

DIGITAL BORDERS AND THE EROSION OF MIGRANT
RIGHTS:
THE ROLE OF “SMART BORDERS” IN *NON-ENTRÉE*
POLICIES

Mareclina Kropiwnicka

I.INTRODUCTION	410
II.LEGAL FRAMEWORKS AND STATE OBLIGATIONS	412
A. The Historical Development of Refugee Law	412
B. The Diverging Interpretations of Refugee Obligations in the U.S. and E.U.	414
C. The Politics of Non-Entrée	418
III.SUPPLEMENTING PHYSICAL BORDERS WITH “SMART” BORDERS.....	419
A. From Physical Borders to Digital Borders.....	419
B. The Rise of “Smart Borders”	424
1. Border Deterrence Technology.....	424
2. Biometrics	426
3. AI Technology	429
IV.CONSEQUENCES OF “SMART BORDERS” ON MIGRANT PROTECTIONS	432
A. “Smart Borders” as a Form of Non-Entrée.....	432
B. Legal and Ethical Concerns	433
V.CONCLUSION.....	437

I. INTRODUCTION

Across the globe, individuals are risking their lives to cross borders, motivated by a variety of complex and often desperate factors, such as the desire to reunite with family, the search for economic opportunities, or perhaps most urgently, the need to escape violence, conflict, and persecution.¹ As of end of 2024, it was estimated that 123.2 million people worldwide, including approximately 36.8 million refugees and 8.4 million asylum seekers, were forcibly displaced due to circumstances beyond their control.² The twenty-first century has witnessed record-high levels of displacement and, paradoxically, it has also witnessed a significant rise in the construction of barriers designed to prevent migrants from crossing.³ These barriers, however, fail to address the root causes of displacement and, in many cases, exacerbate the suffering of those trying to escape dangerous situations.

The 1951 Refugee Convention and its 1967 Protocol were landmark milestones in establishing the legal framework for refugee protection, including the fundamental right to seek asylum.⁴ Most significantly, these international instruments enshrine the principle of *non-refoulement*, which protects individuals from being returned to countries where they face a well-founded fear of persecution.⁵ Despite these protections, the tension between legal obligations and state sovereignty remains a central issue. States are required to adhere to these obligations but often face challenges in balancing refugee protections with concerns about national security and border control.⁶ This raises a central question: to what extent are states obligated to

¹ Reece Jones, *Borders and Walls: Do Barriers Deter Unauthorized Migration?*, MIGRATION POL'Y INST. (Oct. 5, 2016), <https://www.migrationpolicy.org/article/borders-and-walls-do-barriers-deter-unauthorized-migration> [<https://perma.cc/B4D2-MHSB>].

² *Refugee Data Finder*, UNHCR, <https://www.unhcr.org/refugee-statistics> [<https://perma.cc/2NFY-APE5>] (last updated June 12, 2025).

³ See *id.*; see also Jones, *supra* note 1.

⁴ See Melanie Corbett, *Appreciating The Margin: Examining European Refugee Law Through Germany, Hungary, & Turkey*, 51 DENV. J. INT'L L. & POL'Y 1, 4 (2022); see also G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

⁵ Convention Relating to the Status of Refugees art. 33, July 28, 1951, 189 U.N.T.S. 150 [hereinafter 1951 Refugee Convention].

⁶ See Sara McElmurry, Juliana Kerr, Theresa Cardinal Brown & Lazaro Zamora, *Balancing Priorities: Immigration, National Security, and Public Safety*, CHI. COUNCIL ON GLOB. AFFS. (Oct. 17, 2016), <https://globalaffairs.org/research/report/balancing-priorities-immigration-national-security-and-public-safety> [<http://perma.cc/NJ5Z-QPZJ>].

uphold legal standards, and to what extent may they restrict access to asylum in the name of sovereignty?

Physical borders were historically erected by states to assert territorial sovereignty and maintain national security.⁷ In an era of globalization and migration, however, the effectiveness of physical barriers in ensuring security while adhering to international refugee protections has come into question.⁸ Rather than limiting the construction of border walls, however, states have begun to supplement them with advanced technologies such as artificial intelligence and biometrics, among other tools used to monitor and control migration.⁹ These advanced systems are reshaping how nations manage borders in a landscape where traditional barriers alone are inadequate. Both the United States (“U.S.”) and the European Union (“E.U.”) have become increasingly reliant on these so-called “smart border” technologies, signaling a significant shift toward tech-driven enforcement.¹⁰ While these technologies promise enhanced surveillance capabilities and border control, they also introduce new complexities for asylum seekers, raising concerns about compliance with international refugee law and human rights protections.¹¹

This note examines the evolution of border enforcement from physical to digital barriers and argues that “smart borders” represent an extension of *non-entrée* policies, which are designed to prevent

⁷ Historical examples of such fortifications include the Roman limes and fortifications, such as those of Antonine, Hadrian, Aurelian, and the Theodosian triple wall; the walls in Mesopotamia; the Genkō Bōrui wall in Japan; and the multiple walls of China, constructed over several centuries beginning in the Ming Dynasty. See Élisabeth Vallet, *The World is Witnessing a Rapid Proliferation of Border Walls*, MIGRATION POL’Y INST. (Mar. 2, 2022), <https://www.migrationpolicy.org/article/rapid-proliferation-number-border-walls> [https://perma.cc/67Q2-MTXG].

⁸ See Jones, *supra* note 1; see also Kristina Korte, “So, If You Ask Whether Fences Work: They Work”—The Role of Border Fortifications for Migration Control and Access to Asylum: Comparing Hungary and the United States, 11 COMPARATIVE MIGRATION STUD. 1, 14 (2023).

⁹ Chris Jones, *Automating the Fortress: Digital Technologies and European Borders*, STATEWATCH (June 6, 2024), <https://www.statewatch.org/analyses/2024/automating-the-fortress-digital-technologies-and-european-borders/> [https://perma.cc/24CV-FCEC].

¹⁰ See MIZUE AIZEKI, GEOFFREY BOYCE, TODD MILLER, JOSEPH NEVINS, & MIRIAM TICKTIN, SMART BORDERS OR A HUMANE WORLD? 17 (2021).

¹¹ *Global: New Technology and AI Used at Borders Increases Inequalities and Undermines Human Rights of Migrants*, AMNESTY INT’L (May 21, 2024), <https://www.amnesty.org/en/latest/news/2024/05/global-new-technology-and-ai-used-at-borders-increases-inequalities-and-undermines-human-rights-of-migrants/> [https://perma.cc/LKN7-YFGX].

asylum seekers from ever reaching safe territories.¹² Part I provides an overview of the legal foundations of asylum rights, including the 1951 Refugee Convention and its 1967 Protocol, and the principle of *non-refoulement*. It also analyzes how the U.S. and the E.U. interpret their obligations under international asylum law and introduces the politics of *non-entrée*-policies that deny refugees the opportunity to seek safety in the first place. Part II traces the shift from physical borders to technological barriers, examining the adoption of advanced technologies, including AI-driven migration control tools, by both the U.S. and the E.U., and defines and discusses a variety of these so-called “smart border” technologies. Finally, Part III explores the implications of smart border technologies, arguing that their increasing use erodes asylum protections and entrenches the acceptance of *non-entrée* policies.

II. LEGAL FRAMEWORKS AND STATE OBLIGATIONS

A. *The Historical Development of Refugee Law*

In 1950, the General Assembly established the Office of the United Nations High Commissioner for Refugees (“UNHCR”) and, the following year, the United Nations introduced a foundational treaty known as the 1951 Convention Relating to the Status of Refugees (“1951 Refugee Convention”).¹³ Widely regarded as the most influential global framework for refugee rights, the 1951 Refugee Convention defines the term “refugee” and enshrines fundamental rights such as non-discrimination, protection from penalties, and the *non-refoulement* obligation.¹⁴ In 1967, a protocol was added to the Convention, removing the original treaty’s time and location limitations,¹⁵ thereby extending its protections beyond those displaced in post-World War II Europe.¹⁶ Today, 149 nations, including the U.S. and all European Union member states, are party to

¹² See Thomas Gammeltoft-Hansen & James C. Hathaway, *Non-Refoulement in a World of Cooperative Deterrence*, 53 COLUM. J. TRANSNAT’L L. 235, 241 (2015).

¹³ Corbett, *supra* note 4, at 3-4.

¹⁴ *Id.* at 4.

¹⁵ The 1967 Protocol removed the original Convention’s geographical limitation—Europe—and temporal limitation—events occurring prior to 1951—thus expanding the protection of refugees globally. See 1951 Refugee Convention, *supra* note 5.

¹⁶ Corbett, *supra* note 4, at 4.

the 1951 Refugee Convention, and its 1967 Protocol, or both instruments.¹⁷

The 1951 Refugee Convention and its 1967 Protocol define a refugee as someone who cannot return to their home country or secure protection there due to past persecution or a well-founded fear of persecution due to race, religion, nationality, membership in a particular social group, or political opinion.¹⁸ Article 33(1) of the Convention defines the principle of *non-refoulement*, stating “[n]o Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”¹⁹ This protection extends irrespective of the manner of entry, such that irregular border crossings do not preclude individuals from seeking asylum.²⁰

Significantly, this principle is a binding rule of customary international law, even on those states that are not party to the Convention.²¹ While Article 33(2) of the 1951 Refugee Convention provides a narrow exception—limiting eligibility for refugee protections based on security risks and criminal behavior²²—*non-refoulement* has been reinforced by various international and regional human rights treaties, including the Convention Against Torture,²³ the Charter of Fundamental Rights of the European Union,²⁴ and the

¹⁷ *Id.*

¹⁸

Asylum in the United States, AM. IMMIGR. COUNCIL (Jan. 15, 2024), <https://www.americanimmigrationcouncil.org/research/asylum-united-states> [<https://perma.cc/5G3D-8YBA>].

¹⁹ 1951 Refugee Convention, *supra* note 5, at 176.

²⁰ According to Article 33 of the Convention, refugees should not be penalized for illegal entry, recognizing that individual often flee persecution without proper documentation and entering a country other than through a port of entry. *Id.*

²¹ *Access to territory and non-refoulement*, UNHCR (Mar. 6, 2025), <https://emergency.unhcr.org/protection/legal-framework/access-territory-and-non-refoulement> [<https://perma.cc/6U3C-MRWA>].

²² Article 33(2) states as follows: “The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.” 1951 Refugee Convention, *supra* note 5, at 176.

²³ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 3, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter CAT].

²⁴ Charter of Fundamental Rights of the European Union art. 19, 2000 O.J. (C 364).

International Covenant on Civil and Political Rights.²⁵ These instruments prohibit security-premised exceptions when expulsion would create a real risk of human rights violations, such torture or cruel, inhuman, or degrading treatment.²⁶ As such, actions taken under the guise of national security concerns may violate international law.

While there is no international obligation to grant formal status to a refugee or asylum seeker, the principle of *non-refoulement* applies to any form of removal or return, including in “the context of interception at land or sea; rescue at sea; rejection, non-admission, or ‘pushbacks’ at the border; deportation or expulsion (either individually or collectively); externalization or third-country transfer measures; extradition; enforced disappearance; and extraordinary rendition.”²⁷ Because refugee status is based on *de facto* circumstances rather than official recognition, states are obligated to respect the principle of *non-refoulement* by admitting refugees, at least until their claims are evaluated, to prevent them from facing persecution in their country of origin.²⁸ Nevertheless, states such as the U.S. have adopted differing interpretations and have narrowed their obligations under this principle.

B. The Diverging Interpretations of Refugee Obligations in the U.S. and E.U.

As a signatory of the 1967 Protocol²⁹ and under its own immigration law, the U.S. is legally obligated to protect individuals who qualify as refugees.³⁰ This commitment is reflected in the Refugee Act of 1980, which incorporated the definition of “refugee” and the principle of *non-refoulement* into U.S. law.³¹ Furthermore, the Immigration and Nationality Act (“INA”) governs asylum procedures, eligibility, and enforcement; *non-refoulement* is specifically codified

²⁵ See Hum. Rts. Comm., General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), U.N. Doc. HRI/GEN/1/Rev.9, ¶ 9 (Mar. 10, 1992).

²⁶ See *id.*; Charter of Fundamental Rights of the European Union, *supra* note 24; CAT, *supra* note 23.

²⁷ *Access to territory and non-refoulement*, *supra* note 21.

²⁸ Gammeltoft-Hansen & Hathaway, *supra* note 12, at 238.

²⁹ G.A. Res. 2198 (XXI), Convention and Protocol Relating to the Status of Refugees (Dec. 16, 1966) [hereinafter 1967 Protocol].

³⁰ *Asylum in the United States*, *supra* note 18.

³¹ *Id.*

in INA § 241(b)(3), which provides that “the Attorney General may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen’s] life or freedom would be threatened in that country because of the [noncitizen’s] race, religion, nationality, membership in a particular social group, or political opinion.”³² This framework was designed to ensure that the U.S. adheres to its obligations to protect those facing persecution.

In addition to each of the European Union member states being obligated under the 1951 Refugee Convention and its 1967 Protocol, the E.U. echoes its commitment to *non-refoulement* through Article 19 of the E.U. Charter of Fundamental Rights, Article 78(1) of the Lisbon Treaty, several relevant directives, and third-country agreements.³³ The E.U. has further implemented the Common European Asylum System (“CEAS”) to ensure that all non-E.U. nationals in need of international protection receive appropriate legal status while safeguarding *non-refoulement*.³⁴ Between 1999 and 2005, the E.U. adopted six key legislative measures—the Eurodac (European Asylum Dactyloscopy Database) Regulation,³⁵ the Reception Conditions Directive,³⁶ the Dublin Regulation,³⁷ the Temporary Protection Directive, the Qualification Directive,³⁸ and the

³² Immigration and Nationality Act § 241(b)(3)(A), 8 U.S.C. § 1231(b)(3)(A).

³³ OLIVIA SUNDBURG DIEZ, DIMINISHING SAFEGUARDS, INCREASING RETURNS: NON-REFOULEMENT GAPS IN THE EU RETURN AND READMISSION SYSTEM 8 (2019).

³⁴ *Asylum Policy*, EUR. PARLIAMENT (2025), https://www.europarl.europa.eu/erpl-app-public/factsheets/pdf/en/FTU_4.2.2.pdf [<https://perma.cc/2SHF-5GUP>].

³⁵ This regulation “allows law enforcement authorities access to the EU database of the fingerprints of asylum seekers under strictly limited circumstances in order to prevent, detect or investigate the most serious crimes, such as murder, and terrorism.” *Common European Asylum System*, EUR. COMM’N, [<https://perma.cc/L7W3-6ZNT>] (last visited Mar. 12, 2025).

³⁶ This Directive ensures that uniform standards for reception conditions—including housing, food, clothing, and access to healthcare, education, or employment under specific conditions—are upheld for asylum seekers across the E.U., guaranteeing a dignified standard of living in line with the Charter of Fundamental Rights. *Id.*

³⁷ The Dublin Regulation III entered into force in 2003. It aims to guarantee swift access to asylum procedures and ensure that an application is assessed on its merits by a single, clearly designated E.U. country. The Regulation determines which Member State is responsible for examining the asylum application. *The Dublin Regulation*, UNHCR, <https://www.unhcr.org/media/dublin-regulation> [<https://perma.cc/RR6B-LRDQ>] (last visited Mar. 12, 2025).

³⁸ The most recent Qualification Directive of 2011 sets the criteria for granting refugee or subsidiary protection status and defines the rights associated with the status. These include residence permits, travel documents, access to employment, education, healthcare, social welfare, housing, and integration support, with specific provisions for children and vulnerable individuals. *The Qualification Directive*, EUR. COMM’N, <https://home-affairs.ec.europa.eu/policies/migration->

Asylum Procedures Directive³⁹—to establish baseline standards for asylum procedures.⁴⁰

Courts in both regions interpret *non-refoulement* differently.⁴¹ In the U.S., the Supreme Court in *Sale v. Haitian Centers Council* limited the application of the principle to territorial presence,⁴² holding that the Coast Guard's interdiction and repatriation of Haitians on the high seas—without determining whether they might qualify as refugees—did not violate Article 33 of the 1951 Refugee Convention.⁴³ This interpretation effectively permits offshore enforcement practices without triggering *non-refoulement*.

By contrast, the European Court of Human Rights has taken a broader approach, holding states accountable for offshore “pushbacks.”⁴⁴ In *Hirsi Jamaa v. Italy*, the Court found that Italy violated the European Convention on Human Rights (“the European Convention”) when a vessel carrying nationals from Eritrea and Somalia was intercepted in international waters and returned to Libya without first conducting an asylum screening.⁴⁵ The Court stated that an individual's personal risk of harm must be evaluated prior to discharging *non-refoulement* obligations, and that “one must logically go on to conclude that the procedural guarantee of individual evaluation of asylum claims and the ensuing prohibition of collective expulsion are not limited to the land and maritime territory of a State but also apply on the high seas.”⁴⁶

These cases illustrate how the U.S. and E.U. diverge in their interpretations of *non-refoulement*. While the European Court of Human Rights has reinforced the principle by striking down

and-asylum/common-european-asylum-system/who-qualifies-international-protection_en [https://perma.cc/JV46-7FCR] (last visited Mar. 12, 2025).

39 The Asylum Procedures Directive “aims at setting out the conditions for fair, quick and quality asylum decisions.” Additionally, “Asylum seekers with special needs receive the necessary support to explain their claim and in particular protection of unaccompanied minors and victims of torture is ensured.” *Common European Asylum System*, *supra* note 35.

40 *Id.*

41 See Moria Paz, *The Law of Walls*, 28 EUR. J. INT'L L. 601, 610 (2017).

42 *Sale v. Haitian Ctrs. Council*, 509 U.S. 155, 155 (1993).

43 *Id.* at 158-59.

44 See *Hirsi Jamaa & Others v. Italy*, App. No. 27765/09 (Feb. 23, 2012), <https://hudoc.echr.coe.in/t/fre#%7B%22languageisocode%22:%5B%22ENG%22%5D,%22appno%22:%5B%2227765/09%22%5D,%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%5D,%22itemid%22:%5B%22001-109231%22%5D%7D> [https://perma.cc/Q65K-GWQZ].

45 *Id.* at 77-79.

46 *Id.* at 75.

deportation attempts that violate it,⁴⁷ the U.S. has continued to implement measures that are arguably counter-productive to the 1951 Refugee Convention and its Protocol. For instance, the U.S. has implemented broader expulsion policies under Title 42⁴⁸ and the Migrant Protection Protocol,⁴⁹ which significantly restrict access to asylum and demonstrate how legal barriers operate alongside technological ones to prevent migrants from obtaining protection.

Despite established legal frameworks and court rulings affirming *non-refoulement* obligations within the E.U., individual member states have interpreted and applied these commitments inconsistently. For example, the governments of Hungary and Poland have implemented policies that make it nearly impossible for asylum seekers to file claims.⁵⁰ Greece has also engaged in systematic pushbacks at its land and maritime borders, a practice that has received widespread criticism for violating the *non-refoulement* obligations.⁵¹ Furthermore, the E.U.–Turkey deal exemplifies how the E.U. has externalized its refugee responsibilities by incentivizing Turkey to

47 See *Hirsi-Jamaa & Others v. Italy*, App. No. 27765/09.

48 Title 42, a public health order invoked in 2020 during the COVID-19 pandemic, enabled the U.S. to expel asylum seekers without allowing them to apply for protection. Although it was framed as a public health measure, Title 42 functioned as a pretext for denying asylum, disproportionately affecting vulnerable migrants. Over 2.8 million expulsions occurred under this policy, and the result was often returning migrants to dangerous conditions in Mexico and their home countries. The policy was widely criticized for violating *non-refoulement* obligations. See Colleen Long, *Title 42 has ended. Here's what it did, and how US immigration policy is changing*, AP NEWS (May 12, 2023), <https://apnews.com/article/immigration-biden-border-title-42-mexico-asylum-be4e0b15b27adb9bede87b9bbefb798d> [<https://perma.cc/D3HS-X98K>].

49 The MPP, also known as the “Remain in Mexico” policy, forced asylum seekers to wait in Mexico while their cases were processed in U.S. immigration courts. Many migrants faced violence, extortion, and poor living conditions while awaiting their hearings. See *The “Migrant Protection Protocols”: An Explanation of the Remain in Mexico Program*, AM. IMMIGR. COUNCIL (Feb. 1, 2024). This policy served as another form of *non-entrée*, deterring individuals from seeking asylum by making the process unbearably dangerous.

50 See, e.g., *Poland: Scrap Bill Suspending Right to Asylum*, HUM. RTS. WATCH (Feb. 19, 2025), <https://www.hrw.org/news/2025/02/19/poland-scrap-bill-suspending-right-asylum> [<https://perma.cc/E342-N75X>]; *Eastern Borders...*, EUR. COUNCIL ON REFUGEES AND EXILES (June 2, 2023), <https://ecre.org/eastern-borders-poland-continues-restricting-access-to-asylum-hungarys-inhumane-policies-increase-smuggling-crimes-and-deny-people-protection-austrian-minister-calls-for-urgent-reform-of/> [<https://perma.cc/GR5G-YSWJ>].

51 See *Greece: Pushbacks and violence against refugees and migrants are de facto border policy*, AMNESTY INT’L (June 23, 2021), <https://www.amnesty.org/en/latest/press-release/2021/06/greece-pushbacks-and-violence-against-refugees-and-migrants-are-de-facto-border-policy/> [<https://perma.cc/8HEU-72EM>]; *Addressing pushbacks at the EU’s external borders*, EUR. PARLIAMENT (2022), https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/738191/EPRS_BRI%282022%29738191_EN.pdf [<https://perma.cc/8W2V-QG77>].

prevent asylum seekers from reaching Europe.⁵² These practices reflect the growing divide between the E.U.'s legal obligations and the real-world enforcement of refugee protections.

C. The Politics of Non-Entrée

States have circumvented their responsibilities under refugee law in various ways, giving rise to the politics of *non-entrée*. The term, coined by James Hathaway, describes policies designed to prevent refugees from entering a state's territory.⁵³ Once a refugee enters a country, they are entitled to procedural protections and safeguards, including the right to seek asylum and the prohibition against refoulement.⁵⁴ *Non-entrée* strategies therefore operate in legal gray areas, allowing states to sidestep obligations while formally adhering to international treaties.

According to Hathaway, there are three primary *non-entrée* practices. The first involves states subcontracting migration control to private actors. States outsource migration control to transportation companies such as airline providers through a combination of visa controls⁵⁵ and carrier sanctions.⁵⁶ These private actors effectively become de facto border agents, conducting migration screening at points of departure and preventing asylum seekers from beginning their journey.⁵⁷

The second practice involves creating legal black holes in "international zones." The international zones referred to are primarily located in airports, where states claim that "some or all of the legal obligations of the territorial state are declared not to apply," and that they may act "without regard to refugee and other human rights obligations."⁵⁸ By designating airports as international zones, states

⁵² See J. OLAF KLEIST, BEYOND THE CRISIS MODE OF THE EU-TURKEY REFUGEE AGREEMENT: TOWARDS SUSTAINABLE RIGHTS-BASED EU ASYLUM AND REFUGEE POLICIES 19-20 (2022).

⁵³ Gammeltoft-Hansen & Hathaway, *supra* note 12, at 241.

⁵⁴ *Id.* at 244.

⁵⁵ Visas were not offered for the purpose of seeking refugee protection. See *Id.* at 244-45; See also *Legal fiction of non-entry in EU asylum policy*, EUROPEAN PARLIAMENT (2024), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/760347/EPRS_BRI\(2024\)760347_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/760347/EPRS_BRI(2024)760347_EN.pdf) [<https://perma.cc/JMQ5-E4UP>].

⁵⁶ Gammeltoft-Hansen & Hathaway, *supra* note 12, at 244-45.

⁵⁷ *Id.*

⁵⁸ *Id.* at 245.

exploit jurisdictional loopholes to bypass refugee and human rights law, effectively denying asylum seekers entry while ostensibly complying with *non-refoulement*.

The third practice, and the most relevant to this Note, is deterrence on the high seas, a particularly extreme form of *non-entrée* in an international zone.⁵⁹ States, such as the U.S., interdict asylum seekers in international waters to prevent them from reaching national territory.⁶⁰ As discussed above, the landmark case of *Sale v. Haitian Centers Council* upheld the U.S. government's right to return intercepted refugees without screening their claims, ruling that *non-refoulement* obligations do not apply extraterritorially.⁶¹ This decision has been widely criticized for undermining refugee protections and setting a dangerous precedent for maritime deterrence policies.

Although some *non-entrée* practices have faced judicial challenges, they continue to shape global refugee policy. Developed states increasingly prioritize containment over resettlement, seeking to limit refugee movement rather than grant asylum.⁶²

III. SUPPLEMENTING PHYSICAL BORDERS WITH “SMART” BORDERS

A. From Physical Borders to Digital Borders

Although it is commonly believed that physical barriers have long secured most borders, the construction of such barriers is a relatively recent trend.⁶³ In fact, at the end of World War II, there were fewer than five border walls across the globe, and by the fall of the Berlin Wall in 1989, that number had risen to fifteen.⁶⁴ Today, more than seventy border walls stand around the globe.⁶⁵ The purpose of building these walls is no longer primarily to prevent territorial invasions but, arguably, to delineate a nation's economic, political, and cultural identity.⁶⁶

⁵⁹ *Id.*

⁶⁰ *See Id.*; Hirsi, *supra* note 44; *see also Legal fiction of non-entry in EU asylum policy*, *supra* note 55.

⁶¹ Hirsi, *supra* note 44.

⁶² *Legal fiction of non-entry in EU asylum policy*, *supra* note 55.

⁶³ Jones, *supra* note 1.

⁶⁴ *Id.*

⁶⁵ Vallet, *supra* note 7.

⁶⁶ Jones, *supra* note 1.

In the post-9/11 era, the expansion of border fortifications is closely tied to the fear of terrorism, and the global war on terror made border walls politically acceptable by framing them as necessary security measures.⁶⁷ Particularly in the U.S., the national priority shifted toward homeland security after the September 11, 2001 terrorist attacks.⁶⁸ On March 1, 2003, the Department of Homeland Security (“DHS”) was established,⁶⁹ incorporating the U.S. Border Patrol into the U.S. Customs and Border Protection (“CBP”), one of the world’s largest law enforcement agencies, with over 60,000 employees.⁷⁰

States have also been concerned with the growing number of asylum seekers and migrants, viewing barriers as “a tangible solution to clamp down on unauthorized entries and show they are taking action to enforce the border.”⁷¹ Europe has faced mounting challenges related to irregular migration and border security.⁷² The 2015-2016 humanitarian crisis highlighted the need for coordinated and effective border policies when Germany’s open-door policy led to widespread

⁶⁷ *Id.* It is estimated that 50% of walls around the world have been built for immigration- and terrorism-related reasons. *See 6 out of 10 people worldwide live in a country that has built border walls*, TNI (Nov. 18, 2020), <https://www.tni.org/en/article/6-out-of-10-people-worldwide-live-in-a-country-that-has-built-border-walls> [<https://perma.cc/7F8Y-4NTU>].

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *About CBP*, CBP <https://www.cbp.gov/about> [<https://perma.cc/PYS4-29S3>] (last modified Dec. 30, 2024). The Border Patrol “acts as more of a federal police force” and works well beyond the “100-mile border zone,” conducting policing operations near and far from the border. Shaw Drake, *Deadly Deterrence: Border Patrol Authority, Pursuits, and Deported Witnesses*, 61 SAN DIEGO L. REV. 761, 764 (2024).

⁷¹ *See* Jones, *supra* note 1; *see also Walls and fences at EU borders*, EUROPEAN PARLIAMENTARY RESEARCH SERVICE (Oct. 2022), [https://www.europarl.europa.eu/R egData/etudes/BRIE/2022/733692/EPRS_BRI\(2022\)733692_EN.pdf](https://www.europarl.europa.eu/R egData/etudes/BRIE/2022/733692/EPRS_BRI(2022)733692_EN.pdf) [<https://perma.cc/6GZG-AF47>].

⁷² The European Union, specifically twenty-five out of the twenty-nine member states, have a “single external border,” as the internal borders are largely eliminated, allowing the free movement of individuals between members states. This is known as the Schengen Area. Nevertheless, the E.U. has adopted several mechanisms to manage its external borders. *See* Saara Koikkalainen, *Borderless Europe: Seven Decades of Free Movement*, MIGRATION POL’Y INST. (June 4, 2021), <https://www.migrationpolicy.org/article/borderless-europe-free-movement> [<https://perma.cc/TA22-2MXQ>]; *see also The Schengen Area Explained*, EUROPEAN COUNCIL (last updated Feb. 25, 2025), <https://www.consilium.europa.eu/en/policies/schengen-area/#exceptions> [<https://perma.cc/MMW4-X4E9>]; Schengen area: Council adopts update of Schengen Borders Code, European Council (May 24, 2024), <https://www.consilium.europa.eu/en/press/press-releases/2024/05/24/schengen-area-council-adopts-update-of-schengen-borders-code/> [<https://perma.cc/SXF6-QDT6>].

concerns about security and social cohesion across the continent.⁷³ Hungary, under Prime Minister Viktor Orbán, became the first E.U. country to respond decisively by implementing strict border security laws and constructing barriers to control migration flows.⁷⁴ Poland has similarly strengthened its eastern border with Belarus,⁷⁵ and Finland has announced plans to build fencing along its border with Russia.⁷⁶

Meanwhile the U.S., since 1994, has promoted an enforcement policy based on “prevention through deterrence,”⁷⁷ which seeks to make crossing the border increasingly dangerous, theoretically resulting in fewer people attempting the risk. In addition to the increase in Border Patrol personnel, which has been maintained at around 20,000 individuals since 2009,⁷⁸ CBP focused on building physical borders, viewing the border wall as “one element of CBP’s approach to border security that provides persistent impedance and denial to illegal cross-border activity.”⁷⁹ In 2006, President Bush authorized the construction of a “double-layered, reinforced fencing” along the U.S.-Mexico border, completing 500 miles by the end of his term.⁸⁰ President Obama continued construction, adding 130 miles of fencing.⁸¹ President Trump championed building a border wall, but only managed to complete approximately 85 miles by the end of his first term.⁸²

⁷³ Chad Wolf & Robert Law, *European Countries Increasingly Adopting ‘America First’ style Border Security Policies*, AM. FIRST POL’Y INST. (May 28, 2024), <https://americafirstpolicy.com/issues/european-countries-increasingly-adopting-america-first-style-border-security-policies> [https://perma.cc/BM5E-SAPH].

⁷⁴ *Id.*

⁷⁵ See Piotr Drabik, *Poland: Fence In The Swamp*, REPORTING DEMOCRACY, <https://balkaninsight.com/2024/02/29/poland-fence-in-the-swamp/> [https://perma.cc/ZF5Q-ELA6] (last visited Mar. 5, 2025).

⁷⁶ See *Walls and fences at EU borders*, *supra* note 71.

⁷⁷ *Id.*

⁷⁸ U.S. Border Patrol, *Border Patrol Agent Nationwide Staffing by Fiscal Year*, CBP (2021), <https://www.cbp.gov/sites/default/files/assets/documents/2021-Aug/U.S.%20Border%20Patrol%20Fiscal%20Year%20Staffing%20Statistics%20%28FY%201992%20-%20FY%202020%29%20%28508%29.pdf> [https://perma.cc/CN5H-RNHJ].

⁷⁹ *Border Wall System – Frequently Asked Questions*, CBP, <https://www.cbp.gov/border-security/border-wall/border-wall-system-frequently-asked-questions#:~:text=Beginning%20in%202007%2C%20CBP%20has,infrastructure%20along%20the%20Southwest%20border.> [https://perma.cc/3M3K-FMT2] (last modified Feb. 12, 2024).

⁸⁰ Mary E. Mendoza, *America’s Border Wall Is Bipartisan*, TIME (Oct. 30, 2023, 10:00 AM), <https://time.com/6324599/bidens-trump-history-border-wall/> [https://perma.cc/WAK6-MTZN].

⁸¹ *Id.*

⁸² *Id.*

Although walls serve as a visible demonstration of state authority, their effectiveness in preventing irregular migration and security threats remains a subject of debate. While states claim that border walls enhance security, they fail to address root causes of migration and geopolitical instability.⁸³ Migration drivers such as conflict, economic inequality, climate change, and political persecution continue to fuel migration flows, suggesting that physical barriers are ultimately inadequate.⁸⁴ Research also shows that the direct and indirect costs of constructing physical borders outweigh the benefits.⁸⁵ Strategies to bypass these barriers continue to proliferate.⁸⁶ Walls merely redirect migration flows; as migrants find alternative routes to avoid being detected, they often rely on smugglers, making them harder to monitor and increasing enforcement costs.⁸⁷ Moreover, the longer a border extends, the more difficult it is to fence completely.⁸⁸ Nevertheless, border walls persist, as their failure to keep people out reinforces the perceived need for stronger and more extensive fortifications.⁸⁹

As the limitations of physical barriers have become apparent, states have turned to digital technologies to extend their control beyond territorial borders. The use of technology is not new; rather, modern technologies are far more sophisticated,⁹⁰ and the relationship between physical and digital borders is complementary rather than mutually exclusive. While physical walls serve to block certain routes, digital technologies allow states to monitor and control migration more broadly. This includes “the internalisation or ‘insourcing’ of

⁸³ Vallet, *supra* note 7.

⁸⁴ Jones, *supra* note 1.

⁸⁵ See *The Cost of Immigration Enforcement and Border Security*, AM. IMMIGR. COUNCIL (Aug. 2024), https://www.americanimmigrationcouncil.org/sites/default/files/research/cost_of_immigration_enforcement_factsheet_2024.pdf [<https://perma.cc/SKS4-BADQ>]; Mark Akkerman, *Global Spending on Immigration Enforcement Is Higher than Ever and Rising*, MIGRATION POL’Y INST. (May 31, 2023), <https://www.migrationpolicy.org/article/immigration-enforcement-spending-rising> [<https://perma.cc/A52F-HWVT>].

⁸⁶ Migrants will use measures such as tunnels, drones, ladders, ramps, document forgery, and corruption to bypass barriers. Vallet, *supra* note 7. Particularly when it comes to smuggling goods or terrorists, the movement does not occur at crossing points but rather through tunnels built under the walls. Jones, *supra* note 1.

⁸⁷ Vallet, *supra* note 7.

⁸⁸ Jones, *supra* note 1.

⁸⁹ Vallet, *supra* note 7.

⁹⁰ The U.S. government had deployed armed aerial surveillance as far back as 1919. See AIZEKI, BOYCE, MILLER, NEVINS, & TICKTIN, *supra* note 10, at 1.

border governance through the ‘policing . . . and enforcement controls within the interior, such as the detection, detention, and deportation’ of people on the move.”⁹¹ It also includes “the externalisation or ‘outsourcing’ of border governance, including practices such as remotely collecting biometric data and monitoring social media to gather information prior to individuals physically crossing the borders.”⁹² The externalization of border governance effectively expands a nation’s border beyond its territorial boundary.

Both the U.S. and E.U. have been particularly quick to integrate “smart border” capabilities into their operations.⁹³ In the U.S., “from 2017 to 2020, CBP alone received \$743 million from Congress for tech[nology] and surveillance.”⁹⁴ Policymakers have been exploring innovative frameworks leveraging advanced technologies, such as artificial intelligence (“AI”) and machine learning, to enhance surveillance and manage migration more effectively.⁹⁵ The U.S. has promoted the concept of a “virtual wall,” a comprehensive “network of drones, sensors, and other technologies that could detect illegal border crossers,”⁹⁶ while the E.U. has expanded its framework for information sharing and cooperation through the Evaluation of the European Border Surveillance System, commonly known as EUROSUR,⁹⁷ and adopted digital tools in

⁹¹ LORNA MCGREGOR & PETRA MOLNAR, *DIGITAL BORDER GOVERNANCE: A HUMAN RIGHTS BASED APPROACH* 4 (2023). Internalization measures are often technology-enabled policies that follow a person after crossing a border, and examples include “internalization measures include unregulated information sharing of migrants’ personal data between State and local policing agencies, unchecked surveillance of immigrant and undocumented communities, and the use of digitized surveillance and decision-making in welfare and social protection systems,” among other measures. See AMNESTY INTERNATIONAL, *THE DIGITAL BORDER: MIGRATION, TECHNOLOGY, AND INEQUALITY* 21 (2024).

⁹² MCGREGOR & MOLNAR, *supra* note 91.

⁹³ Hannah Tyler, *The Increasing Use of Artificial Intelligence in Border Zones Prompts Privacy Questions*, MIGRATION POL’Y INST. (Feb. 2, 2022), <https://www.migrationpolicy.org/article/artificial-intelligence-border-zones-privacy> [<https://perma.cc/SFK8-XA7S>].

⁹⁴ MIJENTE, JUST FUTURES LAW & NO BORDER WALL COALITION, *THE DEADLY DIGITAL BORDER WALL* 6 (2021).

⁹⁵ Jones, *supra* note 9.

⁹⁶ Tyler, *supra* note 93.

⁹⁷ EUROSUR “consists of national hubs connected through a secure communication network and merged by Frontex’s Fusion Services in a ‘system of systems.’” See Alice Fill, *Pushbacks, pullbacks, backscattering: evolving forms of digital refoulement at the EU borders*, SEC. PRAXIS (Nov. 6, 2020), <https://www.securitypraxis.eu/digital-refoulement-eu-borders/> [<https://perma.cc/S3AR-4SR5>]; see also DEYRA OZKUL, *AUTOMATING IMMIGRATION AND*

migration and asylum systems.⁹⁸ These digital tools are likely to be deployed increasingly, as AI and machine learning remain a central component of contemporary migration management strategies.⁹⁹

B. *The Rise of “Smart Borders”*

Borders are no longer defined solely by physical barriers; rather, they are increasingly governed by an evolving network of surveillance technologies. A key rationale for implementing these technologies is to reduce the number of personnel required to monitor the border while simultaneously expanding surveillance capabilities.¹⁰⁰ Often referred to as the “smart border,” “digital wall,” or “virtual border,” this network of technologies aims to enhance border enforcement through automation, advanced monitoring systems, and artificial intelligence.¹⁰¹ For the purposes of this Note, three categories of technologies will be discussed: border deterrence technologies, biometrics, and the use of artificial intelligence (“A.I.”).

1. *Border Deterrence Technology*

The U.S. and the E.U. have increasingly militarized infrastructure at their borders in ways that are often designed to deter potential entry by migrants and asylum seekers, even before their journey begins.¹⁰² These technologies include drones, Automated License Plate Readers (“ALPRs”), Remote Video Surveillance Systems (“RVSS”), offshore sensors, and Integrated Fixed Towers

ASYLUM: THE USES OF NEW TECHNOLOGIES IN MIGRATION AND ASYLUM GOVERNANCE IN EUROPE 25 (2023).

⁹⁸ LUCÍA SALGADO & HANNE BEIRENS, WHAT ROLE COULD DIGITAL TECHNOLOGIES PLAY IN THE NEW EU PACT ON MIGRATION AND ASYLUM? 2 (2023).

⁹⁹ Lauren Markham, *The Future of the Border Is Even More Dystopian Than You Thought Automated surveillance and AI are here to stay—whether Trump builds his wall or not*, MOTHER JONES (2024), <https://www.motherjones.com/politics/2024/08/border-patrol-wall-automated-surveillance-artificial-intelligence-security-expo/> [https://perma.cc/J58Y-C7NW].

¹⁰⁰ Monique O. Madan, *The Future of Border Patrol: AI Is Always Watching*, THE MARKUP (Mar. 22, 2024, 11:00 AM), <https://themarkup.org/news/2024/03/22/the-future-of-border-patrol-ai-is-always-watching> [https://perma.cc/6KE4-3WLA].

¹⁰¹ Edward Graham, *AI can enhance border security but won't close workforce gap, lawmakers say*, NEXTGOV (July 10, 2024), <https://www.nextgov.com/artificial-intelligence/2024/07/ai-can-enhance-border-security-wont-close-workforce-gap-lawmakers-say/397943/> [https://perma.cc/M8C6-4SYD].

¹⁰² AMNESTY INTERNATIONAL, *supra* note 91.

(“IFTs”), transforming border enforcement into an expansive, high-tech monitoring system.

Drones have been in use for decades but are becoming increasingly sophisticated. Since 2006, CBP has deployed Predator B drones—military-grade aircraft weighing 5,000 pounds, measuring thirty-six feet, and costing \$17 million each, with an operating expense of \$12,255 per flight hour.¹⁰³ They can fly around thirty-six hours in one charge and “read something as small as a license plate from a height of two miles.”¹⁰⁴ Similarly Frontex in the E.U. has tested military-grade drones in the Mediterranean and Aegean to monitor and intercept vessels carrying migrants, purportedly to facilitate asylum applications.¹⁰⁵

ALPRs have been installed not only along the border but throughout the U.S. The cameras on these systems “collect the license plates of vehicles that pass, attach a timestamp and GPS coordinates, then upload that data to a searchable database.”¹⁰⁶ The data may also include images of vehicles and, in some cases, personal information such as names, addresses, dates of birth, and criminal records.¹⁰⁷ U.S. Immigration and Customs Enforcement (“ICE”)¹⁰⁸ can then use the

¹⁰³ See PETRA MOLNAR, *THE WALLS HAVE EYES: SURVIVING MIGRATION IN THE AGE OF ARTIFICIAL INTELLIGENCE* 18 (2024); see also MIJENTE, *THE DEADLY DIGITAL BORDER WALL*, *supra* note 96, at 13.

¹⁰⁴ PETRA MOLNAR, *TECHNOLOGICAL TESTING GROUNDS: MIGRATION MANAGEMENT EXPERIMENTS AND REFLECTIONS FROM THE GROUND UP* 18 (Sarah Chander, Diego Naranjo, Chris Jones, Antonella Napolitano, and Kostantinos Kakavoulis eds. 2020).

¹⁰⁵ *Id.* at 14.

¹⁰⁶ Dave Maass, *CBP Is Expanding Its Surveillance Tower Program at the U.S.-Mexico Border—And We’re Mapping It*, EFF (Mar. 20, 2023), <https://www.eff.org/deeplinks/2023/03/cbp-expanding-its-surveillance-tower-program-us-mexico-border-and-were-mapping-it> [<https://perma.cc/X2BQ-5Y48>].

¹⁰⁷

Leading a Successful Campaign Against Automated License Plate Readers, ACLU, https://www.ilrc.org/sites/default/files/resources/ilrc_aclu_alpr_for_organizers.pdf [<https://perma.cc/6Y37-KA9H>] (last visited Mar. 13, 2025). CBP uses ALPR at border crossings and inland checkpoints, leveraging a \$54.6 million contract with Motorola Solutions for real-time vehicle owner data access. ICE, meanwhile, subscribes to Vigilant Solutions’ database, which shares billions of license plate records from private businesses and law enforcement, sometimes bypassing state law. See MIJENTE, *JUST FUTURES LAW & NO BORDER WALL COALITION*, *supra* note 96, at 9.

¹⁰⁸ Immigration and Customs Enforcement, as the name suggests, enforces federal laws governing immigration, border control, customs and trade. ICE was created in 2003 as a division of the Department of Homeland Security. See *U.S. Immigration and Customs Enforcement*, U.S. IMMIGR. AND CUSTOMS ENF’T, <https://www.ice.gov/about-ice> [<https://perma.cc/53SE-6FM4>] (last updated Mar. 7, 2025).

information collected—which is stored for fifteen years—to track, target and deport individuals.¹⁰⁹

Surveillance towers have long been present along the U.S. border. To address the patchwork of towers with varying technologies,¹¹⁰ CBP launched the “Integrated Surveillance Tower,” also known as “Consolidated Towers and Surveillance Equipment,” to consolidate the various systems over the next decade.¹¹¹ The program will integrate RVSS, permanent monopole towers, and IFTs,¹¹² long-range towers optimized for surveilling foot traffic, to upgrade 135 existing towers and install 307 new ones.¹¹³ A relocatable version of the RVSS has also been deployed along the Rio Grande Valley, equipping towers with new sensors to identify individuals from miles away and fill surveillance gaps.¹¹⁴

The E.U.’s surveillance systems similarly include drones, as mentioned above, but also offshore sensors and satellite remote sensing technologies. Frontex has prioritized aerial surveillance, recognizing its growing importance in border control. In fact, “the European drone market is expected to grow[] considerably and represent €10 billion annually by 2035 and €15 billion annually by 2050.”¹¹⁵ Furthermore, the E.U. is actively working to integrate advanced AI capabilities into these technologies to enhance their efficiency and intelligence for more precise border management.

2. Biometrics

Biometrics is defined as “the automated recognition of individuals based on their biological and behavioral characteristics from which distinguishing, repeatable biometric features can be

¹⁰⁹ *Leading a Successful Campaign Against Automated License Plate Readers*, *supra* note 109.

¹¹⁰ Surveillance towers were first installed along the U.S. border in the 1930s. These towers were initially manned, and efforts in the mid-1990s focused on upgrading them with camera technology. Ultimately, the system became a patchwork of different towers when the government would upgrade legacy towers while installing new surveillance towers. *Id.*

¹¹¹ *Id.* at 5.

¹¹² Integrated Fixed Towers (IFTs), developed by Israeli military contractor Elbit Systems, are 80 to 140 feet tall with cameras and radar capable of detecting people six miles away, transmitting data to a command system originally designed for Israel’s West Bank wall; 55 towers were deployed in Arizona by 2019 under a \$239 million contract. *See* MIJENTE, *supra* note 94, at 10.

¹¹³ Maass, *supra* note 106.

¹¹⁴ *Id.*; *See also* MIJENTE, *supra* note 94, at 1-2.

¹¹⁵ IRIS BLAY PUNTAS, *THE USE OF DRONES FOR MARITIME SURVEILLANCE AND BORDER CONTROL* 11-12 (2022).

extracted for the purpose of biometric recognition.”¹¹⁶ This includes facial imagery, iris scans, fingerprints, DNA, and voice recognition, all of which are highly personal characteristics.¹¹⁷ This personal data is frequently gathered and stored to identify individuals or authenticate their identities.¹¹⁸

In the U.S., the use of biometric data in immigration enforcement has significantly expanded. The Office of Biometric Identity and Management (“OBIM”) maintains the Automated Biometric Identification System (“IDENT”), a vast database containing over 260 million unique identifiers, which are used for various purposes such as detecting and preventing illegal entry, facilitating travel, and verifying visa applications.¹¹⁹ ICE has also employed facial recognition technology to extract personal information from DMV databases, allowing access to details such as home addresses, license plate numbers, and foreign passport usage.¹²⁰ This information facilitates ICE in identifying and locating individuals targeted for immigration enforcement.¹²¹ Additionally, fingerprints, DNA and facial geometry are routinely collected from international travelers. CBP has piloted iris scans at pedestrian crossings and facial recognition for car passengers, while airports now widely use facial recognition technology.¹²²

The CBP One mobile application falls into this umbrella as well. In 2020, the Biden administration launched CBP One with the purpose of processing asylum seekers prior to their arrival at the U.S.-Mexico border.¹²³ The information gathered by the app “extend[ed] the collection of biometric and personal data beyond the physical borders of the U.S.” as it logged “phone number, employment and

¹¹⁶ *Biometrics*, DEP’T OF HOMELAND SEC., <https://www.dhs.gov/biometrics> [https://perma.cc/V95S-YCQ8] (last updated Jan. 24, 2025).

¹¹⁷ See *AI At Europe’s Border*, NETZPOLITIK (Feb. 6, 2024 10:14AM) <https://netzpolitik.org/2024/interview-ai-at-europes-borders/#netzpolitik-pw> [https://perma.cc/AGL4-A4GM]; see also MIJENTE, *supra* note 94, at 5.

¹¹⁸ AMNESTY INTERNATIONAL, *supra* note 91, at 5.

¹¹⁹ Inma Sumaita, *Losing Dignity: Eroding Privacy Rights of Immigrants in Technology-based Immigration Enforcement*, 6 U. CIN. INTELL. PROP. & COMPUTER L.J. 1, 21 (2022).

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² See *id.* at 23; MIJENTE, *supra* note 94, at 14. Biometric Facial Comparison has been used by CBP at all entry-points, and the information is “stored in the IDENT biometric database and retained for 15 years for U.S. citizens and lawful permanent residents, and 75 years for all others.”; *Id.*

¹²³ *Id.* at 18.

family information, marital status, individuals traveling together, permanent address abroad, and destination in the U.S., as well as a photograph to be run through CBP biometric records.”¹²⁴ The app would then allow verified applicants to schedule an appointment at a designated port of entry to make their asylum claim.¹²⁵

Eurodac was created as the E.U.’s centralized biometric database, assisting in the management of asylum applications as well as supporting efforts to prevent and detect terrorism and serious crimes.¹²⁶ Under Eurodac, there is mandatory fingerprinting of asylum seekers, and its database “contains the fingerprints of all asylum applicants in the E.U. and any apprehended regularized migrants,”¹²⁷ including individuals as young as six.¹²⁸ And because of cross-border data sharing across the E.U., authorities use Eurodac to enforce the Dublin Regulation, often transferring asylum seekers back to their first point of entry, even if conditions there are unsafe.¹²⁹ Additionally, within the E.U., biometric technologies such as “iris scanning are increasingly being rolled out . . . [requiring refugees] get their eyes scanned in order to eat.”¹³⁰

Although not a form of biometrics, personal data stored in migrants’ phones and other devices, such as contacts, call history, text messages, and location information, have been increasingly used to control migration. Governments are increasingly requiring migrants to give up their mobile devices to then extract that data and corroborate

¹²⁴ *Id.*

¹²⁵

CBP One: An Overview, AM. IMMIGR. COUNCIL (June 2023), https://www.americanimmigrationcouncil.org/sites/default/files/research/cbp_one_an_overview_0.pdf [<https://perma.cc/9FYF-8SPG>].

¹²⁶ *Eurodac*, EU-LISA, <https://www.eulisa.europa.eu/activities/large-scale-it-systems/eurodac> [<https://perma.cc/L6RA-J4EF>] (last visited Mar. 15, 2025). Originally, Eurodac was designed to facilitate the Dublin Regulation, which determines the member state responsible for processing an asylum claim, but has expanded into a law enforcement tool, aiding in deportations and border enforcement.

¹²⁷ Natasha Saunders, *Security, digital border technologies, and immigration admissions: Challenges of and to non-discrimination, liberty and equality*, EUROPEAN J. POL. THEORY 1, 8 (2023).

¹²⁸ Niovi Vavoula, *The Transformation of Eurodac from an Asylum Tool into an Immigration Database*, EU MIGRATION L. BLOG (Oct. 16, 2024), <https://eumigrationlawblog.eu/the-transformation-of-eurodac-from-an-asylum-tool-into-an-immigration-database/> [<https://perma.cc/8HRQ-K95L>].

¹²⁹ *Id.*

¹³⁰ MOLNAR, *supra* note 104, at 17.

the information they provide to authorities.¹³¹ Countries within the E.U., such as Austria, Germany, and Belgium created laws that permit “the seizure of mobile phones from asylum or migration applicants from which data is then extracted and used as part of asylum procedures.”¹³² Authorities often assume that the data extracted from mobile devices is accurate, and therefore, if a person provides information not corroborated by data on their phone, it may cast serious doubt on the migrant’s claim.¹³³

3. *AI Technology*

Artificial intelligence is a broad and evolving technology, encompassing a wide range of technologies and methods rather than a single system. It powers border security technologies, integrating machine learning and automated decision-making (ADM) systems.¹³⁴ Machine learning, a subset of AI, enables machines to use algorithms to assess data and determine the most likely response based on that data.¹³⁵ Meanwhile, ADM systems rely on AI and machine learning to make decisions without human intervention. At its core, AI enables computers to mimic human behavior, which has been increasingly applied in areas like identity verification, border security and control, and data analysis of visa and asylum applicants.¹³⁶

Machine learning and predictive analytics, for instance, enable E.U. states to predict the next “migration crisis” and anticipate the movement of asylum seekers before they reach European territories.¹³⁷ For example, tools such as the Early Warning and Preparedness System (“EWPS”) and the Global Conflict Risk Index (“GCRI”) have been developed within the E.U. to analyze big data to predict displacement patterns.¹³⁸ These tools utilize machine learning

¹³¹ *Id.* at 18.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ MOLNAR, *supra* note 104, at 3.

¹³⁵ See DEYRA OZKUL, AUTOMATING IMMIGRATION AND ASYLUM: THE USES OF NEW TECHNOLOGIES IN MIGRATION AND ASYLUM GOVERNANCE IN EUROPE 11-12 (2023).

¹³⁶ AMNESTY INTERNATIONAL, *supra* note 91.

¹³⁷ See Ozkul, *supra* note 135 at 15; Ana Beduschi, *International Migration Management in the Age of Artificial Intelligence*, 9 MIGRATION STUD. 576, 579 (2021)

¹³⁸ Ozkul, *supra* note 135 at 15.

algorithms and sources like GDELT,¹³⁹ Google Trends, Frontex, and asylum application data to estimate future migration flows.¹⁴⁰ Unlike the E.U., the U.S. has been using machine learning for some time now. The focus of the U.S. is to implement machine learning tools into its surveillance technology because of the increasing amount of data the DHS looks at and stores.¹⁴¹

ADM implements machine learning analyses in real-time decision-making to “make preliminary determinations about possible threats and how authorities should respond.”¹⁴² In the E.U., some states use AI-based software to verify identities and check the authenticity of migrants’ documents.¹⁴³ Using pattern recognition and augmented intelligence, the software “classifies documents according to their risks, not based on personal attributes, ‘but rather on features of the presented documents.’”¹⁴⁴ Although sometimes caseworkers are involved in the process, there are now algorithms implemented in border technology to predict the outcomes of asylum claims, and governments typically enforce exclusion and control over migrants and refugees deemed “undesirable” by these systems.¹⁴⁵

Some E.U. funded projects have explored emotion recognition technologies, including AI-based lie detectors.¹⁴⁶ Although unsuccessful, one such project was iBorderCtrl, also known as iCROSS, a project aimed at expediting border control for non-E.U. travelers entering the Schengen Area.¹⁴⁷ The project, tested in

¹³⁹ According to a report, “GDELT monitors the news media in more than 100 languages around the world in real time. The abbreviation GDELT stands for ‘Global Database of Events, Language and Tone’.” *Id.* at footnote 26.

¹⁴⁰ *Id.* at 15.

¹⁴¹ Markham, *supra* note 99.

¹⁴² Tyler, *supra* note 93.

¹⁴³ See Ozkul, *supra* note 135, at 25.

¹⁴⁴ *Id.*

¹⁴⁵ See Jones, *supra* note 8; see also MOLNAR, *supra* note 103, at 1.

¹⁴⁶

See *Smart lie detection system to tighten EU’s busy borders*, European Commission (Oct. 24, 2018), <https://projects.research-and-innovation.ec.europa.eu/en/projects/success-stories/all/smart-lie-detection-system-tighten-eus-busy-borders> [https://perma.cc/JGV5-LTUN]; Ozkul, *supra* note 135, at 26; see also MOLNAR, *supra* note 103, at 2.

¹⁴⁷ See Lucien Begault, *Automated technologies at EU borders and the future of Fortress Europe*, EURONEWS (Mar. 27, 2019), https://www.euronews.com/2019/03/27/automated-technologies-at-eu-borders-and-the-future-of-fortress-europe-view?utm_medium=Social&utm_source=Facebook#Echobox=1553694747 [https://perma.cc/U38W-6NCU]. The E.U. contributed 4.5 million euros to the program, which was

Hungary, Latvia and Greece, “combined several technologies, including biometric verification, deception detection, document authentication and risk assessment, in one system.”¹⁴⁸ The first step of the assessment began before the migrant’s travels, and individuals would answer questions from a computer-animated **agent**, customized to their gender and language, while AI would analyze their micro-gestures for signs of deception.¹⁴⁹ The second step would occur upon arrival at the border, where the migrant’s recorded facial expressions would be compared with past border crossing images. Those flagged as high-risk face additional scrutiny from border officers.¹⁵⁰

Other examples of AI technologies include the creation of robots. Although robo-dogs are not yet widely used, they are part of a growing collection of technology that is becoming normalized at the border. The ROBORDER project within the E.U. aimed “to create a ‘fully-functional autonomous border surveillance system with unmanned mobile robots including aerial, water surface, underwater and ground vehicles.’”¹⁵¹ Similarly, the U.S. tested “robotic patrol dogs” at the border in 2022.¹⁵² The purpose of these robots, however, is to act as a “force multiplier” for U.S. Border Patrol.¹⁵³

In the U.S., CBP has prioritized contracting smaller “unmanned aerial systems” to fly autonomously to collect imagery and track people in hard-to-access areas.¹⁵⁴ One of the newest introductions representing a significant leap in border enforcement technology is Autonomous Surveillance Towers (ASTs).¹⁵⁵ ASTs were first installed by the Trump administration in 2018, and just two years later, a partnership was established with Anduril Industries (a defense technology company) to accelerate the deployment of AI-

going to be piloted in Hungary, Greece and Latvia. The project fell through when it received widespread criticism. *Id.*; See also Tyler, *supra* note 93.

¹⁴⁸ Ozkul, *supra* note 135, at 26.

¹⁴⁹ See *id.*; Jones, *supra* note 8.

¹⁵⁰ See Ozkul, *supra* note 135, at 26; Jones, *supra* note 8.

¹⁵¹ AMNESTY INTERNATIONAL, *supra* note 91, at 23.

¹⁵² *Id.* The robots were equipped with sniper rifles and served as a deterrent and intimidation for those attempting to cross the border.

¹⁵³ See Kyle Hiebert, *Robot Dogs Policing America’s Southern Border? It’s Coming Sooner than You Think*, CIGI ONLINE (Apr. 5, 2022), <https://www.cigionline.org/articles/robot-dogs-policing-americas-southern-border-its-coming-sooner-than-you-think/> [https://perma.cc/K3U5-GD46].

¹⁵⁴ MIJENTE, *supra* note 94, at 13. Unlike the heavier Predator B drones, these smaller, unmanned aerial systems, or sUAS, weigh under 55 pounds.

¹⁵⁵ See Maass, *supra* note 106.

driven border surveillance systems. This partnership integrated machine learning into border security efforts well before AI's recent surge in popularity.¹⁵⁶ These ASTs can now automatically detect objects in live video and imagery streams.¹⁵⁷ The technology is so advanced that it can identify and classify items, distinguish livestock from people, and "ascertain the threat level" of an object without the need for direct human control.¹⁵⁸ When an anomaly is identified through AI technologies, real-time alerts are sent to operators to follow up on the detection.¹⁵⁹

IV. CONSEQUENCES OF "SMART BORDERS" ON MIGRANT PROTECTIONS

A. "Smart Borders" as a Form of *Non-Entrée*

The introduction of digital barriers into the framework of border control, which prevents migrants from asserting an asylum claim, undermines the core obligation of *non-refoulement*.¹⁶⁰ As states fortify their borders and increasingly implement surveillance technologies, a central tension has emerged within international refugee law: Whether these restrictive measures violate the principle of *non-refoulement* by preventing access to asylum for those in need of protection? While physical border policies raise significant legal and ethical concerns, technological barriers pose an even greater challenge. By rendering asylum inaccessible through digital gatekeeping, these technologies are not only incompatible with fundamental human rights but also create insurmountable obstacles for refugees seeking protection.

¹⁵⁶ Markham, *supra* note 99. The Biden administration similarly emphasized a commitment to the responsible use of AI, appointing Eric Hysen as the Department of Homeland Security's first chief AI officer, introducing a departmental framework for responsible AI practices, and establishing the AI corps, a team of 50 experts to monitor and implement the technology effectively.

¹⁵⁷ *Using AI to Secure the Homeland*, DEP'T OF HOMELAND SEC. <https://www.dhs.gov/ai/using-ai-to-secure-the-homeland> [<https://perma.cc/65NE-RUPL>].

¹⁵⁸ Markham, *supra* note 99.

¹⁵⁹ *Using AI to Secure the Homeland*, *supra* note 157.

¹⁶⁰ See, e.g., Kudrat D. Kontilis, *Violating Non-Refoulement with the CBP One™ App: How Technology Blocks Asylum Access on the U.S. Borders*, Y. J. INT'L AFF. (Dec. 11, 2024), <https://www.yalejournal.org/publications/the-digital-wall-violating-non-refoulement-with-the-cbp-one-app-how-technology-blocks-asylum-access-on-the-us-borders> [<https://perma.cc/2ECC-BXUA>]. The CBP One app was the digital tool used to turnback asylum seekers arriving at ports of entry who did not have appointments scheduled.

According to researcher Anil Kalhan, the incorporation of new technologies and the practice of immigration surveillance “has accelerated a long-term process of decoupling the territorial border of the U.S. from what [she] term[s] its migration border: the set of boundary points at which nation-states authorize individuals to enter or be admitted, prevent or allow their entry or admission, or subject them to possible expulsion.”¹⁶¹ Due to the immense expansion of immigration enforcement tools, migration borders have become increasingly detached from territorial boundaries.¹⁶²

Both the U.S. and the E.U. use AI-enhanced border surveillance to detect and deter asylum seekers even before they can claim protection, thus potentially violating the principle of *non-refoulement*. These technologies may also facilitate the three policies encompassed within Hathaway’s definition of “non-entrée.” Furthermore, AI technologies could enable targeted interventions that deport migrants and asylum seekers to locations where they may face threats to their lives or freedom. As noted, “AI is at risk of becoming another political tool, used to reinforce old state practices, which aim to curb international migration and prevent asylum-seekers from reaching their territories.”¹⁶³ With the continued deployment of AI-powered drones, biometric surveillance, and automated risk assessments, to name a few, the U.S. and the E.U. risk further entrenching exclusionary border practices that undermine international protection systems.

Rather than enhancing border security, such technologies create new vulnerabilities for the most vulnerable populations. They are increasingly used as tools of deterrence rather than protection and contravene the spirit of the 1951 Refugee Convention and its 1967 Protocol. By prioritizing technological enforcement at the border, the U.S. and the European Union are restricting access to asylum, increasing wrongful expulsions, and undermining *non-refoulement* and due process—the core tenets of international refugee law.

B. Legal and Ethical Concerns

There are countless compelling reasons why “smart border” solutions raise significant legal, ethical and moral concerns. Critics

¹⁶¹ Anil Kalhan, *Immigration Surveillance*, 74 MD. L. REV. 1, 59 (2014).

¹⁶² *Id.* at 60.

¹⁶³ Beduschi, *supra* note 137, at 581.

argue that these technologies are “fundamentally incompatible with human rights,”¹⁶⁴ particularly due to their disproportionate impact on vulnerable populations, reinforcing systemic racism and xenophobia. These systems thrive in contexts where migration is criminalized and anti-migrant sentiment is prevalent, and they rely heavily on the private sector to produce and enforce harmful border practices that result in thousands of migrant deaths.¹⁶⁵ Consequently, migrants are stigmatized as security threats rather than recognized as individuals in need of protection.¹⁶⁶

One of the most alarming consequences of the digital border wall is the increase in migrant deaths. Heightened surveillance and enforcement push migrants into more remote and perilous routes, increasing the risk of heatstroke, dehydration, and death.¹⁶⁷ Although U.S. Border Patrol has reported that approximately 10,000 individuals have died while trying to cross the border, the number could be as high as 80,000.¹⁶⁸ Despite these dangers, the U.S. has shown little interest in regulating these technologies, as illustrated by the focus on migration during the 2024 election cycle.¹⁶⁹ The Biden administration’s Executive Order on AI failed to provide a regulatory framework for high-risk border technologies or address their human rights impacts on migrants.¹⁷⁰ Meanwhile, the E.U.’s comparatively lenient AI Act on border technology reinforces the reluctance of the U.S. government to protect migrants from harmful technologies.¹⁷¹

¹⁶⁴ ACCESS NOW, *Nowhere to turn: How Surveillance Tech at the EU Borders is Endangering Live*, at 1:56 (YouTube, May 23, 2023), https://www.youtube.com/watch?time_continue=102&v=lyU9-vohc0k&embeds_referring_euri=https%3A%2F%2Fprotectnotsurveil.eu%2F&source_ve_path=Mjg2NjY [<https://perma.cc/8V4U-9BHY>].

¹⁶⁵ Petra Molnar, *EU’s AI Act Falls Short on Protecting Rights at Borders*, JUST SECURITY (Dec. 20, 2023), <https://www.justsecurity.org/90763/eus-ai-act-falls-short-on-protecting-rights-at-borders/> [<https://perma.cc/URH7-X68B>].

¹⁶⁶ See AMERICAN IMMIGRATION COUNCIL, *BEYOND A BORDER SOLUTION HOW TO BUILD A HUMANITARIAN PROTECTION SYSTEM THAT WON’T BREAK* (2023); see also MCGREGOR & MOLNAR, *supra* note 91, at 12.

¹⁶⁷ MIJENTE, *supra* note 94, at 6.

¹⁶⁸ *US: Border Deterrence Leads to Deaths, Disappearances*, HUM. RTS WATCH (June 26, 2024, at 9:00 EDT), <https://www.hrw.org/news/2024/06/26/us-border-deterrence-leads-deaths-disappearances> [<https://perma.cc/M882-TRQB>].

¹⁶⁹ Molnar, *supra* note 165.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

In Europe, the Mediterranean has become the deadliest border region, under constant surveillance from Frontex and national aircraft.¹⁷² Migrants at Greece's land and sea borders face violence and humiliation, leading to severe injuries and trauma—a pattern echoed at the borders of Poland and Lithuania.¹⁷³ In Spain's border regions with Morocco, such as Ceuta and Melilla, as well as along routes from West Africa to the Canary Islands, numerous individuals have been killed or injured.¹⁷⁴ Beyond these immediate harms, many endure ongoing hardship in camps and informal settlements at Europe's borders, often without essential healthcare, support services, or basic necessities.¹⁷⁵

In addition to violating the principle of *non-refoulement*, as analyzed above, the use of biometric data and predictive AI in asylum processing often leads to discriminatory profiling and procedural unfairness.¹⁷⁶ Migrants and asylum seekers are subjected to experimental applications of new forms of ADM without adequate safeguards or protections,¹⁷⁷ undermining the right to a fair asylum process. For example, U.S. agencies such as ICE and CBP use facial recognition and AI-driven screening to prioritize cases, sometimes resulting in automated denials or flagging of asylum seekers based on biased datasets with “unclear criteria and little transparency.”¹⁷⁸ Similarly, the Eurodac database uses AI to track migrants' movements and enforce the Dublin Regulation, often compelling claimants to remain in unsafe entry states such as Greece.¹⁷⁹ In both the U.S. and

¹⁷² Jones, *supra* note 9.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ See, e.g., ACCESS NOW, *supra* note 164 (discussing the E.U. border and surveillance systems and their embedded biases); Melissa del Bosque, *Facial recognition bias frustrates Black asylum applicants to US, advocates say*, GUARDIAN (Feb. 8, 2023), <https://www.theguardian.com/us-news/2023/feb/08/us-immigration-cbp-one-app-facial-recognition-bias> [<https://perma.cc/9X79-WS2H>] (stating that the CBP One app used during the Biden administration failed to register people with darker skin tones, essentially blocking their right to request entry into the United States).

¹⁷⁷ AMNESTY INTERNATIONAL, *supra* note 91, at 32.

¹⁷⁸ UN HUMAN RIGHTS, *Digital Technologies and Migration*, at 0:57 (YouTube, Sept. 18, 2023), <https://www.youtube.com/watch?v=2WMecgDhIC4> [<https://perma.cc/26UZ-8HD5>].

¹⁷⁹ See Niovi Vavoula, *The Transformation of Eurodac from an Asylum Tool into an Immigration Database*, EU MIGRATION LAW BLOG (Oct. 16, 2024), <https://eumigrationlawblog.eu/the-transformation-of-eurodac-from-an-asylum-tool-into-an-immigration-database/> [<https://perma.cc/8HRQ-K95L>].

the E.U., AI systems used in asylum processing can lead to wrongful detentions and deportations due to technological errors.¹⁸⁰

Creating a value-neutral technology or database free from bias is “virtually impossible.”¹⁸¹ Biometric identification is not foolproof.¹⁸² Although automated fingerprint identification systems can be highly accurate, they “nevertheless can yield inaccurate results, owing to technological limitations, the quality of fingerprint recording processes, and even the particular demographic groups in which the subjects are members.”¹⁸³ Facial recognition has also been a longstanding issue, with a 2020 report by Harvard University even calling it the “least accurate” form of identification.¹⁸⁴ It was also reported that the CBP One app “is failing to register many people with darker skin tones, effectively barring them from their right to request entry into the US.”¹⁸⁵

Concerns surrounding artificial intelligence in border control extend to biased decision-making and the wrongful denial of asylum. AI tools are increasingly used to assess asylum claims, predict outcomes, and even analyze emotions to gauge the credibility of asylum seekers. The increased dependence on AI in refugee status determinations risks removing human judgment from the process, undermining the Convention’s principles of individualized assessments.¹⁸⁶ Without human intervention, such automated decision-making tools produce biased and inflexible rulings, and fail to consider nuanced humanitarian claims. Studies have shown that “decision making when using computerized systems can be distorted by automation complacency and automation bias,” where individuals place undue

¹⁸⁰ Facial recognition errors disproportionately affect Black men and other marginalized groups and have led to false arrests. DHS has acknowledged that these systems may yield inaccuracies and discriminatory outcomes based on race, sex, and age, and yet continue to use them. *MIJENTE*, *supra* note 94, at 14.

¹⁸¹ *MOLNAR*, *supra* note 105, at 37.

¹⁸² *Kalhan*, *supra* note 161, at 67.

¹⁸³ *Id.*

¹⁸⁴ *Bosque*, *supra* note 176. It has been shown that, agencies fill databases with biometric information such as fingerprints and iris scans, but the error rate exceeds 30% for darker-skinned women. *Id.* *Petra Molnar* has also written about how “even the best algorithms misrecognize Black women twenty times more often than white men.” *MOLNAR*, *supra* note 105, at 26.

¹⁸⁵ *Bosque*, *supra* note 176.

¹⁸⁶ *See* UNHCR, THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEE AND ITS 1967 PROTOCOL 5 (2011).

trust in automated systems even when errors or malfunctions are suspected.¹⁸⁷ In short, automated systems are never neutral.¹⁸⁸

The absence of human determination in these processes also exacerbates the lack of transparency and accountability in asylum decisions.¹⁸⁹ Without clear mechanisms to address errors, biases, or abuses in automated systems, migrants are left without recourse when subjected to wrongful detentions, deportations, or denial of asylum. This is especially alarming given the opaque and discretionary nature of decision-making and the lack of mechanisms for redress when issues arise.¹⁹⁰ In essence, “smart borders” perpetuate a cycle of injustice, where technological failures and discriminatory practices go unchecked, further marginalizing already vulnerable populations.

V. CONCLUSION

Given the profound human rights implications of “smart border” technologies, legal and policy interventions in both the U.S. and E.U. will be necessary to ensure compliance with international refugee law, particularly the principle of *non-refoulement*. Without proper oversight, these technologies risk reinforcing systemic inequalities, violating due process, and obstructing access to asylum rather than facilitating the protection outlined in the 1957 Refugee Convention and its 1967 Protocol.

Under the guise of security and border control, states are increasingly using surveillance technologies and artificial intelligence in migration management. Borders have become a testing ground for new technologies, often operating without meaningful oversight, where an “anything goes” attitude turns migrants into experimental subjects in unregulated “technological testing grounds.”¹⁹¹ Each stage of a migrant’s journey is now influenced by potentially dangerous and largely unregulated border technology.¹⁹²

¹⁸⁷ Jones, *supra* note 9.

¹⁸⁸ JESSICA BITHER & ASTRID ZIEBARTH, AUTOMATING DECISION-MAKING IN MIGRATION POLICY: A NAVIGATION GUIDE 5 (2021).

¹⁸⁹ *Id.* at 20.

¹⁹⁰ See Molnar, *supra* note 165; Madan, *supra* note 100.

¹⁹¹ Petra Molnar, *Technological Testing Grounds and Surveillance Sandboxes: Migration and Border Technology at the Frontiers*, 45 FLETCHER F. WORLD AFF. 109, 113 (2021). For more on the lack of oversight of agencies see Kalhan, *supra* note 161, at 67.

¹⁹² See Molnar, *supra* note 165; see also MCGREGOR & MOLNAR, *supra* note 91.

Instead of upholding international obligations to protect asylum seekers, smart border technologies play a key role in the politics of *non-entrée*, deterring migrants from entering a country. Those who do attempt to cross are met with militarized infrastructure, biometric surveillance, detention, and in many cases, deportation or refoulement. These measures do not address the root causes of displacement but instead prioritize exclusion over humanitarian protection.

As the E.U. and the U.S. navigate their migration policies, they must acknowledge the ethical and legal implications of these policies. To mitigate risks, governments should be required to disclose how AI is used in asylum decisions and ensure that claimants can meaningfully present their claims. Legal challenges at both the domestic and international levels can serve as a crucial means of holding governments accountable for the misuse of such technologies. Without robust regulatory frameworks and human rights safeguards, such technologies will only deepen existing inequalities and erode the fundamental right to seek asylum.