini, a young Iranian Kurdish woman, by religious police in Tehran in September 2022.¹⁶⁸ Protestors demanded justice and change from the Iranian regime.¹⁶⁹ Despite EU officials acting against the regime via sanctions¹⁷⁰ and speeches,¹⁷¹ support for the people of Iran, visa issuance, and consular assistance from Member States in Tehran directly worsened. Consular strictness relative to visa issuance is what I coin the “Protest Paranoia Syndrome,” which can apply, and has applied to any country experiencing instability in addition to Iran.

News sources in the Middle East reported that European Embassies canceled visa appointments in Tehran following the unrest, without explanation.¹⁷² Agents from the airline and travel industry in Iran confirmed the “informal ban,” whereas nations such as Germany and Czechia denied allegations.¹⁷³ The Embassy of France in Tehran denied allegations that visa issuance to Iranian nationals following the Mahsa Amini protests of 2022 had halted,¹⁷⁴ yet cited that filtering of the Internet had significantly slowed down their activities.¹⁷⁵ This hypocrisy of support echoed by the EU and strained visa ease has been noticed by Iranians as well. Famous Iranian author and chairman Peyman Molavi tweeted,

¹⁶⁸ *Iran: EU adopts additional sanctions against perpetrators of serious human rights violations*, COUNCIL OF THE EUROPEAN UNION (Nov. 14, 2022, 3:15 PM), <https://www.consilium.europa.eu/en/press/press-releases/2022/11/14/iran-eu-adopts-additional-sanctions-against-perpetrators-of-serious-human-rights-violations/>.

¹⁶⁹ Negar Mottahedeh, Mohsen Kadivar, & Bruce Jentleson, *Protests Grow More Frequent As Young Iranians Demand More Freedoms, Experts Say*, DUKE TODAY (Sept. 28, 2022), <https://today.duke.edu/2022/09/protests-grow-more-frequent-young-iranians-demand-more-freedoms-experts-say>.

¹⁷⁰ Council Regulation 2018/1806, *supra* note 162.

¹⁷¹ Oliver Várhelyi, *EP Plenary: EU response to the increasing crackdown on protests in Iran*, EUROPEAN UNION EXTERNAL ACTION (Nov. 22, 2022), https://www.eeas.europa.eu/eeas/ep-plenary-eu-response-increasing-crackdown-protests-iran_en.

¹⁷² *Schengen visa: Iranians denounce European embassies for halting visa applications amid protests*, MIDDLE EAST EYE (Oct. 12, 2022, 11:31), <http://www.middleeasteye.net/news/schengen-iran-denounce-europe-embassies-halting-visa-applications>.

¹⁷³ *Id.*

¹⁷⁴ Arta Desku, *French Embassy in Iran Rejects Reports Over Suspension of Visa Applications*, SCHENGENVISA INFO (Oct. 13, 2022), <https://www.schengenvisainfo.com/news/french-embassy-in-iran-rejects-reports-over-suspension-of-visa-applications/>.

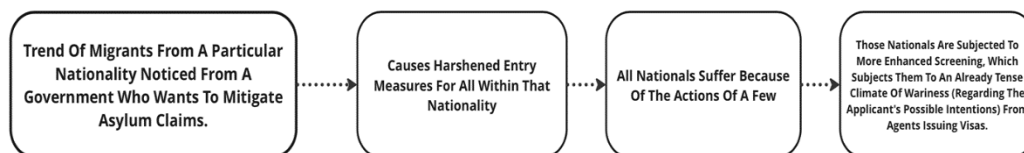
¹⁷⁵ *Id.*

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I read in the news that some member countries of the Schengen zone have suspended the issuance of Schengen visas! And the reason is the possibility of Iranian immigration. In pro, they are supporting people [in protests], but in reality, they are restricting the issuance of visas! This is regretful.¹⁷⁶

Middle East Eye commented on the contradictory action by writing that “[t]he reported ban has prompted mostly negative reactions on social networks amongst Iranians, who said the visa suspensions contradict the official line by many European states who say they stand on the side of the people.”¹⁷⁷

For Iranians and other recurring nationalities, the possibility of entering territories, airports, or the borders of most countries, including all Schengen States, is fully restricted without visa subjection and the possibility of additional restrictions.¹⁷⁸



The ethical dilemma on how asylum austerity through visa policy creates unfairness to all in targeted nationalities.

EU Member States are deeply committed to reducing the number of asylum claims that present themselves at their borders. This means they are willing to take any measures to mitigate the chances, even if such measures are deemed unfair or unbalanced. This commitment is so prevalent that if any previous travel privileges, like visa-free access, are revoked, or if additional requirements, such as presenting extra documents, are imposed on certain nationalities, it can be inferred that the motive is to prevent the possibility of high asylum claims.

Iranians fall victim to many anti-migrant measures in the EU. Of the top fifteen nationalities of first-time asylum applicants in 2021 in the EU, Iran does not appear on the list. Yet still, Iran is subject to many detriments in visa law such as the transit visa “blacklist,” whereas some of the top fifteen nationalities do not appear on the list.¹⁷⁹

¹⁷⁶ Peyman Molavi (@molavi_peyman), TWITTER (Oct. 10, 2022, 3:34 AM) https://x.com/molavi_peyman/status/1579392039229485056?s=2.

¹⁷⁷ MIDDLE EAST EYE, *supra* note 172.

¹⁷⁸ GERMAN MISSIONS IN THE U.S., *supra* note 154.

¹⁷⁹ *Overall figures of immigrants in European Society*, EUROPEAN COMMISSION (May 2023), https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/promoting-our-european-way-life/statistics-migration-europe_en; EUROPEAN COMMISSION, *supra* note 126.

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The EU's rigid approach toward mitigating asylum not only creates obstacles for certain nationalities seeking entry to EU countries due to overblown apprehensions about their intentions, but it has also led to increased reinforcement of visa strictness even outside of the EU.

For example, Iranians used to enjoy visa-free entry to Serbia without the inconvenience of visa requirements and complications.¹⁸⁰ Serbia's geographical location gives asylum seekers the ability to enter the EU somewhat easily, creating possibilities for asylum claims in the EU. After receiving asylum claims from some Iranians, the EU, with its strict stance on limiting asylum seekers' access to its borders, exerted ideological pressure on Serbia, prompting the country to reconsider its visa-free policy.

Consequently, in August 2017, during ongoing political demonstrations in Iran,¹⁸¹ Serbia, the only visa-free destination for Iranians in Europe at that time, suspended visa-free access for all Iranians with ordinary passports.¹⁸² Serbian officials claimed the system was abused by Iranians seeking asylum, though only 1,100 Iranians legally claimed asylum statuses in Serbia,¹⁸³ which equates to 0.0012637% of Iran's population.¹⁸⁴ The privilege of visa-free entry was also revoked for nationals of other countries due to the minor amount of asylum claims by their citizens as well.¹⁸⁵ Iranians and other nationals have once again become victims of the actions of a small number of citizens who share their nationality, due to the stances of some Western governments.

¹⁸⁰ *Relaxation of the Serbian Visa Regime*, EMBASSY OF THE REPUBLIC OF SERBIA – TEHRAN (Nov. 7, 2014, 9:01 AM),

<http://tehran.mfa.gov.rs/consularservicestext.php?subaction=showfull&id=1415350888&ucat=17&template=menieng&>.

¹⁸¹ Ali Fathollah-Nejad, *The Islamic Republic of Iran four decades on: The 2017/18 protests amid a triple crisis*, Brookings (Apr. 27, 2020), <https://www.brookings.edu/research/the-islamic-republic-of-iran-four-decades-on-the-2017-18-protests-amid-a-triple-crisis/>.

¹⁸² *The Decision on Visa Exemption for the Nationals of the Islamic Republic of Iran, Holding Ordinary Passports*, EMBASSY OF THE REPUBLIC OF SERBIA – SEOUL (Sept. 27, 2017, 3:12 AM), <http://www.seoul.mfa.gov.rs/consularservicestext.php?subaction=showfull&id=1506478354&ucat=17%2c19&template=menieng&>.

¹⁸³ Mladen Lakic, *Serbia blames system's 'abuse' for restoring visas for Iranians*, BALKAN INSIGHT (Oct. 11, 2018, 4:41 PM), <https://balkaninsight.com/2018/10/11/serbia-reinstates-visas-for-iranians-10-11-2018/>.

¹⁸⁴ *Iran Population (Live)*, WORLDOMETER, <https://www.worldometers.info/world-population/iran-population/> (last visited Apr. 18, 2023).

¹⁸⁵ Ivana Bzganovic & Jovana Gec, *Serbia is toughening its visa rules after migration prompts pressure from the EU*, EURONEWS.TRAVEL (Oct. 27, 2022, 2:09 PM), <https://www.euronews.com/travel/2022/10/27/serbia-is-toughening-its-visa-rules-after-migration-prompts-pressure-from-the-eu>.

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Serbia’s ambition to join the EU,¹⁸⁶ and the consistent pressure from the EU in Serbia’s immigration affairs,¹⁸⁷ is most likely what played a role in Serbia’s willingness to implement this reactionary policy.

This article discusses various policy measures in immigration law, many of which tend to overlap with one another. In fact, the course of events involving the collapse of the Serbian visa-free regime to Iranians is akin to the U.S.’s involvement with Mexico on immigration reform, which birthed Mexico’s “Programa Frontera Sur.”¹⁸⁸ In 2014, after the United States experienced a record influx of migrants from several Central American countries that entered the U.S. through Mexico, President Obama met with Mexican President, Peña Nieto, to discuss the situation.¹⁸⁹ Subsequently, President Peña Nieto swiftly implemented Programa Frontera Sur, a southern border plan, which cracked down on migrants traveling to the U.S. and made the process more challenging for them.¹⁹⁰ Through funding this program, the U.S. was able to mold immigration reform outside of its own borders.¹⁹¹ This demonstrates that neighboring a “big brother” hegemony nation could cause the little brother nation’s immigration pipeline to fall under their influence and control, because it is a pathway to the big brother nation.

The EU pressuring Serbia to prevent access of third country nationals, like Iranians, to enter Serbia and claim asylum in the EU, is like the previously mentioned 2014 U.S. and Mexico example. Due to the pressure from the EU, Serbia restricted visa-free access for countries that produced migrants. As a result, the EU praised Serbia for aligning their visa policies with its own, specifically citing how Serbia revoked visa-free access for those nationals, and teasing how partnership

¹⁸⁶ *Serbia toughens visa rules as migration prompts EU pressure*, THE ECONOMIC TIMES (Oct. 26, 2022, 3:35 PM), <https://economictimes.indiatimes.com/nri/migrate/serbia-toughens-visa-rules-as-migration-prompts-eu-pressure/articleshow/95098332.cms?from=mdr>.

¹⁸⁷ Justyna Pawlak, *EU tells Balkans to address influx of asylum seekers*, REUTERS (Oct. 25, 2012, 1:13 PM) <https://www.reuters.com/article/us-eu-balkans-visas/eu-tells-balkans-to-address-influx-of-asylum-seekers-idUSBRE8901DB20121025>; *Germany, EU pressure Serbia to curb illegal migration*, DEUTSCHE WELLE (Oct. 14, 2022), <https://amp.dw.com/en/germany-eu-pressure-serbia-to-curb-illegal-migration/a-63446820>; Jovana Gec, *European Union official praises Serbia's migration moves*, AP NEWS (Mar. 16, 2023, 9:15 AM), <https://apnews.com/article/serbia-eu-migration-border-smuggling-8f17fc090e7151e1d64d4b60224712e0>.

¹⁸⁸ Dara Lind, *The 2014 Central American migrant crisis*, VOX (Oct. 10, 2014, 2:01 PM), <https://www.vox.com/2014/10/10/18088638/child-migrant-crisis-unaccompanied-alien-children-rio-grande-valley-obama-immigration>.

¹⁸⁹ David Hudson, *President Obama and President Peña Nieto of Mexico Meet at the White House*, THE WHITE HOUSE OF PRESIDENT OBAMA, (Jan. 6, 2015, 5:51 PM) <https://obamawhitehouse.archives.gov/blog/2015/01/06/president-obama-and-president-pe-nieto-mexico-meet-white-house>.

¹⁹⁰ Luis Alfredo Arriola Vega, *Policy Adrift: Mexico's Southern Border Program*, BAKER INSTITUTE (June 23, 2017), <https://www.bakerinstitute.org/research/policy-adrift-mexicos-southern-border-program>.

¹⁹¹ *Programa Frontera Sur: Historical Violence Against Central America in a 21st Century Context*, BORDERLANDS HISTORY (Aug. 11, 2021), <https://borderlandshistory.org/2021/08/11/programa-frontera-sur-historical-violence-against-central-america-in-a-21st-century-context/>.

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benefits may emerge.¹⁹² The EU is proud of its strict visa policies and demands conformity, demonstrated by its scrutiny of liberal immigration policies in countries aspiring to EU membership. This includes encouraging alignment with the stringent visa policies of the bloc.¹⁹³ Furthermore, the EU has also expressed discontent with Serbia's plans to implement a progressive and innovative citizenship policy. While this policy garnered attention for its potential benefits, it did not align well with the EU's often frustrating policies, making it less well received by the EU.¹⁹⁴

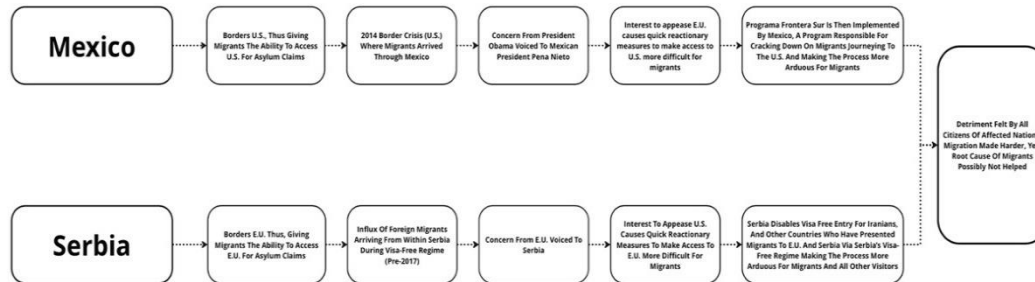
This highlights the EU's policy of weaponizing visas, restricting visa freedom, and using the subjection of individuals to the visa system to counter possible asylum claims. Overall, it shows how the EU's influence and appeal can cause policy changes outside of its own borders. When a country, like Mexico, serves as a transit point for migrants headed to a larger neighboring country, like the U.S., the larger neighbor may exert its influence on the smaller country to implement immigration policies that aim to control the inflow of migrants to its own borders. Examples of this are seen in the case of U.S. and Mexico, as well as in the EU's concerns over Serbia allowing visa-free entry to migrants who later sought asylum in the EU. It also shows that countries, especially smaller ones, are unable to be as freely liberal with entry policy as they would like. If a government believes that simply requiring a visa will prevent migrant arrivals, then the fairness of the nonimmigrant visa system should be questioned.

¹⁹² Jovana Gec, *European Union official praises Serbia's migration moves*, AP NEWS (Mar. 16, 2023, 9:15 AM), <https://apnews.com/article/serbia-eu-migration-border-smuggling-8f17fc090e7151e1d64d4b60224712e0>.

¹⁹³ Bzganovic, *supra* note 185; Christian Henrik Nesheim, *Serbian Govt. Proposes Law to Grant Citizenship After Just 12 Months of Residency*, IMI DAILY (June 13, 2023), <https://www.imidaily.com/europe/serbian-govt-proposes-law-to-grant-citizenship-after-just-12-months-of-residency/>.

¹⁹⁴ @vanderbilt_dynasty, INSTAGRAM (Oct. 1, 2023), <https://www.instagram.com/reel/Cx3HDIYPF52/?igshid=MzRlODBiNWFiZA==>.

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Similarities of reactionary “big brother influence” immigration reform in the cases of Mexico and Serbia.

The EU visa code gives Member States the ability to implement tougher restrictions on nationals during times of upheaval, such as using transit visas during peaks of immigration.¹⁹⁵ This ability is granted during “urgent cases of mass influx of illegal immigrants.”¹⁹⁶

Further, permitted refusal reasons include lacking connections to the home country, financial stability,¹⁹⁷ as well as requiring more documentation during an appeals process.¹⁹⁸ Fear of illegal immigration is grounds for some of these decisions, and in turn, Iranians face a high number of visa denials.¹⁹⁹ All the symptoms that applicants from nations in protest may experience but-for the decline in their home country’s sustainability, such as the outward appearance that because migration is more favorable, it will happen, poor financial standings, or weak ties to their homeland can cause refusals in alignment with Schengen visa policy, even if the applicant has no desire to violate immigration rules or claim asylum. Refusals mitigate the chance, and it seems to be the method of operating that Schengen Member States often choose.

¹⁹⁵ *Summary of Council Regulation 810/2009*, EUR-LEX (Nov. 11, 2021), <https://eur-lex.europa.eu/EN/legal-content/summary/visa-code.html>.

¹⁹⁶ *Id.*

¹⁹⁷ Sanchari Ghosh, *Schengen visa: India among 5 countries with highest rejection rate in 2022*, MINT (Jul. 9, 2023, 9:55 AM), <https://www.livemint.com/news/world/schengen-visa-india-among-10-countries-with-highest-rejection-rate-in-2022-heres-why-your-visa-can-be-denied-11688873534560.html>).

¹⁹⁸ *Decision on visa application*, EUROPEAN COMMISSION, https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/visa-policy/decision-visa-application_en (last visited Sept. 28, 2023).

¹⁹⁹ Ghosh, *supra* note 197.

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While countries affected are in protest, an example of a member state recently toughening visa applications due to security reasons can be found in Slovakia's visa policy at their Tehran Embassy.

As of April 2023, the Embassy of Slovakia in Tehran informed me, via email, that enhanced measures for nationals “covered by the embassy in Tehran,” which are Iran, Afghanistan, and Pakistan, attempting to visit Slovakia, are now in place.²⁰⁰ The Slovakian Embassy, under the guise of the law and claiming security for justification, implemented difficult restrictions against these nationals by announcing that these nationals are no longer eligible for tourist visas to Slovakia and they must present a verified invitation from the Slovak Foreign Police for all Schengen visa applications due to security concerns.²⁰¹ This means that only trips based on such an invitation will be permitted.²⁰² The true justifications are likely asylum anticipation due to looming instability in these nations,²⁰³ and attempts to limit those asylum seekers, due to Slovakia's staunch stance on accepting migrants.²⁰⁴ In a 2021 report, Slovakia had the least immigrants in the EU.²⁰⁵ Methods like this may be to keep that number as low as possible. This approach is unjust as not everyone may have access to individuals who can extend them invitations to Slovakia, and it is unreasonable to impede the right to travel for recreational purposes to Slovakia for all served within the Tehran embassy's consular jurisdiction.

²⁰⁰ Embassy of the Slovak Republic in Tehran, Email to Nicolas Garon (Apr. 16, 2023, 4:35 AM) (subject line: Slovakia visa).

²⁰¹ *The Embassy of the Slovak Republic in Tehran*, MINISTRY OF FOREIGN AND EUROPEAN AFFS. OF THE SLOVAK REPUBLIC, <https://web.archive.org/web/20220615054720/https://www.mzv.sk/web/teheran-en/> (last visited Apr. 18, 2023).

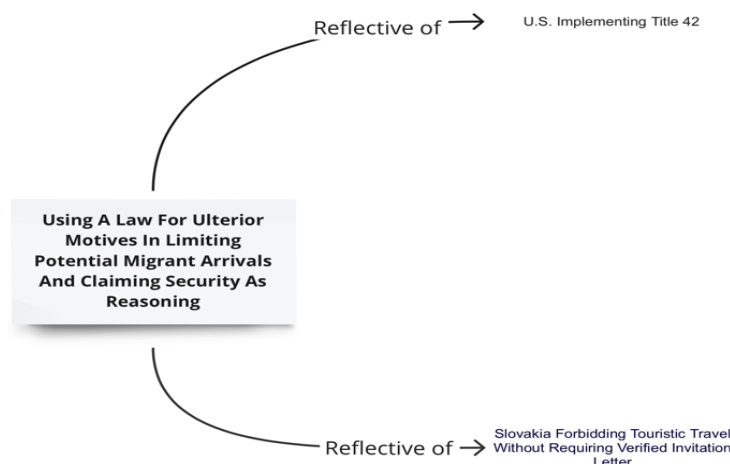
²⁰² *Id.*

²⁰³ Joshua Askew, *Iran protests: What caused them? Are they different this time? Will the regime fall?*, EURONEWS (Jan. 2, 2023, 10:34 PM), <https://www.euronews.com/2022/12/20/iran-protests-what-caused-them-who-is-generation-z-will-the-unrest-lead-to-revolution>; Center for Preventative Action, *Instability in Afghanistan*, COUNCIL ON FOREIGN RELATIONS, <https://www.cfr.org/global-conflict-tracker/conflict/war-afghanistan> (last visited Apr 18, 2023); Madiha Afzal, *Pakistan: Five major issues to watch in 2023*, BROOKINGS (Jan. 13, 2023), <https://www.brookings.edu/blog/order-from-chaos/2023/01/13/pakistan-five-major-issues-to-watch-in-2023/>.

²⁰⁴ Davide Lerner, *Why Slovakia won't embrace migration*, POLITICO (Aug. 16, 2016, 5:50 AM), <https://www.politico.eu/article/why-slovakia-wont-embrace-migration-lubos-blaha-josef-rydlo/>.

²⁰⁵ *Migration and migrant population statistics*, EUROSTAT, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Migration_and_migrant_population_statistics (last visited Apr. 18, 2023).

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Similarities between Slovakia’s action under the Visa Code and U.S.’s Title 42 implementation.

E. *Not the First Time in Iran, nor the Middle East*

Action from Schengen Embassies against those in less than stable times is not a new phenomenon. Following the 2009 Presidential Election in Iran, visa issuance to Iranians was restricted by European nations. This opened a black market where visa access was sold by those with connections.²⁰⁶

Lebanese citizens, who began an in tandem civil protest with Iran in 2019, faced identical, subsequent visa issues from European nations following their civil revolution.²⁰⁷ Visas for first-time applicants as well as those with positive visa history saw an increase in visa refusals.²⁰⁸ A common reason for denials was, “reasonable doubt about your intention to leave the territory of the Member States before the expiry of the visa,” even for first-time applicants.²⁰⁹ Greece and Spain, countries with histories of unethically hindering immigration, have empirically denied visas at a higher rate for Lebanese citizens, according to citations on *L’Orient Today*.²¹⁰

There is a right to appeal for denied Schengen visas. The Schengen Visa Code and EU Charter of Fundamental Rights mandate judicial review, but often

²⁰⁶ MIDDLE EAST EYE, *supra* note 172.

²⁰⁷ Kareem Chehayeb & Abby Sewell, *Why Protesters in Lebanon Are Taking to the Streets*, FOREIGN POL’Y (Nov. 2, 2019, 4:00 AM), <https://foreignpolicy.com/2019/11/02/lebanon-protesters-movement-streets-explainer/>.

²⁰⁸ Kanaan, *supra* note 158.

²⁰⁹ *Id.*

²¹⁰ *Id.*

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one can appeal to the embassy rather than going to court.²¹¹ However, there are timelines when you must appeal to the embassy which are different, and sometimes quite short and difficult. The longest of the Schengen Embassies in Tehran is eight weeks²¹² and the shortest is eight days.²¹³ Sometimes, the appeal cannot be done in English or Farsi, but rather must be done in the native language of the member state,²¹⁴ can cost up to 225 Euros, and sometimes, even the paper size matters.²¹⁵ Deadlines on the part of the embassy to reach a decision are rarely advertised and some refuse to answer status questions. Failures to answer, a high number of politically charged and spurious refusals, and general embassy understaffing may cause those to resort to failure to act lawsuits, though these may be expensive.²¹⁶

IV. REMEDIES PROPOSED

Visa requirements pose difficulties to those seeking to travel or seek refuge in other countries and have proven especially true for citizens of nations that are currently facing political or economic upheaval. In the case of Iran, the climate following protests does not, and has not, meshed well with the EU's stance on curbing immigration via their visa policy. Remedies need to be made in the other direction of how visa policies currently are, which is currently apathetic rather than speculative and preventative.

Potential improvements could be for the EU and U.S. to allow temporary transit visa exemptions to refugee seekers affected by the crackdown of protestors in Iran wishing to transit through the EU Member States. This would provide some relief for those who are struggling to find safe passage out of their home country and could still require a simpler, but effective screening process, for any security concerns.

Overall, trends of visa refusal based on nationality appear to be biased and a larger effort should be made to prevent it. In governmental policymaking

²¹¹ Polish Helsinki Foundation for Human Rights, *Visa Refusal Must Be Subject to Judicial Review*, *Top EU Court Rules*, LIBERTIES (Jan. 15,

2018), <https://www.liberties.eu/en/stories/refusal-of-visa-vs-right-to-court-ecjs-ruling/13819>.

²¹² *Appeals*, NEW TO DENMARK (Feb. 21, 2023), <https://www.nyidanmark.dk/en-gb/words-and-concepts/fælles/appeals>.

²¹³ *Procedure of appeal*, EMBASSY OF HUNGARY

BAKU, <https://baku.mfa.gov.hu/eng/page/procedure-of-appeal> (last visited Sept. 28, 2023).

²¹⁴ *Information about Schengen Visa*, AUSTRIAN EMBASSY –

LONDON, <https://www.bmeia.gv.at/en/austrian-embassy-london/travelling-to-austria/entry-requirements-visa-and-immigration/information-about-schengen-visa/> (last visited Sept. 28, 2023); Ministry of Foreign and European Affairs, *Appeal against refusal, annulment or revocation of visa*, REPUBLIC OF CROATIA, <https://mvpep.gov.hr/services-for-citizens/consular-information-22802/visas-22807/appeal-against-refusal-annulment-or-revocation-of-visa/22817#:~:text=the%20appeal%20is%20submitted%20to,in%20written%2c%20in%20croatia,n%20language> (last visited Nov. 3, 2023).

²¹⁵ EMBASSY OF HUNGARY BAKU, *supra* note 213.

²¹⁶ Aykut Elseven, *Failure to Act: Speeding up German Visa / Residence Permit Decisions*, SCHLUN & ELSEVEN (Oct. 4, 2020), <https://se-legal.de/failure-to-act-speeding-up-german-visa-residence-permit-decisions/?lang=en>.

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situations, every preemptive measure implemented to prevent any unfavorable outcome, should include a holistic review of all consequences and consideration of who may or will be affected by such an attempt. Such cautionary measures often create an air of speculation and may make a naturally fair, case-by-case analysis more difficult. Therefore, socioeconomic, political, and other struggles for the people of nations listed in the EU transit visa requirements should be considered in applying for countercyclical relief. This would allow easier travel among Iranians and other third-party nationals listed on the EU's transit visa "blacklist," instead of these issues causing a detriment to applicants.

Iranians being forced to travel to a third country to interview for the U.S. is extremely difficult and expensive. A remedy to prevent applicants from traveling far for a simple visa is to offer an e-visa or visa waiver program to Iranians applying for visas to the EU, so they can apply online, while also allowing them to join the U.S. Another option is to model parts of Japan's visa regime. Japan allows an applicant to authorize another person to drop off their application at a Japanese Consular Post on their behalf.²¹⁷ If the U.S. implemented this possibility for Iranians, it may allow someone with more travel freedom to apply on their behalf while they remain in Iran, providing the U.S. also removed in-person interview requirements or any other in-person requirements. Japanese visas do not require payment until the application is approved,²¹⁸ which, if implemented in the West, would be a cost-effective alternative, as an Iranian may travel to a third country for their U.S. visa interview only to be rejected and without the ability for a refund.²¹⁹

Furthermore, relating to economic strife and the U.S. Visa Waiver Program (VWP), more nations should be included in the eligible U.S. visa waiver countries, as no developing nations currently appear on this list.²²⁰ This is the opposite of the e-visa eligible countries for Singapore, which contain mostly developing nations and nations who are often without visa privileges, including Iran.²²¹ It would be unfair for citizens to suffer in visa hardships based on their nation's standing or government's actions. The U.S. VWP, which is a program that allows citizens or nationals of certain designated countries to travel to the U.S. for tourism or business for up to ninety days without obtaining a visa, requires far less documentation for its applicants than ordinary “paper” visas.²²² Furthermore, the price is much cheaper than even the weakest visa, the U.S. transit visa. It does not require consideration of immigrant intent, in-person interviews, evidence of their employment, nor

²¹⁷ *Frequently Asked Questions*, MINISTRY OF FOREIGN AFFS. OF JAPAN (Mar. 31, 2023), https://www.mofa.go.jp/j_info/visit/visa/faq.html.

²¹⁸ *Japan visa, Complete guide to Japan visa application, types of visas, the requirements and FAQs*, VISAGUIDE.WORLD, <https://visaguide.world/asia/japan-visa/> (last visited Apr. 13, 2023).

²¹⁹ *Nonimmigrant Visas: Fees*, U.S. EMBASSY & CONSULATES IN THE U.K., <https://uk.usembassy.gov/visas/non-immigrant-visa-fees/> (last visited Apr. 13, 2023).

²²⁰ BUREAU OF CONSULAR AFFS., *supra* note 37; *List of Developing Countries*, USAID (Feb. 6, 2012), <https://www.usaid.gov/sites/default/files/2022-05/310maa.pdf>.

²²¹ *Do you know that you can get your Singapore visa online?*, SINGAPORE VISA ONLINE, <https://singaporevisaonline.sg/> (last visited Sept. 28, 2023).

²²² *Official ESTA Application*, U.S. CUSTOMS AND BORDER PROTECTION, <https://esta.cbp.dhs.gov/esta> (last visited Mar. 29, 2023).

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family ties to show the purpose of their trip and their intent to return to your home country, which are all possible burdens of the paper visitor visa. Additionally, paper visitor visa applicants must demonstrate their ties to their home country, rather than relying on assurances from U.S. friends or family.²²³

Inflation and low wages in places like Iran produce a lower salary on average. Therefore, requiring certain financial solvency to obtain visas is out of the applicant's hands and should be lowered relative to the applicant's home country's GDP. The reality of the visa procedure is the opposite of this ambition, since economic status is subject to judgment.²²⁴ The economic situation should never be a disqualifier or hurt the applicant, so this should be removed.

Further, concerning economic standing and EU visas, many countries require bank statements and solvency minimums from the applicant in the interview process.²²⁵ Inflation and low wages in impoverished nations, like Iran, may diminish the odds of the applicant being approved, despite presenting confirmation of accommodations, airfare, and stable employment. If a Schengen Embassy's appeals department requests new statements from an originally rejected applicant, which embassies are allowed to do,²²⁶ the lengthy wait times for appeal processing combined with rising inflation may result in the bank statement reducing in value as time progresses, despite an inability to control this from the applicant. A remedy could be imposed that would both reduce the chances of this happening and provide a check against the ability of visa officers to decline applicants easily due to the tremendous latitude and vast or vague array of reasons to decline that they are given. The remedy would be an EU-wide deadline imposed against consular posts forcing them to make appeal decisions within a certain timeframe. This would possibly incentivize embassies to decline fewer visas out of speculation, as their docket would remain full, but now, the decisions will be on the clock. This would also reduce the odds of any large changes in the economic status of the applicant, as well as give them a speedier decision. Pending appeals may also disable the applicant from being able to apply for another Schengen visa, so this deadline should be created.

An alternative remedy that can be enacted is to provide an exemption to the legal requirement of interviews for most U.S. visa applications, as mandated by the Immigration and Nationality Act.²²⁷ This exemption would extend to nationals holding sole citizenship to a country without a U.S. consular post, provided that no national security benefit is compromised. This approach would provide relief by

²²³ *Visitor Visa*, U.S. DEP.'T OF STATE – BUREAU OF CONSULAR AFFS., <https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visitor.html> (last visited Mar. 29, 2023).

²²⁴ Council Regulation 2018/1806, *supra* note 162.

²²⁵ *Schengen visa application requirements*, SCHENGENVISA INFO, <https://www.schengenvisainfo.com/schengen-visa-application-requirements/> (last visited Apr. 3, 2023).

²²⁶ *Schengen visas*, MINISTERIO DE ASUNTOS EXTERIORES, UNIÓN EUROPEA Y COOPERACIÓN, <https://www.exteriores.gob.es/embajadas/canberra/en/serviciosconsulares/paginas/consular/visados-schengen.aspx> (last visited Apr. 4, 2023).

²²⁷ 8 U.S.C.A. § 1202.

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enabling them to apply without leaving their home country. Additionally, the option of virtual interviews could also be considered.

In the U.S., the law requires that most nonimmigrant applicants overcome the presumption of immigrant intent by sufficiently demonstrating that they have strong ties to their home country that will compel them to leave the United States at the end of their temporary stay.²²⁸ Failure to display compelling ties is grounds for visa refusal, a policy shared by the U.S.,²²⁹ and the EU.²³⁰ This has been reported as one of the most frequent reasons for Schengen visa rejection.²³¹ This requirement should be revised, as proving immigrant intent is subjective and difficult, which can lead to speculative and questionable decisions by officials.

Consular officers have immense discretion in both the EU and U.S. and are recognizing that challenging decisions are either impossible or extremely difficult, with lack of oversight.²³² The current system, where individual officers determine the strength of an applicant's connection to their homeland, can work against applicants during heightened times of instability. Furthermore, this requirement is susceptible to abuse and subjectivity, resulting in inconsistent application and creating obstacles for those seeking to travel or work in the U.S. or EU.

To address this issue, such requirements should be eliminated from the U.S. and EU visa regimes if there is no clear national security benefit. In fact, this U.S. visa law exempts some, such as H-1B and L visa applicants, highlighting the requirement's subjectivity.²³³ By removing this requirement, the U.S. and EU can better facilitate travel, boost economic growth, and support international relations, while still maintaining effective security protocols. Furthermore, the elimination of this requirement can increase transparency and accountability within the visa system, ensuring that visa applicants are treated fairly and equally, regardless of their nationality or country of origin. Such improvements can enhance trust in the visa system and reduce bias. Under current policies, times of macro instability seem to work against the applicant on the micro level.

The approach of allowing easier access to Iranians on diplomatic or official passports, while restricting ordinary citizens should be reconsidered. This approach unfairly penalizes ordinary Iranians who are not involved with their government's actions yet provides greater benefit to those who are directly affiliated.

Furthermore, the Iranian government's unreasonable enforcement of law, lethal force, and arbitrary usage of the death penalty against peaceful Iranian

²²⁸ *Id.* § 1184.

²²⁹ *Visa Denials*, U.S. DEP.'T OF STATE – BUREAU OF CONSULAR AFFS., <https://travel.state.gov/content/travel/en/us-visas/visa-informationresources/visa-denials.html> (last visited Mar. 29, 2023).

²³⁰ *12 Common Reasons Why Schengen Visa Applications Get Rejected*, SCHENGENVISA INFO, <https://www.schengenvisa.info/common-reasons-visa-applications-get-rejected/> (last visited Dec. 15, 2023).

²³¹ Egzi Toper, *What to do when your Schengen visa is wrongfully denied*, TRT WORLD, <https://www.trtworld.com/magazine/what-to-do-when-your-schengen-visa-is-wrongfully-denied-61377> (last visited Feb. 8, 2023).

²³² Dobkin, *supra* note 13, at 114-119.

²³³ BUREAU OF CONSULAR AFFS., *supra* note 229.

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protestors should compel Western nations to create easier pathways for entrance.²³⁴ Rather than fearing an additional influx of asylum claims, western nations should recognize that many Iranians are fleeing political persecution and human rights violations. By providing easier pathways for entrance, western nations can offer these individuals a safe haven and an opportunity to rebuild their lives, should security benefits not be lost.

**V. DOUBLE STANDARDS AND CONVENIENT PASSPORTS: THE DISPARITY IN
TRAVEL OPPORTUNITIES FOR IRANIANS**

The burgundy document adorned with gold writing and known as the Iranian passport, subjects the people of Iran to bias beyond the familiarity of that within their own borders. This very document is issued with stipulations, unavailable to men until completing mandatory conscription,²³⁵ only available to married women if permission is given by their husband, which can be rendered useless by a husband,²³⁶ and can be lost for speaking against the government.²³⁷ Yet, hopefully serves as a means to escape the prejudiced, arbitrary rules of life inside Iran.

Iranian citizens' aspirations to travel abroad, for leisure, emergencies, transit, business purposes, and everything in-between, are frequently hindered by the biased and convoluted practices employed by Western visa regimes. These practices prioritize migrant mitigation, cause undue hardships for Iranians, and do not appear to benefit national security enough to be justifiable. Consequently, Iranians are often subjected to arbitrary visa denials, prejudiced wariness of their intentions by visa officers, suffer stigma, and endure disproportionate numbers of visa refusals, solely because of their place of birth and other uncontrollable factors within.

The poor passport rankings and the stigma faced by Iranians and others may be attributed to their home government's poor performance and standing in the international community.²³⁸ Yet, when Iranian citizens took a stand against their government during mass anti-government protests, they paid the price through

²³⁴ *Iran: UN Condemns Violent Crackdown Against Hijab Protests*, U.N. NEWS (Sept. 27, 2022), <https://news.un.org/en/story/2022/09/1128111>; Ruhollah Zam: Iran executes journalist accused of fanning unrest, BBC NEWS (Dec. 12, 2020), <https://www.bbc.com/news/world-middle-east-55285301>.

²³⁵ *Iran To Allow Buy-Out Of Military Service, For The Rich*, IRAN INTERNATIONAL (Jan. 30, 2022), <https://www.iranintl.com/en/202201307039>.

²³⁶ Andrew Hanna, *Part 3: Iranian Laws on Women*, THE IRAN PRIMER (Aug. 13, 2023), <https://iranprimer.usip.org/blog/2020/dec/08/part-3-iranian-laws-women#:~:text=in%20the%20law:%20women%20face,permission%20for%20each%20trip%20abroad.>

²³⁷ *Iran Revokes Passports Of Celebrities Who Supported Nationwide Protests*, RADIOFREEEUROPE/RADIOLIBERTY (Oct. 10, 2022), <https://www.rferl.org/a/iran-bans-celebrities-leaving-country-support-protests/32074157.html>.

²³⁸ *The Islamic Republic of Iran: A Dangerous Regime*, U.S. DEP. OF STATE (Dec. 23, 2020), <https://2017-2021.state.gov/the-islamic-republic-of-iran-a-dangerous-regime/#:~:text=human%20rights%20abuses,are%20currently%20detained%20in%20iran.>

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increased visa denials. This was also the case in Lebanon, where citizens faced similar consequences for standing up against their government due to the belief such actions may result in possible asylum claims.²³⁹ Iranians feel the same discrimination from Western visa regimes as they experience from shoddy government services in Iran.

Regarding visa scrutiny, it can be assumed that with the lack of security, foreign policy benefits, and questionable legality, the origin of nationality-based bias practices against Iranians from visa regimes of the West is a byproduct of the Iranian government’s actions. There is no question that Iran’s autocratic rule does little to encourage diplomatic resolution. Iran’s actions and ideological direction, not shared by the ordinary citizenry, are brash and horrific.²⁴⁰ The tyrannical rule of law and society from the Iranian government is resisted by the people in which it governs.²⁴¹ The consistent protests in recent years clearly display the separation between the government’s actions and the people’s desires.²⁴²

Western governments have voiced their support for the Iranian people during their anti-government protests.²⁴³ Likewise, the West has labeled Iran’s government at its true value, problematic. The U.S. labeled Iran a dangerous regime,²⁴⁴ including it in an axis of evil, which exports terrorism.²⁴⁵ The U.K. government called the government of Iran an oppressive regime.²⁴⁶ The Parliament of the EU has claimed the government of Iran has “blatant disregard for human dignity and the democratic aspirations of its own citizens.”²⁴⁷

In 2019, the U.S. not only designated Iran as a state-sponsor of terrorism²⁴⁸ but also classified the IRGC, a militant branch of the Iranian Government, as a

²³⁹ Kanaan, *supra* note 258.

²⁴⁰ Ladan Boroumand, *Iranians Turn Away from the Islamic Republic*, 31 JOURNAL OF DEMOCRACY 169, 177–178 (2020).

²⁴¹ *Hijab protests increase pressure on Iran’s government*, *oxan-es*, DAILY BRIEF, OXFORD ANALYTICA (Sept. 20, 2022), <https://dailybrief.oxan.com/Analysis/ES272828/Hijab-protests-increase-pressure-on-Irans-government>.

²⁴² John Karkazis & Markella Koutsouradi, *The Protests and riots in Iran: International Impact and the Risk of Regime Collapse* 2–3, 7–8 (Jan. 2023) (unpublished paper), https://www.researchgate.net/profile/john-karkazis/publication/366929984_the_protests_and_riots_in_iran_international_impact_and_the_risk_of_regime_collapse/links/63b95fb8097c7832ca9879b8/the-protests-and-riots-in-iran-international-impact-and-the-risk-of-regime-collapse.pdf.

²⁴³ Council Regulation 2018/1806, *supra* note 162.

²⁴⁴ U.S. DEP. ’T OF STATE, *supra* note 238.

²⁴⁵ President George W. Bush, State of the Union Address at the United States Capitol (Jan. 29, 2002), <https://georgewbush-whitehouse.archives.gov/news/releases/2002/01/20020129-11.html>.

²⁴⁶ Foreign, Commonwealth & Development Office & James Kariuki, *The Iranian people will no longer tolerate violence and oppression*, GOV.UK (Nov. 2, 2022), <https://www.gov.uk/government/speeches/the-iranian-people-will-no-longer-tolerate-violence-and-oppression--2>.

²⁴⁷ *Parliament calls for more sanctions against Iranian regime*, EUROPEAN PARLIAMENT (Jan. 1, 2023, 12:19 PM), <https://www.europarl.europa.eu/news/en/press-room/20230113IPR66652/parliament-calls-for-more-sanctions-against-iranian-regime>.

²⁴⁸ Bureau of Counterterrorism, *State Sponsors of Terrorism*, U.S. DEP’T. OF STATE, <https://www.state.gov/state-sponsors-of-terrorism/> (last visited Jan. 21, 2023).

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terrorist organization.²⁴⁹ As of January 2023, the U.K.²⁵⁰ and EU are in motion to reflect this classification,²⁵¹ and they are not alone in this designation.²⁵²

It is clear the West is aware that Iran’s government is the problem and not the people who fall under its wrath and consequences. Reports show that the regular citizenry absorbs the negative Western sanctions.²⁵³ Given the visible separation of blame between the government of Iran and the people, it would only make sense that Iran’s government officials face the most scrutiny when traveling, as ordinary people vicariously suffer from their actions. The direct opposite actually happens.

Many countries that impose visa requirements against Iranian citizens do not impose the same restrictions against Iranians traveling with service passports, issued to government employees on missions, or diplomatic passports, issued to political, government, and diplomatic officials.²⁵⁴ Iranians with service passports are granted visa-free or e-visa access to roughly twice as many destinations,²⁵⁵ and this number increases for those holding diplomatic passports.²⁵⁶ The governing bodies of the EU and U.K., who seek to label the IRGC a terrorist organization and have scorned the government of Iran, still allow easier travel access to Iranian government officials.

In the EU Member States, transit visa requirements are lifted for Iranian diplomats.²⁵⁷ Further, the U.K. does not require a transit visa for Iranians on government or diplomatic orders; the U.K. even extends this policy to their family members and offers a vignette to help them pass transit stops more quickly.²⁵⁸ The U.K. hosts an Iranian-affiliated university with lesser-known satellite offices in other countries, suspected to be a revenue-gathering scheme for the Iranian

²⁴⁹ Bureau of Counterterrorism, *Foreign Terrorist Organizations*, U.S. DEP’T. OF STATE, <https://www.state.gov/foreign-terrorist-organizations/> (last visited Jan. 21, 2023).

²⁵⁰ *UK Lawmakers Pass Resolution Urging Gov’t To Proscribe IRGC*, IRAN INT’L (Jan. 12, 2023), <https://www.iranintl.com/en/202301128919>.

²⁵¹ *Iranians Rejoice Europe’s Move Against IRGC As Regime Vents Anger*, IRAN INT’L (Jan. 20, 2023), <https://www.iranintl.com/en/202301200927>.

²⁵² *Currently listed entities*, PUBLIC SAFETY CANADA (June 25, 2021), <https://www.publicsafety.gc.ca/cnt/ntnl-scrtr/cntr-trrrsm/lstd-ntts/crrnt-lstd-ntts-en.aspx>.

²⁵³ Tara Sepehri Far, “Maximum Pressure,” *US Economic Sanctions Harm Iranians’ Right to Health*, HUMAN RIGHTS WATCH (Oct. 29, 2019), <https://www.hrw.org/report/2019/10/29/maximum-pressure/us-economic-sanctions-harm-iranians-right-health>

²⁵⁴ *Progress Report of I.R. IRAN Police in Issuing and Controlling Machine Readable Travel Documents*, I.R. IRAN POLICE (May 9–11, 2016), <https://www.icao.int/Meetings/icaotrip-Iran-2016/Documents/Presentations/Mohammad%20Babaei.pdf> (last visited Jan. 21, 2023).

²⁵⁵ *Iranian Official Passport*, TRAVEL FREEDOM, https://www.travelfreedom.io/official_passport/iran (last visited Jan. 21, 2023).

²⁵⁶ *Iranian Diplomatic Passport*, TRAVEL FREEDOM, https://www.travelfreedom.io/diplomatic_passport/iran (last visited Jan. 21, 2023).

²⁵⁷ EUROPEAN COMMISSION, *supra* note 121.

²⁵⁸ *Check if you need a UK visa*, GOV.UK, <https://www.gov.uk/check-uk-visa/y/iran/diplomatic> (last visited Jan. 21, 2023).

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government.²⁵⁹ The very governments that have called the IRGC a terrorist organization give more leeway to government officials rather than ordinary people.

The U.S. government does not grant a visa-free pathway to Iranian diplomats.²⁶⁰ Notably, the U.S. government even restricted a top-level Iranian minister from entering the U.N. on questionable grounds.²⁶¹ However, the Immigration and Nationality Act’s interview requirements—which pose a great hassle for Iranians—can be waived for “an alien who qualifies for a diplomatic or official visa, or its equivalent.”²⁶²

Allowing Iranians to retain their passports during the U.S. visa application process could resolve logistical issues of being trapped without a passport for weeks at a time. Creating a free version of the “Keep My Passport” feature from the U.K.,²⁶³ which allows the applicant to maintain their passport during the application, would empower Iranians to apply abroad and return home with their passport after completing the necessary biometric and visa application steps.

Lastly, for fairness and equal access, considering the removal of consular jurisdictions within the EU is worth exploring. Decisions made by consular posts, particularly during times of unrest, might be influenced by higher authorities, leading to potentially unjustified denials. Similar to the U.S. approach, eliminating consular jurisdictions within the EU for Iranian citizens could ensure a more balanced distribution of applicants and mitigate the impact of varying embassy stances. This change might also benefit applicants dealing with consular section challenges, high asylum claims, and overstaying rates.

Recent developments in the United States, particularly legislative actions in states such as Texas,²⁶⁴ Louisiana,²⁶⁵ and Florida,²⁶⁶ reflect a growing negative sentiment towards Iran. This suggests a potential deterioration in relations with Iran, though the Iranian government does not help itself in the international arena.

²⁵⁹ Wagdy Sawahel, *Ambitious But Secretive Arab Education Provider: Iran*, AL-FANAR MEDIA, (Mar. 21, 2017), <https://www.al-fanarmedia.org/2017/03/ambitious-secretive-arab-education-provider-iran/>.

²⁶⁰ *Visas for Diplomats and Foreign Government Officials*, U.S. DEP.’T OF STATE – BUREAU OF CONSULAR AFFS., <https://travel.state.gov/content/travel/en/us-visas/other-visa-categories/visas-diplomats.html> (last visited Jan. 21, 2023).

²⁶¹ REUTERS, *supra* note 105.

²⁶² 8 U.S.C. § 1202(h)(2)(E)(iv) (2021).

²⁶³ *Added Value Services*, TLS CONTACT, https://pos.tlscontact.com/muc_en/added-value-services#:~:text=by%20choosing%20%27keep%20my%20passport,you%20if%20you%20need%20it (last visited Nov. 20, 2023).

²⁶⁴ Aria Jones & Hojun Choi, *4 Texas bills that could limit Chinese, Iranian, North Korean and Russian land ownership*, THE DALLAS MORNING NEWS, (Apr. 2, 2023, 6:00 AM), <https://www.dallasnews.com/news/immigration/2023/04/02/4-texas-bills-that-could-limit-chinese-iranian-north-korean-and-russian-land-ownership/>.

²⁶⁵ Sam Karlin, *Bill targeting foreign land ownership approved by Legislature after tweaks*, NOLA (June 7, 2023), https://www.nola.com/news/politics/legislature/louisiana-passes-foreign-land-ownership-ban-over-protests/article_baa803a2-055c-11ee-a301-f31c7b0054a1.html.

²⁶⁶ *Discriminatory Florida Bills Target Real Estate Purchases from Immigrant Communities*, NIAC ACTION (Apr. 19, 2023), <https://www.niacouncil.org/news/florida-bill-immigrants/#>.

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Its actions, which has caused ruptures in diplomacy with places like Albania,²⁶⁷ Morocco,²⁶⁸ and Saudi Arabia,²⁶⁹ worsen things. This can cause harsh effects on unconnected citizens visa applications. The visa officer may have an implicit bias towards an Iranian applicant or a fear that the applicant is causing a cloaked asylum attempt. Considering these unpredictable circumstances and evidence indicating that mere citizenship can impact approval odds, it becomes essential to introduce blind citizenship reviews for nonimmigrant visas. Under this approach, visa officers would evaluate applicants' information without knowledge of their citizenship or country of residence, unless such details are directly relevant to the visa type or other relevant factors. This will help applicants from countries that are in turmoil from having their intentions assumed to be of fleeing when they are not.

Furthermore, in cases where removing financial considerations from visa systems is not feasible, an alternative approach could involve setting a fixed financial solvency threshold requirement, like the practice in Schengen area member states. An even more flexible strategy could be adopted, incorporating a formula such as $(S + X) / (W + I) \leq F * M$. This formula could serve as a fair and ethical criterion for consular sections to assess an applicant's financial standings.

- $(S + X)$: Represents the combined value of the applicant's savings (S) and salary (X), indicating their total financial resources.
- $(W + I)$: Denotes the summation of the minimum wage (W) in the applicant's country of residence and the inflation rate (I) at the application time, reflecting the economic conditions and cost of living.
- F: A fraction acting as the threshold multiplier, offering flexibility to determine the required level of financial stability. Consular sections can adjust the value of F based on their specific policies.
- M: Represents the median annual income after inflation in Iran at the application time, serving as a benchmark for evaluating financial standing. This ensures that the financial threshold aligns with the country's average income level.

The formula places a constraint on the ratio of $(S + X) / (W + I)$, ensuring it does not exceed the product of the fraction (F) and the median income (M). If an applicant's ratio is less than or equal to $F * M$, it indicates their financial resources—including savings and salary—are within an acceptable range relative to Iran's economic conditions. This approach aims to create a fair and standardized assessment of financial qualifications.

²⁶⁷ NEWS WIRES, *Albania severs diplomatic ties with Iran over cyberattack*, FRANCE 24 (Sept. 8, 2022), <https://www.france24.com/en/europe/20220908-albania-severs-diplomatic-ties-with-iran-over-cyberattack>.

²⁶⁸ Ahmed Eljehtimi, *Morocco severs ties with Iran, accusing it of backing Polisario Front*, REUTERS (May 2, 2018, 2:47 AM), <https://www.reuters.com/article/uk-morocco-iran-idUKKBN1I23X7>.

²⁶⁹ *Saudi Arabia cuts diplomatic ties with Iran*, AL JAZEERA (Jan. 4, 2016), <https://www.aljazeera.com/news/2016/1/4/saudi-arabia-cuts-diplomatic-ties-with-iran>.

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Under high and capricious refusals, an Iranian doctor trying to attend a seminar in the U.S. will likely be rejected and must explain to her guarantor how the West doubted her intentions. An Iranian student will be unable to transit freely through the EU without the fear of claiming asylum in the airport. In general, related to travel, opportunities and experiences will continue to be limited to those with better, more beneficial passports. Jobs will go unfilled, employers will be left in the dark, and charitable subscriptions, which require traveling, may go unfulfilled. The Iranian government, affiliated with terror, danger, and evil by the West, finds itself in a fortunate position. Its officials and diplomats, under non-ordinary passports, can skirt many visa requirements, sometimes with their families.²⁷⁰ Meanwhile, sponsoring companies in the U.S. and its potential foreign-born applicant, are found at disadvantages economically due to a denied visa.

It is sad to see governments, which affiliate terrorism to the Iranian regime, allow visa free transit into its lands by Iranian diplomats and government officials. The failure to restrict these passport types rather than ordinary passports poses another ethical dilemma: if free visa agreements are born through diplomacy, how can Iranian diplomats understand the woes of travel restrictions that they themselves cannot endure? With such ease given to those who can negotiate and fix the erred and arduous visa systems against its people, it is less likely that compelling policymaking will transpire. It is essential for government officials to have convenient travel options to facilitate beneficial agreements. However, it is regrettable that these systems also provide advantages to individuals who may perpetuate negativity within their own countries. The regime's men find themselves in yet the best position.

Dealing with bigotry and targeted disenfranchisement at home and through visa scrutiny from the West, Iranian citizens find themselves stuck between a rock and a hard place.

VI. CONCLUSION

The challenges and inabilities of free transit, and the reduction of visa availability and ease through both empirical and unfeasible means, such as high refusals, bias, exclusion, stigma, and lengthy procedures create extreme difficulty for ordinary Iranian citizens looking to enter the U.S. and EU for any reason. The same issues are not always applicable to the very people who enable the regime.

When events like travel bans and protests ignite, large groups of citizens, like Iranians, find themselves swept in elevated disenfranchisement. These ordinary Iranians have obtained verbal support from the West, but not free travel. The subsequent denials, whether wrongful or not, are stored for eleven years in U.S.

²⁷⁰ TRAVEL FREEDOM, *supra* notes 255–56.

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visa procedure²⁷¹ and Schengen visas, which are shared between members, are stored for five years, causing a tarnished record.²⁷²

Justifying visa strictness as a pertinent national security benefit is tricky, as many nationals can enter countries with no visas. Dozens of nationalities can enter the Schengen Area without visas. Within the U.S., outside of the forty visa waiver nations, two neighboring jurisdictions can enter without visas. Thus, governments may pick some finite unfavorable reason to require visas, often small actions, which makes citizens of those countries suffer. Visa free access does not equate to no security checks. Nations can still use the benefit of airport security, immigration officer interviews within airports, and other methods to ensure national security. Visa-free does not mean threats cannot be mitigated.

Visa attempts and the basic capability to journey represent the furthest point on the spectrum of freedom in comparison to becoming an immigrant. It also has the lowest likelihood of culminating in an actual arrival and permanent residence in a foreign country. Nonetheless, it constitutes the most straightforward measure that a nation can employ to exert control, preventing any potential future complications or responsibilities. This is facilitated by the considerable autonomy wielded by consular officers, minimal oversight, and favorable regulations that empower them to establish grounds for denying individuals entry. These determinations often lack a review process, leaving applicants with minimal recourse at this juncture, which marks the stage where their rights are most limited within the broader range extending from applicant to citizen. Such instances contribute to a negative record that could influence subsequent applications.

These occurrences transpire discreetly, typically communicated through a solitary announcement on an embassy's official website or embedded within obscure policy decisions. These occurrences may not attract international attention due to their limited impact on only a handful of nations. Nevertheless, these practices are inherently biased and carry substantial consequences.

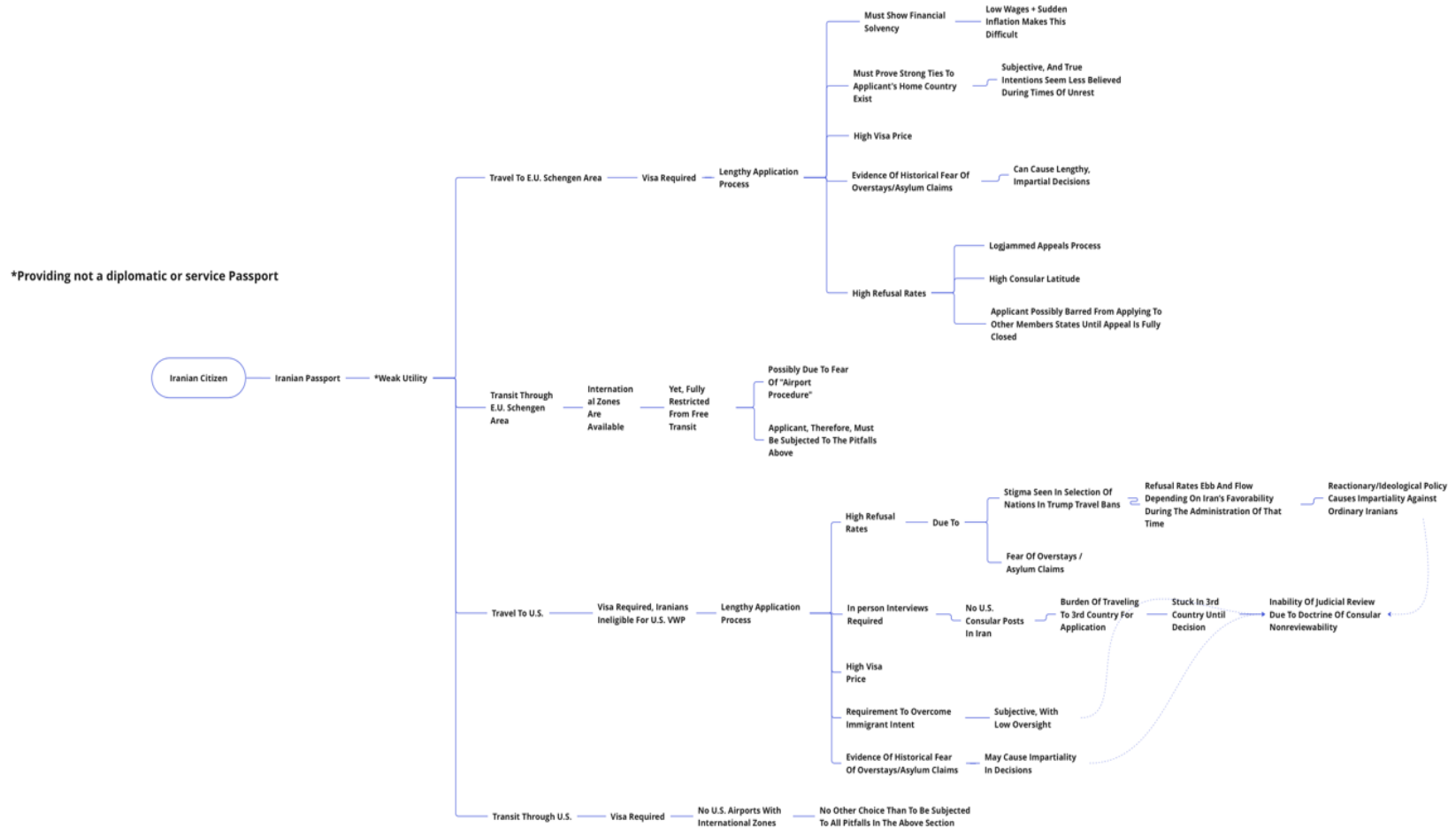
²⁷¹ United States Foreign Affairs Manual, 9 FAM 601.6(U) *Maintaining Visa Files, Records, and Information*, U.S. DEP.'T OF STATE (July 20, 2022), <https://fam.state.gov/fam/09FAM/09FAM060106.html>.

²⁷² *Visa Information System (VIS)*, EUROPEAN COMMISSION, https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/visa-information-system_en (last visited Sept. 28, 2023).

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VII. APPENDIX A: A DIAGRAM OF THE MULTI-LAYERED DIFFICULTIES FOR IRANIANS IN ALL TRAVEL TO THE U.S. AND E.U.²⁷⁴



²⁷⁴ If an Iranian can obtain an interview waiver for the U.S., it allows them to mail their documents and avoid most, if not all, of the dilemmas above. *See* U.S. Mission Spain, Interview Waiver, U.S. EMBASSY & CONSULATE IN SPAIN AND ANDORRA, <https://es.usembassy.gov/interview-waiver/> (last visited Sept. 28, 2023).