



The Yale Law Journal

VOLUME 135 NOTES AND COMMENTS SUBMISSION GUIDELINES

I. INTRODUCTION

We invite and encourage current J.D., M.S.L., and LL.M. students* to submit a Note or Comment for publication in Volume 135 of the *Yale Law Journal*. A Note or Comment makes an original, well-supported argument that advances a frontier of legal scholarship. Publication in the *Journal* allows student authors to communicate their ideas to the legal community, develop their scholarly voice, and join a time-honored tradition of excellence and innovation in student scholarship. We are strongly committed to publishing an array of Notes and Comments that reflect the diversity of intellectual interests at the law school.

The Volume 135 submission deadlines (“drop dates”) are: **February 20, 2025, at 5 PM, April 3, 2025, at 5 PM, July 3, 2025, at 5 PM, and September 11, 2025, at 5 PM**; all Eastern Time.

Please refer to the rest of this memorandum for guidance on developing and submitting your Note or Comment. The Notes & Comments Committee (Committee) takes its commitment to anonymous review seriously. To preserve anonymity, all questions regarding the Notes & Comments submissions process and requests for Notes & Comments Development Editors following receipt of a Feedback Letter should be directed to Managing Editors Ako Ndefo-Haven (ako.ndefo-haven@yale.edu) and Matthew Beattie-Callahan (matthew.beattie-callahan@yale.edu). **Please do not contact any member of the Notes & Comments Committee regarding your submission.**

II. DEVELOPING YOUR NOTE OR COMMENT

What Is a Note?

A Note is a student-written piece of legal scholarship. Notes are not limited by topic, methodology, or approach. Successful Notes typically share the following three characteristics:

- **Originality:** The Note should advance a particular area of legal scholarship beyond its current state, situating itself within and contributing to an existing legal discourse.
- **Justification and support:** The Note’s argument should be analytically sound. Each step in the argument should be well supported by legal authorities. The Note should provide persuasive evidence for each of its conclusions and acknowledge the limits of its argument.

* LL.M. candidates who **do not already have J.D.s** are eligible to submit Notes and Comments. LL.M. candidates who have existing J.D.s may **not** submit Notes and Comments, and are encouraged to submit Articles, Essays, or *Forum* pieces.

Citations should be complete and unambiguous. The *Journal* follows *The Bluebook: A Uniform System of Citation* (21st ed. 2020) for citation form and the *Chicago Manual of Style* (17th ed. 2017) for stylistic matters not addressed by *The Bluebook*.

- **Clear writing and structure:** The Note should employ clear and concise prose, and it should present the argument logically. It should clearly convey its thesis and the relevance of each section to the overall argument.

We welcome Notes adapted from clinical briefs, memos, and seminar papers. We encourage submissions of varied styles, and urge all authors to review Notes published in *YLJ* to understand the form of successful submissions. Many excellent Notes originate from Substantial Papers (Substantials) or Supervised Analytical Writings (SAWs), but effective Notes differ from most Substantials and SAWs in two main ways. First, a Note need not contain a lengthy literature review and should proceed quickly to the author's original argument and analysis. Second, a Note should be directed at a broad legal audience, not at a single professor.

Notes published in previous volumes of the *Journal* provide examples of excellent student scholarship. Historically, we have published Notes related to a wide variety of subject matter. Recent examples include:

- Ryan Francis Pollock, Note, [*The Eyes-On Doctrine*](#), 134 YALE L.J. 200 (2024).
- Daniel Backman, Note, [*The Antimonopoly Presidency*](#), 133 YALE L.J. 342 (2023).
- Rubin Danberg Biggs & Patrick Holland, Note, [*Familial-Status Discrimination: A New Frontier in Fair Housing Act Litigation*](#), 132 YALE L.J. 792 (2022).
- Steffi Ostrowski, Note, [*Judging the Fed*](#), 131 YALE L.J. 726 (2021).
- James T. Campbell, Note, [*Island Judges*](#), 129 YALE L.J. 1888 (2020).
- Valeria M. Pelet del Toro, Note, [*Beyond the Critique of Rights: The Puerto Rico Legal Project and Civil Rights Litigation in America's Colony*](#), 128 YALE L.J. 792 (2019).
- Yumehiko Hoshijima, Note, [*Presidential Administration and the Durability of Climate-Consciousness*](#), 127 YALE L.J. 170 (2017).

What Is a Comment?

A Comment is a short piece of student scholarship that presents an original and concise argument with a strong, clear thesis and succinct review of existing literature.

Comments come in many forms. The *Journal* has previously published case Comments (i.e., those evaluating particular court decisions), practitioner-oriented Comments, Comments that survey or critique an area of jurisprudence, and Comments that identify tensions or gaps in both modern and long-established doctrines. Citations should be complete and unambiguous.

Many of the Comments published in the *Journal* have been based on ideas that authors encountered through work in clinics, summer internships, and research assistantships. The diversity in the breadth and scope of published Comments underscores that any piece with a clear and original thesis can be successful. Again, we encourage submissions of varied styles and urge authors to review Comments published in *YLJ*.

Comments published in previous volumes of the *Journal* provide examples of excellent student scholarship. Like Notes, we publish Comments related to a wide variety of legal issues. Recent examples include:

- Ryanne Bamieh, Comment, [*Seeking Equity in Electronic Monitoring: Mounting a Bearden Challenge*](#), 133 YALE L.J. 629 (2023).
- Marnie Lowe, Comment, [*Fruit of the Racist Tree: A Super-Exclusionary Rule for Racist Policing Under California's Racial Justice Act*](#), 131 YALE L.J. 1035 (2022).
- Lisset M. Pino, Comment, [*Colonizing History: Rice v. Cayetano and the Fight for Native Hawaiian Self-Determination*](#), 129 YALE L.J. 2574 (2020).
- Jade Ford & Mary Ella Simmons, Comment, [*The Treaty Problem: Understanding the Framers' Approach to International Legal Commitments*](#), 128 YALE L.J. 843 (2019).
- Charles C. Bridge, Comment, [*The Bostic Question*](#), 126 YALE L.J. 824 (2017).
- Joshua Revesz, Comment, [*Ideological Imbalance and the Peremptory Challenge*](#), 125 YALE L.J. 2182 (2016).

Resources for Developing Your Note or Comment

The Notes & Comments Committee offers resources for students who are interested in learning more about the submissions process or receiving feedback on their ideas or writing.

Graduate Writing Lab

Before submitting a piece of scholarship to *YLJ*, we encourage students to take advantage of the resources at the Graduate Writing Lab (GWL). The GWL's Associate Director, Patricia Trainor, J.D., and its team of Graduate Writing Fellows are available to discuss your project. A consultant can meet with you at any point in the writing process to offer feedback and help plan your next steps. Writing consultations provide constructive analysis of your work, add structure to your writing process, and can help you gear your writing towards the Notes & Comments submissions process.

You can book an appointment on the GWL [online scheduler](#). Drafts aren't required for writing consultations, but if you have one, your consultant will read it before your meeting. You can upload your draft on the scheduler or sent directly to your consultant. Please give your consultant ample time to read the draft (24 hours for papers up to 10 pages long; 48 hours for papers over 10 pages long). If you have any questions, contact Patricia Trainor at patricia.trainor@yale.edu.

Empirical Scholarship Editor

Also, we encourage students submitting data-driven scholarship to attend Office Hours hosted by our Empirical Scholarship Editor (ESE), Ethan Wang. The ESE is available to discuss any piece that has **not been previously submitted to *YLJ***. ESE Office Hours may serve as opportunities to assess data needs, locate quality data sources, clean or analyze data, work through

coding or statistical analysis issues, and develop figures, charts, and other forms of data visualization.

You can sign up for a thirty-minute Office Hours slot with Empirical Scholarship Editor Ethan Wang. To sign up for a slot, or for questions regarding ESE Office Hours and empirical scholarship at *YLJ*, please contact Ethan directly at ethan.wang.esw43@yale.edu.

The ESE does not sit on the Committee and does not ordinarily participate in Committee deliberations. The Notes & Comments Committee will not know whether or not you met with the ESE prior to submission, and attending ESE Office Hours prior to submission will have **no bearing** on the Committee's deliberations. Given their separation from the Committee, the ESE is a useful resource for students who are still in the writing and revision process.

Notes & Comments Development Editors

Students who have submitted a piece to *YLJ*, received a Feedback Letter, and are interested in resubmitting may request a Notes Development Editor (NDE) or Comments Development Editor (CDE). Unlike the ESE, NDEs and CDEs serve on the Committee. They work with student authors to provide substantive, stylistic, and organizational advice during the revision and development process. Most importantly, NDEs and CDEs elaborate on the contents of Feedback Letters. We strongly encourage authors to take advantage of the NDE/CDE program in anticipation of resubmitting their pieces at a later drop date.

NDEs and CDEs are assigned to authors on a first-come, first-served basis. Students who are assigned an NDE or CDE are entitled to one meeting with their NDE/CDE to discuss their Feedback Letter. NDEs will not meet with students in the week leading up to a drop date (e.g., the last date that an NDE consultation can be scheduled before the April 3 drop date is March 28). Following the meeting, NDEs and CDEs will also respond to follow-up questions on one full draft.

Please note that NDEs and CDEs are recused from discussing and voting on Notes and Comments that they are assigned. **It is important that you do not contact a Notes & Comments Editor directly to request their assistance in developing your piece.** Instead, email Managing Editors Ako Ndefo-Haven (ako.ndefo-haven@yale.edu) and Matthew Beattie-Callahan (matthew.beattie-callahan@yale.edu) to request an NDE or CDE. In your email, please include: (1) your name and class year, (2) the title of your submission, (3) the most recent drop date for which you submitted the piece, and (4) a copy of any Feedback Letter(s) you received.

Please note that NDEs and CDEs are available only **after** submission to *YLJ* and receipt of a Feedback Letter; students interested in advice or suggestions before submitting their Note to *YLJ* for the first time should consult with the Graduate Writing Center, the ESE, or professors. NDEs and CDEs will not be available before the February 20 drop date.

Student-Scholarship Funding

YLJ has limited funding available to support student scholarship. To be eligible to apply for YLJ funding, a Yale Law School student must have exhausted all of Yale Law School's academic research funding opportunities and plan to submit their project to YLJ as a Note or Comment. Note that this funding is separate from the YLJ Summer Grants Program funding. While students may avail themselves of both resources, they may not use both for the same project. For example, a student may not use both Summer Grants funding and Student-Scholarship funding on Project A. However, that student may use Summer Grants funding on Project A and Student-Scholarship funding on Project B.

To apply, please email ylj@yalelawjournal.org and attach the following:

1. Documentation showing that you have applied to, and have not received funding from, the Oscar M. Ruebhausen Fund, the Streicker Fund for Student Research (if eligible), and the Howard M. Holtzmann Fund in International Arbitration and Dispute Resolution (if eligible); and
2. A one-to-three-page proposal that includes: the title of your project, the amount of funding you are requesting, your faculty advisor (if any), a brief description of the project and the specific purpose of the funding you are requesting, an anticipated timeline, whether you intend to submit your project to YLJ as a Note or Comment, and a brief explanation of the original contribution your project will make to existing literature.

Students who receive YLJ funding for their scholarship will be required to submit their project as a Note or Comment and, upon publication (in YLJ or another publication), disclose that their research was funded by YLJ.

III. POLICIES ON REVIEWING AND ACCEPTING NOTES AND COMMENTS

Anonymous Review

The Committee is strongly committed to impartial, anonymous review. Notes and Comments are reviewed without knowledge of authors' names or other identifying information, and authors' identities are only revealed to the Committee after a Note or Comment has been accepted. Any Committee member who can identify the author of a Note or Comment with confidence will be recused from deliberations.

To preserve the anonymity critical to the Committee's review of submissions, you should not discuss any aspect of your Note or Comment or the submissions process with members of the Committee, apart from your NDE or CDE, if applicable.

The Notes & Comments Committee will not consider submissions that contain identifying information about the author. **Prior to uploading any documents, please double-check to make sure that you have removed all self-identifying references from your documents (except the Submission Form, which is the only document that should contain identifying information).** To

remove document metadata, in Microsoft Word, navigate to the “Info” option under the “File” menu, run “Inspect Document,” then click “Remove All” next to “Document Properties and Personal Information.”

Notes and Comments Revision

All students who have submitted a Note or Comment will be notified promptly of the Committee’s decision, which will entail one of the following: (1) acceptance of the Note or Comment, or (2) a request to revise and resubmit the Note or Comment. Students who receive a request to resubmit the Note or Comment will also receive a Feedback Letter, which evaluates the strengths and weaknesses of the Note or Comment and provides constructive feedback on how the author should revise the Note or Comment to increase its likelihood of acceptance. Once you receive a Feedback Letter, you can request an NDE or CDE to review it.

Please note that acceptance of a Note or Comment on the first submission is extremely rare. The vast majority of Notes and Comments published in the *Journal* are accepted on the second or even third submission. We strongly encourage all students who receive a Feedback Letter to incorporate the Committee’s suggestions for revision and resubmit their Note or Comment. We also recommend that students who receive a Feedback Letter work with an NDE or CDE to revise their work for resubmission. Finally, we encourage you to submit your work at the earliest drop date possible. The earlier you submit, the more time you will have to implement the Committee’s suggestions and resubmit later.

Membership

The Notes & Comments Committee welcomes submissions from non-*YLJ* members. Students whose Notes (single-authored or coauthored by a maximum of two total students) are accepted for publication by the July drop date before their 3L year will be invited to join *YLJ* as First-Year Editors (“Note-on”). Students who Note-on will be held to the same responsibilities as students offered membership through our standard admissions process and must complete a Bluebook training program. Note-on membership will be revoked if the Note is not published in Volume 135. Typically, two to five students are invited to join the *Journal* on the basis of Note acceptance in each volume. Students who Note-on before the winter of their 2L year will have the opportunity to slate for upper-masthead positions. There will be no “Comment-on” process.

IV. POLICIES ON NOTES AND COMMENTS SUBMISSION

Eligibility

Only J.D., M.S.L., and LL.M. candidates* at Yale Law School can submit Notes and Comments. Students may submit cowritten Notes or Comments (with a maximum of two authors) only if both authors are eligible J.D., M.S.L., or LL.M. candidates at Yale Law School.

Eligible LL.M. candidates may submit **either** to Notes & Comments **or** Articles & Essays in Volume 135. In other words, an LL.M. candidate who is otherwise eligible to submit to Notes & Comments or Articles & Essays **may not submit both types of scholarship**. Students who have already acquired a J.D. may *not* submit a Note or Comment, and are welcome to submit Articles, Essays, or *Forum* pieces.

Eligible students may *submit* up to a maximum of one Note and two Comments per drop date. Eligible students may *publish* up to one Note and one Comment in Volume 135. Eligible students may publish up to one Note and two Comments total *across* Volumes (e.g., a student who published one Note and one Comment in Volume 134 will not be allowed to publish a second Note in Volume 135, though they may publish a second Comment in Volume 135). Otherwise-eligible members of the Class of 2025 may submit a Note or Comment to any of Volume 135's four drop dates, including the July and September drop dates following their graduation.

Word Limit for Notes

First-time Note submissions are subject to a word limit of 20,000 words. To be fair to authors who comply with the word limit, the Committee will not review first-time submissions that exceed 20,000 words. The word limit includes text and footnotes but does not include the Abstract (which is no more than 100 words), Table of Contents, or Statement of Originality. Second-time submissions are subject to a word limit of 22,500 words. Additional submissions are not subject to a word limit, but submissions of over 25,000 words are rarely over 25,000 words when they are submitted. Previous submissions to Volume 133 or 134 count toward these restrictions.

Please note that there is no minimum Note length. Quality is not correlated with quantity, and your Note need not come close to utilizing the full 20,000-word allowance. In the past, the Committee has accepted Notes that were **significantly shorter** than the maximum. We **strongly encourage** you to avoid making your submission longer than necessary, especially given that Notes often increase in length upon resubmission. While the Committee anticipates that accepted manuscripts will increase in length throughout the editing process, we will not publish Notes longer than 25,000 words without special approval from YLJ.

* Only LL.M. candidates who **do not already have J.D.s** are eligible to submit Notes and Comments. LL.M. candidates who have existing J.D.s may **not** submit Notes and Comments, and are encouraged to submit Articles, Essays, or *Forum* pieces.

Word Limit for Comments

First-time Comment submissions must be between 3,000 and 7,000 words. The Committee will not review first-time submissions outside this range. This word limit includes text and footnotes, but does not include the Statement of Originality. There is no word limit for resubmitted Comments.

The Committee has accepted Comments at both extremes of the range. Quantity is not correlated with quality, and we strongly encourage you to avoid making your submission longer than necessary. While the Committee expects accepted manuscripts to increase in length throughout the editing process, we will not publish Comments longer than 10,000 words without prior approval from YLJ.

Font, Spacing, and Format

Please use double-spaced, 12-point Times New Roman font for the main text of your Note or Comment and single-spaced, 10-point Times New Roman font for the footnotes. The Note or Comment should use one-inch margins on all sides and include page numbers in the bottom-right corner of the page.

Source Corroboration

All citations, including datasets, must be capable of being corroborated by the *Journal*. If your submission is accepted for publication, you will be asked to provide PDFs and hardcopy books of your sources to the Managing Editors to assist our source corroboration procedure. In addition, authors must obtain prior, written permission for the use and publication of any nonpublic material, including but not limited to quotes or paraphrases from interviews, nonpublic court documents or records of adjudication, and nonpublic data. **This provision is particularly important if your Note or Comment is the product of summer employment, clinical work, or a research assistantship.** The Notes & Comments Committee will determine whether such permission is acceptable.

Statement of Originality

A Statement of Originality should accompany all Note and Comment submissions and resubmissions. Please find a sample Statement of Originality below. The Statement of Originality should accomplish several objectives:

- First, it should identify the Note or Comment's **original contribution** to the literature. You should think of the Statement of Originality as an opportunity to highlight the novelty of your argument to a nonexpert audience.
- Second, the Statement should clearly and precisely explain the Note or Comment's **relationship to the closest existing works** on the topic. What sources does your Note or Comment build on, and how does your Note or Comment deviate from existing arguments? Every piece of scholarship relies on what has come before, so the Statement

should discuss the Note or Comment's major sources and intellectual debts, including cited and uncited scholarship. Do not merely list your sources; instead, explain them and distinguish your argument from those of other authors.

- Third, the Statement should discuss the literature that forms the **intellectual background** for the Note or Comment. Please feel free to discuss ideas or material that would contribute to an appreciation of your argument but were not emphasized in the Note or Comment itself.

We use the Statement of Originality to learn more about the nature and extent of a Note or Comment's original contribution. The Statement of Originality is **not** an opportunity to make an extended pitch for your Note or Comment as a whole – only for the aspects that are original. You should not reproduce the Introduction in your Statement, nor should you include a detailed roadmap. You should only discuss the finer details of your Note or Comment insofar as they are necessary to convey the substance and contours of your original contribution.

When it comes to the existing literature, however, you should err on the side of caution and overinclusion. We expect authors to identify the literature that comes closest to the Note or Comment, to describe this literature accurately, and to explain the relationship between the Note or Comment and existing literature honestly. **Please note that we conduct preemption checks for each submission.** Even beyond the acceptance process, every Note or Comment author is expected to stand behind their Note or Comment as original and accurate. If it is discovered after acceptance that the Note or Comment does not meet these standards, the piece will not be published.

The appropriate length for your Statement of Originality may vary depending on the topic and scope of the existing literature. **While there is no minimum required length, the word limit for the Statement is 1,500 words, excluding footnotes.** That is, the Committee will only read the first 1,500 words of the Statement. It is by no means a requirement to meet the 1,500-word limit. An example Statement of Originality appears at the end of this document. Be sure to check both legal and nonlegal books and periodicals, as well as both online and printed sources. If you decide to work with an NDE or CDE in developing your submission, they will be available to offer advice on the Statement of Originality. Additionally, you can find a tutorial on preemption checking from the Yale Law Library at: <https://library.law.yale.edu/research-guides/preemption-checking>.

Resubmission Memorandum

Authors who are resubmitting their Note or Comment must include the following materials in their submission package: (1) all Feedback Letters, including Revise & Resubmit memos from previous Volumes of the *Journal*, and (2) a Resubmission Memorandum. The Resubmission Memorandum should describe how the Note or Comment has changed since the prior submission and why these changes have improved or strengthened the Note or Comment. Of special interest to the Committee is how the author has chosen to implement suggestions offered in past R&Rs/Feedback Letters. Approximately one page should suffice. **If you have previously resubmitted your Note or Comment, please submit your previous Resubmission Memoranda as well** (i.e., please submit a Resubmission Memorandum corresponding to each R&R/Feedback

Letter that you have received for the Note or Comment).

V. HOW TO SUBMIT YOUR NOTE OR COMMENT

The *Journal* accepts student Note and Comment submissions only through our [online submission system](#). If you have any difficulties with the mechanics of the submission process, please email Managing Editors Ako Ndefo-Haven (ako.ndefo-haven@yale.edu) and Matthew Beattie-Callahan (matthew.beattie-callahan@yale.edu) with questions.

1. To submit your Note or Comment, go to <https://yalelawjournal.my.site.com/submissions>. If you have never used YLJ's submission platform before, click "Not a member?" to create your account.
2. Once logged in, click "New Submission," then check the "Student Note" or "Student Comment" bubble and select "Next."
3. Follow the instructions to input the required information on the next three screens.
4. On the "File Uploads" page, you must upload the following submission materials in Microsoft Word format:
 - a. **Submission File:** Upload your fully anonymized submission. Please be sure your document includes a Table of Contents and a Cover Page. The Cover Page should include: (1) the title of your piece in the upper left corner, (2) the word count including footnotes, (3) an Abstract no longer than 100 words, and (4) a sentence indicating whether you have previously submitted the Note or Comment.
 - b. **Supplementary Files:**
 - i. **Statement of Originality:** Upload your Statement of Originality. As with your submission, please be sure that your Statement of Originality has been thoroughly anonymized and that your name and other identifying information do not appear anywhere in the document, including in the filename.
 - ii. **Feedback Letter(s)/Revise & Resubmit Letter(s):** If you have previously submitted your Note or Comment (even to prior Volumes), you are required to upload the **original version** of any previous Feedback Letter(s)/R&R(s) associated with your submission.
 - iii. **Resubmission Memorandum:** If you have previously submitted your Note or Comment (even to prior Volumes), you are required to upload a Resubmission Memorandum responding to the Feedback Letter. If you have previously resubmitted your Note or Comment, please upload all previous Resubmission Memoranda as well.
 - iv. **Disclosure Requirements:** The *Yale Law Journal* requires disclosure of conflicts of interest, underlying data, and IRB approval, when applicable. To comply with these requirements, please upload as a supplementary file a single document titled "[SUBMISSION TITLE]_DISCLOSURES." These disclosure requirements are discussed at greater length in our [General Submission Guidelines](#). For the *Journal's* guidelines pertaining to empirical work, please refer to the [Data-Retention Policy for Authors](#) and [Dataverse Instructions](#).

5. After uploading the required documents, select “Next” to navigate to the “Submit” page. Confirm the accuracy of the information you have provided, then select “Submit.”
6. Follow the link to and complete the **mandatory [Notes & Comments Submission Survey](#)**. **This Survey is required for all Notes or Comments authors, and your submission will not be reviewed until you have filled it out.** Note that Members of the Notes & Comments Committee will **never** gain access to the contents of this Survey, and your **personal information will not be used to evaluate** your Note or Comment. Your information will be held in strict confidence by the Managing Editors, and only the Managing Editors will know the identity of authors whose Notes or Comments are not accepted. Your information may be used at an aggregate level to help the Committee better understand the composition of the submissions pool, but it will not be linked to you as an identified or unidentified individual. If you have any questions about this Survey, please contact Managing Editors Ako Ndefo-Haven (ako.ndefo-haven@yale.edu) and Matthew Beattie-Callahan (matthew.beattie-callahan@yale.edu).

The Notes & Comments Committee will not review submissions that depart from any of the guidelines contained in this memorandum or that are otherwise incomplete.

* * *

We sincerely look forward to receiving and reading your Note or Comment. Please contact Managing Editors Ako Ndefo-Haven (ako.ndefo-haven@yale.edu) and Matthew Beattie-Callahan (matthew.beattie-callahan@yale.edu) if you have any questions.

Sample Statement of Originality

Domestic Violence Asylum After *Matter of L-R-*

This Note discusses the legal obstacles to asylum applications by women fleeing severe domestic violence. As described in Part II(B) of the paper, this type of asylum claim has a long and tortured history over the past 20 years. The Note questions whether recent developments – specifically, DHS’s willingness to support some asylum applications by domestic violence victims in Immigration Court – will actually lead to greater consistency in the adjudication of such claims. I outline a series of doctrinal flaws in the DHS position and suggest that those flaws are contributing to inconsistent adjudications that jeopardize the safety of women who come to the U.S. seeking refuge from domestic violence. I then offer a new proposal for a regulatory reform analogous to the 1996 statutory reform allowing asylum claims based on avoidance of forcible population control policies (namely, China’s one-child policy) and describe the regulatory hurdles that such a reform would have to overcome.

While there is an existing literature on the general topic of women and asylum, the rapidly changing nature of the law in this field has rendered most accounts of domestic violence asylum largely outdated. In particular, two changes that post-date these accounts have had a significant impact on the law and form the starting point for this Note. The first is DHS’s brief in *Matter of L-R-*,¹ which endorsed the basic framework for domestic violence asylum claims offered by earlier scholarly accounts. The second is the BIA’s redefinition of “particular social group” through decisions in 2006 and 2008,² which cast doubt on the doctrinal soundness of that framework.

A few scholarly commentaries were written *after* these significant changes, but their reform proposals do not go far enough towards ameliorating the effect of adjudicator bias against domestic violence claims and formalizing protection for domestic violence victims. This Note is the first to analyze the doctrinal and practical flaws of the 2009 DHS brief and argue that regulation is needed to create a clearer, more coherent legal standard that satisfies U.S. obligations under the Refugee Convention. The Note goes on to offer a novel solution to the problem of domestic violence asylum that would resolve aspects of the asylum standard as a matter of law for domestic violence claims while still allowing adjudicators to make independent decisions about individual asylum applications.

The first section of the Note draws on three distinct bodies of scholarship to argue that domestic violence asylum is entirely consonant with the broad aims of asylum and refugee law. One group of writings is the product of feminist historians and theorists writing generally about the causes of domestic violence.³ The second group of articles connects domestic violence to

¹ Department of Homeland Security’s Supplemental Brief, *In the Matter of L-R-* (B.I.A. April 13, 2009), *available at* <http://cgrs.uchastings.edu/pdfs/Redacted%20DHS%20brief%20on%20PSG.pdf>.

² See *Matter of C-A-*, 3 I. & N. Dec. 951 (BIA 2006) (particular social group must be “visible”) and *Matter of S-E-G-*, 24 I. & N. Dec. 579 (BIA 2008) (particular social group must have well-defined boundaries).

³ See, e.g., LENORE WALKER, *THE BATTERED WOMAN* (1980); CATHARINE MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989); Reva B. Siegel, *The Rule of Love*, 105 YALE L.J. 2117, 2122-23 (1996); ELIZABETH PLECK, *DOMESTIC TYRANNY* (2004).

international human rights norms and a state's obligations under human rights law.⁴ The third group consists of sociological studies of the prevalence and nature of domestic violence, most notably the World Health Organization's groundbreaking 2005 multicountry comparative study of domestic violence.⁵

The bulk of the Note focuses on the government's position in *L-R*-, its impact on asylum adjudications since 2009, and the path forward. The work of the Center for Gender & Refugee Studies at U.C. Hastings College of Law has been invaluable in understanding how domestic violence asylum claims are currently being handled in immigration courts. Karen Musalo, the head of CGRS, has a unique historical perspective on the current status of domestic violence asylum claims thanks to her more than twenty years as an advocate for immigrant women.⁶ Thanks to their wide network of asylum advocates, CGRS is able to collect otherwise-unpublished data on immigration judge decisions in gender asylum cases. Blaine Bookey's recent analysis of that database includes a discussion of decisions made after the important 2009 brief was released,⁷ and that information was crucial to understanding the limitations of the *L-R*- framework as a comprehensive solution to the domestic violence asylum problem. Nina Rabin's similar study of decisions by judges at the Eloy, Arizona, immigration court⁸ portrayed a group of adjudicators whose hostility to domestic violence asylum was unchanged by DHS's about-face in *L-R*-.

A small number of articles published after the *L-R*- brief do offer possible solutions to the domestic violence asylum problems continuing after *L-R*-, but none go far enough towards ameliorating the effect of adjudicator bias towards domestic violence claims. Marisa Silenzi Cianciarulo proposes that domestic violence claims should be treated as political opinion claims rather than particular social group claims.⁹ Barbara Barreno and Elsa M. Bullard both argue that the analysis should be shifted to focus on the government's failure to act rather than the motives of the persecutor himself.¹⁰ However, requiring adjudicators to assess the motives behind the government's failure to act will not resolve the inconsistencies that we now see in the outcomes of domestic violence asylum claims, which stem from a more fundamental disbelief by some adjudicators that asylum covers domestic violence claims at all. Finally, Natalie Rodriguez argues for regulations to refine the meaning of particular social group.¹¹ While I agree with her that

⁴ See, e.g., Rhonda Copelon, *Recognizing the Egregious in the Everyday: Domestic Violence as Torture*, 25 COLUM. HUM. RTS. L. REV. 291 (1994); Celina Romany, *Women as Aliens: A Feminist Critique of the Public/Private Distinction in International Human Rights Law*, 6 HARV. HUM. RTS. J. 87 (1993).

⁵ See CLAUDIA GARCIA-MORENO, ET AL., WHO MULTI-COUNTRY STUDY ON WOMEN'S HEALTH AND DOMESTIC VIOLENCE AGAINST WOMEN (2005).

⁶ Karen Musalo, *A Short History of Gender Asylum in the United States*, 29 REFUGEE SURV. Q. 46 (2010).

⁷ Blaine Bookey, *Domestic Violence as a Basis for Asylum: An Analysis of 206 Case Outcomes in the United States from 1994 to 2012*, 24 HASTINGS WOMEN'S L.J. 107 (2013).

⁸ Nina Rabin, *At the Border between Public and Private: U.S. Immigration Policy for Victims of Domestic Violence* 28-32 (Arizona Legal Studies Discussion Paper No. 12-23, May 2012).

⁹ See Marisa Silenzi Cianciarulo, *Batterers As Agents of the State: Challenging the Public/private Distinction in Intimate Partner Violence-Based Asylum Claims*, 35 HARV. J.L. & GENDER 117 (2012).

¹⁰ See Elsa M. Bullard, *Insufficient Government Protection: The Inescapable Element in Domestic Violence Asylum Cases*, 95 MINN. L. REV. 1867 (2011); Barbara R. Barreno, *In Search of Guidance: An Examination of Past, Present, and Future Adjudications of Domestic Violence Asylum Claims*, 64 VAND. L. REV. 225, 263 (2011).

¹¹ See Natalie Rodriguez, *Give Us Your Weary But Not Your Battered*, 18 SW. J. INT'L L. 317 (2011).

regulation is the right approach to solving the current problem, her proposal does not go far enough in making the law more favorable to this type of asylum claim. Among other differences, she would continue to allow adjudicators to determine that persecution occurred on the basis of gender as a matter of fact; I will argue that the historical and sociological evidence tying domestic violence to gender warrants drawing that connection as a matter of law.

Both the detailed account of the doctrinal problems with *L-R-* and the specific regulatory reform offered in the note are new. This note therefore makes a unique contribution to the literature on domestic violence asylum, and thus should not be regarded as preempted by the existing literature.