

Notes

General Summary of the Affirmative

This affirmative says that women who are fleeing their home country to escape domestic violence (also commonly referred to as 'intimate partner violence') should be able to claim asylum in the United States. Asylees are very much like refugees, but there is one important distinction. Refugees are people who have fled their home country to have not reached the destination they are seeking. Asylees have reached that destination. So someone applying for relief outside of the United States is a refugee. Someone who applies while inside the United States is an Asylee.

Despite this difference, asylees still need to meet the United Nations' definition of Refugee in order to be given status as an Asylum Seeker. Currently, there are several criteria that are involved in meeting this definition. First, upon entry into the United States, persons seeking asylum must demonstrate a 'credible threat' if returned to their home. Once they have passed a credible threat interview, persons seeking asylum are then placed into the system in order to have a hearing before an immigration judge to determine if they meet the definition of a refugee. The UN definition for a refugee has five (5) criteria. A person must prove they have a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group. They must also prove that their home country is unwilling or incapable of protecting them.

This affirmative revolves around the last criteria. Some immigration judges in the United States had recently begun to accept that 'gender' as a category constituted a 'particular social group.' This all changed in June of this year (2018) when the Attorney General of the United States, Jeff Sessions, issued a ruling that said that Immigration Courts may no longer consider domestic violence as reason for granting asylum.

The plan has congress overturn Sessions' decision by including Gender in the definition of a particular social group.

General Summary of the Negative

The negative has several arguments to respond to this affirmative:

The Court Clog DA says that the plan would encourage a large number of people to seek relief from the United States. This would overburden our immigration courts and prevent them from safely monitoring who comes and goes into the country. This could be exploited by terrorist groups looking to attack the U.S.

Case Answers

1NC — Gender Violence Advantage Answers

Adding “gender” fails because it does not protect non-women from gender violence.

Chow 16 – JD Candidate at the Catholic Univ [Lizabeth, A-R-C-G- Is Not the Solution For Domestic Violence Victims <https://scholarship.law.edu/lawreview/vol66/iss1/9/> Catholic University Law Review Volume 66 Issue 1 Fall Article 9]

The overarching problem with a gender-based approach is that it ignores that domestic violence victims can be male¹⁸³ or female, and that domestic violence can occur in heterosexual or homosexual relationships.¹⁸⁴ While women may be most willing to seek asylum based on domestic violence, there is no need to close the door to men equally in need of protection. Some argue that men are better protected around the world, but in countries where men are largely in power and a “machismo” attitude prevails, men are unlikely to receive protection for domestic violence because their cultures generally expect that they should be able to protect themselves.¹⁸⁵ Others may want to argue that men are better equipped to deal with domestic violence because of their inherent strength, but this is not true of a physically disabled man who is abused by his spouse and may not even be able to try to protect himself.¹⁸⁶ Similarly, a person in a same-sex relationship may already be subject to prejudice due to the nature of the relationship and is unlikely to receive protection.¹⁸⁷ Ultimately, “gender does not explain why domestic violence . . . is also perpetrated against men by women, and occurs in same-sex relationships.”¹⁸⁸

Grouping all women as a “particular social group” is inaccurate and reinforces patriarchy.

FOOTE '94 (Victoria; M.A. Student, Faculty of Environmental Studies – York University, and graduate researcher at CRS, Refuge, v. 14, n. 7, December, <https://refuge.journals.yorku.ca/index.php/refuge/article/viewFile/21842/20511>)ww

The “particular” group classification strongly implies that women be categorized and sub-categorized in a manner suggesting that refugee women, despite their majority status among the global refugee population, are an aberration from the norm, as Macklin initially suggests. The implication is that women refugees, by virtue of being female, are perennial victims and therefore belong to a particular social group; women are thus put in the uncomfortable position of having their biological characteristics determine their helplessness and subsequent legal status.

In addition, the classification of women as a “social” group is deeply problematic. Phelan (1989, 57) claims that one cannot speak of Women as a specific social entity. To do so is to ignore class and cultural differences. To suggest, as Caste1 (1992) and Stairs and Pope (1990) do, that women in general may constitute a particular social group reveals a certain cultural

image or stereotype that is affixed in our society to a specific arrangement of anatomical features. **Feminism**, cautions Butler (1990), **sometimes entails an urgency to establish a universal status for patriarchy**, what Butler (1990, 3) calls a "fictive universality of the structure of domination, held **to produce women's common subjugated experience.**" **It is this professed "common subjugated experience" that permits, at least in part, the categorization of women as a social group.** **However**, as Butler points out, **the political task for feminism is not to refuse representational politics**-which, for the purposes of this paper, I think of in reference to the representation of women as a social group for the sake of the political process of refugee determination-since "juridical structures of language and politics constitute the contemporary field of power" (1990, 5). Butler suggests that, **instead, one may posit a critique of the categories of identity that "contemporary juridical structures engender, naturalize, and immobilize"** (1990,5). This is precisely where Caste1 (1992), Stairs and Pope (1990), and even Macklin (1993) fall short when they, each in her own particular way, group women together as a single social entity either epistemologically (Castel) or legally (Stairs and Pope; Macklin; the Guidelines).

So, although they may be labelled as a "particular social group," women are, in fact, no such thing. **The label is affixed in order to steer women through a system which**, in part because of the very methodology advocated by the Guidelines, **remains profoundly masculinist in outlook.** **As long as this is the case, claims put forward by women refugees in response to gender-specific persecution will continue to be regarded as something derivative from the norm and, assuming that one's biology dictates one's social status for the sake of the legal system, women will continue to be beholden to their biological functions** in order either to **acquire or to maintain legal legitimacy.** One can conclude, therefore, that the Guidelines accept the masculinist framework entrenched within the Convention refugee definition. Consequently, **getting some refugee women claimants through the refugee determination process will depend heavily upon the individuals interpreting the definition.** Nor is the ground of political opinion, as suggested by Macklin, and the 1991 UNHCR Guidelines, a happy alternative. Although I find arguments in favour of political opinion as grounds for persecution less compromising than those for particular social group, there are still some difficulties in describing gender-specific persecution in this manner. Macklin's use of the term "political" is sufficiently broad as to risk rendering all other grounds of persecution superfluous. Because she refers to patriarchy as a system of power (1993,32; 1995), there appears to be a connection between the use of the word "political" and an understanding of power relations, in this instance between genders. All refugees, however, suffer from a power imbalance. This state of being is not peculiar to women refugees. What is specific to some women refugees is the way in which the power imbalance manifests itself and whether or not this manifestation will be recognized as persecutory in nature. As Butler (1990) notes, one can question the universality of gender identity and masculinist oppression, both of which assume a shared epistemology and shared structures of oppression, which need not be the case.

While "the personal is the political" is a popular-and often appropriate phrase within western feminist discourse, it is not obvious to me that refugee women themselves would necessarily provide a similar description of their actions, behaviour, or victimization. It is tempting, as Razack (1995) writes, to tell stories in a manner that will appeal to those in a position to make decisions on refugee claims. Such an approach can take on subtle forms, "as when the cultures of refugee women are presented as overly patriarchal."

In sum, **it is inaccurate, to say the least, to group women together on the basis of social factors, and it is inappropriate and demeaning to classify them on the grounds of biological factors.**

Public officials must consider consequences — even if there's uncertainty.

Gooden 95 — Robert Gooden, philosopher at the Research School of the Social Sciences, 1995 (Utilitarianism as Public Philosophy, ISBN-13: 978-0521468060, p.62-63)

Consider, first, the argument from necessity. **Public officials are obliged to make their choices under uncertainty**, and uncertainty of a very special sort at that. **All choices—public and private alike—are made under some degree of uncertainty**, of course. **But in the nature of things, private individuals will usually have more complete information on the peculiarities of their own circumstances** and on the ramifications that alternative possible choices might have on them. **Public officials, in contrast, are relatively poorly informed as to the effects that their choices will have on individuals, one by one. What they typically do know are generalities: averages and aggregates. They know what will happen most often to most people as a result of their various possible choices.** But that is all. **That is enough to allow public policy-makers to use the utilitarian calculus**—if they want to use it at all—**to choose general rules of conduct. Knowing aggregates and averages, they can proceed to calculate the utility payoffs from adopting each alternative possible general rules.**

Preventing extinction comes first — all moral views agree.

Plummer 15 — Theron Plummer, researcher in philosophy at St. Anne's College at the University of Oxford, Ph.D., 2015 ("Moral Agreement on Saving the World," Practical Ethics, May 18th, Available Online at <http://blog.practicaethics.ox.ac.uk/2015/05/moral-agreement-on-saving-the-world/>, Accessed 08-09-2018)

There appears to be lot of disagreement in moral philosophy. Whether these many apparent disagreements are deep and irresolvable, I believe **there is** at least **one thing it is reasonable to agree on** right now, **whatever** general **moral view we adopt**: that **it is** very **important to reduce the risk that** all intelligent **beings** on this planet **are eliminated by** an enormous **catastrophe**, such as a nuclear war. How we might in fact try to reduce such existential risks is

discussed elsewhere. My claim here is only that **we – whether we're consequentialists, deontologists, or virtue ethicists – should all agree that we should try to save the world.**

According to consequentialism, we should maximize the good, where this is taken to be the goodness, from an impartial perspective, of outcomes. Clearly one thing that makes an outcome good is that the people in it are doing well. There is little disagreement here. If the happiness or well-being of possible future people is just as important as that of people who already exist, and if they would have good lives, it is not hard to see how reducing existential risk is easily the most important thing in the whole world. This is for the familiar reason that there are so many people who could exist in the future – there are trillions upon trillions... upon trillions. **There are so many possible future people that reducing existential risk is arguably the most important thing in the world**, even if the well-being of these possible people were given only 0.001% as much weight as that of existing people. **Even on a wholly person-affecting view** – according to which there's nothing (apart from effects on existing people) to be said in favor of creating happy people – **the case for reducing existential risk is very strong**. As noted in this seminal paper, this case is strengthened by the fact that there's a good chance that many existing people will, with the aid of life-extension technology, live very long and very high quality lives. **You might think what I have just argued applies to consequentialists only. There is a tendency to assume that, if an argument appeals to consequentialist considerations** (the goodness of outcomes), **it is irrelevant to non-consequentialists. But that is a huge mistake.** **Non-consequentialism is the view that there's more that determines rightness than the goodness of consequences or outcomes; it is not the view that the latter don't matter.** Even John Rawls wrote, "All ethical doctrines worth our attention take consequences into account in judging rightness. **One which did not would simply be irrational, crazy.**" **Minimally plausible versions of deontology and virtue ethics must be concerned in part with promoting the good, from an impartial point of view.** **They'd thus imply very strong reasons to reduce existential risk**, at least when this doesn't significantly involve doing harm to others or damaging one's character. What's even more surprising, perhaps, is that even if our own good (or that of those near and dear to us) has much greater weight than goodness from the impartial "point of view of the universe," indeed even if the latter is entirely morally irrelevant, we may nonetheless have very strong reasons to reduce existential risk. **Even egoism**, the view that each agent should maximize her own good, **might imply strong reasons to reduce existential risk**. It will depend, among other things, on what one's own good consists in. If well-being consisted in pleasure only, it is somewhat harder to argue that egoism would imply strong reasons to reduce existential risk – perhaps we could argue that one would maximize her expected hedonic well-being by funding life extension technology or by having herself cryogenically frozen at the time of her bodily death as well as giving money to reduce existential risk (so that there is a world for her to live in!). I am not sure, however, how strong the reasons to do this would be. But views which imply that, if I don't care about other people, I have no or very little reason to help them are not even minimally plausible views (in addition to hedonistic egoism, I

here have in mind views that imply that one has no reason to perform an act unless one actually desires to do that act). To be minimally plausible, egoism will need to be paired with a more sophisticated account of well-being. To see this, it is enough to consider, as Plato did, the possibility of a ring of invisibility – suppose that, while wearing it, Ayn could derive some pleasure by helping the poor, but instead could derive just a bit more by severely harming them. Hedonistic egoism would absurdly imply she should do the latter. To avoid this implication, egoists would need to build something like the meaningfulness of a life into well-being, in some robust way, where this would to a significant extent be a function of other-regarding concerns (see chapter 12 of this classic intro to ethics). But once these elements are included, we can (roughly, as above) argue that this sort of egoism will imply strong reasons to reduce existential risk. Add to all of this Samuel Scheffler’s recent intriguing arguments (quick podcast version available here) that **most of what makes our lives go well would be undermined if there were no future generations** of intelligent persons. On his view, my life would contain vastly less well-being if (say) a year after my death the world came to an end. **So obviously** if Scheffler were right **I’d have very strong reason to reduce existential risk**. **We should also take into account moral uncertainty**. **What is it reasonable for one to do, when one is uncertain** not (only) **about** the empirical facts, but also about the **moral facts**? I’ve just argued that there’s agreement among minimally plausible ethical views that we have strong reason to reduce existential risk – not only consequentialists, but also deontologists, virtue ethicists, and sophisticated egoists should agree. But even **those** (hedonistic egoists) **who disagree should have a significant level of confidence that they are mistaken**, and that one of the above views is correct. **Even if they were 90% sure that their view is the correct one** (and 10% sure that one of these other ones is correct), **they would have pretty strong reason, from the standpoint of moral uncertainty, to reduce existential risk**. Perhaps most disturbingly still, **even if we are only 1% sure that the well-being of possible future people matters**, it is at least arguable that, from the standpoint of moral uncertainty, **reducing existential risk is the most important thing in the world**. Again, this is largely **for the reason that there are so many people who could exist in the future** – there are trillions upon trillions... upon trillions. (For more on this and other related issues, see this excellent dissertation). **Of course, it is uncertain whether these untold trillions would, in general, have good lives**. It’s possible they’ll be miserable. **It is enough** for my claim **that there is moral agreement in the relevant sense if, at least given certain empirical claims about what future lives would most likely be like, all minimally plausible moral views would converge on the conclusion that we should try to save the world**. While there are some non-crazy views that place significantly greater moral weight on avoiding suffering than on promoting happiness, for reasons others have offered (and for independent reasons I won’t get into here unless requested to), they nonetheless seem to be fairly implausible views. And **even if things did not go well for our ancestors, I am optimistic that they will overall go fantastically well for our descendants, if we allow them to**. I suspect that **most of us alive today** – at least those of us not suffering from extreme illness or poverty –

have lives that are well worth living, and that things will continue to improve. Derek Parfit, whose work has emphasized future generations as well as agreement in ethics, described our situation clearly and accurately: “We live during the hinge of history. Given the scientific and technological discoveries of the last two centuries, the world has never changed as fast. We shall soon have even greater powers to transform, not only our surroundings, but ourselves and our successors. If we act wisely in the next few centuries, humanity will survive its most dangerous and decisive period. Our descendants could, if necessary, go elsewhere, spreading through this galaxy.... Our descendants might, I believe, make the further future very good. But that good future may also depend in part on us. If our selfish recklessness ends human history, we would be acting very wrongly.” (From chapter 36 of *On What Matters*)

Claims of “moral obligation” undercut political obligation and allow for violence.

Isaac ‘2 (Jeffrey C., James H. Rudy professor of Political Science and director of the Center for the Study of Democracy and Public Life at Indiana University, Bloomington, “Ends, Means and politics,” *Dissent*, Spring)

As **writers** such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt **have taught**, an unyielding **concern with moral goodness undercuts political responsibility.** **The concern** may be morally laudable, reflecting a kind of personal integrity, but **it suffers from three fatal flaws**: (1) **It fails to see that the purity of one’s intention does not ensure the achievement of what one intends.** **Abjuring violence** or refusing to make common cause with morally compromised parties **may seem like the right thing**; **but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters**; (2) **it fails to see that in a world of real violence and injustice, moral purity** is not simply a form of powerlessness; it **is often a form of complicity in injustice.** This is why, **from the standpoint of politics**— as opposed to religion—**pacifism is always a potentially immoral stand.** In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; **and (3) it fails to see that politics is as much about unintended consequences as it is about intentions; it is the effects of action, rather than the motives of action, that is most significant.** Just as the alignment with “good” may engender impotence, **it is often the pursuit of “good” that generates evil.** This is the lesson of communism in the twentieth century: **it is not enough that one’s goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways.** **Moral absolutism** inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it **undermines political effectiveness.**

Extend: "Grouping All Women Bad"

Extend 1NC # ____ — Grouping All Women Bad. Saying women count as a unified "particular social group" treats women as an Other and categorizes them by their biological functions — that reinforces masculinist ideology. That's Foote.

They say:

[Write out what the 2AC said and your answers to it here. Then read more evidence.]

Grouping all women together continues their powerlessness and marginalization

FOOTE '94 (Victoria; M.A. Student, Faculty of Environmental Studies – York University, and graduate researcher at CRS, Refuge, v. 14, n. 7, December, <https://refuge.journals.yorku.ca/index.php/refuge/article/viewFile/21842/20511>)ww

"Is the construction of the category of Women as a coherent and stable subject an unwitting regulation and reification of gender relations?" asks Butler (1990, 5). Does the notion that women refugee claimants form a particular social group maintain a framework that is potentially damaging, or that perpetuates, inadvertently, a power/gender imbalance which endorses the subordination of women refugees within the overriding male refugee definition and experience?

My concern is that **by legally defining women as a particular social group, women's powerlessness and marginalization are ensured. It is these very characteristics which allow women refugee claimants to qualify for particular social group status. In a strange way, then, the disempowerment of women is cultivated in order to legitimate, in the eyes of decision makers, their fears-both realized and potential-of persecution.**

Men, it must be noted, are not classified as a particular social group. That this is so brings to mind an observation made by Butler (1990,20), who, referring to Wittig (1983), writes that "gender is used in the singular, because indeed there are not two genders. There is only one: the feminine, the 'masculine' not being a gender, for the masculine is not the masculine, but the general." **The legitimacy of claiming gender-specific persecution should not rely upon the subordination of women as a whole.**

Gender-specific persecution, I believe, should stand alone as a recognized basis for persecution from which some, but luckily not all, women suffer.

Extend: “Policymakers Must Consider Consequences”

Extend 1NC # ___ — Policymakers Must Consider Consequences. Policymakers have an obligation to consider *every person*, not just *specific groups*. And, even if their info isn't *perfect*, it's good enough to prevent catastrophe. That's Gooden.

They say:

[Write out what the 2AC said and your answers to it here. Then read more evidence.]

The public nature of policy-making necessitates consequentialism.

Brock 93 — Dan W. Brock, American philosopher, bioethicist, Professor Emeritus of Medical Ethics in the Department of Global Health and Social Medicine at Harvard Medical School, the former Director of the Division of Medical Ethics (now the Center for Bioethics) at the Harvard Medical School, and former Director of the Harvard University Program in Ethics and Health (PEH), held the Tillinghast Professorship at Brown University and served as a member of the Department of Clinical Bioethics at the National Institutes of Health, B.A. in economics from Cornell and Ph.D. in philosophy from Columbia University, 1993 (“The Role of Philosophers in Policy-Making,” in *Life and Death: Philosophical Essays in Biomedical Ethics*. Cambridge University Press, Jan 29th, p. 409-410.)

The central point of conflict is that **the first concern of those responsible for public policy is, and ought to be, the consequences of their actions for public policy and the persons that those policies affect. This is not to say that they should not be concerned with the moral evaluation of those consequences—they should; nor that they must be moral consequentialists in the evaluation of the policy, and in turn human, consequences of their actions—whether some form of consequentialism is an adequate moral theory is another matter. But it is to say that persons who directly participate in the formation of public policy would be irresponsible if they did not focus their concern on how their actions will affect policy and how that policy will in turn affect people.** The virtues of academic research and scholarship that consist in an unconstrained search for truth, whatever the consequences, reflect not only the different goals of scholarly work but also the fact **that the effects of the scholarly endeavor on the public are less direct, and are mediated more by other institutions and events, than are those of the public policy process. It is in part the very impotence in terms of major, direct effects on people's lives of most academic scholarship that makes it morally acceptable not to worry much about the social consequences of that scholarship. When philosophers move into the policy domain, they must shift their primary commitment from knowledge and truth to the**

policy consequences of what they do. And if they are not prepared to do this, why did they enter the policy domain? What are they doing there?

Policymakers have to be held to different standards because of their responsibility to everyone — the aff's moral framework is itself immoral.

Nye 86 — Joseph Nye, professor of security affairs at Harvard, 1986 (Nuclear Ethics, ISBN-13: 978-0029230916, p. 33-4)

While the cosmopolitan approach has the virtue of accepting transnational realities and avoids the sanctification of the nation-state, an unsophisticated cosmopolitanism also has serious drawbacks. First, **if morality is about choice, then to underestimate the significance of states and boundaries is to fail to take into account the main features of the real setting in which choices must be made. To pursue individual justice at the cost of survival or to launch human rights crusades that cannot hope to be fulfilled, yet interfere with prudential concerns about order, may lead to immoral consequences.** And **if such actions**, for example the promotion of human rights in Eastern Europe, **were to lead to crises and an unintended nuclear war, the consequences might be the ultimate immorality.** **Applying ethics to foreign policy is more than merely constructing philosophical arguments; it must be relevant to the international domain in which moral choice is to be exercised.**

Extend: "Extinction First"

Extend 1NC # ___ — Extinction First. Every moral framework must first be interested in preventing extinction because all human values are also extinguished if we eliminate the species. That means you should err negative on all of our disads — even a 1% risk of human extinction outweighs. That's Plummer.

They say:

[Write out what the 2AC said and your answers to it here. Then read more evidence.]

High magnitude impacts override traditional moral calculus

Nye '86 (Joseph S. 1986; Phd Political Science Harvard. University; Served as Assistant Secretary of Defense for International Security Affairs; "Nuclear Ethics" pg. 18-19)

The significance and the limits of the two broad traditions can be captured by contemplating a hypothetical case.³⁴ Imagine that you are visiting a Central American country and you happen upon a village square where an army captain is about to order his men to shoot two peasants lined up against a wall. When you ask the reason, you are told someone in this village shot at the captain's men last night. When you object to the killing of possibly innocent people, you are told that civil wars do not permit moral niceties. Just to prove the point that we all have dirty hands in such situations, the captain hands you a rifle and tells you that if you will shoot one peasant, he will free the other. Otherwise both die. He warns you not to try any tricks because his men have their guns trained on you. Will you shoot one person with the consequences of saving one, or will you allow both to die but preserve your moral integrity by refusing to play his dirty game? The point of the story is to show the value and limits of both traditions. Integrity is clearly an important value, and many of us would refuse to shoot. But at what point does the principle of not taking an innocent life collapse before the consequentialist burden? Would it matter if there were twenty or 1,000 peasants to be saved? What if killing or torturing one innocent person could save a city of 10 million persons from a terrorists' nuclear device? At some point does not integrity become the ultimate egoism of fastidious self-righteousness in which the purity of the self is more important than the lives of countless others? Is it not better to follow a consequentialist approach, admit remorse or regret over the immoral means, but justify the action by the consequences? Do absolutist approaches to integrity become self-contradictory in a world of nuclear weapons? "Do what is right though the world should perish" was a difficult principle even when Kant expounded it in the eighteenth century, and there is some evidence that he did not mean it to be taken literally even then. Now that it may be literally possible in the nuclear age, it seems more than ever to be self-contradictory.³⁵ Absolutist ethics bear a heavier burden of proof in the nuclear age than ever before.

1NC — Solvency Answers

Many applicants will still be denied asylum.

ORDOÑEZ '15 (Franco; Miami Herald, “Landmark asylum ruling has helped fewer domestic violence victims than hoped,” <http://www.miamiherald.com/news/nation-world/national/article52091630.html>)

A landmark ruling last year by the nation’s highest immigration court gave some victims of domestic violence, such as Bonilla, a path to stay and to remain in the country legally.

“I feel like I won the lottery,” Bonilla said, somewhat reluctantly. She won permission to stay in November 2014.

Many asylum experts saw the August 2014 landmark case, known as A-R-C-G after the initials of the woman involved, as a leap forward for those fleeing “femicide,” the rampant gender-based violence rooted in much of Latin America. But a year after the ruling, applicants face broad disparities in the courts.

A review of recent decisions in domestic violence asylum cases has advocates saying that outcomes continue to be influenced by courts’ locations and whether applicants have lawyers.

Roughly 2 out of 5 reported domestic-violence decisions have been denied since the landmark case, according to preliminary data compiled by the Center for Gender & Refugee Studies at University of California Hastings College of the Law.

The government does not report the immigration judges’ decisions on domestic violence cases, making it harder to track how cases fare across the country. The Center for Gender & Refugee Studies houses the largest repository of gender-based asylum cases.

The center has collected nearly 90 decisions that involved domestic violence since A-R-C-G. Although the sample isn’t large, patterns have emerged showing the significance and limitations of the decision, according to a report by the center titled “Gender-Based Asylum Post-Matter of A-R-C-G” to be published this week in the Southwestern Journal of International Law.

Out of more than 1,600 asylum cases involving partner violence in which attorneys have sought the center’s assistance, there have been 89 decisions. While 43 were granted either asylum or some similar form of relief, 35 were denied and the rest were sent back to court.

“I don’t mean to diminish what is going on, but **it hasn’t been so pronounced,**” said Blaine Bookey, co-legal director at the center and author of the report, speaking of the ruling’s impact. **“A-R-C-G was really such a positive advancement in recognizing domestic violence as a basis for asylum. But it still leaves a lot untold.”**

Trump will circumvent the plan — family separations and other asylum denials prove that the administration doesn't follow legal guidelines. They will just find a new way to exclude victims.

Judge bias and lack of legal access prevents solvency.

ORDOÑEZ '15 (Franco; Miami Herald, "Landmark asylum ruling has helped fewer domestic violence victims than hoped," <http://www.miamiherald.com/news/nation-world/national/article52091630.html>)

The surge of unaccompanied minors and families from Central America that began last year has increased the backlog to nearly half a million cases in immigration court. **To receive asylum in the United States, applicants must prove they have well-founded fears of persecution because of "race, religion, nationality, membership in a particular social group or political opinion."**

Which applicants are most likely to prevail often depends on judges' backgrounds, what parts of the country the cases are heard in and whether they have lawyers, according to data from the Transactional Records Access Clearinghouse, known as TRAC, at Syracuse University.

Judges at **the immigration court in Miami** by the Krome detention center **denied over 92 percent of asylum requests** from 2009 to 2014, **while half of the judges at the New York immigration court granted 80 percent of asylum requests,** according to TRAC.

Felix **Villalobos, an immigration attorney** with the Texas-based Refugee and Immigrant Center for Education and Legal Services, **said it was much harder to win an immigration case in a conservative state** such as Texas, **where views on immigration could be tougher.** He wants the U.S. Supreme Court to take up the domestic violence issue to establish more clear rules on when asylum is appropriate.

"People should be outraged, because our justice system is supposed to be a system that is predictable..." said Villalobos. "When you have absolutely no idea which way it could go, that shows that something is wrong."

If an applicant doesn't have a lawyer, she has little chance of success, according to the data. Just 1.5 percent of women traveling with children who did not have lawyers were allowed to stay, according to TRAC. **Those who got lawyers were able to stay in the country more than 26 percent of the time.**

Extend: “Trump Will Circumvent the Plan”

Extend 1NC # ___ — Trump Will Circumvent the Plan. Even if domestic violence victims have eligibility for asylum, Trump will just find other ways of ensuring they don't get to stay.

They say:

[Write out what the 2AC said and your answers to it here. Then read more evidence.]

Trump will circumvent the plan.

BLITZER '18 (Jonathan; The New Yorker, “The Trump Administration Is Completely Unravelling the U.S. Asylum System,” 6/11, <https://www.newyorker.com/news/news-desk/the-trump-administration-is-completely-unraveling-the-us-asylum-system>)ww

Publicly, the Trump Administration still pays lip service to the country's asylum laws, which dictate the rights that people fleeing violence or persecution in their home countries have upon entering the U.S. “If you come to the country, you should come through, first, the port of entry and make a claim of asylum if you think you have a legitimate asylum claim,” Sessions said recently, while defending a new “zero tolerance” policy of prosecuting everyone who crosses the U.S. border anywhere other than at official ports of entry, including asylum seekers. Sessions described the new policy, which has led to hundreds of children being separated from their parents at the border, as necessary to preserve the rule of law—a common argument from the Trump Administration, which has described the implementation of harsh anti-immigrant measures as merely following the laws already on the books. **At the same time, Sessions has made a series of decisions to undermine, narrow, and redraw the asylum laws and policies that are also on the books.**

Since becoming Attorney General, Sessions has limited the ability of asylum seekers to appeal decisions, restricted the discretion that immigration judges have over their own dockets, and used his authority as Attorney General to personally review immigration cases—as he did in the case of the Salvadoran domestic-violence victim. “‘Zero tolerance’ is part of Sessions’s ongoing plans to rewrite asylum law,” Michelle Brané, of the Women’s Refugee Commission, told me. **“The Administration is unilaterally dismantling access to any protection for those seeking safety.”**

Just a month after it was announced, the zero-tolerance policy is giving rise to a full-blown crisis at the border. This may give Sessions the pretext he needs to institute further changes. In El Paso, as Texas Monthly reported earlier this month, **officers are intercepting asylum seekers** travelling from Ciudad Juárez, Mexico, before they can cross the bridge that separates the two cities. Elsewhere in Texas, **asylum seekers are being told there isn't enough room to process**

them on the American side of the border. **“They are using that tactic as a way to push people out and deny people asylum,”** Ruben García, who runs a migrant shelter along the border, told the Los Angeles Times.

Customs and Border Protection, the federal agency in charge of processing people as they arrive in the U.S., **has been telling asylum seekers to wait in Mexico until American authorities have the capacity to admit them.** Many legal scholars say that **making people who are looking for safety in the U.S. wait across the border violates both American and international human-rights law**, which together hold that asylum seekers cannot be sent back to countries where they are likely to be tortured or killed. Mexico also has a well-documented history of mistreating migrants in its custody and of inappropriately turning them around at its southern border, with Guatemala. Nevertheless, last month, representatives from the Department of Homeland Security met with Mexican officials to work out an arrangement—known as a “safe third-country agreement”—that would allow the U.S. to automatically send Central American asylum seekers that travel through Mexico on their way to the U.S. back to Mexico.

The Trump Administration also appears to be putting more asylum seekers behind bars. In March, the A.C.L.U. filed a complaint in federal court alleging that the Administration was **detaining asylum seekers indefinitely, in some cases even after they passed the standard screening**, known as the credible-fear interview, **at the border. Five Immigration and Customs Enforcement field offices**, the lawyers wrote in their brief, **“have detained these asylum seekers** based not on individualized determinations that they pose a flight risk or a danger to the community, but rather **to deter other migrants from seeking refuge here.”** The lead plaintiff in the case is a teacher from Haiti, who has remained in detention for close to two years, despite having won his asylum case, twice, in immigration court. The government is refusing to release him while it appeals the decisions.

Court Clog Disad

1NC — Court Clog DA

The [first/next] off-case is the Court Clog Disadvantage.

First, the unique link — the plan prevents the speedy resolution of immigration cases and opens the system up to fraud.

SPAGAT 18 — (Elliot; Associated Press, "AG Jeff Sessions excludes domestic, gang violence from asylum claims," June 12th, <http://www.pressdemocrat.com/news/8426154-181/ag-jeff-sessions-excludes-domestic?sba=AAS>)ww

Immigration judges generally cannot consider domestic and gang violence as grounds for asylum, U.S. Attorney General Jeff **Sessions said** Monday **in a ruling that could affect large numbers** of Central Americans **who have increasingly turned to the United States for protection**.

"Generally, claims by aliens pertaining to domestic violence or gang violence perpetrated by non-government actors will not qualify for asylum," Sessions wrote in 31-page decision. "The mere fact that a country may have problems effectively policing certain crimes — such as domestic violence or gang violence — or that certain populations are more likely to be victims of crime, cannot itself establish an asylum claim."

The widely expected move overruled a Board of Immigration Appeals decision in 2016 that gave asylum status to a woman from El Salvador who fled her husband. Sessions reopened the case for his review in March as the administration stepped up criticism of asylum practices.

Sessions took aim at one of five categories to qualify for asylum - persecution for membership in a social group - calling it "inherently ambiguous." The other categories are for race, religion, nationality and political affiliation.

Domestic violence is a "particularly difficult crime to prevent and prosecute, even in the United States," Sessions wrote, but its prevalence in El Salvador doesn't mean that its government was unwilling or unable to protect victims any less so than the United States.

Sessions said the woman obtained restraining orders against her husband and had him arrested at least once.

"No country provides its citizens with complete security from private criminal activity, and perfect protection is not required," he wrote.

The government does not say how many asylum claims are for domestic or gang violence but their advocates said there could be tens of thousands of domestic violence cases in the current immigration court backlog.

Karen Musalo, co-counsel for the Salvadoran woman and a professor at University of California Hastings College of Law, said the decision could undermine claims of women suffering violence throughout the world, including sex trafficking.

"This is not just about domestic violence, or El Salvador, or gangs," she said. "This is the attorney general trying to yank us back to the dark ages of rights for women."

Sessions sent the case back to an immigration judge, whose ruling can be appealed to the Justice Department's Board of Immigration Appeals and then to a federal appeals court, Musalo said. She anticipates other cases in the pipeline may reach the appeals court first.

U.S. Sen. Dianne Feinstein, a California Democrat, said the decision was "despicable and should be immediately reversed." And 15 former immigration judges and Board of Immigration Appeals members signed a letter calling Sessions' decision "an affront to the rule of law."

"For reasons understood only by himself, the Attorney General today erased an important legal development that was universally agreed to be correct," the former judges wrote. "Today we are deeply disappointed that our country will no longer offer legal protection to women seeking refuge from terrible forms of domestic violence from which their home countries are unable or unwilling to protect them."

The decision came hours after Sessions' latest criticism on the asylum system in which he and other administration officials consider rife with abuse. **The cases can take years to resolve in backlogged immigration courts** that Sessions oversees and applicants often are released on bond in the meantime.

An administration official said last month that the backlog of asylum cases topped 300,000, nearly half the total backlog. Despite President Donald Trump's tough talk on immigration, border arrests topped 50,000 for a third straight month in May and lines of asylum seekers have grown at U.S. crossings with Mexico.

"**Saying a few simple words — claiming a fear of return — is now transforming a straightforward arrest for illegal entry and immediate return into a prolonged legal process, where an alien may be released from custody into the United States and possibly never show up for an immigration hearing.**" Sessions said at a training event for immigration judges. "This is a large part of what has been accurately called 'catch and release.'"

Second, immigration court clog increases the risk of terrorism.

von SPAKOVSKY '17 (Hans A.; Senior Legal Fellow – Heritage Foundation, "How to get Our Immigration Courts Back to Enforcing Federal Law," 5/18, <https://www.heritage.org/immigration/commentary/how-get-our-immigration-courts-back-enforcing-federal-law>)

With the backlog of immigration cases hitting a record high of 585,930 cases in April according to Syracuse University, the initiative announced by Attorney General Jeff Sessions last month in Nogales, Ariz., to hire more immigration judges is a vital step in bringing our immigration courts back to enforcing federal law. This includes the long overdue hiring of an additional 50 immigration judges this year and another 75 next year under a “streamlined” hiring process.

Now that Sessions has “already surged 25 immigration judges to detention centers along the border” and the Trump administration ended the Obama era “catch and release” policy, we may once again see U.S. immigration courts fulfilling their mission: trying the cases of those who have entered or remained here illegally.

Why are these moves important? Because **the huge backlog of untried cases** and the prior “catch and release” policy **allowed many** illegal aliens **to disappear, never to be seen again**. Their numbers are stark evidence of a breakdown in the immigration court system that only accelerated during the Obama years.

Ending the “catch and release” policy—a policy Border Patrol agents rightly refer to as the “catch and run” policy—was a critical first step.

“Catch and release” is the DHS (Department of Homeland Security) policy of arresting illegal aliens, giving them court dates, and then releasing them. Unsurprisingly, many of those released never showed for court.

The numbers tell the story. In 2016, 39 percent of aliens who were free pending trial failed to show up for their hearings. In 2015, 43 percent did the same. Over the past 21 years, 37 percent of all aliens the U.S. permitted to remain free before trial—some 952,000 people—were ordered removed for dodging court.

Courts are three times more likely to issue removal orders for evading court than removal orders from cases that were actually tried. Predictably, American immigration courts have the highest “failure-to-appear” rate of any court system in the country, averaging more than 45,000 per year.

This is why “surging” more judges to immigration detention facilities along our border is critically important.

Deploying **judges who can swiftly conduct hearings to grant relief to the deserving and direct removal of offenders not only assures due process to all claimants, but it also serves to warn others away from illegal entry**. In short, **alert and empowered courts harden our borders**.

Restoring the authority of immigration judges is just as important. At the end of 2008—right before Barack Obama became president—federal immigration courts reported a backlog of 186,108 cases.

By the end of 2016, backlogged cases had increased 300 percent to 542,411, and now we have reached almost 586,000 cases. Much of this backlog resulted from procedural changes directed by Justice Department political appointees that radically slowed down court cases. In 2006, 233 immigration judges completed 407,487 cases. Yet in 2016, more than 270 judges completed only 273,390 cases.

At the same time that these Justice Department appointees nearly halted adjudication, DHS political appointees refused to enforce removal orders issued by the immigration courts. Today unexecuted removal orders stand at 953,506—a 58 percent increase since 2002—and the great majority of these orders were issued to those who evaded court.

One final note of concern that few mention: **From 2003 through 2015, 62,409 asylum applicants from the 36 “Specially Designated Countries”—countries that DHS designates as aiding and abetting terrorism—entered the U.S.**

Forty percent of this group (24,975) received asylum. From the remaining asylum seekers, **3,095 never showed for their court hearings and were ordered removed. Within this group of absconders were 338 people from Iran, Sudan and Syria, countries the U.S. identifies as “State Sponsors of Terrorism.”**

Never has there been an accounting to Congress or the public about what became of these people from terrorist safe-havens who claimed asylum before disappearing into the United States.

On top of that, almost no one noticed another alarming fact that came out of former FBI Director James Comey’s testimony before the Senate Judiciary Committee on May 3. Comey said that out of over 2,000 “violent extremist investigations” about “300 of them are people who came to the United States as refugees.”

The bottom line is that **America has a well-organized immigration court system that can help secure our borders and remove violators while also redeeming the persecuted. But it works only if it has enough judges to handle its cases** and if illegal aliens are detained, so they actually show up for court.

Eight years of intentional neglect can’t be reversed overnight. But Jeff Sessions seems intent on making sure that all of this finally happens by empowering judges, prosecutors, and enforcement officers to do their jobs.

He is restoring common sense and effectiveness to an immigration court system that, until recently, had neither.

Finally, terrorism causes extinction.

MYHRVOLD '13 (Nathan; PhD in theoretical and mathematical physics – Princeton and Former Chief Technology Officer – Microsoft, “Strategic Terrorism: A Call to Action,” The Lawfare Research Paper Series No.2, July, <http://www.lawfareblog.com/wp-content/uploads/2013/07/Strategic-Terrorism-Myhrvold-7-3-2013.pdf>)

Several powerful trends have aligned to profoundly change the way that the world works.

Technology now allows stateless groups to organize, recruit, and fund themselves in an unprecedented fashion.

That, coupled with the extreme difficulty of finding and punishing a stateless group, means that stateless groups are positioned to be lead players on the world stage. They may act on their own, or they may act as proxies for nation-states that wish to duck responsibility. Either way, stateless groups are forces to be reckoned with. **At the same time, a**

different set of technology trends means that small numbers of people can obtain incredibly

lethal power. Now, **for the first time in human history, a small group can be as lethal as the**

largest superpower. Such a group could execute an attack that could kill millions of people. **It is**

technically feasible for such a group to kill billions of people, to **end modern civilization**—

perhaps even to drive the human race to extinction. Our defense establishment was shaped

over decades to address what was, for a long time, the only strategic threat our nation faced:

Soviet or Chinese missiles. More recently, it has started retooling to address tactical terror attacks like those launched on the morning of 9/11, but the reform process is incomplete and

inconsistent. A real defense will require rebuilding our military and intelligence capabilities

from the ground up. Yet, so far, strategic terrorism has received relatively little attention in

defense agencies, and the efforts that have been launched to combat this existential threat

seem fragmented. History suggests what will happen. The only thing that shakes America out of

complacency is a direct threat from a determined adversary that confronts us with our

shortcomings by repeatedly attacking us or hectoring us for decades.

They Say: "Backlog High Now"

The Justice Department is taking steps to eliminate the backlog.

DELGADO 5/30 (Edwin; UPI, "Attorneys for immigrants: Rush to clear backlog may rush deportations," <https://www.upi.com/Attorneys-for-immigrants-Rush-to-clear-backlog-may-rush-deportations/8391527693520/>)ww

Attorneys representing immigrants along the U.S. border with Mexico say **an effort to expedite court proceedings and clear a backlog of cases could lead to thousands of deportations** without proper consideration.

Immigration attorneys are bracing for an influx of court proceedings after Attorney General Jeff **Sessions** on May 2 **ordered more prosecutors and judges to courts** along the border **in an effort to alleviate a backlog of cases.**

Melissa Lopez, an immigration attorney and executive director of the Diocesan Migrant and Refugee Services in El Paso, Texas, said she's worried about the courts rushing cases. DMRS provides free legal services to immigrants and refugees.

Lopez said **the government is implementing an aggressive approach** that could limit each migrant's ability to have a fair opportunity to seek benefits and resources they may be eligible for -- including an ability to hire a lawyer.

"It's concerning when people are not getting the opportunity to fully prepare for a case," she said. "When the consequences of losing a case is deportation, it's obviously very important for everyone to have an opportunity to go through the adequate process."

In total, 35 prosecutors and 18 immigration judges are expected to arrive in courts along the border in the next several weeks. Seven of those prosecutors will be assigned to the Western District of Texas, which includes El Paso, San Antonio, Austin and Midland.

Some of those judges have begun to hear cases through video teleconferencing, while the Department of Justice evaluates when the judges will travel to their courts.

In late April, around 1,200 migrants from Central America arrived at the U.S. border. Their arrival sparked an effort by the U.S. government to discourage migrants from continuing to enter the country illegally.

Sessions called the so-called caravan of migrants an attempt to undermine U.S. law and overwhelm the immigration system. In response, he **implemented a "zero-tolerance" policy in which he asked federal prosecutors to prioritize all criminal immigration offenses. He supplemented that policy with the latest directive to add staffing for the courts.**

Immigration activists say the federal government is overreacting to the uptick of border crossings made in the two previous months.

The number of apprehensions and illegal border crossings has been dropping steadily for more than a decade, down from about 1.8 million in 2005 to less than 490,000 in 2017, the lowest number in 37 years, according to U.S. Border Patrol data.

Justice Department spokesman Devin O'Malley said the directive is part of the administration's efforts to increase efficiency and reduce a backlog of cases.

About 700,000 immigration cases are pending in courts throughout the country, with more than 100,000 of those in Texas, the DOJ said.

"The prosecutors that will be sent to the border will handle the expected increase of cases dealing with criminal violations, including illegal entry," O'Malley said. "The expected increase in immigration court cases leads to the need to bring judges to increase the adjudicatory capacity."

Those who represent immigrants in court see the influx as an effort to speed up the removal of undocumented immigrants.

"In El Paso, we had already seen an increase in prosecution taking place on the ground and these announcements are confirmation of something we suspected was already happening," said Lourdes Ortiz, a member of the Detained Migrant Solidarity Committee.

Ortiz is a caseworker who specializes in representing unaccompanied minors who either came to the United States alone or were separated from their families after being detained by U.S. Customs and Border Protection.

Ortiz said there is a fear among immigration attorneys that courts will quickly move to deport migrants without a fair trial and reasonable opportunity to seek appropriate legal representation, which she says, is "the single biggest factor on whether you win your case or not."

The DOJ insists **the actions are aimed at making the courts more efficient.**

O'Malley said **the government is also increasing the use of video conferencing in immigration courts and streamlining the hiring process for new judges.**

The average time frame for the hiring of a judge has been reduced from 762 to 318 days, according to the DOJ, and the goal is to further reduce the hiring process to eight to 10 months.

The department is also considering implementing annual performance evaluations for immigration judges that include case completion quotas. The current expectation is for the judges to complete 700 cases a year in addition to appeals and other filings.

Lopez said quotas could pressure judges to rush cases to meet "unrealistic expectations."

Asked whether the quota had any precedent, Ortiz said: "The bigger question is why would you place any quotas, to begin with? Judges are supposed to be impartial and this goes to the heart

of our concerns of undermining the due process. Having quotas provides an incentive to end up deporting people. In principle is an atrocious idea."

They Say: “Plan Eliminates Sessions Backlog”

No Sessions backlog — status quo will deter entry and resolve the backlog.

ARTHUR 6/13 (Andrew R.; Center for Immigration Studies, “AG Provides Guidance for Crime-Based Asylum Claims ... by Applying Current Law,” <https://www.cis.org/Arthur/AG-Provides-Guidance-CrimeBased-Asylum-Claims-Applying-Current-Law>)ww

As a practical matter, **the attorney general's decision** in Matter of A-B- **will likely serve to limit the number of aliens found to have a credible fear of persecution**, and limit the number of asylum grants issued by asylum officers and the immigration courts. **This**, in turn, **will reduce incentives for aliens to enter the United States illegally or without documents at the ports of entry to claim credible fear, thereby protecting the integrity of the borders and cutting the number of subsequent asylum claims heard by immigration judges. This will allow those judges to consider other pending cases, and reduce the backlog before the immigration courts.**

Sessions decision is essential to enforce immigration laws — it is key to prevent exploitation of the system.

Johnson and Gomez 18 – Justice Department writer and immigration reporter for USA TODAY[Kevin and Alan, USA TODAY, 7/12/2018, 7/13/2018, “Trump administration activates new asylum crackdown; potentially valid claims could be denied” <https://www.usatoday.com/story/news/politics/2018/07/12/trump-administration-announces-tougher-asylum-rules-immigrants/780634002/-,JL>]

Michael Bars, a USCIS spokesman, said the directive was "part of an effort to protect the integrity of our immigration system and help restore the faithful execution of our laws." **“Our laws do not offer protection against instances of violence based on personal, private conflict,”** Bars said. **"But over the years, grounds for qualifying for asylum have greatly expanded far beyond what Congress originally intended. Many petitioners understand this, know how to exploit our system, and are able to enter the U.S., avoid removal,** and remain in the country. **"USCIS is committed to adjudicating all petitions fairly, efficiently, and effectively on a case-by-case basis** to determine if they meet all standards required under the law," Bars said. Changes to the asylum policy had been contemplated since the Republican Party drafted its platform at the 2016 convention. "From its beginning, our country has been a haven of refuge and asylum," the party's platform statement said. "That should continue - but with major changes. Asylum should be limited to cases of political, ethnic or religious persecution."

They Say: “No Link”

Including domestic violence in asylum relief opens the floodgates.

CADMAN '18 (Dan; Center for Immigration Studies, “Asylum Law is not Intended for Domestic Violence,” 4/20, <https://cis.org/Cadman/Asylum-Law-Not-Intended-Domestic-Violence>)ww

The problem with domestic violence as a predicate for the grant of asylum is that, while superficially persuasive, **it opens the door to granting asylum for all victims of criminal violence** in foreign countries. **Should someone who has been the victim of domestic violence be granted asylum, but someone who has survived an attempted murder be denied? Where does such a spectrum end?**

It was never contemplated by the drafters or signatories to the international convention on the granting of refuge or asylum that victims of criminal offenses would be entitled to seek asylum. Were that the case, the dispossessed of the entire world would be beating a path to the doors of every developed country. (In truth, for all practical purposes they are, and it seems evident that Sessions wants to ensure that grants of asylum and refuge remain the extraordinary kind of relief that they were intended to be, rather than loopholes that a tractor trailer can fit through.)

Refuge and asylum have always been held to be extraordinary forms of relief from applying the usual rules relating to immigration to those meriting protection. The intent to exclude victims of everyday crime (as opposed to political crimes, crimes against humanity, war crimes, and genocide), **no matter how individually tragic, from the protections of refuge or asylum is abundantly clear** from the Travaux Préparatoires, the equivalent of the legislative history of the multi-national convention of ministers who attended the meetings that resulted in the 1951 Refugee Convention.

Plan will water down the meaning of asylum.

ORDOÑEZ '15 (Franco; Miami Herald, “Landmark asylum ruling has helped fewer domestic violence victims than hoped,” <http://www.miamiherald.com/news/nation-world/national/article52091630.html>)ww

Some groups are concerned that the U.S. court’s decision has weakened the asylum program created to protect those facing persecution.

While domestic violence certainly should be condemned, the immigration court’s decision is an inappropriate venue to address a worldwide problem, said Jessica Vaughan, director of policy studies at the Center for Immigration Studies, a Washington research institute that supports tighter controls on immigration.

"It has the potential to over the long term dilute the meaning of asylum," Vaughan said.

"Anyone fleeing an uncomfortable or dangerous or upsetting or difficult circumstance could then qualify for asylum."

They Say: “No Terror Threat”

Nuclear terrorism is still a threat.

ALLISON '18 (Graham; Douglas Dillon Professor of Government – Harvard’s Kennedy School, “Nuclear Terrorism: Did We Beat the Odds or Change Them?” PRISM, v. 7, n. 3, <http://cco.ndu.edu/News/Article/1507316/nuclear-terrorism-did-we-beat-the-odds-or-change-them/>)ww

Another major long-term **challenge is the relentless advance of science and technology and the accelerating diffusion of nuclear and radiological know-how. The proliferation of advanced manufacturing has made it easier to produce components needed for a bomb.** For example, the A.Q. Khan nuclear black market network manufactured key parts for centrifuges in workshops in Malaysia.²⁹ Furthermore, **the widespread availability of radiological material in medical and research settings has led to the recognition that it is simply a matter of when, not if, terrorists detonate a dirty bomb.** This reminds us of one of the hardest truths about modern life: the same advances that enrich and prolong our lives also empower potential killers to achieve their deadly ambitions.

While those potential killers are not as cohesively organized as they were prior to 9/11 when al-Qaeda had a coordinated WMD effort, **the terrorist threat has metastasized.** Al-Qaeda morphed into ISIL and an array of affiliates like al-Shabaab in Somalia. **These newer terrorist organizations will undoubtedly splinter** further as a result of the loss of ISIL and al-Qaeda’s main safehavens. But these groups have demonstrated a remarkable ability to find hosts in other fragile states around the globe, from Niger to Yemen, and even within more stable states, like Indonesia.

Furthermore, the widening scope of U.S. counterterrorism operations has continued to create new mutations. The United States has now conducted drone strikes and Special Forces raids in at least seven Muslim-majority countries: Afghanistan, Iraq, Libya, Pakistan, Somalia, Syria, and Yemen. Furthermore, with the Trump Administration’s recent announcement that it will begin flying drone missions out of a new base in Niger, this number will likely rise to include at least Niger and Mali, along whose borders many terrorists operate.³⁰ Despite major efforts to avoid civilian casualties, many strikes have resulted in significant collateral damage, providing fodder for terrorist recruiters.³¹ Thus, while U.S. counterterrorism operations have been immensely successful in hunting down high-level militants, these efforts in each area must be weighed against the risk that operations could create more enemies than they kill.

The battle against Islamic extremist ideologies and their adherents will be a generational challenge. This is less a problem to be “fixed” than a condition that will have to be managed. It **will require constant vigilance** for as far as any eye can see. And as long as there are states that are unwilling or unable to suppress terrorists or expel them from their borders, they will find safehavens in which to continue. We should never forget that most of the planning and preparation for the 9/11 attack was done by an al-Qaeda cell in Hamburg, Germany. Moreover,

while al-Qaeda's core has been decimated, its remaining leaders continue to find refuge in the nuclear-armed ticking time bomb called Pakistan.

They Say: “Case Turns the DA”

No, DA turns the case — ignoring court clog is judicially and academically irresponsible.

POSNER '96 (Richard; Federal Judge – U.S. Court of Appeals, *The Federal Courts: Challenge and Reform*, p. 317)

Scholars of constitutional law fail to consider the systemic effects of recognizing new constitutional rights,²⁹ or, for that matter, of retrenchments of existing rights. They seem not to realize that the enforcement of rights affects caseload and that caseload affects the enforcement of rights. Creating a new right that generates many cases may, through the effect of caseload on the enforcement of rights, harm other rights holders. Victims of single-car accidents might have benefited from a decision in DeShaney's favor, but the resulting flood of cases would have put additional pressure on the federal district courts to dispose of cases summarily, which we saw in Chapter 6 harms civil rights plaintiffs disproportionately. One could take the position that it is not the business of the judiciary to worry about the infrastructure of rights enforcement; that the responsibility lies elsewhere, with Congress and the President. And they have supported judicial expansion to the point necessary to accommodate new rights. **The danger is not that the judiciary may be starved for resources but that it will expand so promiscuously, and be stretched so thin, that its effectiveness will be compromised. It is as irresponsible of judges as it is of scholars to ignore the effects of creating new rights on the ability of the federal courts to protect the holders of the old rights. The issue has been ignored in part because few judges or law professors take any interest in the causes or consequences of heavy caseloads.**

High caseloads devastate judicial legitimacy and independence — that turns solvency.

BASSLER '96 (William G.; Federal Judge – United States District Court of New Jersey and Adjunct Professor of Law – Seton Hall, 48 Rutgers L. Rev. 1139, Summer, 1/n)

As a result of this growth in criminal proceedings, the civil calendar obviously does not receive the attention it requires. Civil rights cases, among others, must wait an inordinate amount of time before being addressed by the courts. Without the assistance of the magistrates in trying to get cases settled, the entire civil calendar in some districts would collapse. **The pressure to settle cases, however, while helping the court's calendar, may well deprive deserving litigants of their "day in court." Resolution of cases at any price may breed a cynicism that will, in the long run, be more harmful than delay. Providing rights without a real opportunity to vindicate them can only undermine the public's confidence in the legal system. The growth of the federal caseload has affected significantly the quality of the federal courts.** The effect of the volume of the federal workload may well be like prolonged and unmitigated stress in an individual's life; **while there may be no single catastrophic event, the effects may be**

debilitating over an extended period of time. 86 **The federal judicial system will not collapse, but the accustomed quality of its work** 87 **will surely deteriorate.** There are already enough signs pointing to a negative diagnosis. The first symptom of judicial overload is the abandonment of opinion writing by judges. Recently, the practice of judges, on the Supreme Court and elsewhere, of delegating their opinion writing to law clerks has been criticized. 88 Something more problematic than "turgid language that stumbles along on pedantic footnotes" 89 takes place. The art of judging is at stake: "Clerks ought not to be playing the role of judge-- performing the agonizing task of putting together the complex thoughts that become opinions." 90 Because of the "inseparability of writing and thinking," the clerks are not just simply "putting the judge's 'thoughts' into [the first draft]; they substitute their own thoughts for the judge's . . ." 91 In addition to the delegation of opinion writing to clerks, the delegation of authority in general 92 is a major cost of the [*1157] caseload explosion. "The caseload per federal judge has risen to the point where very few judges, however able and dedicated, can keep up with the flow without heavy reliance on law clerks, staff attorneys, and sometimes externs too." 93 **This bureaucratization** 94 **of the federal judiciary can only serve to erode its effectiveness, independence, and public respect, as well as the morale of the federal bench itself. The sheer volume of cases erodes the ability of the judge to give personal and individual attention to each case.** 95 **In order to stay abreast of his or her docket, a judge may be tempted to resort to forced settlements, excuses to remand to state courts, and aggressive dispositions by summary judgments rather than carefully weigh the arguments of both sides.** The ever-increasing criminal docket with its requirements for early disposition of cases under the Speedy Trial Act 96 prevents careful pretrial management of the civil docket by the judge and mandates reliance on the magistrate. **The ever-increasing docket will, by necessity, invite more court administrator involvement with the inevitable erosion of the traditional independence of the federal judge.** 97 Increased pressure to dispose of ever in- [*1158] creasing backlogs also invites well-intentioned efforts to find better ways to manage the docket. This in turn requires judges to attend an ever increasing number of committee meetings 98 which naturally takes away from time on the bench. 99 While "the federal courts do not exist for the purpose of clearing their dockets," 100 the current caseload crisis does at least require those advocating the expansion of federal jurisdiction 101 to justify the need for federal action. **Considering the** [*1159] **public expectations of the federal judiciary, impaired performance and diminished independence are costs the country cannot afford.**

Link Booster — Spillover

Plan would spillover to protect other groups.

HEITZ '13 (Aimee; J.D. – University of Indiana, 'Providing a Pathway to Asylum: Re-Interpreting "Social Group" to Include Gender,' Indiana International & Comparative Law Review, v. 23, n. 2)ww

Re-structuring the current standard of "social group" to include gender-based persecution claims for asylum will not only give women additional protection, but it **may also lead to protection for other groups excluded from the current refugee definition. Re-structuring the social group definition could provide additional protection to groups persecuted on the basis of sexual orientation or other less socially visible grounds.**

Extend: “Plan Causes Fraud”

Plan would allow for fraudulent claims that overburden the system.

HOMAN ’18 (Thomas D.; Senior Official and Deputy Director Performing the Duties of the Director of U.S. Immigration and Customs Enforcement, “Stopping the Daily Border Caravan: Time to Build a Policy Wall”

<https://docs.house.gov/meetings/HM/HM11/20180522/108323/HHRG-115-HM11-Bio-HomanT-20180522.pdf>)ww

While those with legitimate claims of asylum must be protected, **many of those seeking to enter this country illegally know that there is no significant downside to making a claim of “credible fear” and only a few key words are all it takes to keep an alien in the country longer. A fact that is exploited by the smuggling organizations** who profit from them. DHS experience has shown that **individuals seeking to enter the country illegally know they can delay their removal by making false claims of credible fear.** Indeed, **the standard** for credible fear screenings at the border **has been set so low that aliens may easily meet this threshold by including certain phrases and claims during their credible fear interview.** The **smuggling organizations** know this, and they **coach** to **aliens to** make certain claims and to **recite “magic words” during their interview.**

To compound this issue, family units who arrive at our border are nearly always released from ICE custody into the interior of the United States, as recent rulings in the Flores consent decree litigation places a constraint on ICE’s authority to detain an entire Family Unit. This litigation requires that children be released from DHS custody within a few days of arrival if they are not removed. In FY 2017, approximately 71,500 members of family units were apprehended, and ICE believes this number is on track to increase significantly in FY 2018.

With many of those arriving at the border claiming credible fear and an immigration court backlog of more than 700,000 cases, it is clear that we must elevate the threshold standard of proof in credible fear interviews, as **aliens who falsely claim credible fear** in expectation of parole or release **are placing a strain on Department resources, and preventing or delaying legitimate asylum cases from being adjudicated.** DHS and the Department of Justice (DOJ) are working together to explore options for addressing this increasing threat to the security of our border.

Undocumented migrants abuse the asylum system — they use it to circumvent deportation.

McCaughey 18 – constitutional scholar from Columbia University (Betsy, Daily Press, 7/6/18, “Asylum is being misused”, ProQuest, 7/14/18) //dchen

People hoping to settle in the United States wait years for a green card to be legal residents. They play by the rules. These **law-abiding newcomers must feel like idiots, watching** what's

happening on **the southern border. Hundreds of thousands of Central American migrants are walking right in. They're not waiting in line. They're using "asylum" requests as their E-ZPass.** Just 12 percent of requests from El Salvadorans, 11 percent from Guatemalans and 7.5 percent from Hondurans are actually granted, according to the Department of Homeland Security. It's a shameful distortion of a program intended to provide a haven for true victims of state-sponsored religious, ethnic and political persecution. The U.S. offered asylum to Hungarian anti-communists after their uprising was crushed by the Soviets in 1956; to Cubans fleeing Castro's prisons; to Vietnamese after the fall of Saigon to the Communists in 1975; to Chinese political dissidents escaping the crackdown after Tiananmen Square in 1989; and more recently, to Chinese Christians and Muslims threatened for practicing their religion. **Not to be confused with what's happening on the southern border. Women typically plead they're victims of an abusive boyfriend or husband, and men claim they're escaping gang violence.** They're detained briefly, but **many are then released into the United States and given a date for an asylum hearing. Being granted asylum means hitting the jackpot. Asylees get the Refugee Cash Assistance program, including medical care, a housing allowance and hundreds of dollars a month in cash. In contrast, immigrants who go the green card route are ineligible for most benefits for years. Half who use asylum as their excuse for crossing the border never even file a claim or show up at a hearing.**

The plan overloads the system — asylum judges cannot handle the complex cases. This turns the case because backlog causes gender based asylum to be denied.
Twibell, 10 – Attorney at International Association for the Study of Forced Migration [T.S., Georgetown Immigration Law Review, Vol. 24, No. 2, Winter “The Development Of Gender As A Basis For Asylum In United States Immigration Law And Under The United Nations Refugee Convention: Case Studies Of Female Asylum Seekers From Cameroon, Eritrea, Iraq And Somalia”, Lexisnexis, acc. 7/14/18, bhc]

However, one could argue that the United States acted quickly in the early 1990s. **Its asylum corps was not established until 1991 when Congress finally adhered to the U.N. Refugee Convention.** In 1995, it established the policy, noted in the Legacy INS Gender Guidelines, to train every asylum officer that gender in part or alone could be a basis for asylum and that asylum officers should search for these issues. n26 Additionally, asylum officers were instructed that they should create an environment when interviewing that is conducive for women to be comfortable in discussing these issues. n27 This policy was implemented in explicit consideration of UNHCR and Canadian gender guidelines in addition to recommendations from U.S. women's rights groups such as the Women Refugees Project of the Harvard Immigration and Refugee Program in Cambridge, Massachusetts and the Somerville Legal Services in Somerville, Massachusetts. n28 Further, **asylum adjudicators are inundated with a very large caseload of complex cases. Many feel that these adjudicators do not have adequate time [*198] to properly assess the credibility of asylum applications** in order to protect the U.S.

public from criminals and terrorists. n29 **Asylum adjudicators are often unable to meet internal goals of timely adjudication while their responsibilities continue to increase.** n30 Nevertheless, human rights groups maintain that gender-based asylum claims are often not accepted in the United States. For example, Amnesty International states that, "[w]omen with asylum cases based on gender-related violence are often denied protection in the U.S." n31 Other human rights groups state that **"U.S. asylum law fails to provide a systematic way to identify women who have suffered persecution and are in danger.** It does not necessarily recognize gender-related claims, such as women who have endured domestic violence."32

Extend: "Court Clog Causes Terrorism"

Court Clog diverts resources from counter-terrorism.

GOLDMAN '8 (Russell; ABC News, "What's Clogging the Courts? Ask America's Busiest Judge," 7/23, <https://abcnews.go.com/print?id=5429227>)BB

Judge Robert Brack is the busiest federal judge in the United States. From his bench in the bordertown of Las Cruces, N.M., Brack expects to hear between 1,000 and 1,200 cases this year, more than twice the average number tried by district court judges.

Almost all of his cases have one thing in common: they involved illegal immigrants reentering the United States, looking for work and finding jail time instead.

"I'm on the bench every morning of every day for several hours, sentencing defendants. A very high percentage of those involve Mexican citizens charged with felony reentry. Then I take a break, come back and do it some more," said Brack, who was ranked No. 1 in the country in overall caseload, according to federal statistics and Syracuse University.

Immigration-related felony **trials have been on the rise for several years, straining the resources of courts** and prisons from Texas to California and illustrating the difficulties of policing the country's primary point of entry for illegal immigrants and drugs.

All along the 2,000-mile U.S.-Mexico border, **courts are clogged with immigration-related cases**. As a result, the region's courtrooms handle a disproportionate amount of the country's crime. Just five of the country's 94 districts -- South California, New Mexico, Arizona, West Texas and South Texas -- handle 75 percent of all the criminal cases in federal district courts around the country.

Rising Case Numbers Flood Courtrooms

The number of immigration trials have spiked since 2005, a result of a federal program called Operation Streamline that puts illegal immigrants on a fast track to prosecution, detention and deportation.

In the first seven months of 2008, the government reported 38,443 new immigration prosecutions. The Transactional Records Access Clearinghouse, a data research organization at Syracuse University, estimates there will be 65,902 immigration cases this year, a 65 percent increase over last year and a 216 percent increase over 2003.

For the Department of Homeland Security, Operation Streamline is an indispensable tool needed to secure the border. In the past year, the government says, the deterrent of prison time has dramatically decreased the number of the people trying to cross the border from Mexico.

Critics, however, contend that **the increased number of cases strain an already burdened judicial system, depriving lawyers and judges of ample time to hear cases and denying defendants the right to a fair trial.**

They **also** contend that **resources have been diverted from pursuing offenders more dangerous than the typical migrant worker** and that prosecutors cannot use their own discretion in choosing which violators to go after.

"I'm all for national security and border security," said Brack, who was appointed to the bench in 2003 by President Bush. "The people I generally see are humble people who have no criminal offenses other than coming back and forth to pick chili. **We're spending a lot of time catching these folks when we could concentrate on those penetrating our border to do us harm.**"