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DON'T ASK ME ABOUT MY BUSINESS: THE MAFIA'S EXPLOITATION OF THE EUROPEAN MIGRATION CRISIS

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Abstract: Old meets new as the Italian mafia capitalizes on the European migration crisis. Beginning with the coordination of Mediterranean voyages and ending with the indefinite exploitation of refugees at mafia-run migrant camps, the mafia has found an opportunity to profit from the crisis at every step of the way. With no end to the constant influx of refugees in sight, and verging on a humanitarian crisis within the camps' walls, Italy faces a serious problem that requires a multifaceted solution. The Dublin regulations, which mandate registration and application for asylum in the first European Union country of entry, are in no small part tied to the situation in Italy. Not only does this system disproportionately burden border states and slow the asylum application process, it also traps refugees in procedural limbo and allows corrupt individuals and organizations to profit from their quandary. In dire need of change in light of the refugee crisis, reforming Dublin has the capacity to loosen the mafia's financial stronghold on the plight of migrants while also safeguarding the fundamental human rights of refugees and giving them a better chance at the life they seek within Europe's borders.

INTRODUCTION

The centuries-old problem of Italian organized crime has collided with the current refugee crisis, catalyzing the emergence of a lucrative new industry: the trafficking and exploitation of migrants.¹ Organized crime—more specifically the persistence and power of the Sicilian mafia—is nothing new.² The Sicilian mafia rose to power in the early to mid-1800s and has since maintained its grip on Sicilian politics, economics, and society in many ways.³ The sudden influx of refugees into European waters and borders on the other hand,

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¹ See James Politi, *Italy's Mafia Learns to Profit from the Migration Crisis*, FIN. TIMES (July 24, 2015, 4:41 PM), <http://www.ft.com/intl/cms/s/0/0d0371d0-31f4-11e5-8873-775ba7c2ea3d.html#axzz3xLvkkjau> [https://perma.cc/JNE2-PXR7].

² See Paolo Buonanno, Ruben Durante, Giovanni Prarolo & Paolo Vanin, *On the Historical and Geographic Origins of the Sicilian Mafia* (Feb. 23, 2012) (unpublished manuscript), <http://ssrn.com/abstract=2009808> [https://perma.cc/DA4F-R6XK].

³ See *id.*; Diego Gambetta, *Mafia: The Price of Distrust*, in TRUST: MAKING AND BREAKING COOPERATIVE RELATIONS 158, 159 (Diego Gambetta ed., 1990).

is a relatively recent phenomenon.⁴ The unprecedented volume and speed at which migrants are pouring into Europe has ushered in new business for the Mafia in the forms of human trafficking, drug dealing, prostitution, and above all, securing lucrative contracts for the service provision to and operation of migrant reception centers.⁵

While each problematic in their own right, the combination of a healthy mafia and a refugee crisis poses new threats and challenges both to Italy domestically and to the greater international community.⁶ The historical problems associated with mafia prosecution in Sicily, coupled with Europe's inability to keep up with and respond to the ongoing refugee crisis, suggest that this is only the beginning of the mafia profiting off of and taking advantage of the ever-increasing number of migrants.⁷ Nevertheless, as bleak as this forecast may be, finding a way to address this emerging problem is crucial to the preservation of international security, human rights, economic health, and political stability in Italy and beyond.⁸

The objective of this Note is to explain the blending of these phenomena in order to underscore the need for an effective legal response. In highlighting the notion that mafia-led migrant exploitation is a multi-faceted problem, the Background section of this Note outlines the rise and persistence of the Sicilian mafia, and also describes the dynamics of the refugee crisis in the context of Southern Italy and Sicily. The Discussion then aims to explain how these two seemingly distinct problems have merged into one, suggesting that such a unique problem requires a response that not only weakens the mafia's financial grip on the refugee crisis, but also safeguards the rights of the migrants and asylum seekers affected. It suggests a possible way forward via the Dublin regulations, and examines the conflicting outcomes of two European Court of Human Rights (ECtHR) cases that pertain to Dublin's application across the European Union (EU).

Although this analysis acknowledges that mafia existence is by no means a novel issue, and that the migrant crisis itself is complex and overwhelming, the purpose of bringing the potent combination of these issues to light from a legal perspective is to highlight the pressing need for a solution to a growing

⁴ See Human Rights Watch, *Europe's Refugee Crisis: An Agenda for Action* 12 (Dec. 2015), <https://www.hrw.org/report/2015/11/16/europes-refugee-crisis/agenda-action> [<https://perma.cc/3P6E-UE67>].

⁵ See Eric Reguly, *Refugee Crisis a Multibillion-Dollar Honeytrap for Italian Mafia*, GLOBE & MAIL (Jan. 12, 2016, 8:12 PM), <http://www.theglobeandmail.com/news/world/refugee-crisis-a-multibillion-dollar-honeytrap-for-italian-mafia/article27186445/> [<https://perma.cc/N843-JAK4>].

⁶ See Alex Perry & Connie Agius, *The New Mediterranean Mafia*, MIGRANT REPORT: BACK BRIEF (June 12, 2015), <http://migrantreport.org/migrants-and-the-new-mediterranean-mafia/> [<https://perma.cc/CX4P-5LE2>].

⁷ See *id.*

⁸ See *id.*; Reguly, *supra* note 5.

and severe international problem. The Analysis section argues that the current Dublin regulations are not only inherently flawed, but also that they have directly contributed to, exacerbated, and perpetuated the current situation in Italy. It advocates for meaningful reform of Dublin that not only adequately addresses the present problem of mafia exploitation of refugees, but also serves as a much-needed step towards a consistent, harmonized asylum policy across Europe that better safeguards the rights of asylum seekers, facilitates migrant integration, and promotes political, economic, and social stability across Europe when it is needed more than ever.

I. BACKGROUND

A. The Roots and Rise of the Sicilian Mafia

In order to understand current mafia activity as it pertains to refugees, it is useful to examine the environment in which the Sicilian mafia arose, as many of the conditions that facilitated the initial emergence of organized crime in Sicily are the very reason it still persists today.⁹ The two major events during the nineteenth century that catalyzed the rise of the Sicilian mafia are the deterioration of feudalism in 1812, and the fall of the Bourbon reign in 1861.¹⁰

In the early 1800s, most Sicilian land was under the control of feudal barons.¹¹ However, rather than residing in their respective municipalities, most lords lived in the capital city of Palermo, which doubled as the political and economic hub of Sicily.¹² Their land was rented to local proprietors who managed production and often invested in the land themselves, until the feudal system was abolished and all previously held feudal lands were officially transferred to the state.¹³ The power of the landlords was further weakened when the Bourbon monarchy collapsed and the island was annexed to form a unified Italian State.¹⁴ During these major institutional shifts, law enforcement fell by the wayside and the few valuable portions of land amongst the primarily impoverished countryside became susceptible to attacks by local bandits.¹⁵ As the state consistently failed to provide adequate public protection via local law enforcement, the demand for private protection skyrocketed.¹⁶ Simultaneously,

⁹ See, e.g., Gambetta, *supra* note 3, at 158 (noting that the mafia has been able to sustain its power in southern Italy for over a century by creating and reinforcing a system of distrust).

¹⁰ Paolo Buonanno, Ruben Durante, Giovanni Prarolo & Paolo Vanin, *Poor Institutions, Rich Mines: Resource Curse and the Origins of the Sicilian Mafia* 125 *ECON. J.* 175, 180 (2015).

¹¹ *See id.*

¹² *Id.* at 180–81.

¹³ *Id.* at 181.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *See id.* The public perceived emerging Mafiosi as more capable of guaranteeing justice privately than the state could publicly. See Gambetta, *supra* note 3, at 164–65.

the collapse of feudalism created a new class of former soldiers and convicts who had previously served as bodyguards to the local feudal administrators.¹⁷ As groups of these individuals sprang up across the Sicilian countryside, their violent backgrounds, extensive local knowledge, and need for income naturally led to the commoditization of private protection.¹⁸ To this day, the degree of mafia presence and the extent of its activity remain largely dependent on the demand for protection and the state's inability to provide it.¹⁹

In fact, although the Mafia is typically thought to deal mainly in violence, its true primary commodity is protection.²⁰ This allows for a diverse clientele and wide range of services, as the need for protection often extends to transactions that would otherwise be perfectly legal.²¹ For instance, customers of the Sicilian mafia span both legal and illegal markets, and have included not only landowners, herdsmen, and peasants, but also olive and orange growers, politicians, doctors, shopkeepers, smugglers, drug dealers, and weapons suppliers.²² Further, because private protection is less often a one-time deal and more typically a long-term contract that establishes an ongoing relationship, the bond between provider and client is usually a lasting one.²³ The deeply engrained nature of the mafia in Sicilian society therefore suggests that so long as the power of the mafia to guarantee protection supersedes that of the state, the demand for mafia services will remain.²⁴

B. Mass Migration in the Mediterranean

The overwhelming influx of refugees has reached crisis level in Europe, where over one million refugees arrived by December 2015.²⁵ The vast majority of migrants have traveled and entered by sea, with the voyage from Libya to Italy being among the most hazardous migration routes.²⁶ In 2015, over 3770 migrants died, most of them crossing into Europe from North Africa.²⁷ The

¹⁷ Buonanno, *supra* note 10, at 181.

¹⁸ *See id.*

¹⁹ *See id.*

²⁰ DIEGO GAMBETTA, *THE SICILIAN MAFIA 2* (1993).

²¹ *Id.* at 3, 54 (“The mafia’s ‘consumers’ are quite cynical about it and know that mafia protection is often not a good but a lesser evil. . . . Yet, although the use of private protection may appear objectionable in principle, in practice it is often a sensible option for certain individuals. . . . In both legal and illegal markets those who enlist mafiosi to sort out their disputes, to retrieve their stolen property, or to protect their cartels from free riders and competitors do not perceive that protection as bogus.”).

²² *Id.* at 54.

²³ *Id.*

²⁴ *See id.*; *see also* Gambetta, *supra* note 3, at 158 (explaining that the mafia has been able to sustain itself both intentionally and unintentionally for over a century).

²⁵ *Migrant Crisis: Migration to Europe Explained in Seven Charts*, BBC (Mar. 4, 2016), <http://www.bbc.com/news/world-europe-34131911> [https://perma.cc/7G56-F4JL].

²⁶ *See id.*

²⁷ *Id.*

deadliest month was April, during which as many as 850 migrants died when a boat capsized off the coast of Libya.²⁸ In 2015, over 130,000 migrants landed in Italy alone.²⁹ In 2016, this figure climbed to 171,000, setting a new record for migrants reaching Italy by boat in a single year.³⁰

Italy has found itself at the center of the migrant crisis since the Arab Spring.³¹ As the Italian island of Lampedusa is the closest geographic point of Europe to Africa, refugees have now been arriving on Italian soil for years.³² Although Italy initially treated refugee migration as a seasonal problem, as the vast majority of refugees had been making the voyage during the summer months, the recent escalation has signaled a much larger problem for the already overwhelmed state, which never found an initial way to efficiently process and handle the growing number of asylum seekers.³³

Italy has been widely criticized for failing to properly identify migrants that arrive on its shores, particularly with regard to fingerprinting.³⁴ Part of the problem stems from the mandate that refugees stay in the country in which they first submit an asylum request; to bypass this requirement and keep open the option to move elsewhere, many migrants refuse to have their fingerprints taken.³⁵ Beyond the identification issue, there exists a contentious debate regarding the adequacy of Italy's general handling of the crisis.³⁶ Proponents of Italy's efforts point to the "Mare Nostrum" operation: a yearlong program that required the Italian navy to rescue migrants traveling by boat in the Sicilian channel.³⁷ This project is estimated to have saved approximately 190,000 people.³⁸ Additionally, the Italian government has decriminalized illegal immigra-

²⁸ *Id.*

²⁹ Angela Giuffrida, *Italy: Thank Us for Refugee Help—Don't Sue*, LOCAL (Dec. 9, 2015, 2:50 PM), <http://www.thelocal.it/20151209/italy-slams-eu-over-refugee-crisis-criticism> [<https://perma.cc/Z4QW-HYWSJ>].

³⁰ See Patrick Kinglsey, *2016 Sets New Record for Asylum Seekers Reaching Italy by Boat*, GUARDIAN (Nov. 28, 2016, 7:27 AM), <https://www.theguardian.com/world/2016/nov/28/2016-sets-new-record-for-asylum-seekers-reaching-italy-by-boat> [<https://perma.cc/QNT4-T7H7>].

³¹ Giampiero Gramaglia, *How Italy Is Still Struggling with the Refugee Crisis*, EURS. WORLD (Oct. 16, 2015), http://europesworld.org/2015/10/26/how-italy-is-still-struggling-with-the-refugee-crisis/#.Vpv8Q_EyOlc [<https://perma.cc/DJ2N-E3KN>].

³² *Id.*

³³ *Id.*

³⁴ Giuffrida, *supra* note 29.

³⁵ *Id.*

³⁶ *See id.* For example, Italy's Interior Minister Angelino Alfano stated that allowing the European Commission to open proceedings against Italy would be "unreasonable," and instead, the EU should thank Italy for the work it has done throughout the crisis. *Id.*

³⁷ Nicholas Farrell, *Welcome to Italy: This Is What a Real Immigration Crisis Looks Like*, SPECTATOR (June 20, 2015, 9:00 AM), <http://www.spectator.co.uk/2015/06/the-invasion-of-italy/> [<https://perma.cc/YXJ8-P5CY>].

³⁸ *Id.*

tion, meaning that migrants traveling by sea are not arrested upon their arrival on Italian land.³⁹

Setting the overarching policy debate aside, the statistics are a sobering reminder that there is no end in sight for Italy.⁴⁰ The relatively small percentage of migrants staying in the welcome centers is the segment of the population that actually applies for asylum: in 2014, 64,900 refugees applied, which is only one third of the number saved by the navy.⁴¹ From there, the judiciary was only able to decide on half of the applications, which is almost irrelevant in light of the fact that appeals are slow enough to allow even those who are rejected to stay in the country for years.⁴² Even a refugee with a rare deportation order does not have a difficult time staying; in 2014, Italy deported only 6944 people.⁴³ Italy's close geographic proximity to North Africa, lack of consistent identification procedures, and policies that facilitate both the arrival of migrants and their indefinite stay, solidify its position as a central fixture in the refugee crisis with little sign of impending change.⁴⁴

II. DISCUSSION

A. Smuggling, Service Contracts, and Subsidies: Making Them Offers They Can't Refuse

On March 21, 2011, a large Egyptian fishing boat approached the eastern coast of Sicily, stopping twelve nautical miles from the seaside town of Ripoosto.⁴⁵ The boat was carrying 190 migrants, primarily Egyptian and several Libyan, and nineteen crewmembers.⁴⁶ At around 3:30 a.m., as two small fishing boats were approaching the larger vessel with the anticipation of receiving the migrants, the Italian coast guard arrived and intervened, arresting the crewmembers and taking the migrants on board.⁴⁷

Before this particular instance in which the authorities intercepted the migrants, operations of this nature had become routine thanks to a high-ranking Sicilian Mafioso's decision to collaborate with a notorious North African smuggler.⁴⁸ The investigation that culminated in this sting began five years

³⁹ *Id.*

⁴⁰ *See id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Farrell, *supra* note 37.

⁴⁴ *See id.*; *see also* Gramaglia, *supra* note 31 (noting that Italy should treat migration as a permanent reality as opposed to a temporary problem).

⁴⁵ Reguly, *supra* note 5; Lorenzo Tondo, *How the Mafia Make Millions Out of the Plight of Migrants*, TIME (Jan. 18, 2016), <http://time.com/4134503/mafia-millions-migrants/> [<https://perma.cc/Q8YQ-UDXQ>].

⁴⁶ Reguly, *supra* note 5; Tondo, *supra* note 45.

⁴⁷ Tondo, *supra* note 45.

⁴⁸ *Id.*

prior when a migrant, upon his arrival in Italy, told police he overheard a crewman discussing a man who was organizing the smuggling of immigrants in Egypt.⁴⁹ This man is Salvatore Greco, the sixty-one-year-old head of the Brunetto mafia clan of Riposto, Sicily.⁵⁰ As it turns out, Greco had teamed up with Egyptian smuggler Mohamed Arafa Badawi and his son, Sayd, to formulate an arrangement in which Badawi and his son facilitated the refugee voyages from Northern Africa to the Italian coast, and Greco supplied motorboats to bring the migrants to shore, hide them, and secure their transportation to northern Europe.⁵¹

In attempting to assess just how profitable migrant smuggling is, Italian prosecutors estimate that the mafia has tapped into a multi-billion dollar business.⁵² In the scheme described above, Badawi charged each migrant between three and six thousand dollars for the voyage from North Africa to Sicily, meaning that a single journey with two hundred migrants on board could generate at least \$600,000.⁵³ From a financial standpoint, the arrangement is almost entirely risk-free because the money is collected upfront and the smugglers, who have already been paid, are largely unconcerned with whether the boats actually make it to their destination.⁵⁴

The profits certainly do not stop at the shoreline; the mafia has found ways to cash in on the plight of the refugees every step of the way, including housing them upon arrival in Italy and securing additional transportation to northern Europe, where the prospect of employment is compelling for many of the migrants.⁵⁵ Yet the most lucrative aspect of the refugee crisis is likely the management of migrant centers across Italy.⁵⁶ Sicily alone is home to six gov-

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* On the night of the Italian intervention, both Greco and Badawi fled the scene by boat. *Id.* Greco and his son Massimo were arrested three days later and sentenced to five years in prison for conspiracy and facilitation of illegal immigration, while Badawi was murdered in Egypt in 2012 after the Egyptian government refused to extradite him to Italy. *Id.* Police believe he was killed by fellow collaborators for not sharing profits. *Id.*

⁵² See Reguly, *supra* note 5 (“Prosecutors say the Sicilian Mafia, known as the Cosa Nostra, and possibly other Italian Mafia groups must consider the Mediterranean refugee crisis manna from heaven. ‘Behind the smugglers, there is a multibillion-dollar business—and that of course attracts the Mafia,’ said Maurizio Scalia, a prosecutor in the Sicilian capital, Palermo, who is investigating smuggling networks and sharing his findings with European investigators.”).

⁵³ Reguly, *supra* note 5. As a result of the arrests and convictions that followed the interception of the smuggling voyage, law enforcement officials in Sicily confirmed that Greco and Badawi were involved in a vast network of smugglers that included money men and safe houses in Italy, and that they had carried out five to six trips prior to being caught. *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Rick Noack, *For Rome's Mafia, More Refugees Means More Money*, WASH. POST (Dec. 5, 2014), <https://www.washingtonpost.com/news/worldviews/wp/2014/12/04/for-romes-mafia-more-refugees-means-more-money/> [https://perma.cc/K4RC-YT8Z]; Reguly, *supra* note 5. Rome is currently embroiled in a similar scandal of its own, in which mafia members bribed high-ranking government

ernment-funded camps.⁵⁷ When corrupt government officials award contracts to mafia-controlled companies to provide food, clothing, and medicine to the migrant camps, the mafia provides cheaper services to the centers than other commercial companies would, profiting from the difference.⁵⁸

These service contracts are valuable, especially at Mineo, one of the largest migrant centers in Sicily that houses four thousand refugees.⁵⁹ The government subsidizes Mineo's operation by providing forty euros per day for each adult and eighty euros per day for each child, which is intended to cover food, shelter, education, and general upkeep.⁶⁰ This amounts to an annual budget of €98 million for Mineo alone.⁶¹ Because the refugees at Mineo are in the long process of waiting for their asylum applications to be processed, and the flow of migrants into the centers is seemingly endless as the refugee crisis marches on, there appears to be no end in sight as the mafia continues to cash in on the camps.⁶²

B. More Migrants, More Money, More Problems

As investigations swirl around the legality of the operation and service provision contracts for the migrant centers, additional problems are simmering just below the surface: poor living conditions, human rights violations, and criminal activity inside the camps' walls.⁶³ At Mineo, reports of exploitation and abuse have surfaced through testimonies gathered outside of the camp, which tell of scarce food supplies, overcrowded sleeping areas, lack of health services, withheld daily allowances, bullying, and intimidation.⁶⁴ Located in rural Sicily, the facility was formerly used as a residential complex for U.S. military personnel.⁶⁵ It is presently surrounded by a twelve-foot high fence and secured by armed guards at the entrance, which, coupled with the atmosphere

officials in order to secure contracts to manage refugee accommodation, as well as Rome's parks and waste collection services. *Id.* In a wiretapped phone call, with regard to the refugee crisis, suspected collaborator Salvatore Buzzi stated that "drug trafficking earns less" than the "immigration business." *Id.* He further stated: "We closed this year with turnover of [\$50 million], but . . . our profits all came from the gypsies, the housing emergency and the immigrants" *Id.* (alterations in original).

⁵⁷ Tondo, *supra* note 45.

⁵⁸ *Id.*; see Reguly, *supra* note 5.

⁵⁹ Tondo, *supra* note 45.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² See *id.*; Reguly, *supra* note 5.

⁶³ See Niccolo Zancan, *Sicilian Mafia Cashes in on Desperate Immigrants*, STAMPA (Mar. 13, 2015), <http://www.lastampa.it/2015/03/24/esteri/lastampa-in-english/sicilian-mafia-cashes-in-on-desperate-immigrants-LzOAbd4ybfpKFge9CeAUiO/pagina.html> [https://perma.cc/977J-ELDL].

⁶⁴ Gianluca Mezzofiore, *Mediterranean Migrants Meet the Mafia at Sicily's Kafkaesque Mineo Camp*, INT'L BUS. TIMES (Apr. 26, 2015, 11:13 AM), <http://www.ibtimes.co.uk/sicily-mediterranean-migrants-exploited-lucrative-business-huge-mineo-camp-1498737> [https://perma.cc/K8VE-P3MY].

⁶⁵ *Id.*

of fear and intimidation, has generated criticism that the center is reminiscent of a concentration camp.⁶⁶

The mafia's lucrative tactics of skimping on the provision of services is readily apparent in the daily lives of the migrants living in the camps.⁶⁷ For the many migrants at Mineo, eating a steady diet of low-quality pasta and rice, wearing the same clothes since their arrival in Italy, and sharing a small room with six to eight people and no ventilation are all symptoms of the same problem of mafia operation.⁶⁸ Often the small daily allowance of €2.50, intended to be used to purchase SIM cards, never reaches the migrants because the administrators frequently pocket the money and give out cigarettes instead.⁶⁹ If the allowance actually reaches the migrants, it does so in the form of an electronic card that can only be used at the center's store, again benefitting the corrupt service providers.⁷⁰

The director of the center claims that frustration and unrest can be attributed to the long asylum application process, and not to the quality of life within the camp's walls.⁷¹ Ironically, this application process also funnels profits to the mafia's Mineo scheme.⁷² Not only does the long duration of the process ensure that migrants stay long enough for a steady stream of government subsidies to flow into mafia pockets, but there is also money to be made in charging the migrants for rides back and forth to Catania, where asylum seekers must go to fill out all of the necessary paperwork.⁷³ Further contributing to instability and unrest at Mineo is the underlying threat of riots.⁷⁴ Perhaps unsurprising in light of the living conditions at the center, eleven riots broke out at Mineo in 2014 alone.⁷⁵ There is also an added dimension of racism fueling the tension between administrators and inhabitants; in one instance, a group of migrants set fire to a Red Cross tent after Red Cross members used racial slurs towards one of the refugees.⁷⁶

⁶⁶ *Id.* (“[Activist Alfonso] Di Stefano, who accuses the [asylum] commission of steering clear of the centre for fear of riots, calls Mineo ‘the biggest segregation camp in Europe’ and explains that Italian authorities have imposed a regime of fear and intimidation ‘akin to that used in the Nazi concentration camp’ with kapos, or privileged insiders, heading each community of migrants, controlling every aspect of their lives.”).

⁶⁷ *See id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Perry & Agius, *supra* note 6.

⁷¹ Mezzofiore, *supra* note 64. Sebastiano Maccarrone, the director of Mineo, claims it is a “respectable centre,” stating, “[t]he migrants don’t need money, we provide them with everything they need to live in the camp. The constant presence of police guarantees that law and order is respected. . . . People are frustrated because they have to wait at least 12 months to get a response.” *Id.*

⁷² *Id.*

⁷³ *Id.*; see Zancan, *supra* note 63.

⁷⁴ See Mezzofiore, *supra* note 64.

⁷⁵ *Id.*

⁷⁶ *Id.*

In addition to creating a vicious cycle of poverty and unrest, the centers also breed illegal activity.⁷⁷ Receiving little to no daily allowance, migrants resort to lining up at 7:00 a.m. to board trucks that will take them to work on the surrounding orange and tomato fields.⁷⁸ The arrangement is risky because it is illegal and all money is exchanged completely under the table, and the migrants are only paid between one and three euros per hour for their labor.⁷⁹ The mafia has also entrusted the migrants with drug dealing within the center and in nearby towns, and often forces the migrant women into prostitution.⁸⁰ It therefore goes without saying that Mineo and other mafia-run migrant centers have become breeding grounds for instability, illicit activity, and human rights violations.⁸¹ Although Italy's parliament is coming to this realization, it remains to be seen whether action will follow, and how much more the mafia stands to gain in the meantime.⁸²

C. Sicily's Solution: International Law, Domestic Proceedings, or Something Else

The collision of the mafia and the migrant crisis has ushered in a new wave of problems related to the exploitation of refugees.⁸³ Not only is there an overarching problem of mafia operation with regard to human trafficking and illegally securing contracts to operate migrant centers, but also the tangential, ground-level issues of growing poverty, rumblings of revolt, unbearable living conditions, drug pushing, and prostitution.⁸⁴ The solution, therefore, must have

⁷⁷ See *id.*

⁷⁸ *Id.*; Perry & Agius, *supra* note 6; Zancan, *supra* note 63.

⁷⁹ Zancan, *supra* note 63.

⁸⁰ Tondo, *supra* note 45; Zancan, *supra* note 63. Prostitution has become particularly problematic both in and around the camps. See Zancan, *supra* note 63 ("The first thing a visitor is asked when arriving at the gates to Europe's largest center for asylum seekers is: 'Do you want one girl, or two?' It is not a misunderstanding between the visitor and the four Eritrean migrants standing in the dark in front of Italian army trucks . . . There are girls for sale on side streets, or are sometimes brought into the city where they can earn more.").

⁸¹ See Zancan, *supra* note 63; see also Mark Townsend, *Child Migrants in Sicily Must Overcome One Last Obstacle—the Mafia*, GUARDIAN: OBSERVER (July 23, 2016, 7:06 PM), <https://www.theguardian.com/world/2016/jul/23/child-migrants-in-sicily-must-overcome-mafia-obstacle> [<https://perma.cc/7LEF-27NV>] ("Children held there describe intense overcrowding and cramped rooms holding five to six. Some live inside the remote facility for as long as 18 months, usually finding it a wretched experience. The centre has been plagued with allegations of prostitution, drug use and violence.").

⁸² See Perry & Agius, *supra* note 6. Certain Italian government officials are beginning to realize the gravity of the situation inside the migrant camps. *Id.* ("After an inspection this May, deputy Erasmo Mansion called Mineo 'a scary sort of limbo', 'a symbol of opacity', 'a black hole' and 'a humanitarian time bomb' and demanded it be closed.").

⁸³ See *id.*

⁸⁴ See *id.*; Mezzofiore, *supra* note 64.

the capacity to curtail the mafia's windfalls while simultaneously safeguarding both the legal protections and human rights of the migrants.⁸⁵

Certain documents in the realm of international law aim to articulate the rights of refugees, or explain what constitutes human rights and their corresponding violations.⁸⁶ But do these mechanisms adequately address the economic component of this problem?⁸⁷ Can identifying and safeguarding the rights of the migrants translate to weakening the financial stronghold of the mafia?⁸⁸ On the other hand, Italian prosecutors believe that decades of experience have made them the best equipped to handle the mafia; but will the investigation and subsequent prosecution of top Mafiosi also guarantee the safety and well-being of the refugee populations affected?⁸⁹

⁸⁵ See Eleanor Acer & Jake Goodman, *Reaffirming Rights: Human Rights Protections of Migrants, Asylum Seekers, and Refugees in Immigration Detention*, 24 GEO. IMMIGR. L.J. 507, 507–11 (2010); Mezzofiore, *supra* note 64.

⁸⁶ See, e.g., Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267; Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150 [hereinafter 1951 Refugee Convention]; G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948). The Conference of the Plenipotentiaries prescribed in a resolution to the draft Protocol Relating to the Status of Stateless Persons that:

C. The Conference, Considering that, in the moral, legal and material spheres, refugees need the help of suitable welfare services, especially that of appropriate non-governmental organizations: Recommends Governments and inter-governmental bodies to facilitate, encourage and sustain the efforts of properly qualified organizations.

D. The Conference, Considering that many persons still leave their country of origin for reasons of persecution and are entitled to special protection on account of their position, Recommends that Governments continue to receive refugees in their territories and that they act in concert in a true spirit of international co-operation in order that these refugees may find asylum and the possibility of resettlement.

U.N. Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Final Act and Convention Relating to the Status of Refugees (July 25, 1951), <http://www.unhcr.org/en-us/protection/travaux/40a8a7394/final-act-united-nations-conference-plenipotentiaries-status-refugees-stateless.html> [<https://perma.cc/8HY6-MW8G>].

⁸⁷ See Pierre-Michel Fontaine, *The 1951 Convention and the 1957 Protocol Relating to the Status of Refugees: Evolution and Relevance for Today*, 2 INTERCULTURAL HUM. RTS. L. REV. 149, 149–51 (2007). Many critics of the 1951 Refugee Convention and the 1957 Protocol Relating to the Status of Refugees argue that these documents are inapplicable to present refugee situations, and that certain improvements could make these documents more workable in the modern context. See *id.*

⁸⁸ See *id.*; Perry & Agius, *supra* note 6.

⁸⁹ See Acer & Goodman, *supra* note 85, at 507–11; Perry & Agius, *supra* note 6 (“If there is hope, much of it seems to lie with Italy’s elite anti-Mafia prosecutors, who have begun to argue that, since people smuggling is a form of organised crime, and since it affects Italy, this human disaster comes under their jurisdiction. Fabio Licata, a Palermo judge, . . . says in this case Italy’s long experience of the Mafia works to its advantage: ‘We have the best organised crime investigators in Europe, even better than the US,’ he says. ‘Other countries in Europe deal with people smugglers as a police problem or a problem of public order. But this is about crimes against humanity, smuggling, money laundering, even terrorism. We know these phenomena. We know how to fight it. We achieve results.’”).

Enter the Dublin regulations: initially coming into force in the Irish capital in 1990 as the Dublin Convention, the law has been amended several times since in order to address subsequent problems.⁹⁰ The current version—known as Dublin III—has the legal status of a regulation and is binding upon member nations, which include the EU in its entirety plus Iceland, Lichtenstein, Norway, and Switzerland.⁹¹ The Dublin regulations function as the portion of EU law that dictates which member states are charged with processing the asylum requests of refugees.⁹² The general rule established by the Dublin regulations stipulates that the country through which the asylum seeker first enters the union is tasked with taking fingerprints and processing the asylum application.⁹³ Because the country of entry has already assumed these responsibilities, migrants who move further into Europe are sent back to their respective responsible nations in what are known as Dublin transfers.⁹⁴

The rationale behind the implementation of this scheme is an attempt to ensure that only one country is responsible for processing each individual asylum seeker's application.⁹⁵ This policy, in theory, discourages migrants from moving across multiple countries to present their cases, or "asylum-shopping."⁹⁶ It was also intended to prevent situations where migrants simply "orbit" around the EU without any single country having accountability for their cases.⁹⁷ To these ends, the Dublin system also includes the Eurodac database, which stores the fingerprints of all asylum seekers who complete the registration process upon arrival in the European Economic Area (EEA): the EU, plus Lichtenstein, Iceland, and Norway.⁹⁸ This archive allows immigration authorities across Europe to determine where an individual asylum-seeker has applied, and whether applications have been lodged in multiple countries.⁹⁹

Perhaps the most contentious piece of the Dublin legislation is the requirement that asylum seekers be sent back to the country in which they first filed an application, which is typically the country through which they first entered the EEA.¹⁰⁰ Several Grand Chamber judgments from the ECtHR illus-

⁹⁰ Patrick J. Lyons, *Explaining the Rules for Migrants: Borders and Asylum*, N.Y. TIMES (Sept. 16, 2015), http://www.nytimes.com/2015/09/17/world/europe/europe-refugees-migrants-rules.html?_r=0 [<https://perma.cc/8QZL-FHDE>].

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Jan-Paul Brekke, *Stuck in Transit: Secondary Migration of Asylum Seekers in Europe, National Differences, and the Dublin Regulation*, 28 J. REFUGEE STUD. 145, 147 (2014).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

trate how the Dublin transfers operate in practice, and also highlight some of the complications and difficulties that arise from the send back provision.¹⁰¹

D. Dublin Decisions and the State of the “Send Back” Provision

1. Suspension of Transfers to Greece in the Wake of *M.S.S.*

In early 2008, Afghan national *M.S.S.* left Kabul and travelled to Greece via Iran and Turkey.¹⁰² After entering the EU through Greece, he arrived in Belgium on February 10, 2009 and subsequently applied for asylum there.¹⁰³ Pursuant to the Dublin regulations, the Belgian Aliens Office submitted a request to Greece to take responsibility for processing *M.S.S.*'s request for asylum.¹⁰⁴ While his case was pending, the United Nations High Commissioner for Refugees wrote a letter to the Belgian Minister for Migration and Asylum Policy, criticizing the process and recommending that all transfers to Greece be suspended in light of deficiencies in Greece's asylum procedure and the conditions of reception of migrants in Greece.¹⁰⁵ Despite this recommendation, and without any acknowledgement from Greek officials, the Belgian immigration authorities ordered *M.S.S.* back to Greece in May of 2009, arguing that Belgium was not responsible for handling *M.S.S.*'s case, and that they believed that Greece would meet its obligations in processing the case.¹⁰⁶

Upon lodging an appeal with the Aliens Appeals Board, *M.S.S.* argued that if returned to Greece he would face the risk of detention in appalling conditions, that there were significant deficiencies in the Greek asylum system, and that he feared being sent back to Afghanistan without a proper examination of his reasons for leaving, which included his escape from a Taliban murder attempt.¹⁰⁷ His application was again rejected, and he was transferred to Greece on June 15, 2009.¹⁰⁸ When he arrived at Athens International Airport, he was detained in an adjacent building where he was locked in a small area with twenty other detainees who had restricted toilet access, could not leave

¹⁰¹ See *Tarakhel v. Switzerland*, App. No. 29217/12, Eur. Ct. H.R. (2014); *M.S.S. v. Belgium*, 2011-I Eur. Ct. H.R. 255; Press Release, European Court of Human Rights, Belgian Authorities Should Not Have Expelled Asylum Seeker to Greece (Jan. 21, 2011), <http://hudoc.echr.coe.int/eng?i=003-3407679-3824378> [<https://perma.cc/NZE3-RUS6>] [hereinafter Press Release, *M.S.S.*]; Press Release, European Court of Human Rights, Sending Afghan Family of Asylum Seekers Back to Italy Under the “Dublin” Regulation Without Individual Guarantees Concerning Their Care Would Be in Violation of the Convention (Nov. 4, 2014), <http://hudoc.echr.coe.int/eng?i=003-4923136-6025044> [<https://perma.cc/NTK9-FSQF>] [hereinafter Press Release, *Tarakhel*].

¹⁰² *M.S.S.*, 2011-I Eur. Ct. H.R. at 266.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 266–67.

¹⁰⁶ *Id.* at 267. Greece was also a named defendant in *M.S.S. Id.* at 255.

¹⁰⁷ *Id.* at 266–67; see Press Release, *M.S.S.*, *supra* note 101.

¹⁰⁸ *M.S.S.*, 2011-I Eur. Ct. H.R. at 269.

for fresh air, were given very little food, and had to sleep either on the floor or on dirty mattresses.¹⁰⁹ Once he was released with an asylum seeker's card on June 18, he lived on the streets with no subsistence.¹¹⁰ After attempting to leave Greece with a fake identification card, he was arrested and returned to the detention center next to the airport, where he was allegedly beaten by the police.¹¹¹ Upon his release one week later, he returned to the streets where he occasionally received aid from the local church and residents, and although steps were allegedly taken to find him accommodation, he was never offered any housing.¹¹²

The portion of this case that pertains to the present discussion is the applicant's complaint that returning him to Greece, where he was subjected to deplorable detention conditions and living conditions, constituted a violation of Article 3 of the European Convention on Human Rights.¹¹³ He not only alleged that the situation in Greece amounted to a violation of the prohibition against inhuman or degrading treatment or punishment, but also that Belgium had committed a violation in having exposed him to such conditions by sending him back.¹¹⁴

In rendering its decision, the Grand Chamber of the ECtHR acknowledged the burden the refugee crisis has placed on EU border states, particularly with regard to receiving migrants and asylum seekers at major international airports.¹¹⁵ However, the court found that this burden ultimately does not absolve Greece of its obligations under Article 3.¹¹⁶ The court noted that the complaint of the widespread practice of Greek authorities detaining asylum seekers without explanation, as well as the allegations concerning unsanitary living conditions and overcrowding, were corroborated by the reports of witnesses, international organizations, the European Committee for the Prevention of Torture, and the United Nations High Commissioner for Refugees.¹¹⁷

The court ultimately found that the conditions in Greece were unacceptable, that the applicant's detention was anxiety-inducing and undoubtedly had a profound impact on his sense of dignity, and that as an asylum-seeker, he was particularly vulnerable in light of his migration and traumatic experiences.¹¹⁸

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* at 271.

¹¹² *Id.*

¹¹³ *See id.* at 306; *see also* Convention for the Protection of Human Rights and Fundamental Freedoms art. 3, Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter European Convention on Human Rights] ("No one shall be subjected to torture or to inhuman or degrading treatment or punishment.")

¹¹⁴ *See M.S.S.*, 2011-I Eur. Ct. H.R. at 306.

¹¹⁵ *See id.* at 309–10.

¹¹⁶ *Id.* at 310.

¹¹⁷ *Id.* at 310–12.

¹¹⁸ *Id.* at 311–12.

Taken together, the court held that these circumstances amounted to a violation of Article 3.¹¹⁹ Additionally, the court found that because the facts regarding the conditions in Greece were well known and ascertainable from a number of sources, Belgium was also in violation of Article 3 in light of the Belgian authorities' decision to knowingly expose him to living conditions that amounted to degrading treatment.¹²⁰ Following this judgment, all Dublin transfers from other member states to Greece were suspended, and despite mounting EU pressure on Greece to accept Dublin returns, they have remained frozen ever since.¹²¹ Pursuant to the plan the European Commission announced in December 2016, member states had the option to send migrants back to Greece starting in mid-March of 2017.¹²² Although gaining some traction in countries such as Germany, which announced its decision to begin returning arriving asylum seekers to Greece, the commission's recommendation has been widely criticized in light of the unimproved and unsafe situation in Greece by the Greek government, non-governmental organizations, human rights organizations, and refugees themselves.¹²³ This criticism culminated in the Greek migration minister's announcement at the end of March 2017 that Greece cannot, and will not, resume acceptance of returned refugees.¹²⁴

¹¹⁹ *Id.*

¹²⁰ *Id.* at 341.

¹²¹ See *EU: Pressure on Greece for Dublin Returns Is 'Hypocritical,'* AMNESTY INT'L (Dec. 8 2016, 12:48 PM), <https://www.amnesty.org/en/latest/news/2016/12/eu-pressure-on-greece-for-dublin-returns-is-hypocritical/> [<https://perma.cc/WY37-2SN4>]; Greek Council for Refugees, *Dublin Statistics 2016*, ASYLUM INFO. DATABASE, http://www.asylumineurope.org/reports/country/greece/asylum-procedure/procedures/dublin#footnote2_lqoq1zn [<https://perma.cc/N3A6-Z3TF>].

¹²² See *EU: Pressure on Greece for Dublin Returns Is 'Hypocritical,'* *supra* note 121.

¹²³ See Patrick Strickland & Anealla Safdar, *Concern Over EU Plans to Send Refugees Back to Greece*, AL JAZEERA (Jan. 16, 2017), <http://www.aljazeera.com/indepth/features/2017/01/concern-eu-plans-send-refugees-greece-170114162243125.html> [<https://perma.cc/9FBJ-Z4HS>]; see also *EU Restarts Asylum Seeker Returns to Greece*, DEUTSCHE WELLE (Mar. 15, 2017), <http://www.dw.com/en/eu-restarts-asylum-seeker-returns-to-greece/a-37939811> [<https://perma.cc/GB3D-ACC3>]. Pursuant to the European Commission's December 2016 recommendation, Germany began sending newly-arrived asylum seekers back to Greece as of March 15, 2017, if that was their initial point of entry. *EU Restarts Asylum Seeker Returns to Greece, supra.* This resumption of Dublin transfers from Germany specifically excludes the return of vulnerable asylum applicants, such as unaccompanied minors. *Id.* Further, the European Commission's recommendation cautions that applicants should only be returned to Greece if Greek authorities are able to assure that each individual applicant will be appropriately handled in accordance with EU law. *Id.*

¹²⁴ *'We Reached Our Limits': Greece to Stop Taking Back Refugees—Migration Minister*, RT (Mar. 26, 2017), <https://www.rt.com/news/382334-greece-refugees-stop-resettlement/> [<https://perma.cc/525M-FJE7>].

2. Refusal to Extend Blanket Suspension to Italy Following *Tarakhel v. Switzerland*

While the situation in Greece has been alleviated by an ECtHR judgment, Italy has not had similar success.¹²⁵ In July 2011, a family of seven Afghani nationals traveled by boat from Turkey to Italy, landing on the coast of Calabria on July 16.¹²⁶ After supplying false identities, the family members had their photographs and fingerprints taken pursuant to the Eurodac identification procedure.¹²⁷ They were detained for ten days in a reception facility, where their true identities were established, and then transferred to another facility.¹²⁸ The applicants left the Italian facility without permission on July 28, traveled to Austria, and registered in the Eurodac system for a second time.¹²⁹ The family submitted an application for asylum that was ultimately rejected, and the Austrian authorities requested that Italy reassume responsibility for the applicants.¹³⁰ Although the request was accepted and the applicants were, in theory, supposed to return to Italy, the family travelled to Switzerland and lodged another asylum application.¹³¹ There, they were interviewed by the Federal Migration Office, which decided not to move forward in processing the case and deemed Italy the appropriate member state to do so.¹³²

After several additional unsuccessful attempts to have their application processed in Switzerland, the applicants requested an interim measure from the ECtHR suspending their deportation.¹³³ The applicants alleged in relevant part that if they were returned to Italy without guarantees regarding their care, they would face inhuman and degrading treatment under Article 3 in light of the conditions that asylum seekers faced in Italy.¹³⁴ The family also alleged that their return to Italy would deprive them of their right to respect for private and family life under Article 8, as they had no connections to Italy and did not speak Italian, and further, that the Swiss authorities were in violation of Article 13 in not giving due consideration to their personal circumstances as a family.¹³⁵

¹²⁵ See *ECtHR: General Suspension of Dublin Transfers to Italy Not Justified*, NEW EUROPE (Nov. 5, 2014, 9:01 AM), <http://neurope.eu/article/ecthr-general-suspension-dublin-transfers-italy-not-justified/> [<https://perma.cc/83FN-PJFS>].

¹²⁶ *Tarakhel*, App. No. 29217/12, Eur. Ct. H.R. para. 10.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.* para. 12.

¹³⁰ *Id.*

¹³¹ *Id.* paras. 12–13.

¹³² *Id.* paras. 14–15.

¹³³ *Id.* paras. 19–20.

¹³⁴ *Id.* para. 53.

¹³⁵ *Id.* paras. 54, 56. Article 8 of the European Convention on Human Rights provides:

(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

In evaluating the family's claim pursuant to Article 3, the court acknowledged that both the reports of the United Nations High Commissioner for Refugees and the Commissioner for Human Rights of the Council of Europe pointed to various failings in Italy's reception of asylum seekers, noting in particular the wide discrepancy between the number of asylum applications and the number of available spaces in the reception facilities.¹³⁶ Although the court was aware of the fact that living conditions in the facilities were problematic, it specifically noted that the reports did not include mention of widespread violence or completely deplorable conditions, and that the Italian authorities had been making efforts to improve reception conditions.¹³⁷

In rendering its decision, much of the court's attention was devoted to the fact that the applicants involved in the present case were children belonging to a family.¹³⁸ The court emphasized the notion that asylum seekers are entitled to special protection under Article 3 as a vulnerable population group, and that special protection is particularly important where children are concerned, even if accompanied by parents.¹³⁹ The court found that in light of the risk that asylum seekers sent back to Italy could be left without accommodation or accommodated in overcrowded facilities with poor living conditions, the Swiss authorities had an obligation to ensure that if returned, the Italian authorities could guarantee that the family would be placed in facilities and conditions appropriate for the children, and that the family would not be separated.¹⁴⁰ Thus, the court held that sending the family back to Italy without these assurances would constitute an Article 3 violation.¹⁴¹

Unlike the outcome in *M.S.S. v. Belgium*, the court did not find in *Tarakhel v. Switzerland* that the situation in Italy with regard to migrant reception warranted a general suspension of all Dublin transfers back to Italy.¹⁴² The judgment therefore largely leaves the decision of whether or not to undertake a

(2) There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

European Convention on Human Rights, *supra* note 113, art. 8. Article 13 reads: "Everyone whose rights and freedoms as set forth in this convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity." *Id.* art. 13.

¹³⁶ *Tarakhel*, App No. 29217/12, Eur. Ct. H.R. para. 114.

¹³⁷ *Id.*

¹³⁸ *See id.* para. 119.

¹³⁹ *Id.*

¹⁴⁰ *Id.* paras. 121–22.

¹⁴¹ *Id.* para. 122.

¹⁴² *See id.* para. 114; *ECtHR: General Suspension of Dublin Transfers to Italy Not Justified*, *supra* note 125; *see also M.S.S.*, 2011-I Eur. Ct. H.R. at 306.

Dublin transfer to Italy in the hands of member states.¹⁴³ Given the various legal repercussions that a state may be exposed to as a result of requesting Dublin transfers and the procedure through which the authorities conduct them, the significant amount of state discretion in Dublin transfers to Italy after *Tarakhel* ultimately raises several unanswered questions.¹⁴⁴

III. ANALYSIS

A. Deconstructing Dublin

The current system established under the Dublin regulations is unsustainable.¹⁴⁵ Although this portion of EU law was designed to harmonize asylum policy and procedure across the EEA, Dublin III is problematic in its inability to handle the present refugee crisis, disproportionate impact on particular member states that fall on Europe's borders, hindrance to permanent settlement and integration, and failure to take into account the circumstances in Italy that have given rise to the mafia's stronghold on asylum seekers.¹⁴⁶ While the solution to the problem of mafia exploitation of migrants may very well lie in reforming Dublin, it is necessary to first understand where exactly the Dublin regulations have fallen short.¹⁴⁷

The most recently amended version of the Dublin regulations entered into force in January 2014.¹⁴⁸ At the time of the consultations over the latest round of changes, it would have been difficult to forecast the speed at which the refugee crisis would accelerate in the period that followed.¹⁴⁹ For example, in 2012, the number of asylum applicants hovered around 330,000.¹⁵⁰ In the

¹⁴³ See *ECTHR: General Suspension of Dublin Transfers to Italy Not Justified*, *supra* note 125 ("The European Commission will carefully assess the ECtHR judgment as well as its possible implications for the functioning of the asylum system in Italy and the EU. However, it is primarily for Member States to draw conclusions from this judgment, and in particular to assess what implications it should have for the decisions which they may take in relation to 'Dublin transfers' to Italy, and for the manner in which such transfers are carried out.").

¹⁴⁴ See *id.*

¹⁴⁵ See Brekke, *supra* note 95, at 160.

¹⁴⁶ See *id.* Presently, the difference in reception conditions in Italy as compared to other member states is characterized by the heavy mafia involvement in the receipt and management of the migrants. See Perry & Agius, *supra* note 6.

¹⁴⁷ See Perry & Agius, *supra* note 6; see also Richard Williams, *Beyond Dublin: A Discussion Paper for the Greens/EFA in the European Parliament* (Mar. 18, 2015), https://www.greens-efa.eu/legacy/fileadmin/dam/Documents/Policy_papers/Migration_asylum/Beyond_Dublin_paper_final.pdf [<https://perma.cc/VM9V-GJR6>] (explaining the problems that persist under the current Dublin system).

¹⁴⁸ Commission Regulation 118/2014, 2014 O.J. (L 39) 1 (EU).

¹⁴⁹ See *id.*; see also *Asylum Statistics*, EUROSTAT (Mar. 13, 2017), http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics [<https://perma.cc/U6MK-X5TA>].

¹⁵⁰ Alexander Bitoulas, Eurostat, *Asylum Applicants and First Instance Decisions on Asylum Applications: 2012*, at 1 (May 2013), <http://ec.europa.eu/eurostat/documents/4168041/5948553/KS-QA-13-005-EN.PDF/b03443ae-5b58-4858-b196-d9de7be84548> [<https://perma.cc/37MR-MNCC>].

fourth quarter of 2015 alone, Europe was bombarded with 426,000 applications.¹⁵¹ Unsurprisingly, 2015 set the record for highest number of asylum applications in any single year with 1.3 million refugees applying for asylum across the EU.¹⁵² Although 2016 saw a reduction in the total number of asylum seekers entering the EU, the backlog of pending applications surpassed one million and is expected to continue growing.¹⁵³ From a sheer numbers perspective, the initial Dublin regulations were not designed to handle this volume of asylum applications and even the various rounds of amendments cannot keep up with complexities that have since arisen due to the multitude of applications ushered in by the refugee crisis.¹⁵⁴

Even more problematic is the fact that the burden associated with the high volume of applications is not spread out evenly across the EU.¹⁵⁵ Because the Dublin system mandates that the member state responsible for processing an asylum seeker's application be the country through which the individual first entered Europe, member states that happen to be popular entry points, namely borders, are disproportionately affected by the regulations.¹⁵⁶ Not only do these states have the task of processing an overwhelming number of applications, but they also must be able to sustain a growing population.¹⁵⁷ Border countries such as Greece and Italy are already constrained in terms of resources, so their ability to process applications swiftly and ensure that asylum seekers have their basic needs met has become increasingly unlikely, if not already completely infeasible.¹⁵⁸

Although Dublin was intended to ensure consistent application of a uniform asylum policy throughout the EU, disparities in reception centers and resource availability among member nations have threatened this goal.¹⁵⁹ Vast differences in living standards, job opportunities, and access to government

¹⁵¹ *Asylum Quarterly Report*, EUROSTAT (Mar. 15, 2017), http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_quarterly_report [<https://perma.cc/3XWT-5Z33>].

¹⁵² Phillip Connor, *Number of Refugees to Europe Surges to Record 1.3 Million in 2015*, PEW RES. CTR. (Aug. 2, 2016), <http://www.pewglobal.org/2016/08/02/number-of-refugees-to-europe-surges-to-record-1-3-million-in-2015/> [<https://perma.cc/SXF8-TV7G>].

¹⁵³ Phillip Connor & Jens Manuel Krogstad, *Fewer Refugees Entering Europe Than in 2015, but Asylum Backlog Still Growing*, PEW RES. CTR.: FACT TANK (Sept. 6, 2016), <http://www.pewresearch.org/fact-tank/2016/09/06/fewer-refugees-entering-europe-than-in-2015-but-asylum-backlog-still-growing/> [<https://perma.cc/2KWE-5EA7>].

¹⁵⁴ See *Asylum Quarterly Report*, *supra* note 151. See generally Williams, *supra* note 147 (criticizing Dublin's ineffectiveness, risk of violating human rights, financial cost, and tendency to undermine solidarity between EU member states).

¹⁵⁵ See Williams, *supra* note 147, at 15.

¹⁵⁶ See *id.*

¹⁵⁷ See *id.* at 15–16.

¹⁵⁸ See *id.*

¹⁵⁹ See Brekke, *supra* note 95, at 145–48.

services incentivize migrants to attempt to move further into Europe.¹⁶⁰ With a high national unemployment rate following the financial crisis and a limited welfare system, asylum seekers who land in Italy face difficulty in securing, at best, a minimum level of income and basic housing.¹⁶¹ Norway, on the other hand, boasts an organized system of 130 reception centers and low unemployment rates stemming from its healthy oil economy.¹⁶² When asylum seekers are accepted, they complete a two-year comprehensive introductory program that includes language lessons and job training, receive extensive welfare benefits plus an additional salary, and are afforded a wide range of social rights.¹⁶³

Aware of this type of glaring discrepancy from country-to-country, many migrants attempt to land in Italy unnoticed by immigration authorities in an effort to evade the registration and fingerprinting process.¹⁶⁴ If successful, they can move on to other European countries with better reception conditions and welfare systems.¹⁶⁵ If unsuccessful, the migrants are effectively tied to Italy, and the risk of leaving corresponds to a risk of wasting time and valuable resources if ultimately sent back via a Dublin transfer.¹⁶⁶ This places asylum

¹⁶⁰ See *id.* See generally *Factbox: Benefits Offered to Asylum Seekers in European Countries*, REUTERS (Sept. 16, 2015, 8:20 AM), <http://www.reuters.com/article/us-europe-migrants-benefits-factbox-idUSKCN0RG1MJ20150916> [<https://perma.cc/TN8L-SGAC>] (demonstrating that the benefits migrants are entitled to claim with regard to financial support, employment, housing, education, and family reunification vary significantly across Europe).

¹⁶¹ See Brekke, *supra* note 95, at 149–53.

¹⁶² See *id.*

¹⁶³ See *id.* Although seemingly one of the more attractive destinations for asylum seekers, right-wing crackdowns on immigration policy in Norway in the form of disincentives and the threat of deportation have made these benefits even less attainable. See David Crouch, *Norway's Asylum Policy in Chaos Amid Russian Intransigence*, GUARDIAN (Jan. 24, 2016, 11:48 AM) <https://www.theguardian.com/world/2016/jan/24/norway-halts-return-of-asylum-seekers-who-entered-via-russia> [<https://perma.cc/D3ZN-YR36>]; see also Willa Frej, *One Country's Scheme to Cut Down on Asylum Seekers: Pay Them to Leave*, WORLD POST (Apr. 28, 2016, 4:05 PM), http://www.huffingtonpost.com/entry/norway-asylum-seeker-payment_us_571f8b19e4b0f309baee9a09 [<https://perma.cc/PHL5-A923>]. In 2016, Norway implemented a program in which the first five hundred people to apply for asylum between April 25 and June 6 received thirty thousand Norwegian kroner (NOK), a free plane ticket to their home countries, and an extra ten thousand NOK for each child under the age of eighteen. Frej, *supra*.

¹⁶⁴ See, e.g., Brekke, *supra* note 95, at 155 (“We interviewed a group of young Eritrean men who had arrived in Lampedusa on a boat carrying 54 asylum seekers. While at sea, everyone had agreed to collectively resist having their fingerprints taken once they arrived. This resulted in a confrontation between government officials and these new arrivals. In the end, they were all fingerprinted and registered. Others told us they had, before reaching the shore, planned to run in different directions and hide to avoid detection and registration . . .”).

¹⁶⁵ See *id.*

¹⁶⁶ See *id.* at 156 (“According to staff at the reception centres, NGO personnel and the asylum seekers themselves, being sent back after living for months or even years in other [Dublin Regulation] countries could set them back: they would have to re-start their integration process in Italy, and the mental strain was considerable. . . . A group of five residents of the shantytown outside Rome agreed: ‘We want to go anywhere else. We have all been outside the country and been returned here. It is impossible because of Dublin. All people that leave come back, from Norway and Sweden as well.’”).

seekers in a constant state of limbo.¹⁶⁷ Uncertain as to their final destinations and whether they will remain in Italy for good, migrants have little incentive to integrate into Italian society, learn the language, secure housing, or seek long-term employment.¹⁶⁸ This looming uncertainty and unrest across European countries, especially in Italy, breeds instability and undermines the entire European asylum regime under Dublin.¹⁶⁹ The reception systems, welfare schemes, and government service programs of various member nations are deeply entrenched in national politics and thus unlikely to undergo any radical changes in the near future.¹⁷⁰ This is especially true in border countries such as Italy where resources are already spread thin.¹⁷¹ Therefore, harmony in asylum policy and increased migrant integration can only be achieved if Dublin adapts accordingly, taking into consideration the critical differences among member nations that impact asylum procedure at the national level.¹⁷²

This point raises another major criticism of Dublin that goes to the heart of the present analysis: the Dublin system, and more specifically the judgments of the ECtHR pertaining to Dublin, does not account for the present (and worsening) situation in Italy that has resulted from the relatively recent phenomenon of mafia exploitation.¹⁷³ Following *M.S.S. v. Belgium*, all Dublin transfers via the send back provision were suspended.¹⁷⁴ In rendering the decision that catalyzed this suspension, the court acknowledged that Article 3 of the European Convention on Human Rights does not require that member states secure a certain standard of living for refugees through the provision of financial assistance.¹⁷⁵ However, the court found that M.S.S.'s circumstances were characterized by extreme poverty, an inability to meet his basic needs of food, hygiene, and housing, and living in a constant state of fear of being attacked or robbed.¹⁷⁶ On the contrary, in *Tarakhel v. Switzerland*, the court did not find that the conditions in Italy merited a general suspension of transfers, as the situation at that time was not comparable to that in Greece.¹⁷⁷

¹⁶⁷ See *id.* at 158.

¹⁶⁸ See *id.*

¹⁶⁹ See Williams, *supra* note 147 (“The myopic national debates about immigration in Member States are such that many citizens feel that their country is the top destination for asylum seekers. When Southern EU States, such as Spain, Malta, Greece and, most recently, Italy, ask for help with dealing with their migration crisis their northern neighbours are quick to criticise (e.g. the poor reception conditions), but slow to offer practical help.”).

¹⁷⁰ See Brekke, *supra* note 95, at 160.

¹⁷¹ See *id.* at 149.

¹⁷² See *id.* at 160.

¹⁷³ See ECtHR: *General Suspension of Dublin Transfers to Italy Not Justified*, *supra* note 125. The situation today differs from that at the time of the court’s ruling in light of the mafia’s relatively recent exploitation of the refugee crisis. See Pery & Agius, *supra* note 6.

¹⁷⁴ See Greek Council for Refugees, *supra* note 121.

¹⁷⁵ See Press Release, *M.S.S.*, *supra* note 101.

¹⁷⁶ See *id.*

¹⁷⁷ See ECtHR: *General Suspension of Dublin Transfers to Italy Not Justified*, *supra* note 125.

Whether or not this was the correct outcome at the time of the decision in 2014—which is certainly debatable—it definitely does not hold true today.¹⁷⁸ In rendering its decision regarding the conditions in Italy, the court relied primarily upon reports from the United Nations High Commissioner for Refugees and the Commissioner for Human Rights of the Council of Europe, both published in 2012.¹⁷⁹ The present reality is that Italy is unfit for returns.¹⁸⁰ Given the long delays in the processing of asylum applications, exploitation of migrants, and egregious human rights problems within the centers, all perpetuated by the mafia, sending asylum seekers back to Italy through Dublin transfers today almost certainly constitutes a violation of Article 3, akin to the violation found in *M.S.S. v. Belgium*.¹⁸¹

B. Reforming Dublin: A Solution the Mafia Cannot Afford

The mafia's ability to sustain its lucrative business of profiting off of migrants directly corresponds to Dublin's flaws.¹⁸² The current system established under Dublin effectively traps refugees in Italy upon arrival by mandating first-entry registration and asylum application.¹⁸³ Further, Dublin keeps the migrants there indefinitely by overburdening Italy with applications, thereby clogging up the pipeline and slowing down the whole process, which essentially gives the mafia more time and opportunities to make money.¹⁸⁴ Finally, Dublin ensures that even if migrants do manage to escape from the mafia by leaving Italy, they are sent right back via Dublin's option to return to the first point of entry.¹⁸⁵

1. Eliminate the First Country of Entry Asylum Application Requirement

As a starting point, the requirement that asylum seekers must apply for asylum in the country through which they first entered the European Union should be abandoned.¹⁸⁶ This does not necessarily require an overhaul of the

¹⁷⁸ See *id.* The situation has worsened in light of the increased degree of mafia control of the reception centers. See Reguly, *supra* note 5.

¹⁷⁹ See Press Release, *Tarakhel*, *supra* note 101.

¹⁸⁰ See *id.*; Reguly, *supra* note 5.

¹⁸¹ See *M.S.S. v. Belgium*, 2011-I Eur. Ct. H.R. 255; *ECTHR: General Suspension of Dublin Transfers to Italy Not Justified*, *supra* note 125; Reguly, *supra* note 5.

¹⁸² See Williams, *supra* note 147; Perry & Agius, *supra* note 6. The perpetuation of mafia control is made possible through several Dublin mechanisms. See Perry & Agius, *supra* note 6.

¹⁸³ See Lyons, *supra* note 90.

¹⁸⁴ See Mezzofiore, *supra* note 64.

¹⁸⁵ See *id.*; Brekke, *supra* note 95, at 158.

¹⁸⁶ See Williams, *supra* note 147, at 24. Examples of proposed alternatives to the current system include a "free choice" model where applicants are allowed to travel to the member state of their choice, and a slightly more stringent option where the applicant is given the opportunity to make a case for traveling to their member state of choice based on factors such as language, potential employment, family ties, and previous residence. See *id.*

Eurodac registration and fingerprinting system in place; on the contrary, leaving this system intact will allow member states to continue to access a single, centralized database of information, and also promotes transparency and accountability by ideally collecting reliable data about all refugees entering Europe and ensuring that people do not fall through the cracks during the initial phase of asylum proceedings.¹⁸⁷ The crucial difference, however, should be that the registration process, which includes the taking of photographs and fingerprinting, is kept separate from the application process.¹⁸⁸ In this ideal scenario, migrants would be registered upon entry into Europe, but would then have the freedom to move elsewhere and choose where to lodge a single asylum application, thus streamlining the process and simultaneously giving asylum seekers increased autonomy over their ultimate place of residence.¹⁸⁹

This reform would also deal a major blow to the mafia.¹⁹⁰ The primary reason the mafia has been able to make millions of dollars off of the refugee crisis is the sheer volume of migrants living in Italy, primarily in the mafia-controlled centers.¹⁹¹ Because the government essentially pays the mafia to take care of the migrants on a per-person basis, fewer people becoming trapped in the camps upon arrival means fewer daily allowances the mafia can withhold, and fewer services they can contract to deliver and then provide sparingly.¹⁹² Simply put, if the migrant centers aren't full, the mafia loses money.¹⁹³

Further, because this change would result in a more even distribution of asylum applications across the EU, Italy would no longer be overburdened with a disproportionate amount of applications to process.¹⁹⁴ Consequently, the time the migrants spend in limbo at the camps would be severely reduced.¹⁹⁵ This is another way to curtail mafia proceeds, as the current nationwide delays in application processing have allowed the mafia to profit off of each individual asylum applicant for a prolonged period of time.¹⁹⁶ Additionally, the groups of migrants already in the camps would ideally have their applications processed more quickly.¹⁹⁷

¹⁸⁷ See Brekke, *supra* note 95, at 147.

¹⁸⁸ See *id.* at 155. Keeping these components separate would resolve the problem of migrants attempting to enter the EU undetected. See *id.*

¹⁸⁹ See Williams, *supra* note 147, at 10–11.

¹⁹⁰ See *id.*; see also Reguly, *supra* note 5. Increased movement further into Europe ensures that the mafia cannot hold refugees captive for its own prolonged financial gain. See Williams, *supra* note 147, at 10–11.

¹⁹¹ See Mezzofiore, *supra* note 64; Reguly, *supra* note 5.

¹⁹² See Mezzofiore, *supra* note 64; Reguly, *supra* note 5.

¹⁹³ See Perry & Agius, *supra* note 6.

¹⁹⁴ See Williams, *supra* note 147, at 15–16.

¹⁹⁵ See Mezzofiore, *supra* note 64.

¹⁹⁶ See *id.*; Williams, *supra* note 147, at 9.

¹⁹⁷ See Mezzofiore, *supra* note 64; Williams, *supra* note 147, at 9.

2. Prohibit or Suspend All Dublin Transfers to Italy

Secondly, the portion of the Dublin regulations that allows member nations to send asylum seekers back to the country through which they initially entered the EU should be eliminated, or at the very least, all Dublin transfers to Italy should be suspended in the same manner as transfers to Greece were suspended following the ECtHR's judgment in *M.S.S. v. Belgium*.¹⁹⁸ Again, the current scheme places a disproportionate burden upon states that happen to fall on Europe's borders.¹⁹⁹ The present system is unsustainable, as many asylum seekers are being sent back to the very countries where resources, welfare services, and spaces in reception centers are most severely limited.²⁰⁰

It has become unavoidably clear that living conditions in the mafia-controlled reception centers are poor enough to warrant this suspension.²⁰¹ While this may not have been the case at the time the ECtHR decided *Tarakhel*, it certainly is now.²⁰² Ongoing economic exploitation of vulnerable groups of refugees, coupled with systematic human rights abuses in the centers, undoubtedly translates to a violation of Article 3 on the part of any country attempting to send asylum seekers back to Italy.²⁰³ If another case involving a Dublin transfer reaches the ECtHR prior to an amendment or a complete overhaul of Dublin, the court should wholeheartedly support a general prohibition of this nature.²⁰⁴ Again, this would reduce mafia windfalls significantly, as Italy has been the recipient of the largest number of incoming transfer requests from other member nations.²⁰⁵ Ensuring that asylum seekers do not end up back in the reception centers directly correlates to less revenue in mafia pockets.²⁰⁶

¹⁹⁸ See *M.S.S.*, 2011-I Eur. Ct. H.R. at 306; Brekke, *supra* note 95, at 145. See generally ECtHR: *General Suspension of Dublin Transfers to Italy Not Justified*, *supra* note 125 (noting that the ECtHR in *Tarakhel* found "the situation in Italy is not comparable to the situation in Greece which led to the MSS judgment"). Italy's reception conditions more closely resemble those of Greece than of other EU member states, thus meriting a similar suspension. See ECtHR: *General Suspension of Dublin Transfers to Italy Not Justified*, *supra* note 125.

¹⁹⁹ See Williams, *supra* note 147, at 15.

²⁰⁰ See Brekke, *supra* note 94, at 149.

²⁰¹ See Williams, *supra* note 147, at 8–9; Mezzofiore, *supra* note 64.

²⁰² See Williams, *supra* note 147, at 8–9; Mezzofiore, *supra* note 64.

²⁰³ See *Tarakhel v. Switzerland*, App. No. 29217/12, Eur. Ct. H.R. para. 46 (2014); Mezzofiore, *supra* note 64.

²⁰⁴ See Williams, *supra* note 147, at 8–9; Harriet Grant, *UK Fights to Retain Dublin Law to Deport Asylum Seekers*, GUARDIAN (Mar. 2, 2016, 6:47 AM), <http://www.theguardian.com/uk-news/2016/mar/02/uk-fights-to-retain-dublin-law-to-deport-asylum-seekers> [<https://perma.cc/HR79-RK86>] The U.K. government's use of Dublin is currently being challenged, specifically in a case in which an Eritrean woman was removed to Italy despite having been raped while she was homeless there, and in a case involving an Afghan man who attempted to commit suicide after becoming homeless in Italy. Grant, *supra*.

²⁰⁵ See Williams, *supra* note 147, at 11.

²⁰⁶ See *id.*; Mezzofiore, *supra* note 64.

Reforming the Dublin regulations in these two crucial ways is not only in the best interest of the ever-increasing population of migrants and refugees seeking asylum in Europe, but it is also essential to curtailing mafia windfalls and ultimately hindering predatory mafia activity moving forward.²⁰⁷

CONCLUSION

While it is unlikely that any single solution will bring a swift demise to a centuries-old institution such as the mafia while simultaneously solving the complex problems that have developed in the wake of the ongoing refugee crisis, reforming the Dublin regulations is certainly a step in the right direction.

Reforming Dublin has the capacity to curtail mafia spending enough to disincentivize the widespread, systematic, and calculated exploitation of the refugee crisis. Eliminating the requirement that asylum seekers apply for asylum in the first country in which they entered the EU, coupled with the suspension or elimination of Dublin transfers, will not only reduce mafia profits, but will also have the desirable outcome of improving asylum policy in Europe generally. By ensuring that asylum seekers do not become initially trapped, delayed in procedural limbo, or sent back to the mafia-controlled reception centers, the proposed changes to Dublin will minimize profit generating while also alleviating many of the human rights-related problems that have arisen as a result of mafia activity in Italy. Further, the reforms will ideally result in a more consistent, synchronized asylum policy across the EU by distributing applications more evenly and accounting for differences in available resources among member nations.

These outcomes are not only crucial to promoting political, economic, and social stability in Italy, Europe, and the international community, but are also in the best interests of the migrant and refugee populations affected who ultimately hope to find security, safety, and a new start within Europe's borders.

²⁰⁷ See Mezzofiore, *supra* note 64; Williams, *supra* note 147, at 5.

