U.S. Case Law and Legal Precedent Affirming the Due Process Rights of Immigrants Fleeing Persecution

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The political discourse on domestic immigration policy has shifted rapidly in recent years, mirrored by similar shifts in the geopolitical climate worldwide. However, a nuanced assessment of the legal basis backing such rhetoric is sorely lacking. This article examines the historical, legal, and case law precedent as it pertains specifically to immigrants who are fleeing persecution and residing within the United States. Due process rights emerged from the Fifth, Sixth, and Fourteenth Constitutional Amendments and have been expanded to include this population through several sequential United States Supreme Court Cases. We review the 1951 Convention Related to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees and examine subsequent case law and legal precedent. We then present evidence documenting widespread violations of due process rights for immigrants fleeing persecution. Specifically, we address the right to a fair hearing for individuals fearing for their lives upon return to their home country, the right against wrongful detainment, and the right to apply for asylum regardless of religion or country of origin. We conclude by addressing potential counterarguments to our thesis, future directions, and the role of forensic psychiatrists.

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Recent influxes of Central and Latin Americans across the U.S.–Mexico border and the parallel Syrian mass migration across the Middle East and Europe have forced the collective Western world to re-examine policies toward immigrants fleeing persecution. Human rights advocacy groups, such as Physicians for Human Rights and HealthRight International, have called upon psychiatrists to provide asylum evaluations for individuals applying for refugee status, most of whom live within the United States without U.S. documentation.[1] Politicians and pundits alike continue to make extreme and polarizing suggestions in response to this emerging and evolving issue; yet, few acknowledge the very significant historical and legal precedent already in place granting due process rights to this group. In this article, we review the case law and legal precedent protecting due process rights for domestically residing immigrants who are fleeing persecution, highlight violations of such rights, address counterarguments and lastly apply the theoretical arguments made in the paper to the clinical practice of forensic psychiatry.

Psychiatrists are most likely to interface with immigrants who are fleeing persecution in their role as asylum evaluators or primary treatment providers. This vulnerable group's claims for due process rights must be considered with great care, because many have experienced horrific trauma and remain in considerable danger.[2–4] Naturally, this population is a significantly disadvantaged group when it comes to support systems, access to social services, and a reasonable degree of knowledge and understanding regarding local language, customs, laws, and immigration proceedings. As will be discussed further, many are not even aware that applying for asylum is an option, and more still are unaware of the process for doing so.[2]

Early Domestic History, Terminology, and Classification

The international standard for asylum is defined by the 1951 Convention Relating to the Status of Refugees and subsequent 1967 Protocol Relating to

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the Status of Refugees.[5] Here, a refugee is defined as an individual with a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable . . . to avail himself of the protection of that country or . . . to return to it" (Ref. 5, Introductory Note). These UN documents also establish the critical guiding principles of nondiscrimination, nonrefoulement, and nonpenalization in asylum law. Nondiscrimination highlights the need for "provisions to be applied without discrimination as to race, religion or country of origin," or "discrimination as to sex, age disability sexuality, or other prohibited grounds of discrimination" (Ref. 5, Introductory Note). Nonrefoulement suggests that no governing body "shall expel or return a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears threats to life or freedom" (Ref. 5, Article 23). Similarly, nonpenalization submits that individuals seeking asylum "should not be penalized for their illegal entry or stay . . . the seeking of asylum can require refugees to breach immigration rules. Prohibited penalties may include being charged with immigration or criminal offenses relating to the seeking of asylum, or being arbitrarily detained purely on the basis of seeking asylum" (Ref. 5, Introductory Note).

Nearly three-quarters of the world's nations (144 of 195), including the United States, have signed onto the 1967 Protocol and thus agree with the same basic premise as to the fair and impartial treatment of asylum-seeking immigrants.[6] In addition, some terminology from the Protocol is represented directly in United States legislation. For example, the 1980 Refugee Act refers to a refugee as a person with a "well-founded fear of persecution." This strongly bipartisan landmark piece of United States legislation formalized the asylum process by creating the U.S. Coordinator for Refugee Affairs position, funding the Office of Refugee Resettlement to provide and coordinate services for new refugees, and raising the annual ceiling for refugees from 17,400 to 50,000 (Ref. 7, pp 8–10,16).

Due Process Rights for U.S. Citizens

Due process rights are guaranteed to all citizens (those born and naturalized in the United States) in federal matters by the Fifth Amendment in the Bill of Rights (1791), and further expanded upon in the Sixth and Fourteenth Amendments to the U.S. Constitution.[8–10] Of note, while much of the Fifth, Sixth, and Fourteenth Amendments apply to immigrants in the United States fleeing persecution, the phrase "nor be deprived of life, liberty, or property, without due process of the law" is perhaps the most applicable. This specific phrase is not discussed below but is quite important. It may be a given that most such immigrants are in search of liberty, whereas others may have accumulated property while in the United States, and unfortunately many may be fleeing persecution and violence and thus the "life" clause itself would apply to them as well.

Legal Rights for Undocumented Immigrants

A series of U.S. Supreme Court cases spanning over a century sequentially established due process rights for undocumented immigrants. Such rights should apply even more to the subgroup of undocumented immigrants who are residing in the United States because they are fleeing persecution. Many of these cases expanded upon the Equal Protection Clause of the Fourteenth Amendment, which initially guaranteed "equal protection of the laws" to "all persons born or naturalized in the United States," but did not directly address the matter of undocumented immigrants or those meeting criteria for asylum.

Yick Wo v. Hopkins (1886) guaranteed due process rights not only to newly freed African Americans, but also legal immigrants such as Chinese immigrant Yick Wo.[11] Here, Justice Matthews opined:

> The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. . . . These provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality, and the equal protection of the laws is a pledge of the protection of equal laws [Ref. 11, p 369].

Shortly thereafter in *Wong Wing v. United States* (1896) the Court ruled that, although Wong Wing was an undocumented immigrant detained for unauthorized entry into the country, due process rights applied to him.[12] Here, Justice Field opined, "The majority of the Justices in this case hold that whatever might be true as to the power of the United States to exclude aliens . . . could only be lawfully exercised after a judicial trial" (Ref. 12, pp 238–9), and then goes on to add, "But I do not concur, but

dissent entirely, from what seemed to me to be harsh and illegal assertions made . . . to deny the accused the full protection of the law and Constitution against every form of oppression and cruelty to them" (Ref. 12 p 239). Although peripherally related, *United States v. Wong Kim Ark* (1898) further expanded the reach of the Fourteenth Amendment by declaring that the children of "resident aliens," or foreign nationals residing within the United States, are indeed to be considered full citizens and be granted the rights conferring therein (Ref. 1313, pp 693–4).

The turn of the 20th century was punctuated by one of the most crucial cases in undocumented immigrant law heard by the Supreme Court in *Yamataya v. Fisher* (1903).[14] Although the court actually ruled against Kaoru Yamataya, a Japanese immigrant in this case, it did uphold and confirm that undocumented immigrants are guaranteed due process rights in deportation hearings, and specifically stated that such individuals could not be acted against without a fair hearing.

The modern definition of a fair hearing in removal proceedings for this population is found in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 under 8 U.S. Code § 1229a,[15] which clearly states, "the alien shall have the privilege of being represented, at no expense to the Government," and "the alien shall have a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien's own behalf, and to cross-examine the witnesses presented by the Government . . ." (Ref. 15 ¶(b)(4)).

The phrase "right to counsel at no cost to the government" is quite noteworthy. This suggests that, while legal counsel is considered a right for undocumented immigrants, the government will not absorb the cost of providing such counsel. Without dedicated nonprofit organizations, such clients would be responsible for representing themselves. This is in stark contrast to the U.S. criminal justice system in which all defendants are provided counsel, even if they cannot afford an attorney.

Given that deportation hearings are administrative rather than criminal proceedings, some have argued that due process rights need not apply. However, these arguments are directly countered by the Supreme Court's opinion in *Bridges v. Wixon (*1945), in which Justice Murphy opined that:

> Though deportation is not technically a criminal proceeding, it visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom. . . . That deportation is a penalty . . . cannot be doubted. Meticulous care must be exercised lest the procedure by which he is deprived of that liberty not meet the essential standards of fairness [Ref. 16, p 154].

These sentiments are further supported by the Court in *Wong Yang Sung v. McGrath* (1950) in which it defined aliens as a "voteless class of litigants who not only lack the influence of citizens, but who are strangers to the laws and customs in which they find themselves involved and who often do not even understand the tongue in which they are accused" (Ref. 17, p 46).

In *Plyler v. Doe* (1982), the Supreme Court reversed a Texas statute that barred illegal immigrants and their children born outside of the United States from obtaining a free public education.[18] Here again, Justice Brennan cited the Equal Protection Clause of the Fourteenth Amendment, and went on to opine, "Whatever his status under the immigration laws, an alien is surely a 'person' in any ordinary sense of that term. Aliens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments" (Ref. 18, p 210). The same year the court decided that those considered resident aliens who are not citizens but are given a foreign work permit are entitled to the same due process rights as citizens in *Landon v. Plasencia*.[19]

Evidence That Rights Are Being Violated

There is a growing body of evidence documenting widespread violations of the constitutional rights of undocumented immigrants fleeing persecution in our nation's recent past. Most such violations fall under the categories of deportation without a fair hearing (nonrefoulement), prolonged detainment without just cause (nonpenalization), and denial of asylum application based on religion or country of origin (nondiscrimination).

Right to a Fair Trial

As demonstrated above, the right to a fair hearing (nonrefoulement) is clearly a due process right for undocumented immigrants as established in U.S. case law, and deportation without a fair hearing could have life-threatening consequences for immigrants fleeing persecution.[2–4] For example, San Diego State University researcher Elizabeth Kennedy

conducted a comprehensive study analyzing data from January 2014 to September 2015, which suggests a "dramatically increased" murder rate for U.S. deportees to Central America in the two years leading up to the study, and cited at least 83 individual cases of such murders.[4]

In 2013, the U.S. Congress created a series of programs to facilitate what is informally known as "speed deportation."[20] More specifically, the Immigration and Nationality Act of 2014[21–24] was passed for the specific purpose of rapidly processing and removing noncitizens while limiting procedural protections such as legal representation or a hearing before an immigration judge.[20] Unfortunately, in many cases, the expedited removal of undocumented immigrants results in the unethical deportation of individuals who would otherwise meet criteria for citizenship on the basis of refuge from persecution, family ties, long-term residence, or steady employment in the country. In 2013 nearly 83 percent of undocumented individuals were deported without a removal proceeding being heard by a judge or an official removal order being placed, meaning only 17 percent had the potential to be granted their constitutional due process rights (Ref. 20, p 3). As discussed above, this process appears to be a violation of multiple Supreme Court rulings guaranteeing a fair hearing to this population. The Convention Against Torture clause of the Immigration and Nationality Act further supports that "any alien . . . irrespective of such alien's status, may apply for asylum."[25]

Proponents of speed deportation justify these policies through selective interpretation of fine print in deportation and asylum law. The required legal process for the U.S. Department of Homeland Security (DHS) following detainment of an undocumented immigrant by Customs and Border Protection (CBP) officers involves the officer initially reading a script to detainees advising them of their right to seek asylum in their native language. This script is brief and includes such phrases as "U.S. law provides protection to certain persons who face persecution, harm or torture upon return to their home country . . . if you fear or have a concern about being removed . . . you should tell me so during this interview" (Ref. 2, p 33). Those who choose to seek asylum are then asked to write a sworn statement justifying their claim, review the said statement, and then sign it. CBP officers must provide an interpreter or translator in the detainee's primary native language for all components of this initial process. CBP officers are then to refer those requesting protection from the U.S. government on the grounds of persecution and those fearing for their safety upon return to their native homeland to an asylum officer, regardless of the source of said persecution. The asylum officer then conducts a formalized reasonable fear interview and determines whether or not the fear of persecution presented is "reasonable" and "credible." If deemed appropriate, the case is forwarded to an immigration judge to be heard.[2,20,26] U.S. Customs and Immigration Services division data from 2008 through 2013 suggests a significant increase in annual credible fear reports from 5,000 to 37,000, and a similar increase in credible fear actually being established by asylum officers in approximately 30,000 of these cases.[27,28] Despite the more than 600 percent increase in the presence of legitimate credible fear over this time, the number of individuals granted asylum annually has remained the same at 10,000 per year.[28] This flat statistic may suggest a systemic resistance to granting asylum to individuals who meet criteria and also highlights the significant possibility that individuals with genuine concerns for their safety and persecution are being returned to life-threatening situations.

According to multiple reports, over the past several years, there have been significant barriers at nearly every step of the aforementioned process for asylum-seeking individuals. Furthermore, there is evidence to suggest that the surprisingly low rate of detained undocumented immigrants being referred to an asylum officer, ranging from four to nine percent, correlates with informal practices at the border resulting in the deterrence of such referrals. One study found that up to 15 percent of asylum seekers expressing a clear fear of persecution were expeditiously removed without even seeing an asylum officer, and that CBP officers had either erroneously or intentionally neglected to mention such fears in their paperwork in at least half of these cases.[26] In addition, in over half of the interviews, the required scripts were not read to the detainee. This evidence suggests a clear violation of a DHS requirement by CBP officers. As mentioned previously, referral by a CBP officer to an asylum officer should not be based at all on the source of danger presented. The only job of the CBP officer in this context is to determine whether there is a claim of persecution or fear of safety upon return and to refer appropriately thereafter. However, some reports suggest that CBP officers have been refusing to refer asylum seekers to asylum officers on the basis that gang-related or do-

mestic violence do not meet criteria for such a referral.[2,27] If this is true, CBP officers in such instances are stepping outside of their scope of practice and playing the part of an asylum officer, which would again be a violation of DHS requirements and procedures.

Despite the clear provision that asylum-seeking individuals are required to review and sign their sworn statements, the aforementioned study found that 72 percent of the time detainees were not given the opportunity to review them.[26] Not surprisingly, the United States Commission on International Religious Freedom gave a failing letter grade to CBP, a D to Immigration and Customs Enforcement (ICE), and a D to the DHS, suggesting that these government agencies and institutions are in great need of procedural improvement and refinement.

A report by the American Civil Liberties Union (ACLU), in which 136 deportees who never saw a deportation judge were interviewed along with 69 immigration attorneys, found that most of those ultimately deported were not asked about the potential for persecution or torture upon their return. Even more concerning is that 40 percent who actually reported such concerns were deported without seeing an asylum officer or being provided a fair hearing.[2] The majority of individuals in this study reported being given forms only in English which they could not read and did not understand verbally, at times were not read anything and were simply asked to sign, and were not provided with a translator, interpreter, or officer who spoke their language. Thus, for all intents and purposes, most undocumented individuals detained in this study did not even know about their right to request asylum from the U.S. government and would not know to express their fears of returning at this point in the process.

Moreover, the current system requires the detainee to present sensitive information to the very officers who in some cases forcibly restrained and detained them.[2] Although unsubstantiated, it is worth mentioning a report from the American Immigration Council in which detainees claimed they had not only been dissuaded from seeking asylum, but had also been berated, yelled at, harassed, and even threatened with separation from their families or long detentions by CBP officers if they applied.[27] Clearly even if these accounts are only partially true, this type of treatment would serve to greatly deter individuals coming forth with asylum claims.

There are other reasons why asylum-seekers may have difficulty opening up about their safety concerns in such circumstances. Some may have traumatic stress disorder, and others may be delirious from dehydration and malnourishment following their long and often treacherous journey. More still may have difficulty trusting U.S. officers after suffering at the hands of corrupt and predatory police and military personnel in their countries of origin.[2] Given a documented history of asylum-seeking individuals being murdered after deportation to their country of origin,[2–4] the types of procedural infractions being mentioned could be considered refoulement and therefore in direct violation of the 1951 Convention Relating to the Status of Refugees/1967 Protocol Relating to the Status of Refugees.[5]

Right Against Wrongful Detainment

Indefinite detention of undocumented individuals fleeing persecution in the United States is also a clear violation of their due process rights. As established in *Bridges v. Wixon* (1945),[16] wrongful detainment has been equated to punishment for asylum-seeking individuals and is therefore a direct violation of the nonpenalization clause of the 1951 Convention Relating to the Status of Refugees/1967 Protocol Relating to the Status of Refugees.[5]

A number of sources have documented the extended confinement of asylum-seeking individuals in U.S. detention camps or even U.S. federal prisons for months to years.[2,20,28–30] Individuals who meet criteria for a reasonable fear interview with an asylum officer wait an average of 111 days in detention, whereas the law requires such interviews be conducted and a final decision reached within 10 days.[2] Likewise, there has been a massive expansion of immigration detention with a total of 6,000 individuals detained in the entire 1994 calendar year, compared with approximately 380,000 individuals being detained at any given time at various points after 2008.[31] These individuals are simply seeking asylum and have not violated any laws apart from crossing the border without documentation. As mentioned above in the "non-discrimination" clause, individuals fleeing persecution who must break immigration laws to reach safety should not be punished for such offenses.[5] They have not conspired in acts of terrorism and are not targets of other governmental activity based on suspicious behavior. There is legal precedent that the impingement of the due process rights

of detained individuals, even when undocumented immigrants, is considered unconstitutional. Both *Wong Wing v. United States* (1896)[12] and *Carlson v. Landon* (1952)[32] unequivocally held that preventatively detaining individuals without a known flight risk or a specific and known danger to the community is a violation of their due process rights.

The Supreme Court revisited this point in 2001 in *Zadvydas v. Davis*.[33] The Court ruled that the indefinite detention of undocumented immigrants, specifically those who had been ordered deported but could not be for administrative reasons, served no legal or governmental purpose and therefore violated due process rights. In its finding, the Court opined that detention outside of a risk of flight or danger to the community should largely be considered unconstitutional and set the maximum acceptable detention period at six months. Any detention beyond this would be considered unconstitutional and require a hearing for the continuation of detention, unless the government could show imminent removal or argue for "special circumstances." In the words of Justice Kennedy, "Both removable and inadmissible aliens are entitled to be free from detention. . . . Where detention is incident to removal, the detention cannot be justified. . . . This accords with international views on detention of refugees and asylum seekers" (Ref. 33, p 687). Justice Kennedy cited the aforementioned *Wong Wing v. United States* (1896)[12] several times in the *Zadvydas v. Davis* (2001) decision as legal precedent and support for his opinion.[33] Despite this precedent, institutions within the U.S. government, such as the Immigration and Naturalization Service (INS) and Department of Homeland Security, have openly admitted to the use of detainment as a form of punishment and even as a political tool to send a message to particular refugee groups. This is demonstrated in the Florida district court case of *Jeanty v. Bulger* (2002).[34] In this case, 167 Haitians were rescued by the U.S. Coast Guard, most of whom were detained for approximately six months due to a change in INS/DHS policy restricting their release (Ref. 34, p 1369). INS officials "feared a mass migration and sought to deter more Haitians from making the dangerous voyage" (Ref. 34, p 1373). Four of the Haitians who had passed credible fear interviews petitioned the government for a writ of *habeas corpus*, claiming discrimination based on nationality and prolonged detention, despite passing the credible fear interviews (Ref. 34, p 1370). Ultimately the District Court and Court of Appeals sided with INS/DHS and dismissed the claims of the Haitian refugees, arguing that refugees have no right to parole despite the opposing *Zadvydas v. Davis* ruling one year prior.[34]

Not only is detaining hundreds of thousands of undocumented individuals a likely violation of international law and due process constitutional rights, but the conditions in which these individuals have been confined are highly questionable at best and quite possibly inhumane. Detainees have reported verbal abuse and interrogation from officials, overcrowded jail-like cells which are literally prisons and military instillations in a number of cases, very cold temperatures, no beds (resulting in families and children sleeping on the floor), no access to showers, multiple individuals using a public bathroom with no privacy, decreased access to potentially lifesaving medical care, inadequate food supply, and separation of family members, including children from their parents, in the detention process.[2] Although difficult to substantiate, several organizations filed a formal complaint to the DHS Office for Civil Rights alleging 116 cases of abuse by CBP officials against children aged 5–17 years, including reported shackling, rape, death threats, and denial of medical care.[2] These detainees are often highly traumatized victims of severe human rights violations who have undergone a treacherous journey to escape callous and unemotional predators. If these stories are true, there is considerable injustice in such individuals arriving in search of refuge only to be treated as if they themselves are the perpetrators of heinous crimes.

In 2010, there was a potential shift in immigration proceedings when ICE announced that those who entered the United States through main ports of entry and met credible fear requirements were to be granted parole.[28] However, this policy has reportedly been violated in a number of cases, and this policy does little to address the thousands upon thousands of undocumented individuals fleeing persecution who have crossed the border at other locations. Although in some circumstances, immigration judges may set bonds for the release of detainees, most such migrants arrive nearly penniless and thus even a $5,000 or $10,000 bond is significantly higher than they would be able to afford.[28]

One potential reason that the aforementioned wrongful detainment has gone unnoticed is that individuals have actually voiced a preference for jail

time to what they view as certain death or even worse in torture, abuse, sexual exploitation, or enslavement upon return to their country of origin. In the words of a woman who was beaten so severely in Honduras that she miscarried a child, and whose continued bleeding in U.S. detention was not addressed by CBP officials, "All you're going to find in Honduras is death. . . . I would prefer one year in jail alive to death" (Ref. 2, p 35).

Rights Against Discrimination

The Trump administration has taken a considerably harsher stance toward immigrants fleeing persecution both at home and abroad than the past several administrations. Executive Order 13769/13780 ("Protecting the Nation from Foreign Terrorist Entry into the United States")[35] completely suspends the U.S. Refugee Admissions Program for 120 days, which naturally has a very direct impact on not only those seeking asylum but potentially even those who were already been granted refugee status. Federal judges and corresponding attorneys general from five states have now challenged this executive order as unconstitutional based on religious discrimination and a violation of the First Amendment's Establishment Clause.[36] Hawaii judge Derrick Watson wrote in his ruling, "the entirety of the Executive Order runs afoul of the Establishment Clause, where openly available data support a commonsense conclusion that a religious objective permeated the government's action."[37] It also theoretically violates the nonrefoulement clause to the extent that individuals in danger are returned to their countries of origin, as well as the nonpenalization clause to the extent that such individuals are punished or detained.

Counterarguments to Due Process Rights

As stated previously, basic due process rights are guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution and subsequent U.S. Supreme Court cases for both citizens and noncitizens when being tried within the continental United States, "except in cases arising . . . in time of War or public danger."[8]

Those opposing due process rights for undocumented asylum-seeking individuals may cite the aforementioned "times of war" clause, suggesting that the United States is currently at war with terrorism, terrorist-harboring nations, or entities sympathetic to terrorist plights as reason to restrict such due process rights. However, there are a number of limitations to this argument. First, the War on Terror, much like the so-called War on Drugs and War Against Poverty, is not a war against a foreign entity that has been officially sanctioned by the United States Congress. Given that recent presidents have largely acted without congressional approval, current counterterrorism activities are not technically under the auspices of war as defined by the constitution.[38]

Similarly, opponents may also cite the aforementioned "public danger" clause as a reason due process rights should not apply to immigrants fleeing persecution. However, such immigrants undergo a thorough vetting process. As a result, the data overwhelmingly show that most immigrants, both legal and undocumented, are not violent criminals. In fact, the preponderance of evidence demonstrates that immigrants are five times less likely to commit crimes than their American citizen counterparts.[39] This is even the case for young immigrant men and immigrants with low levels of income and education.[40]

The Role of Forensic Psychiatrists

Psychiatrists fulfill a crucial legal, professional, and humanitarian role for our modern society in providing asylum evaluations for immigrants seeking refugee status. Many psychiatrists provide this service *pro bono* on their own personal time. Recent political shifts could have significant real-world effects for asylum evaluators. Most psychiatrists providing these evaluations cite the aforementioned UN criteria.[5] However, this standard could be reversed if multiple branches of the government are unified against it.

Such a paradigm shift could have multiple effects for psychiatrists performing asylum evaluations. First, in the case of a newly established gold standard, the entire premise of asylum evaluations may have to be altered to meet new requirements. There may also be certain ethnic groups for whom asylum is simply denied on the basis of their national origin or religious identity. Second, in light of the recent Executive Orders, evaluating psychiatrists may have open cases pulled from court dockets, while the subjects potentially face deportation. Third, both clinical and forensic psychiatrists may have to be especially careful regarding how they document working with such individuals and their families so as not to endanger them further. Finally, it is possible that the law enforcement and judicial cultures in the United States

will shift such that the fact an individual is undocumented far outweighs even glaringly obvious cases for asylum.

Psychiatrists passionate about due process rights for asylum-seeking immigrants may be able to advocate for this underrepresented group in more ways than one. While providing asylum evaluations and direct clinical care are probably the most proximal ways of working with this community, larger advocacy efforts should not be discounted and may have even farther-reaching effects. Fighting to maintain the legal precedent argued here could have a drastic impact on thousands of at-risk lives.

Immigrants fleeing persecution are an incredibly vulnerable population that has been present since the very founding of our nation. As noted above, most such individuals are hardworking and nonviolent. They have often escaped treacherous circumstances and seek refuge in a country where they can make an honest living for their families and contribute positively to society. They are a group without a voice, largely without advocates and without the financial support of lobbyists, and whom many governments view as the problem of another. However, despite these seemingly insurmountable barriers, this is also a group for whom constitutional due process rights have been firmly established and reaffirmed through case law. After all, since its inception the United States has always has been a nation of immigrants, many of whom fled one form of oppression or another themselves. Compassion toward others in need has always been one of our nation's noblest qualities. Our basic humanity, decency, and civility will indeed be challenged in the most recent chapter of our nation's history and will have to stand the test of time if we are to maintain our core identity and set of values as a people.

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