

Massacre in the Media: Why Mexican Journalists Should Qualify for Asylum Protection Under the 'Particular Social Group' Prong Before It's Too Late

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ABSTRACT

Today, Mexican journalists continue to live in fear, and even face death, because of their critical role in disseminating information to their communities. These journalists have come under attack not only from corrupt public officials in law enforcement and the government but also from individuals running organized crime in Mexico. They have paid the ultimate cost because of the target on their back. In 2018, there were 544 attacks against journalists,¹ and as a result, journalists around Mexico have vehemently sought to obtain asylum at the border. In 2019, the estimated number of asylum-seekers doubled from 2018.² As of October 2019, the number of Mexican refugees also increased from 39,000 people in 2018 to over 60,000.³ Yet despite increased refugee numbers that show an increased need to aid those fleeing persecution, the deadly dilemma Mexican journalists face seems to be met with indifference by the United States. This indifference is exemplified by the Trump administration's policies that disregard the dangerous conditions these individuals live with day in and day out. Against the backdrop of the asylum process, the policy reasons for granting asylum will reinforce why the United States

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1. Civic Space, *Mexico: Report Shows Silencing of Journalists and Media Freedom*, ART. 19 (Apr. 17, 2019), available at <https://www.article19.org/resources/mexico-report-shows-silencing-of-journalists-and-media-freedom/> (last visited Oct. 19, 2020).

2. Wendy Fry, *Asylum-seekers in Mexico Expected to Double by End of 2019 Amid Trump Administration Immigration Crackdown*, SAN DIEGO UNION-TRIB. (Oct. 21, 2019), available at <https://www.sandiegouniontribune.com/news/border-baja-california/story/2019-10-21/sd-me-tijuana-migration-meeting> (last visited Oct. 19, 2020).

3. *Id.*

should honor their obligations under the 1951 Convention Relating to the Status of Refugees and accept these asylum-seekers with open arms.

I. INTRODUCTION

The press freedom organization, Article 19, stated, “Mexico is the most dangerous country in the world to practice journalism.”⁴ Article 19 made this statement after the newly elected Human Rights Commissioner, Rosario Piedra Ibarra, questioned the veracity of the number of Mexican journalists who have been killed for simply fulfilling the duties of their occupation and passion.⁵ In 2019, according to the Committee to Protect Journalists, Mexico surpassed Syria and became the deadliest nation for journalists.⁶ The Committee reported an average of 100 homicides a day in Mexico from January to June of that year.⁷ Following the Commissioner’s statement, a group of reporters filed a complaint against her. The reporter’s complaint made note of how increasingly troubling the situation in their home country was becoming, and why they are desperately seeking aid after many were forced to flee their homes in the face of threat: “[t]he simple ignorance of 131 journalists killed in Mexico, coming from the ‘ombudsman,’ is, in itself, a violation of the human rights of those of us who have suffered violence for practicing journalism.”⁸

Members of the press know the significance of their job to seek the truth and disseminate it to the public.⁹ That responsibility has produced

4. David Agren, *Mexico’s Human Rights Chief Draws Fury for Asking if Journalists Have Been Killed*, GUARDIAN (Nov. 14, 2019), available at <https://www.theguardian.com/world/2019/nov/14/mexico-rosario-piedra-ibarra-journalists-killed> (last visited Oct. 19, 2020).

5. *Id.* After being elected, Commissioner Rosario Piedra Ibarra asked reporters: “They’ve killed journalists?” Ibarra tried to distance herself from the attacks, claiming they had taken place under past administrations despite a number of journalists being killed since President Andrés Manuel López took office in 2018. *Id.* Mexican journalists responded in outrage, especially since tensions between the President and the press corps worsened. *Id.*

6. Carrie Kahn, *12 Journalists Have Been Killed In Mexico This Year, The World’s Highest Toll*, NPR (Sept. 12, 2019), available at <https://www.npr.org/2019/09/12/759882660/12-journalists-have-been-killed-in-mexico-this-year-the-worlds-highest-toll> (last visited Oct. 19, 2020).

7. *Id.*

8. Agren, *supra* note 4.

9. See generally Bill Kovach & Tom Rosenstiel, *The Elements of Journalism*, AM. PRESS INST. (Dec. 2020), available at <https://www.americanpressinstitute.org/journalism-essentials/what-is-journalism/elements-journalism/> (last updated Oct. 19, 2020) (discussing the necessity for journalists to show an ultimate allegiance to the citizens, striving to put the public interest and the truth above their own self-interests or assumptions).

fatal results, prompting members of the press to seek asylum at the border. The process of proving the requirements for asylum at the border, specifically under the *political opinion* or *particular social group* prongs under U.S. standards, has been almost impossible. This Note will examine the obstacles preventing these journalists from receiving refugee status, the treatment they face during the asylum process, and why the *political opinion* or *particular social group* prongs should be extended to journalists.

Section II of this Note conceptualizes the harsh realities that Mexican journalists face through the experiences of a few, and lays the Note's foundation by illustrating some of the persecution many are attempting to escape. Section III discusses, in-depth, the backdrop of Mexico and its stronghold on censoring members of the media. Section IV provides an overview of the relevant international law that explicitly supports refugees and asylum-seekers. This section also details the asylum process for those seeking asylum in the United States, and those who arrive at designated ports of entry at the U.S. border. The most favorable grounds for Mexican journalists to argue for asylum, of the five grounds for asylum under U.S. law, is membership of a *particular social group*.

Section V addresses the flawed application of the *particular social group* prong through case law and also considers reasons why, despite the cases cited, the particular requirements should be in favor of Mexican journalists. Section VI focuses on another ground for asylum, *political opinion*, a second ground that may apply to Mexican journalists in some cases. Finally, Section VII contemplates the core First Amendment values of freedom of speech and press, which may support the argument for a broader interpretation of asylum for Mexican journalists.

II. CATEGORICAL BARRIERS TO SEEKING ASYLUM AND ITS INCREASED IMPLICATIONS ON MEXICAN JOURNALISTS

The media's role in the world is essential: they are educators, providing the public with knowledge and giving them the tools to interact and develop their own opinions and conclusions on matters of public concern.¹⁰ The media transmits reality and uncovers the underlying facts of

10. See, e.g., *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964) (“The general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled by our decisions. The constitutional safeguard, we have said, ‘was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.’”) (quoting *Roth v. United States*, 354 U.S. 476, 484 (1957));

events.¹¹ The world would not function as effectively if the media did not disseminate and reveal the truth on a host of subjects. Yet media members and journalists in Mexico are constantly living in fear for their lives simply for doing their jobs; at the same time, they face continuous hardships during the United States asylum-seeking process. The Mexican Constitution explicitly states that freedom of speech and press shall not be violated, but no true safeguards are in place for journalists seeking protection from the government or drug cartels who take serious offense to the information about which these journalists report and publish.¹² Journalists have no other option but to seek asylum in the United States. However, when exercising their right to seek asylum, found explicitly in the 1951 Refugee Convention, these individuals have failed to satisfy the U.S. government's standard for proving their fear of persecution under one of the five grounds for asylum: religion, race, nationality, *political opinion*, or membership in a *particular social group*.¹³

Journalists like Emilio Gutierrez Soto are brave enough to pen their experiences, obstacles, and frustrations while living in a dangerous

Branzburg v. Hayes, 408 U.S. 665, 726-27 (1972) (Stewart, J., dissenting) ("Enlightened choice by an informed citizenry is the basic ideal upon which an open society is premised, and a free press is thus indispensable to a free society. Not only does the press enhance personal self-fulfillment by providing the people with the widest possible range of fact and opinion, but it also is an incontestable precondition of self-government."); *N.Y. Times Co. v. U.S.*, 403 U.S. 713, 717 (1971) (Black, J., concurring) ("The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government. Paramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people"); *Id.* at 728 (Stewart, J., concurring) ("In the absence of the governmental checks and balances present in other areas of our national life, the only effective restraint upon executive policy and power in the areas of national defense and international affairs may lie in an enlightened citizenry in an informed and critical public opinion which alone can here protect the values of democratic government. For this reason, it is perhaps here that a press that is alert, aware, and free most vitally serves the basic purpose of the First Amendment. For without an informed and free press there cannot be an enlightened people").

11. Marie Bray, *The Role of Media in Shaping Public Opinion*, THE QUAD (Mar. 5, 2018), available at <https://wcuquad.com/6010053/op-ed/the-role-of-media-in-shaping-public-opinion/> (last visited Oct. 19, 2020).

12. Jon Allsop, *A Deadly Year for Mexico's Journalists*, COLUM. J. REV. (Aug. 27, 2019), available at https://www.cjr.org/the_media_today/mexico_journalist_murders.php (last visited Oct. 19, 2020) (the impunity rate for crimes against free expression is almost 100 percent, and a federal program offering protective measures to almost 1,000 reporters, including panic buttons and bodyguards, has not always worked).

13. U.N. Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150 [hereinafter 1951 Convention], as amended, U.N. Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267 [hereinafter 1967 Protocol] [collectively hereinafter, the Convention], available at <http://hrlibrary.umn.edu/instreet/v1crs.htm> (last visited Oct. 19, 2020).

climate where peril awaits them at every turn and they are eventually forced to seek safety at the border.¹⁴ Soto has been a journalist in Mexico for twenty-five years and has covered a range of serious, high-stake news.¹⁵ As a result, he was driven to flee his home and seek asylum in the United States in 2008.¹⁶ Soto was one of the fortunate individuals not turned away at the border immediately; he was held instead in a detention center with his son.¹⁷ Eventually, the two were allowed out of the detention center as they awaited a decision regarding whether they would be granted asylum.¹⁸ In 2017, a judge denied Soto's asylum claim on the basis that Soto was unable to prove his life would be in danger if he returned to Mexico.¹⁹ Many journalists who flee Mexico have heard these same words from American courts, sealing their fate the minute they decide evidence lacks credibility.

Lydia Cacho, another Mexican journalist, is all too familiar with the hurdles of being an investigative journalist in her home country. Cacho's career as an investigative journalist in Mexico spanned twenty years, but she was illegally arrested and tortured in 2005 after she released a book criticizing some of Mexico's political elites.²⁰ Cacho was detained by Mexican authorities for weeks, and harassed and tortured while in custody.²¹ That harassment did not end when she was released from custody, however, as Cacho began receiving death threats shortly thereafter. Despite the continued harassment, Cacho continued to promote her story to the public.²² Cacho persevered, and the opportunity arose to present a human rights case in front of Mexico's Supreme Court, effecting change in Mexican laws.²³

14. Emilio Soto, *I'm Safe, But Not Yet Free*, POLITICO (Jan. 20, 2019), available at <https://www.politico.com/magazine/story/2019/01/20/mexico-asylum-immigrants-224028> (last visited Oct. 19, 2020).

15. *Id.*

16. *Id.*

17. *See id.*

18. *Id.*

19. Soto, *supra* note 14.

20. Nicole Krestos, *2010 Tully Award for Free Speech*, NEWHOUSE SYRACUSE UNIV. (2010), available at <https://tully.syr.edu/award/lydia-cacho/> (last visited Oct. 19, 2020). *See also* Lydia Cacho, *Los Demonios Del Edén: El Poder Que Protégé a la Pornografía Infantil* (2005) (exposed a Mexican child pornography ring that was protected by Mexican politicians and businessmen).

21. *Id.*

22. *See id.*

23. *Id.* For example, defamation is now decriminalized, though it was once a criminal offense.

Méndez Pineda, a twenty-five-year-old reporter, fled to the border after receiving months of threats and harassment from corrupt officials in law enforcement stemming from the fallout of an article he published.²⁴ Pineda believed he could seek aid from the United States, given the increasing wave of terror and violence for journalists in particular.²⁵ A month after crossing the border, Pineda had his first credible-fear interview and passed in ninety minutes; however, he remained in Immigration and Customs Enforcement's (ICE) custody as he awaited to appear in court.²⁶ The same attorney who worked on Soto's case, Carlos Spector, also aided Pineda. However, under the Trump administration, release from ICE custody was more difficult to obtain than ever before.²⁷ After a sixty-eight page appeal, Pineda was denied bail from ICE custody a second time, and he eventually self-deported given the conditions of the facilities he was forced to live in.²⁸ However, journalists like Pineda who are denied asylum and must return to Mexico do not return to a life conducive to their well-being, as they remain in fear of persecution by those who drove them out of the country in the first place. Many journalists denied asylum live in Mexico under the radar, hiding just to be able to see the next day. Less than a day after Pineda's return, award-winning journalist Javier Valdez was gunned down in cold blood and broad daylight in Culiacan, Sinaloa.²⁹ Valdez reported on critical issues, particularly that of the drug war and the participation of one of the most powerful drug dealers, Joaquín "El Chapo" Guzman.³⁰ Young journalists like

24. J. Weston Phippen, *Hold the Line*, MOTHER JONES (Oct. 2019), available at <https://www.motherjones.com/politics/2019/09/carlos-spector-trump-asylum-mendez-pineda/> (last visited Oct. 19, 2020).

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. Nina Lakhani, *They Treat Everyone Like Criminals: US Asylum Fails Reporter Fleeing Mexico*, THE GUARDIAN (May 28, 2017), available at <https://www.theguardian.com/world/2017/may/28/us-asylum-immigration-mexico-reporter-journalist-martin-mendez-pineda> (last visited Oct. 19, 2020).

30. *Id.* Joaquín Guzmán, also known as "El Chapo," was born in a remote and impoverished area of Sinaloa state in northwestern Mexico, and became the leader of the Sinaloa cartel in the late 1980s; see also André Munro, *Joaquín Guzmán: Mexican Criminal*, BRITANNICA (Feb. 27, 2014), available at <https://www.britannica.com/biography/Joaquin-Guzman-Loera> (last visited Oct. 18, 2020). Under his leadership, the Sinaloa cartel developed creative smuggling techniques and strategies, including building air-conditioned tunnels under the Mexico-U.S. border, hiding drugs in chili pepper cans and fire extinguishers, and catapulting drugs over the border. *Id.* In the early 21st century, Guzmán was believed to be responsible for most of the marijuana and cocaine trafficked from Colombia and Mexico to the United States and the largest smuggler of methamphetamine in the Asia-Mexico-U.S.

Pineda are rightfully scared and seeking to get out of the country when some of their well-established, successful, respected colleagues are killed without regard. How can the significant value of media continue to remain intact and grow when reporters are being silenced or are choosing to self-censor to avoid the same outcome as their peers?

Journalists face severe uncertainty. Presently, 99% of murders and disappearances of fellow journalists in Mexico remain unsolved.³¹ President Andrés Manuel López Obrador pledged to improve protections for journalists, but the administration has shown that it does not fully recognize the country's grave freedom of expression crisis and the seriousness of the issue which further increases the uncertainty of journalists' situations.³² The government's proposed commitments have appeared to be insufficient to reduce the level of impunity, and it is unclear whether that is due to an intentional blind eye or underappreciation of the media's role in news gathering and distribution.³³

The President's communication team claims that what is perceived as the stigmatization of journalists and media outlets is simply a matter of public debate.³⁴ Their cavalier attitude regarding the exigency of the press is contributing to the vulnerable, dangerous environment in which media members are left.³⁵ If the highest level of government does not share the same concern for this group of individuals, whose objective is to promote a truly open and free public discussion, the rise of violence against them will only continue.

III. MEXICO'S POLITICAL HISTORY AND RESULTING CENSORSHIP

The freedoms of speech and press are suffering in Mexico. Journalists are being silenced and murdered. Those in hiding receive the

triangle. *Id.* In 2004, the U.S. government announced a \$5 million reward for information leading to his arrest on federal drug charges, but he continued to evade capture for quite some time. *Id.* Despite being apprehended in Matzalán, Mexico in 2014, Guzmán escaped custody, fleeing from the maximum-security Atiplano prison through a shaft beneath the shower in his cell to a tunnel, more than a mile long, that led to a house on a construction site. *Id.* He was captured once again in January of the following year. *Id.*

31. *Mexican Government Declines to Recognize Freedom of Expression Crisis*, RSF (Nov. 7, 2019), available at <https://rsf.org/en/news/mexican-government-declines-recognize-freedom-expression-crisis> (last visited Oct. 18, 2020).

32. *Id.*

33. *Id.*

34. *Institutional Revolution Party*, BRITANNICA (Sept. 20, 2018), available at <https://www.britannica.com/topic/Institutional-Revolutionary-Party> (last visited Mar. 11, 2020).

35. *Id.*

government's message loud and clear, to remain silent and out of sight—or else their life will be next. Drug cartels are effective at intimidating members of the media, and the Mexican government does seemingly little to aid or protect them. The quickest way for the media to face potentially fatal consequences as a result of their profession is to publish wrong or glaringly unfavored content of the Mexican government and drug cartels. This issue raises the question, *has Mexico always deprived the media of the freedom of speech and the press?* The Mexican Constitution currently provides Mexican citizens with the right to freedom of expression. Article 6 of the Mexican Constitution states: “[t]he expression of ideas shall not be subject to any judicial or administrative investigation, unless it offends good morals, infringes the rights of others, incites to crime, or disturbs the public order.”³⁶ In addition, Article 7 of the Mexican Constitution states:

Freedom of writing and publishing writings on any subject is inviolable. No law or authority may establish censorship, require bonds from authors or printers, or restrict the freedom of printing, which shall be limited only by the respect due to private life, morals, and public peace. Under no circumstances may a printing press be sequestered as the instrument of the offense.

The organic laws shall contain whatever provisions may be necessary to prevent the imprisonment of the vendors, newsboys, workmen, and other employees of the establishment publishing the work denounced, under pretext of a denunciation of offenses of the press, unless their guilt is previously established.³⁷

Although these articles suggest the media is fully protected in Mexico, looking at the history of the country, it seems safe to say that Mexican media members have never been fully accorded nor recognized as having the same value as other members of the profession located elsewhere around the globe.

36. Constitución Política de los Estados Unidos Mexicanos, CP, art. 7, Diario Oficial de la Federación [DOF] 1968 (Mex.), available at https://web.oas.org/mla/en/Countries_Intro/en_mex-int-text-const.pdf (last visited Mar. 13, 2020).

37. *Id.* at 3.

A. Political Influence in Censorship of the Media

For over seventy years, Mexico was led by the Institutional Revolutionary Party (PRI), from 1929 until the end of the twentieth century.³⁸ The PRI was founded by Plutarco Elias Calles, alongside a group of local political leaders and military strongmen, as well as labor unions and regional political parties.³⁹ The PRI began as a means of organizing the political competition, but by 1934 Calles was singlehandedly in control of the Mexican government and politics, and his influence remained long after he left office.⁴⁰ Calles and Lazaro Cardenas, Mexico's sitting President from 1934-1940, engaged in a serious power struggle for political control of the country that resulted in Cardenas re-grouping the PRI. The PRI's members grew to some 4.3 million people within a year.⁴¹ In the fifty years that followed, PRI's power only increased, and by the mid-1970s corruption had permeated the political organization, reaching unprecedented levels as more wealth flowed into the country.⁴² At this point the media started to see the system and this dynamic, and called officials out for their actions.⁴³

The PRI's presence was felt and supported by many, but the party was not afraid to employ repression and corruption to fulfill any objectives it saw as necessary and censor those who chose to speak out against the PRI's favor.⁴⁴ Media outlets have relied heavily on the government for their funding, which remains the case today, yet the PRI has had no sympathy for the profession. In the 1970s, PRI President Lopez Portillo stated, "I don't pay for them to beat me," and ceased government advertising in the only major independent media outlet at that time.⁴⁵ In turn, the government awarded certain media outlets government advertisements, tax breaks, and loans from the government.⁴⁶ However, no media

38. *Id.*

39. *Institutional Revolution Party (PRI)*, U.S. LIBR. OF CONG. (2018), available at <http://countrystudies.us/mexico/84.htm> (last visited Mar. 11, 2020).

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. Constitution of Mexico, *supra* note 36.

45. Daniel Moreno et al., *Ad Politics: How Mexico's Government Controls Journalism*, ALJAZEERA (May 27, 2018), available at <https://www.aljazeera.com/programmes/listening-post/2018/05/ad-politics-mexico-government-controls-journalism-180526094603031.html> (last visited Sept. 5, 2020).

46. Lynn Romero, *Understanding Censorship of the Mexican Media Through an Analysis of Mexico's Political History*, available at https://repositories.lib.utexas.edu/bitstream/handle/2152/15562/Romero_FinalPoster.pdf?sequence=2 (last visited Jan. 18, 2020).

outlet was safe; if, after receiving a loan or tax break from the government, they chose to publish something the government believed was unfavorable to their interests, the PRI would demand immediate repayment.⁴⁷ Bribery was common, and some journalists were even added to the payroll of some officials to stay out of harm's way.⁴⁸ The PRI demanded its respect and was slow to let up on its control over the media.

Despite clear disapproval and lack of support from the government, the 1970s saw a rise in autonomous, independent, free journalism that challenged Mexico's regime publicly.⁴⁹ Many journalists believed Mexico's civil, social, and political realities needed to be brought to the forefront of public discourse, so they began highlighting alternative viewpoints.⁵⁰ The journalistic culture began to bubble with the emerging competition, and the readership base enhanced, in part, because of the press's credibility.⁵¹ Individuals working in the media enjoyed the ability to communicate in a way that showcased the diversity and plurality of perspectives on significant issues which allowed other countries a view into their world. By the 1980s, the media was a force to be reckoned with – but not coincidentally, murders of journalists also began to rise in the '80s and this trend continued throughout the next two decades.⁵²

B. Drug Cartels' Contributing to Silence the Media

In addition to potential harms that may be attributable to the government, Mexican cartels are responsible for the other increased risks to Mexican journalists. Currently, Mexico is “the largest foreign supplier of heroin, methamphetamine, and cocaine to the United States.”⁵³ In 2019 alone, drug cartels were behind more than 17,000 homicides in Mexico between January and June. Drug trafficking organizations have splintered into smaller, competing factions of variable sizes, beginning in 2017, which has made it especially difficult to eradicate organized crime.⁵⁴

47. *Id.*

48. *Id.*

49. Felipe Carlos Betancourt Higareda, *The Development of the Media and the Public Sphere in Mexico*, 5 MEX. L. REV. 305, 319 (2013), available at <https://www.sciencedirect.com/science/article/pii/S1870057816300270#fn0310> (last visited Oct. 17, 2020).

50. *Id.*

51. *Id.*

52. Romero, *supra* note 46.

53. Brianna Lee et al., *Mexico's Drug War*, CFR (Oct. 22, 2019), available at <https://www.cfr.org/background/mexicos-drug-war> (last visited Oct. 17, 2020).

54. *Id.*

Older organizations retained stronger familial ties, while their leaders were elusive kingpins who have been in such positions for quite some time.⁵⁵ Drug trafficking operated for over a century in Mexico, picking up momentum when the Columbian drug cartels came to their demise, using bribery and violence to discipline their workers, limit competitors, and coerce and corrupt government officials to prevent government action against them.⁵⁶ These efforts to re-establish impunity have seemingly succeeded, and only nine major drug trafficking organizations are in existence today.⁵⁷

The war on drugs has increased the amount of violence in Mexico. However, the danger of corruption is also a persistent issue. Public officials have been able to get away with corruption in their roles and intimidating journalists.⁵⁸ Journalists, in particular, remain caught between two forces. They investigate and write pieces regarding significant events, but will be bribed to write the version a particular cartel wants, or be harassed, threatened, harmed, and possibly killed by cartels if their articles reveal too much information or cast them in an unfavorable light.⁵⁹ There have also been instances where journalists may be caught between two rival cartels that demand two conflicting versions of stories, and the journalist cannot avoid risk on either side.⁶⁰

Despite little to no aid from the government, Mexican journalists have carried on their love for reporting and writing on real issues, refusing to give up what they love to do the most. Yet these risks remain, and it fuels the desire for these journalists to flee and seek asylum on the other side of the border. Organizations like the National Association of Hispanic Journalists are dedicated to supporting Hispanic journalists around the world.⁶¹ One of their main goals is to promote accurate and fair treatment of Hispanics by the news media, as well as foster a greater understanding of the unique cultural identity, interests, and concerns of Hispanic journalists.⁶² Reporters Without Borders (RSF), one of the world's largest nonprofit organizations, supports Mexican journalists in their

55. *Id.*

56. *Id.* at 9.

57. *Id.* at 14.

58. Phippen, *supra* note 24.

59. Don Winslow, *Mexican Journalists Risk Death to Tell the Truth*, TIME (June 28, 2017), available at <https://time.com/4836655/mexican-cartels-free-press-don-winslow/> (last visited Oct. 12, 2020).

60. *Id.*

61. NAHJ Mission, NAHJ, available at <https://nahj.org/about-overview/> (last visited Oct. 12, 2020).

62. *Id.*

mission to protect freedom of information.⁶³ Additionally, there are people on the ground who support Mexican journalists and try to provide resources where needed. Carlos Spector, an American attorney, specialized in arguing asylum cases for thirty years.⁶⁴ Spector, growing up between El Paso, Texas, and Guadalupe, Mexico, was familiar with the challenges of immigrants and it sparked his passion for immigration work, involving such cases as that of Méndez Pineda.⁶⁵

IV. OVERVIEW OF ASYLUM AND THE RIGHT OF REFUGEES

The system of international protection has had a complicated history dating back to its origins. Article 14(1) of the Universal Declaration of Human Rights (UDHR), which was adopted in 1948, guarantees the right to seek and maintain asylum in other countries.⁶⁶ The Declaration has been said to have been created as a “set standard of rights for all people everywhere: whether male or female, black or white, communist or capitalist, victor or vanquished, rich or poor, for members of a majority or a minority in the community.”⁶⁷ It was made for “recognition of the inherent dignity and . . . equal and inalienable rights of all members of the human family ‘ . . . and through that recognition [to] provide the foundation of freedom, justice, and peace in the world.’”⁶⁸ The controlling international convention on refugee law is the 1951 Convention relating to the Status of Refugees (1951 Convention) and its 1967 Optional Protocol relating to the Status of Refugees (1967 Optional Protocol),⁶⁹ and the

63. *Our Values*, REP. WITHOUT BORDERS, available at <https://rsf.org/en/our-values> (last visited Oct. 10, 2020). A central message of the RSF’s value statement is that the freedom of information is unquestionably one of the freedoms that help to develop the capacities of individuals. *Id.* Freedom of information is essential to the growth in all the social, economic and political possibilities available to the individual. *Id.*

64. Phippen, *supra* note 24.

65. *Id.* RSF connected Pineda with Spector because of his well-known success with four other Mexican journalists, including Emilio Gutiérrez Soto. *Id.* In the years since Pineda self-deported in 2017, Spector has continued to fight for asylum-seekers, despite the Trump administration’s treatment of asylum cases. *Id.*

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

67. Peter Bailey, *The Creation of the Universal Declaration of Human Rights*, UNIVERSAL RIGHTS NETWORK, available at <https://www.universalrights.net/main/creation.htm#top> (last visited Oct. 18, 2020).

68. *Id.*

69. U.N. Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137 [hereinafter 1951 Convention], as amended, United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267 [hereinafter 1967 Protocol].

process is notably overseen by the United Nations High Commissioner for Refugees (UNHCR).⁷⁰ The UNHCR has existed for almost seventy years and has worked with over fifty million refugees to successfully get them to safety and freedom for a new life. During the aftermath of the Second World War, the UNHCR was created by the United Nations and from its inception, it has been a tremendous aid to millions of Europeans when they resettled.⁷¹ The following year, the 1951 Refugee Convention was created and overseen by the UNHCR, which defined the term “refugee” and outlined refugee rights as well as the responsibilities of the 145 State signatories to protect them.⁷² Nonrefoulement is one of the core principles of the Convention, and it stands for the proposition that refugees should not be returned to a country where serious threats to their life and freedom exist based on “race, religion, nationality, membership of a *particular social group*, or *political opinion*.”⁷³ The 1967 Protocol recognized that refugee situations would continue to occur in the future, and broadened the Convention’s applicability by removing its time and geographical limitations so that persons seeking refugee status no longer were confined to displacement following events in Europe before January

70. *Asylum Law, Asylum Seekers and Refugees: A Primer*, TRAC IMMIGR. (Aug. 7, 2006), available at <https://trac.syr.edu/immigration/reports/161/> (last visited Oct. 18, 2020). The primary responsibility of the UNHCR is to lead and coordinate international efforts to protect refugees as well as to solve global refugee issues. *Id.*

71. *History of UNHCR*, UNHCR, available at <https://www.unhcr.org/pages/49c3646cbc.html> (last visited Oct. 18, 2020). The UNHCR won its first Nobel Peace Prize in 1954 for its work in Europe. *Id.* The UNHCR won its second Nobel Peace Prize in 1981 for its worldwide refugee assistance during the 1960s and over the following two decades. *Id.*

72. *The 1951 Refugee Convention*, UNHCR, available at <https://www.unhcr.org/en-us/1951-refugee-convention.html?query=1951%20convention%20of%20refugee> (last visited Oct. 18, 2020). The 1951 Convention is the key legal text that has formed the basis for the UNHCR’s work. *Id.* It was ratified by 145 State parties. *Id.* Other rights contained in the 1951 Convention include: “The right not to be expelled, except under certain, strictly defined conditions (Article 32); the right not to be punished for illegal entry into the territory of a contracting State (Article 31); the right to work (Articles 17 to 19); the right to housing (Article 21); the right to education (Article 22); the right to public relief and assistance (Article 23); the right to freedom of religion (Article 4); the right to access the courts (Article 16); the right to freedom of movement within the territory (Article 26); and the right to be issued identity and travel documents (Article 27 and 28).” *See also The 1951 Refugee Convention and Protocol*, FACING HIST. AND OURSELVES, available at <https://www.facinghistory.org/standing-up-hatred-intolerance/1951-refugee-convention-and-protocol> (last visited Oct. 18, 2020).

73. Sir Elihu Lauterpacht and Daniel Bethlehem, *The Scope and Content of the Principle of Nonrefoulement: Opinion*, UNHCR (June 20, 2001), available at <https://www.unhcr.org/enus/protection/globalconsult/3b33574d1/scope-content-principle-non-refoulement-opinion.html?query=nonrefoulement> (last visited Dec. 5, 2020).

1, 1951.⁷⁴ The United States immediately ratified the 1967 Protocol in 1967, but in 1980, Congress passed the Refugee Act which followed the prior 1951 Convention.⁷⁵ The Refugee Act defined a refugee—aligned with the definitions of the 1951 Convention—as “an individual . . . outside their country of residence or nationality, or someone . . . without any nationality and is unable or unwilling to return to his or her homeland because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a *social group*, or *political opinion* . . .”⁷⁶ With this new legal foundation, the United States appeared to want to commit itself as a nation to opening its borders to those being persecuted and oppressed, providing a safe place for refuge for those who needed such shelter.⁷⁷

U.S. immigration law also makes the distinction between refugees and asylum-seekers. A refugee is a person who claims to meet its definition from outside the United States,⁷⁸ and an asylum-seeker is a person who claims to meet the definition of “refugee” and is already located in the United States.⁷⁹ This definition is significant in determinations of both refugee resettlement and asylum status, but the process to obtain either is quite different.⁸⁰ The Immigration and Nationality Act (INA) explicitly gives the executive branch the power to determine how the refugee process operates each year.⁸¹ The INA also describes the asylum process in section 208 (a)(1):

Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after

74. *The 1951 Convention and its 1967 Protocol*, UNHCR (2011), available at <https://www.unhcr.org/en-us/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html> (last visited Sept. 6, 2020).

75. Dan Moffett, *What is the United States Refugee Act of 1980?*, THOUGHTCO (Nov. 19, 2019), available at <https://www.thoughtco.com/united-states-refugee-act-1980-1952018> (last visited Oct. 18, 2020).

76. *Id.*

77. *Id.*

78. Whitney Drake, *Disparate Treatment: A Comparison of United States Immigration Policies Toward Asylum-Seekers and Refugees from Colombia and Mexico*, 20 TEX. HISP. J.L. & POL'Y 121, 124 (2014); see generally Immigration and Nationality Act § 207(d)(1).

79. Drake, *supra* note 78; see Immigration and Nationality Act § 208(a)(1) (1980); see also 8 U.S.C. § 1158(a)(1) (1980).

80. Drake, *supra* note 78.

81. Drake, *supra* note 78; see Immigration and Nationality Act § 207(a) (1980); see also 8 U.S.C. § 1157(a) (1980).

having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum . . .⁸²

A. The Asylum Process

It is well-settled that a person may request asylum for any country outside of their own; there is no requirement for one to claim asylum in the first country they reach.⁸³ An asylum-seeker is also entitled to remain in the country of asylum and have their claim heard, a key right provided under the 1951 Convention.⁸⁴ Applicants who demonstrate that they meet the definition of a refugee can seek asylum in two ways: either affirmatively, by applying, or defensively, by raising a claim resisting removal if they have been apprehended while living in the United States without legal status.⁸⁵ An affirmative asylum-seeker is physically present in the United States and must apply for asylum within one year of his or her arrival in the United States.⁸⁶ Affirmative asylum claims are reviewed by the U.S. Citizenship and Immigration Services through a non-adversarial interview with an asylum officer.⁸⁷ The asylum-seeker must complete an I-589 Application which provides personal information demonstrating the grounds for asylum.⁸⁸ Then, the asylum officer may grant the asylum status or refer the applicant for removal proceedings in an immigration court, where the applicant will have to pursue asylum in front of an immigration judge.⁸⁹

82. Drake, *supra* note 78; *see also* Immigration and Nationality Act § 208(a)(1) (1980).

83. NewsDeeply, *The Asylum Process*, THE NEW HUMANITARIAN, available at <https://deeply.thenewhumanitarian.org/refugees/background/the-asylum-process> (last visited Oct. 19, 2020). The “first country of asylum” principle refers to the expectation that countries should accept asylum-seekers fleeing their neighboring countries. *Id.* The host country has the primary responsibility to provide international protection, including recognizing and providing a safe haven to refugees and processing asylum cases in a fair and timely fashion. *Id.*

84. *Id.*

85. *See* 8 U.S.C. § 1158(a)(1) (2009); *see also* 8 C.F.R. § 208.2(a)(b) (2009).

86. *Immigration Law: The Rules and Procedure for Asylum Seekers*, LAWSHELF, available at <https://lawshelf.com/shortvideoscontentview/immigration-law-the-rules-and-procedure-for-asylum-seekers> (last visited Oct. 19, 2020). The asylum-seeker, at the time he or she is applying for asylum, may be undocumented, living in the United States without status, or may have entered the United States on a visa which will soon expire. *Id.*

87. *Id.*

88. *Id.* In the application, the asylum-seeker sets forth information such as whether he or she has ever experienced “harm, or mistreatment or threats,” whether he or she “fears harm or mistreatment” if forced to return home, and whether he or she has been imprisoned or detained in countries outside of the United States. *Id.*

89. *Id.*

A defensive asylum-seeker is an individual who has been apprehended after entering the United States, who then applies for asylum while the threat of removal by the Department of Homeland Security hangs in the balance.⁹⁰ This asylum-seeker must complete the same application as an affirmative asylum-seeker, however, the application must be filed with the immigration court that has jurisdiction over the case.⁹¹ Without the opportunity of a non-adversarial interview where they can openly provide any information pertinent to their situation, the applicant applying defensively must show that persecution is more probable than not if he or she is forced to return home.⁹² Defensive asylum cases are heard in adversarial proceedings, and the immigration judge will decide whether the applicant is eligible for asylum.⁹³

Although the United States agreed to protect refugees, American courts had issues applying the refugee definition to asylum-seekers. In 1992, the Supreme Court denied asylum to Elias Zacarias, a Guatemalan citizen who raised a claim of asylum based upon the *political opinion* claim for his refusal to join the guerrillas, a leftist military group who rebelled against the government in his home country.⁹⁴ The Court denied Zacarias's claim, reasoning that he could not show his persecutors threatened him specifically due to his political opinion, stating:

The ordinary meaning of the phrase "persecution on account of . . . political opinion" in § 101(a)(42) is persecution on account of the *victim's* political opinion, not the persecutor's. If a Nazi regime persecutes Jews, it is not, within the ordinary meaning of language, engaging in persecution on account of political opinion; and if a fundamentalist Moslem regime persecutes democrats, it is not engaging in persecution on account of religion. Thus, the mere existence of a generalized "political" motive underlying the guerrillas' forced recruitment is inadequate to establish (and, indeed, goes far to refute) the proposition that Elias-Zacarias fears persecution *on account of political opinion*, as § 101(a)(42) requires.⁹⁵

90. *Id.*

91. *Immigration Law: The Rules and Procedure for Asylum Seekers*, *supra* note 86.

92. *See id.*

93. *Obtaining Asylum in the United States*, U.S. CITIZENSHIP & IMMIGR. SERV. (Oct. 19, 2015), available at <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/obtaining-asylum-united-states> (last visited Oct. 15, 2020).

94. *See INS v. Elias-Zacarias*, 502 U.S. 478, 483-84 (1992) (holding that an organization's attempt to coerce the claimant did not amount to necessary persecution within the meaning of the law).

95. *Id.* at 482.

This decision undoubtedly changed the way asylum-seekers were able to effectively raise claims because the burden of proof required them to show not only that they faced a real, well-founded fear of persecution based upon one of the five statutory grounds, but also to provide evidence of their persecutor's motivation.⁹⁶ As it stands, this evidentiary burden of proof has become one of the most strenuous obstacles to obtaining asylum protection in the United States.⁹⁷

It comes as no surprise that some Mexican journalists have had similar experiences as Zacarias; they have historically had trouble proving persecution based on one of the five grounds. Mexican asylum-seekers applying defensively have trouble because they are disproportionately affected due to the large number of Mexican individuals who, likewise, seek asylum in this way.⁹⁸ Mexican asylum-seekers applying defensively have trouble because they are disproportionately affected due to the large number of Mexican individuals who, likewise, seek asylum in this way.⁹⁹ Not only do defensive asylum proceedings take much longer than affirmative actions, but they are much more difficult for asylum-seekers who do not have counsel to aid them.¹⁰⁰ Individuals who apply affirmatively for asylum may also face a host of issues during the interview process, such as those who have faced trauma or violence and have difficulty communicating and remembering certain events, hindering their credibility.¹⁰¹ Others may be illiterate or do not speak English; thus their rights are jeopardized because they do not necessarily understand the extent of the documents they may be told to sign or the magnitude of what is said by the officer.¹⁰² Many are denied asylum in part because of these issues, and although the core principle of the Convention was to protect refugees and those seeking asylum, there appears to be an intrinsic lack of protection when their rights are being violated in this manner through America's asylum process.

96. Katy Mann, *Reporters as Refugees: Applying United States Asylum Laws to Persecuted Journalists in Mexico*, 35 HASTINGS INT'L & COMP. L. REV. 149, 157 (2012).

97. *Id.*

98. J. Anna Cabot, *Problems Faced by Mexican Asylum Seekers in the United States*, 2 J. ON MIGRATION & HUM. SEC. 362, 365 (2018), available at <https://journals.sagepub.com/doi/pdf/10.1177/233150241400200405> (last visited Oct. 15, 2020).

99. *Id.*

100. *Id.* at 365.

101. *Id.*

102. *Id.* at 366.

1. *Journalists as Members of a Particular Social Group*

As individuals who are valued and vital to the media community-at-large, one would think that Mexican journalists would more readily qualify under the membership of a *particular social group* as grounds for asylum. Yet it has not been so easy, especially because a workable definition of the term has remained largely undefined. Historically, the United States has accepted more refugees annually than any other country.¹⁰³ Under the Trump administration, however, there have been significant cuts in refugee admission.¹⁰⁴ Ever since 2017, the administration has vetted refugees more thoroughly, ultimately resulting in a reduction of the number of refugees the United States will accept.¹⁰⁵

In 2019 the number of admissions was cut even further to 30,000, and the currently anticipated numbers do not appear to be any better.¹⁰⁶ Mexican journalists have attempted to acquire asylum by contending that they were persecuted for being members of a particular social group; analyzing the requirements of this specific ground for persecution, however, may lend some clarity as to why so many journalists have had little success.

2. *Immutability*

The first case that tackled the meaning of the grounds for “persecution on account of membership in a particular social group” was *Matter of Acosta*. In *Acosta*, the Board of Immigration Appeals (BIA) interpreted the phrase to mean “persecution that is directed toward an individual who is a member of a group of persons all of whom share a common, immutable characteristic.”¹⁰⁷ The BIA relied on the doctrine of *ejusdem generis*, meaning “of the same kind,”¹⁰⁸ to construe the phrase’s meaning; in light of this doctrine, it further explained:

103. Brittany Blizzard & Jeanne Batalova, *Refugees and Asylees in the United States*, MIGRATION POL’Y INST. (June 13, 2019), available at <https://www.migrationpolicy.org/article/refugees-and-asylees-united-states> (last visited Aug. 30, 2020).

104. *Id.*

105. *Id.*

106. *Fact Sheet: U.S. Refugee Resettlement*, NAT. IMMIGR. F. (Nov. 5, 2020), available at <https://immigrationforum.org/article/fact-sheet-u-s-refugee-resettlement/> (last visited Sept. 11, 2020).

107. *Matter of Acosta*, 19 I. & N. Dec. 211, 233 (B.I.A. 1985) [hereinafter *Acosta*].

108. *Id.* at 233.

The shared characteristic might be an innate one such as sex, color, or kinship ties, or in some circumstances, it might be a shared past experience such as former military leadership or land ownership. The particular kind of group characteristic that will qualify under this construction remains to be determined on a case-by-case basis. However, whatever the common characteristic that defines the group, it must be one that the members of the group either cannot change or should not be required to change because it is fundamental to their individual identities or consciences. Only when this is the case does the mere fact of group membership become something comparable to the other four grounds of persecution under the Act, namely, something that either is beyond the power of an individual to change or that is so fundamental to his identity or conscience that it ought not be required to be changed.¹⁰⁹

The respondent was an El Salvadoran taxi driver who fled his home country after being assaulted and receiving death threats in the form of anonymous notes.¹¹⁰ His claims consisted of persecution from the government and the guerillas; particularly, he claimed that the persecution “at the hands of the guerillas [was] on account of his membership in a particular social group,” because he was an employee of a specific taxi company as well as a person involved in the El Salvadoran transportation industry.¹¹¹ The court held that the characteristics defining this asserted group—being a taxi driver and refusing to participate in the guerilla-sponsored work stoppages—were not immutable, because the members of the group could avoid the guerillas’ threats by simply changing employment or cooperating with the stoppages.¹¹² The court viewed their employment as something that was within their control, and although it was unfortunate, there was no guaranteed right for an individual to work in the job of his choice.¹¹³ The *Acosta* immutability requirement would be difficult for Mexican journalists to assert because their livelihood is the reason that they face persecution from both the government and the cartels, and courts have not recognized areas of employment as sufficient to establish a particular social group.

The U.S. Court of Appeals for the Ninth Circuit also set forth a definition of the legal basis in the 1986 case *Sanchez-Trujillo v. INS*. In

109. *Id.* at 233-34.

110. *Id.* at 217.

111. *Id.* at 231-32.

112. *Acosta*, *supra* note 107, at 234.

113. *Id.*

reviewing the petitioners' claim of persecution based upon their membership within "a particular social group consisting of young, urban, working-class males of military age who had never served in the military or otherwise expressed support for the government of El Salvador,"¹¹⁴ the court stated:

The phrase "particular social group" implies a collection of people closely affiliated with each other, who are actuated by some common impulse or interest. Of central concern is the existence of a voluntary associational relationship among the purported members, which imparts some common characteristic that is fundamental to their identity as a member of that discrete social group.¹¹⁵

The court found that the class of "young, urban, working-class males of military age" did not exemplify the type of "social group" for which protection from persecution could be provided.¹¹⁶ The class was over-broad and, as such, too many variables could be included in defining that class; it was not the type of voluntary and cohesive, homogeneous group for which the grounds of persecution intended to apply.¹¹⁷ The court articulated that "to hold otherwise would be tantamount to extending refugee status to every alien displaced by general conditions of unrest or violence in his or her home country."¹¹⁸ The court cited *Hernandez-Ortiz* as an example of a *particular social group* within which persecution against a family unit was relevant because a family constituted a "small, readily identifiable group."¹¹⁹ On the contrary, the court reasoned that a group of males taller than six feet would not constitute a *particular social group* because, similar to the case at hand, the group of individuals would be too broad, and the shared characteristics may not sufficiently relate to the grounds for persecution.¹²⁰

Other circuit courts have come to their own conclusions about what this requirement means and how it should apply. The U.S. Court of Appeals for the Second Circuit elaborated on the *Sanchez-Trujillo* definition, stating that "a particular social group is comprised of individuals who

114. *Sanchez-Trujillo v. I.N.S.*, 801 F.2d 1571, 1573 (9th Cir. 1986).

115. *Id.* at 1576.

116. *Id.*

117. *Id.* at 1577.

118. *Id.*

119. *See Sanchez-Trujillo*, 801 F.2d at 1576; *see also Hernandez-Ortiz v. I.N.S.*, 777 F.2d 509, 516 (9th Cir. 1985).

120. *See Sanchez-Trujillo*, 801 F.2d at 1577.

possess some fundamental characteristic in common which serves to distinguish them in the eyes of a persecutor—or the eyes of the outside world in general.”¹²¹ Such a characteristic claimed to be the basis of persecution—like persecution on account of race, religion, nationality, and political opinion—must be “recognizable and discrete.”¹²²

3. *Particularity and Social Visibility*

Despite its uneven application, *Acosta* laid a significant foundation for what defined a *particular social group*, and the First, Third, Sixth, and Seventh Circuits adopted its formulation.¹²³ In 2006, the BIA attempted to clarify the elusive definition by adding the requirements of particularity and social visibility. In *Matter of C-A*, the Board concluded that members of a *particular social group* must be socially visible: generally, easily recognizable, and understood by others to constitute a social group.¹²⁴ In 2007, the BIA held that “noncriminal government informants” could not constitute a *particular social group* because the very nature of the conduct at issue was kept out of the public view.¹²⁵ The BIA relied on the Second Circuit’s determination that members of a social group must be “externally distinguishable.”¹²⁶ The BIA also noted the UNHCR’s *Guidelines on Membership of a Particular Social Group*, which confirmed that “visibility” is an important element in identifying the existence of a *particular social group* that affects the determination of refugee status.¹²⁷ Normally, informants against a drug cartel intend to remain unknown and undiscovered; the requisite visibility, however, is limited to those informants who are seemingly witnesses or have somehow come to cartel members’ attention.¹²⁸ The BIA determined that

121. *Gomez v. I.N.S.*, 947 F.2d 664 (2d Cir. 1991).

122. *Id.*

123. *Matter of C-A*, 23 I. & N. Dec. 951, 955-56. See *Castellano-Chacon v. INS*, 341 F.3d 533 (6th Cir. 2003) (applying *Acosta* to find that “tattooed youth” were not a “particular social group”); see also *Lwin v. INS*, 144 F.3d 505 (7th Cir. 1998) (finding that parents of Burmese student dissidents shared a common, immutable characteristic sufficient to comprise a particular social group); *Fatin v. INS*, 12 F.3d 1233, 1239-41 (3d Cir. 1993) (holding that a subgroup of Iranian feminists who refuse to conform to the government’s gender-specific laws and social norms may constitute a particular social group); *Ananeh-Firempong v. INS*, 766 F.3d 621, 626 (1st Cir. 1985) (applying *Acosta* in determining that family relations can be the basis of a particular social group).

124. *Matter of C-A*, 23 I. & N. Dec. 951, 959.

125. *Id.* at 957.

126. *Id.* at 956.

127. *Id.* at 960.

128. *Id.*

informants were not in a substantially different situation from anyone who has crossed the cartel or is otherwise perceived as a threat to their interests; as such, it was difficult to conclude that any group is much narrower than the general population.¹²⁹

Shortly thereafter, the BIA analyzed *Matter of A-M-E & J-G-U* to determine whether a *particular social group* existed, focusing on “social visibility” and “particularity” requirements as applied to the proposed group of “affluent Guatemalans.”¹³⁰ The Board determined that this group did not meet the particularity requirement, stating that “the characteristic of wealth or affluence is simply too subjective, inchoate, and variable to provide the sole basis for membership in a particular social group.”¹³¹ Depending upon the narrowness or expansiveness of one’s perspective, the terms “wealthy” and “affluent” assume different meanings; correspondingly, the proposed social group could range from as little as 1% to as much as 20% of the population.¹³² Because of this, particularity could not be demonstrated.¹³³

The proposed social group also failed as a collective group under the social visibility requirement. According to the BIA, social visibility must be considered in the context of the country of concern while the persecution must be feared.¹³⁴ Additionally, a social group must be “particular” or sufficient enough to “provide an adequate benchmark for determining group membership.”¹³⁵ The proposed social group was subjected to threats of extortion. However, there was no evidence to show that wealthy Guatemalans would be recognized as a group that was at a greater risk of crime, particularly extortion.¹³⁶ These threats are legitimate because violence and crime in the country appear to be pervasive at all socio-economic levels.¹³⁷

In 2008, the BIA imposed two new requirements of “social visibility” and “particularity” for a proposed social group in *Matter of S-E-G*.¹³⁸

129. *Id.* at 960-61.

130. *Matter of A-M-E*, 24 I. & N. Dec. 69 (B.I.A. 2007).

131. *Id.* at 76.

132. *Id.*

133. *Id.*

134. *Id.* at 74-75.

135. *Matter of A-M-E*, 24 I. & N. Dec. 76 (B.I.A. 2007).

136. *Id.* at 74.

137. *Id.*

138. *Matter of S-E-G*, 24 I. & N. Dec. 579 (B.I.A. 2008) (holding that “Salvadoran youth who have been subjected to recruitment efforts by the MS-13 gang and who have rejected or resisted membership in the gang based on their own personal, moral, and religious opposition to the gang’s values and activities” did not constitute a particular social group).

In considering whether the proposed social group met the particularity requirement, the Board stated:

The essence of the “particularity” requirement, therefore, is whether the proposed group can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons. While the size of the proposed group may be an important factor in determining whether the group can be so recognized, the key question is whether the proposed description is sufficiently “particular,” or is “too amorphous . . . to create a benchmark for determining group membership.”¹³⁹

The BIA defined social visibility as a requirement that “the shared characteristic of the group should generally be recognizable by others in the community.”¹⁴⁰ Through this standard and additional tests, the BIA was able to provide necessary clarification to the perplexing definition in *Acosta*.¹⁴¹ However, the UNHCR recently criticized the BIA in an amicus brief for adding the requirements, stating that the addition was inconsistent with the “purpose and intent of the 1951 Convention and the 1967 Protocol.”¹⁴² The UNHCR interpreted a proposed social group as:

A group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience, or the exercise of one’s human rights.¹⁴³

139. *Id.* at 584.

140. *Id.* at 586.

141. *Matter of M-E-V-G*, 26 I. & N. Dec. 227 (B.I.A. 2014) (stating: “The generality permitted by the *Acosta* standard provided flexibility in the adjudication of asylum claims. However, it also led to confusion and a lack of consistency as adjudicators struggled with various possible social groups, some of which appeared to be created exclusively for asylum purposes”).

142. Rachel Gonzalez Settlage, *Rejecting the Children of Violence: Why U.S. Asylum Law Should Return to the Acosta Definition of “A Particular Social Particular Group”*, 30 GEO. IMMIGR. L.J. 287, 305-06 (2016).

143. *Id.* at 306; see Guidelines on International Protection No. 2: “Membership of a Particular Social Group” Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, § II(B)(10), U.N. Doc. HCR/GIP/02/02 (May 7, 2002), available at <https://www.unhcr.org/3d58de2da.pdf> (last visited Sept. 6, 2020) [hereinafter Guidelines].

This definition more closely resembles that of *Acosta*,¹⁴⁴ and scholars have taken note of The Guidelines, stating “the social perception aspect may cover certain characteristics, such as occupation, that are neither immutable nor fundamental to one’s human rights, but that the Refugee Convention is designed to protect.”¹⁴⁵ The Guidelines state, “only if a claimant alleges a social group that is based on a characteristic determined to be neither unalterable or fundamental should further analysis be undertaken to determine whether the group is nonetheless perceived as a cognizable group in that society.”¹⁴⁶ Thus, the UNHCR Guidelines make it clear that the immutability factor is the primary focus, while social visibility or perception is secondary. In regard to “particularity” and “social visibility”, the group need not be visible to the “naked eye in a literal sense of the term.”¹⁴⁷ The UNHCR also made clear the size of a *particular social group* is not a “relevant criterion” for the determination of a *particular social group*.¹⁴⁸

The BIA addressed some of the ambiguity of the requirements of a *particular social group* in two decisions: *Matter of M-E-V-G-* and *Matter of W-G-R-*. The BIA formulated a new test which required applicants for asylum, or the withholding of removal of those seeking relief, to establish that the group is: (1) composed of members who share a common immutable characteristic; (2) defined with particularity; and (3) socially distinct within the society in question.¹⁴⁹ In *Matter of M-E-V-G-*, the BIA stated literal or “ocular” visibility is not, and never has been, a prerequisite for a viable *particular social group*.¹⁵⁰ Although a *particular social group* may be set apart from the rest of society because of visible characteristics, the “social visibility” requirement was never intended to be limited solely to these characteristics. The Board noted that such an interpretation would run afoul of the principles of refugee protection under the Act and Protocol.¹⁵¹ In addressing particularity, the BIA held that “a particular social group must be defined by characteristics that provide a clear benchmark for determining who falls within the group.”¹⁵² The group must also be “discrete and have definable boundaries—it must not be

144. *Acosta*, 19 I. & N. Dec. 234 (B.I.A 1985).

145. Kathleen Kersh, *An Insurmountable Obstacle: Denying Deference to the BIA’s Social Visibility Requirement*, 19 MICH. J. RACE & L. 153, 160 (2013).

146. Guidelines on International Protection No. 2, *supra* note 143.

147. *Id.*

148. *Id.*

149. *Matter of M-E-V-G-*, 26 I. & N. Dec. at 237.

150. *Id.* at 238.

151. *Id.*

152. *Id.* at 239.

amorphous, overbroad, diffuse, or subjective.”¹⁵³ The BIA also introduced the concept of social distinction:

Social distinction refers to social recognition, taking as its basis the plain language of the Act—in this case, the word “social.” To be socially distinct, a group need not be seen by society; rather it must be perceived as a group by society. Society can consider persons to comprise a group without being able to identify the group’s members on sight.¹⁵⁴

This case provided a clear rule as to what is required of applicants to meet the particularity requirement.

In the *Matter of W-G-R-*, the question addressed by the “particularity” analysis was one of delineation, or in other words, “the need to put ‘outer limits’ on the definition of a ‘particular social group.’”¹⁵⁵ In assessing an applicant’s claim, both the social and cultural context of the alien’s country of citizenship or nationality must be taken into account.¹⁵⁶ In both decisions, the BIA recognized that the “social distinction” and “particularity” requirements emphasized a different aspect of a particular social group.¹⁵⁷ The two requirements overlap in the sense that both of these requirements consider societal factors in application of the fact-specific society an applicant’s claim for relief.¹⁵⁸ Whether people of a given society perceive a social group as sufficiently separate or distinct is key to determining if a proposed social group satisfies the “particularity” test.¹⁵⁹

V. FLAWED APPLICATION OF PARTICULAR SOCIAL GROUP

Under these judicial tests, journalists do not explicitly constitute a particular social group. From the perspective of the journalists, however, they are a part of a particular social group, announcing their membership

153. *Id.*

154. *Matter of M-E-V-G-*, 26 I. & N. Dec. at 240.

155. *Matter of W-G-R-*, 26 I. & N. Dec. 208, 214 (B.I.A. 2014).

156. *Id.*

157. *Id.* at 241.

158. *Id.*

159. *Matter of W-G-R-*, 26 I. & N. Dec. at 241.

every time they place their name in print in the byline of a publication.¹⁶⁰ Omar Bah, a Gambian journalist, was fortunate to receive asylum because the public nature of his profession helped demonstrate his qualification on particular social group grounds.¹⁶¹ Similarly, a Honduran journalist won his appeal of a denied asylum application as a member of a particular social group.¹⁶² The BIA concluded:

The respondent submitted evidence to demonstrate that journalists are a socially distinct group within Honduran society, and frequently targets for violence and murder As the respondent has demonstrated that he suffered persecution on account of his membership in a particular social group and that the Honduran government was unable or unwilling to protect him, the respondent has demonstrated he qualifies as a refugee as described under the Act . . . We conclude it is unreasonable to expect the respondent, whose family, social and economic ties are all within one region of the country, to relocate within Honduras . . . We conclude that the respondent established eligibility for asylum.¹⁶³

However, many Mexican journalists have had difficulty reviewing what is required to win an asylum claim on the ground of being a member of a particular social group. At times, they succeed because the occupation was the exact reason for their persecution. The Sixth Circuit rejected the argument that a group of Ethiopian journalists constituted a particular social group in an unpublished decision.¹⁶⁴ Despite the uphill battle, Mexican journalists hold out hope that their arguments will not fall on deaf ears. The media's role worldwide, and the principles of freedom of the press and human rights as a whole, may serve as a significant motivation

160. Allison Griner, *Caught in the Middle: Journalists Seeking Asylum Often Stuck in Limbo*, COLUM. JOURNALISM REV. (Aug. 17, 2015), available at https://www.cjr.org/analysis/journalists_seeking_asylum.php (last visited Sept. 7, 2020).

161. *Id.*

162. Daniel M. Kowalski, *Unpub. BIA PSG (Pro Bono) Asylum Victory – Honduran Journalist*, LEXISNEXIS (Oct. 23, 2015), available at <https://www.lexisnexis.com/legalnews-room/immigration/b/insidenews/posts/unpub-bia-psg-pro-bono-asylum-victory-honduran-journalist> (last visited Sept. 7, 2020) (the article discusses an unpublished BIA opinion).

163. *Id.*

164. *Dubal v. Mukasey*, 257 F. App'x. 875, 878 (6th Cir. 2007) (holding that “Dubal’s claims of a three-week detention in 1993, a three-hour detention in 1998, and a two-day detention and a week of harassing phone calls in 2003, accompanied by general claims of physical abuse that Dubal failed to document before the IJ or the BIA, do not compel a finding of actual persecution”).

for these journalists and other human rights activists to see this fight through.

A. Immutability

Part of the issue with journalists claiming to be a member of a particular social group is their ability to satisfy the immutability requirement. It is hard to argue that, as a group, journalists have an immutable characteristic when looking at judicial interpretations. For example, the *Acosta* court illustrated that occupation could not be considered to have an immutable characteristic because taxi drivers could choose to change their jobs or simply agree to the demands placed upon them.¹⁶⁵ However, when it comes to this requirement, it should be applied on a case-by-case basis. Mexican journalists often do not have the ability nor the opportunity to change their professions, nor can they decide to cede to the pressure imposed upon them by corrupt government players or members of the drug cartels; oftentimes, it is too late.

Journalists, like Miroslava Breach, who investigate stories of authorities and criminals working together become aware of the dangers associated with their profession but do not have any protection at all in their communities in Mexico.¹⁶⁶ Breach seemingly crossed the line, and though she informed her family and authorities of the mounting threats against her, she was still gunned down while taking her teenage son to school one morning in March 2016.¹⁶⁷ Mexican journalists are often exposed to danger but unable to dodge their fate.

Even before they can even think of retracting or completely removing themselves from the profession, and thus play by the rules, journalists are still not safe from harm because of their past publications. Another journalist, Emilio Soto Gutierrez, realized there was nothing he could have done to make up for his fatal mistake of disseminating information to the public about corrupt police, corrupt military officials, and cartel leaders.¹⁶⁸ Despite curtailing reporting on certain issues in his community about those in power, he still received serious threats and lived in fear day in and day out.¹⁶⁹ His apologies for his provoking publications

165. *Acosta*, 19 I. & N. Dec. at 234.

166. Hugo Bacheaga, *Can Mexico Save its Journalists?*, BBC (July 4, 2017), available at <https://www.bbc.com/news/world-latin-america-39436568> (last visited Sept. 7, 2020).

167. *Id.*

168. Charles Bowden, *We Bring Fear*, MOTHER JONES (July 2009), available at <https://www.motherjones.com/politics/2009/07/we-bring-fear/> (last visited Sept. 7, 2020).

169. *Id.*

fell on deaf ears, and a black cloud lingered over his head until he chose to flee his country.¹⁷⁰

Not all journalists have the option to make things better because of the work they do in their professional capacity. All of these journalists face persecution and there is no way out. If this requirement were to be considered on a case-by-case basis, there is sufficient support to determine that Mexican journalists could establish a social group “composed of members who share a common immutable characteristic”, thereby meeting the *Matter of S-E-G* requirement.¹⁷¹

The possibility of making room for journalists under the immutability requirement may suggest there would be a better chance of considering more journalists if the BIA were to go back to adhering to the *Acosta* definition. As the BIA has described, it does not matter what the common characteristic is so long as it is one that “the members of the group either cannot change or should not be required to change because it is fundamental to their individual identities or consciences.”¹⁷² This proposed social group has done nothing wrong; they are simply working in a profession that they are passionate about and attempting to exercise freedom of expression. The Mexican Constitution states that there shall be no law that establishes censorship.¹⁷³ The legal framework promotes freedom that has been reflected in various think pieces and hard news. A journalist’s work is fundamental to their identity and conscience, especially because it is primarily how they are recognized and revered throughout their respective communities. Moreover, the importance of the press in this day and age around the world is increasing, and it is an imperative reason why Mexican journalists should be protected due to their profession. They have contributed significant value to the world of news in and outside of their country. Additionally, their identity as a journalist who goes against “playing by the rules” is stamped upon them and as such becomes an immutable characteristic as they navigate the dangers associated with it.

170. *Id.*

171. *Matter of M-E-V-G-*, 26 I. & N. Dec. at 122.

172. *Acosta*, 19 I. & N. Dec. 234

173. Constitución Política de los Estados Unidos Mexicanos, CP, art. 7, Diario Oficial de la Federación [DOF] 1968 (Mex.), available at https://web.oas.org/mla/en/Countries_Intro/en_mex-int-text-const.pdf (last visited Mar. 13, 2020).

B. Particularity and Social Visibility

Further, journalists should be able to sufficiently satisfy the particularity prong. As previously noted, the *Matter of A-M-E* determined that “affluent Guatemalans” did not establish particularity because “the characteristic of wealth or affluence is simply too subjective, inchoate, and variable to provide the sole basis for membership in a particular social group.”¹⁷⁴ Moreover, the proposed group must be “discrete and have definable boundaries”¹⁷⁵

When looking at these requirements objectively, journalists are a group of distinguishable and determinate individuals. It is clear in the community, not only by the public nature of their work but also through word of mouth, that journalists are who they are. There is nothing amorphous about this proposed social group since there is evidence that journalists face serious persecution from all sides in a way that other occupations in Mexico may not. Thus, a line may be drawn between journalists and the rest of society. Furthermore, these journalists are so distinguishable that it is easy for them to be marked and tracked for revenge; individuals in different occupations may have an easier time laying low and finding ways to readjust their lives if necessary because their names are not known throughout the grapevine of officials and cartel members. Journalists are also perceived as a distinct group by society when considering the concept of social distinction. Some journalists in particular may even be identifiable to members of the public upon sight. Taking both the social and cultural context of Mexico into consideration, journalists should be assessed on a case-by-case basis to demonstrate and establish particularity.

Likewise, journalists should be able to meet the social visibility requirement. Pursuant to the BIA’s conclusion in *Matter of C-A*,¹⁷⁶ journalists are easily recognizable and understood by the people to constitute a social group because their profession easily sets them apart. There is evidence of this distinction in the way that they are targeted by corrupt officials and the cartels. The expression and ability to disseminate certain information to the public sets journalists apart from the rest of society. If journalists cannot meet the immutability requirement, the requirement of social visibility should work in their favor. In addition, even if journalists are not recognizable on sight, the court in *Benitez-Holder* clarified that a literal sense of the term “social visibility” is not required—only that

174. *Matter of A-M-E*, 24 I. & N. Dec. at 76.

175. *Matter of M-E-V-G*, *supra* note 141.

176. *Matter of C-A*, *supra* note 123, at 959.

society recognizes a group as having a common characteristic.¹⁷⁷ Thus, journalists, by virtue of the public nature of their profession, may fit this description, especially when they all seemingly share similar experiences publishing unfavorable work.

In sum, Mexican journalists may continue to have issues persuading the BIA or other immigration judges that they have a well-founded fear of persecution on the grounds of being a member of a particular social group. However, there are creative arguments to suggest journalists can and should be able to establish their membership under the three requirements because of the nature of their profession and the intense persecution that comes with it. Even more to their point, the threats are directly targeted at members of the press because of what they do and who they are in society, and evidence of such should be favorable to the journalists seeking asylum. There is a real threat, and it is not merely because of the desire to keep journalists quiet. Journalists quickly become the focus because powerful officials, as well as cartel leaders, specifically want journalists to work in their favor solely because of their status. When journalists refuse to cooperate with this desired arrangement, neither side is satisfied with simply silencing journalists; they want to send a message to the media that their days are numbered. For this reason, there is ample support to demonstrate that journalists should be considered as members of a particular social group for asylum purposes.

VI. JOURNALISTS AND POLITICAL OPINION

The grounds of *political opinion* within asylum law are what Mexican journalists have turned to in order to plead their cases of persecution and potential for loss of life upon return to their home country. Many Mexican journalists may not believe they are necessarily political actors, yet there is room to argue that they may fall under the umbrella of *political opinion*. For instance, the decision in *Hussain v. INS* may indicate that the same rationale should be applied to journalists fleeing from Mexico. Hussain was a Pakistani reporter that was attacked by a political group based upon the belief that he supported a rival political organization, and he was granted asylum by the Ninth Circuit.¹⁷⁸

The Ninth Circuit held that whether or not Hussain actually held the political beliefs imputed to him by his persecutors, he was being attacked based on these beliefs and that his journalistic choices were motivated by

177. *Benitez Ramos v. Holder*, 589 F.3d 426, 430 (7th Cir. 2009).

178. *Hussain v. I.N.S.*, 246 F.3d 674 (9th Cir. 2000).

politics.¹⁷⁹ The court stated “Journalism is a work that overtly manifests a political opinion,”¹⁸⁰ thus persecution based upon an imputable political opinion, whether or not the seeker actually holds such opinion, is a valid basis for asylum.¹⁸¹ In light of the court pointing out that journalism has political elements, this seems applicable to Mexican journalists who, despite viewing themselves as non-political, may be believed to be political by their persecutors. Thus, persecution would fall within statutory grounds for protection. The Ninth Circuit also decided in *Hasan v. Ashcroft* that journalists who attempted to expose corruption through their reporting were making statements that fall under political opinion.¹⁸² “When a powerful political leader uses his political office as a means to siphon public money for personal use and uses political connections throughout a wide swath of government agencies, both to facilitate and to protect his illicit operations, exposure of his corruption is inherently political.”¹⁸³ Hasan, a female Bangladeshi reporter, was persecuted for publishing an article regarding a prominent government official and his alleged participation in criminal activity. Because of the publication, she was attacked numerous times, even once at her home by associates of the official, and the group of men also attacked her parents and her husband.¹⁸⁴ The Ninth Circuit panel thus concluded that Hasan and her family experienced persecution on account of the political opinion she voiced in her article.¹⁸⁵ The Court wrote:

The text of the article provided in the record reveals that, contrary to the IJ’s characterization, Afroza did more than call the Chairman a “crook.” She accused him of organizing a cadre of “terrorism, repression, and extortion,” of “misappropriation of public money,” of “collect[ing] tolls for his own while giving hookup connection[s] for water and gas lines,” and of making his political office “an office of corruption.” These are indisputably political issues.¹⁸⁶

179. *Id.* at 2.

180. *Id.*

181. *Id.*

182. *Hasan v. Ashcroft*, 380 F.3d 1114 (9th Cir. 2004), *overruled by* *Maldonado v. Lynch*, 786 F.3d 1155 (9th Cir. 2015).

183. *Id.* at 1121.

184. *Id.* at 1117-18.

185. *Id.* at 1121.

186. *Ashcroft*, 380 F.3d at 1120.

VII. FIRST AMENDMENT IN SUPPORT OF MEXICAN JOURNALISTS SEEKING ASYLUM

The U.S. Constitution explicitly protects freedom of speech and freedom of the press, as these values are deeply rooted in American history. The First Amendment provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”¹⁸⁷ Scholars have largely cited the purposes underlying the First Amendment protections of the freedom of speech are: “(1) to assure individual self-fulfillment; (2) to help attain the truth; (3) to inform the electorate; and (4) to promote the arts.”¹⁸⁸ It has also been argued that free speech is an essential means of promoting tolerance; checking governmental abuse, and protecting those holding dissenting views.¹⁸⁹ While free speech is one of the United States’ most cherished liberties, that freedom is not without limits. The Supreme Court has held that free speech will not be protected if an individual is a “clear and present danger” to U.S. security.¹⁹⁰ The test, “whether the words used are used in such circumstances are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent,”¹⁹¹ is, therefore, a question of proximity and degree. This test requires that the speech be viewed and analyzed in its context and, by its utterance, create a real danger before it can be censored.

187. U.S. CONST. amend. I.

188. Alexander Lindvall, *Frankly, My Dear, I Don't Give a "Darn" – An Argument Against Censoring Broadcast Media*, 7 ARIZ. ST. SPORTS & ENT. L.J. 153, 157 (2017); see, e.g., Thomas Emerson, *Toward a General Theory of the First Amendment*, 72 YALE L.J., 877, 878-79 (1963) (arguing that four major principles underlie the freedom of speech: (1) individual self-fulfillment; (2) the attainment of truth; (3) furthering participation in governmental decision-making; and (4) creating a balance between stability and change).

189. David Han, *The Value of First Amendment Theory*, U. ILL. L. REV. Slip Opinions 87, 88 (2015), available at <https://illinoislawreview.org/print/free-speech-constitutionalism/the-value-of-first-amendment-theory/> (last visited Oct. 17, 2020); see also LEE C. BOLLINGER, *THE TOLERANT SOCIETY* (1986); see, e.g., Vincent Blasi, *The Checking Value in First Amendment Theory*, 1977 AM. B. FOUND. RES. J. 521; see, e.g., Emerson, *supra* note 189, at 885.

190. *Schenck v. United States*, 249 U.S. 47, 52 (1919) (Justice Holmes is famous for his opinion that “the most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing panic”).

191. *Id.*

Similarly, the Supreme Court has also placed value in freedom of the press, consistently stating that a free press is essential to the “heart of our democracy and its preservation is essential to the survival of liberty.”¹⁹² The press is protected because of its recognized “crucial contribution to democracy and democratic legitimacy.”¹⁹³ An independent press ensures that citizens remain informed about the actions of their government, creating a free forum for debate and open exchange of ideas, while also acting as a watchdog for government accountability.¹⁹⁴ Fundamentally, we the people are able to say what we think and the press may perform its essential roles: to agitate, investigate and scrutinize the nation’s leaders and institutions, which is a freedom that differentiates a democracy from a dictatorship.¹⁹⁵ In sum, “a free press is an essential element of human rights protection.”¹⁹⁶

In light of these values, there are weighty reasons for reevaluating and redeveloping public policy regarding asylum for Mexican journalists. Despite the President’s “running war with the media,”¹⁹⁷ the press still has explicit safeguards for their significant roles. On the contrary, there is no protection for journalism in Mexico like the First Amendment. Mexican President Andrés Manuel López Obrador has had a tumultuous

192. Andrea Butler, *Protecting the Democratic Role of the Press: A Legal Solution to Fake News*, 96 WASH. U. L. REV.; see, e.g., *Craig v. Harney*, 331 U.S. 367, 383 (1947) (Murphy, J., concurring); see, e.g., *Associated Press v. United States*, 326 U.S. 1, 28 (1945) (Frankfurter, J., concurring) (“A free press is indispensable to the workings of our democratic society.”); see also Kovach & Rostenstiel, *supra* note 9.

193. C. Edwin Baker, *The Media That Citizens Need*, 147 U. PA. L. REV. 317, 388 (1998) (because a free press was so pivotal in their efforts to overthrow British rule, the Founding Fathers decided to protect that right with the First Amendment, ratified in 1791); see also Patrick D’Arcy, *Why Freedom of the Press is More Important Now Than Ever*, TED (Aug. 11, 2017), available at <https://ideas.ted.com/why-freedom-of-the-press-is-more-important-now-than-ever/> (last visited Oct 17, 2020).

194. D’Arcy, *supra* note 193.

195. *The Importance of a Free Press*, CHARLES KOCH INST., available at <https://www.charleskochinstitute.org/issue-areas/free-speech-and-toleration/importance-of-a-free-press/> (last visited Oct. 17, 2020).

196. Mago Torres, *Journalists Under Fire: Freedom of the Press in Mexico with Mago Torres*, POZEN FAM. CTR. FOR HUM. RTS. (Feb. 6, 2019), available at <https://humanrights.uchicago.edu/events/journalists-under-fire-freedom-of-the-press-in-mexico-with-mago-torres> (last visited Oct. 17, 2020).

197. Sonja R. West, *Presidential Attacks on the Press*, 83 MO. L. REV. 915 (2018) (President Trump has targeted particular news organizations, individual reporters, and the profession as a whole, attempting to punish or silence those that displease him. *Id.* His actions have undermined the purpose of the First Amendment and are contradictory to the Supreme Court’s rule that “debate on public issues should be uninhibited, robust and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials); see also *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

relationship with the press, making such statements to reporters as “[i]f you go too far, you know what will happen.”¹⁹⁸ Such rhetoric increases risks for Mexican journalists and has resulted in relentless threats and harassment for members of the press. This is a serious issue because essentially “[e]very incident is part of a larger global attack on press freedom.”¹⁹⁹ “The price is paid by all of us if freedom of expression is taken away from anyone.”²⁰⁰ Mexican journalists are unwavering in their commitment to their profession, even in the face of the accompanying serious risks and costs of the job.²⁰¹ They are not only contributing to their communities by keeping the public informed and empowered with investigative reporting, but they also contribute in a major way to global newsrooms that benefit from their published stories.

Despite the Mexican Constitution stating: “[n]o law or authority may establish censorship,”²⁰² Mexican journalists severely lack security and protection for their words and ideas, and as a result, truths are silenced and information stifled. They seek asylum based on real fears of persecution because of their profession, a profession the United States has held dear since the Founding Fathers drafted the First Amendment, knowing that “when the press examines the actions of the government, the nation benefits.”²⁰³ United Nations Secretary-General António Guterres shared in the urge to protect this group, stating “[w]hen journalists are targeted, societies as a whole pay a price. Without the ability to protect journalists, our ability to remain informed and contribute to decision making, is severely hampered.”²⁰⁴ Ultimately, it is up to the United States to remember why it became a party to the 1951 Convention in the first place: “to protect refugees and provide them aid, shelter, and access to

198. Jan-Albert Hootsen, *López Obrador's Anti-Press Rhetoric Leaves Mexico's Journalists Feeling Exposed*, COMM. TO PROTECT JOURNALISTS (May 6, 2019), available at <https://cpj.org/blog/2019/05/mexico-president-lopez-obrador-press-rhetoric-threatened.php> (last visited Oct. 18, 2020). The President has been known to attack critical journalists and commentators for being “conservative,” “neo-liberal,” and “fifi” – meaning elitist or out-of-touch, and even specifically singling out several journalists and news outlets. *Id.*

199. Zainab Salbi, *Mexico's Journalists: On the Front Lines of Press Freedom*, HUFFINGTON POST (Dec. 22, 2016), available at https://www.huffpost.com/entry/mexico-journalists-press-freedom_b_585be98fe4b0d9a59457467c (last visited Oct. 18, 2020).

200. *Id.*

201. *Id.*

202. Constitución Política de los Estados Unidos Mexicanos, CP, art. 7, Diario Oficial de la Federación [DOF] 1968 (Mex.), available at https://web.oas.org/mla/en/Countries_Intro/en_mex-int-text-const.pdf (last visited Mar. 13, 2020).

203. *The Importance of a Free Press*, *supra* note 195.

204. “*When Journalists are Targeted, Societies as a Whole Pay a Price*”: UN Chief, UN NEWS (Nov. 1, 2019), available at <https://news.un.org/en/story/2019/11/1050411> (last visited Oct. 18, 2020).

education and work.”²⁰⁵ Those people, like these Mexican journalists who are seeking asylum, deserve and require the protection that was promised to them and required by the 1951 Convention.

VIII. CONCLUSION

In conclusion, the fight for asylum-seekers is strenuous and burdensome. Mexican journalists gain notoriety because they investigate stories for their communities, but it comes with immense harassment and fatal risk, and there is no way for them to flee persecution. The complexities of pursuing the asylum process are undue, yet this right is a fundamental human right: a right to seek refuge, a right to escape persecution, and a right to be protected by the nations that so long ago signed and made it their obligation to provide safe havens.²⁰⁶ Moreover, the value placed in the First Amendment on the free press creates a space for these values to have strong support for granting Mexican journalists asylum. In the spirit of nonrefoulement,²⁰⁷ there should be a broader interpretation of the grounds for asylum so that Mexican journalists can not only save their commitment to truth-seeking but their lives as well, rather than living in fear and counting their days with inevitable harm hanging in the balance.

205. Natalie Muller, *Refugee Convention of 1951 Still Crucial Cornerstone of Human Rights*, DEUTSCHE WELLE (July 28, 2016), available at <https://www.dw.com/en/refugee-convention-of-1951-still-crucial-cornerstone-of-human-rights/a-19429093> (last visited Oct. 18, 2020).

206. See *Human Lives, Human Rights*, U.N. HIGH COMM’R FOR REFUGEES [UNHCR], available at <https://www.unhcr.org/en-au/human-lives-human-rights.html> (last visited Oct. 18, 2020).

207. *History of UNHCR*, *supra* note 71.