The Yale Law Journal

To: All J.D. and M.S.L. Candidates at Yale Law School
From: The *Yale Law Journal* Volume 129 Notes & Comments Committee (Briana Clark, Simon Brewer, Mary Charlotte Carroll, Alaa Chaker, Zohaib Chida, Rosa Hayes, Thomas Hopson, Lynette Lim, Danielle Zucker, Ela Leshem)
Re: Notes Submission Guidelines
Date: January 27, 2019

I. Introduction

We invite and encourage all current J.D. and M.S.L. students to submit a Note for publication in Volume 129 of the *Yale Law Journal*. A Note makes an original, well-supported argument that advances the frontier of legal scholarship in a particular field. 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 that reflect the diversity of intellectual interests at the law school.

The Spring 2019 submission deadlines ("drop dates") for Volume 129 will be **Friday, February 15 at 5 PM; Friday, April 5 at 5 PM; and Sunday, June 16 at 5 PM**.

The remaining submission deadlines for Volume 129 will be announced later in the year. There will be at least one more submission deadline in early Fall.

Please refer to the rest of this memorandum for guidance on developing and submitting your Note. The Notes & Comments Committee takes its commitment to blind review seriously. To preserve anonymity, all questions regarding the Notes submissions process and requests for Notes Development Editors should be directed to Managing Editors Josh Blecher-Cohen (josh.blecher-cohen@yale.edu) and Peter Kallis (peter.kallis@yale.edu). **Please do not contact any member of the Notes & Comments Committee regarding your submission**.

II. Developing Your Note

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:

- **Original**: The Note should advance a particular area of legal scholarship beyond its current state. The Note should situate itself within a legal discourse and articulate how it progresses the field.
- **Well-supported**: 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. Citations should be complete and unambiguous. The *Journal* follows *The Bluebook: A Uniform System of Citation* (20th ed. 2015) for citation form and the *Chicago Manual of Style* (16th ed. 2010) for stylistic matters not addressed by *The Bluebook*.

- **Well-written and structured effectively**: The Note should employ clear and concise prose and it should present the argument logically. The Note should clearly convey its thesis and the relevance of each section to the overall argument.

We welcome Notes adapted from clinical briefs, memos, or seminar papers. Although Notes can originate from Substantials or SAWs, effective Notes differ from most Substantials and SAWs in several ways. Notes need not contain a lengthy literature review and should proceed quickly to the author's original argument and analysis. Notes should be directed at a broad legal audience, not at one professor.

Notes published in previous volumes of the *Journal* provide examples of excellent student scholarship. Recent examples include:

- 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), https://www.yalelawjournal.org/pdf/PeletdelToro_pinq2u76.pdf
- Sarah Golabek-Goldman, Note, *Ban the Address: Combating Employment Discrimination Against the Homeless*, 126 YALE L.J. 1788 (2017), http://www.yalelawjournal.org/pdf/h.1788.Golabek-Goldman.1868_9wo15f6u.pdf
- Alex Hemmer, Note, *Civil Servant Suits*, 124 YALE L.J. 758 (2014), http://www.yalelawjournal.org/pdf/HemmerPDF_p4iyzgmt.pdf.
- Daniel J. Hessel, Note, *Founding-Era* Jus Ad Bellum *and the Domestic Law of Treaty Withdrawal*, 125 YALE L.J. 2394 (2016), http://www.yalelawjournal.org/pdf/e.2394.Hessel.2444_q8vx7dyh.pdf.

Resources for Developing Your Note

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

Notes Development Editors

First, students may request a Notes Development Editor (NDE). NDEs work with student authors to provide substantive, stylistic, and organizational advice at any stage of the Notes development process, from formulating an idea to polishing a finished piece. Please note that NDEs are not available for the February drop date but will be available shortly thereafter.

NDEs are available to answer any questions you may have about the submission process and to

offer feedback on potential topics and ideas. There is no deadline to request an NDE for these purposes.

Prior to submission, NDEs will also provide comments on *one* full draft of a Note per drop date and answer follow-up questions. The deadlines for requesting an NDE for this purpose are **Monday, March 25** for the April 5 drop date and **Saturday, June 1 at 5:00 PM** for the June 16 drop date.

Please note that NDEs will be recused from discussing and voting on Notes to which they are assigned. **It is important that you do not contact a Notes & Comments Editor directly to request his or her assistance in developing your Note**. Instead, email Managing Editors Josh Blecher-Cohen and Peter Kallis to request an NDE. In your email, please include (1) a 1-3 sentence explanation of your topic, (2) the nature of your request (e.g. reading a full draft; topic brainstorming), (3) any preference to work with a particular Notes or Comments Editor, and (4) any Notes or Comments Editor who might be able to identify you as the author of the piece. NDEs will be assigned to authors on a first-come, first-served basis.

Other Resources

We encourage students to review our **Common Suggestions for Notes & Comments** and our **Guide to Writing a Note or Comment Based on Summer, Clinical, or RA Work**, both of which are available on our website: http://www.yalelawjournal.org/student-submissions.

We also encourage students seeking to publish practical scholarship to contact our Practical Scholarship Editor, Jade Ford (jade.ford@yale.edu). The Practical Scholarship Editor (PSE) assists students at any stage of the writing process (e.g., the PSE can help students brainstorm a topic and offer feedback on an outline or draft).

III. Policies on Reviewing and Accepting Notes

Blind Review

The Committee is strongly committed to impartial, blind review. Notes are reviewed without knowledge of the author's name or other identifying information, and authors' identities are only revealed to the Committee after a Note has been accepted. Any Committee member who can identify a Note's author 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 the submissions process with members of the Committee apart from your NDE, 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). For

all documents, please select "File" and then "Properties" on Microsoft Word and remove your name from the "Author" field.

Notes Revision

All students who have submitted a Note will be notified promptly of the Committee's decision, which will entail one of the following: (1) acceptance of the Note; (2) a request to revise and resubmit the Note; or (3) a rejection. Students who receive a request to resubmit the Note will also receive a Revise & Resubmit letter (R&R), which evaluates the strengths and weaknesses of the Note and provides constructive feedback on how the author should revise the Note to increase the likelihood of acceptance. If you receive an R&R and have not previously worked with an NDE, you can request an NDE to review the suggestions contained in the R&R.

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

Journal Membership

The Notes & Comments Committee welcomes submissions from non-*Journal* students. Members of the Class of 2021 who are the sole authors of accepted Notes will be invited to join the *Journal* as First Year Editors. Authors of accepted Notes from the Class of 2020 will be eligible for membership if the Note is accepted at or before the September drop date. Authors of accepted Notes from the Class of 2019 will not be eligible for *Journal* membership. The *Journal* does not extend offers of membership to the authors of co-written Notes. Membership offered on the basis of the acceptance of a Note will be revoked if the Note is not published in Volume 129.

We hope that you will accept your offer of membership and join the *Journal* as a First Year Editor, fulfilling the same responsibilities as your peers in that role. If you have additional questions about becoming a *Journal* member, you will have an opportunity to ask them before accepting the membership offer. You will not need to decide until after we have committed to publishing your Note.

IV. POLICIES ON NOTE SUBMISSION

Eligibility

Only J.D. and M.S.L. candidates at Yale Law School are eligible to submit Notes. Students may submit co-written Notes if all authors are J.D. or M.S.L. candidates. Students who have already acquired a J.D. or its foreign equivalent may *not* submit a Note but are welcome to submit Articles, Essays, and *YLJ Forum* pieces. Eligible students may publish up to one Comment and one Note in Volume 129.

Word Limit

First-time submissions are subject to a word limit of 15,000 words. To be fair to authors who comply with the word limit, the Committee will not review first-time submissions that exceed 15,000 words. The word limit includes text and footnotes and does not include the Abstract, Table of Contents, or Statement of Originality. There is no word limit for resubmitted Notes.

Please note that there is no minimum Note length. Quality is not correlated with quantity, and your Note need not utilize the full 15,000-word allowance. In the past, the Committee has accepted Notes that were significantly shorter than 15,000 words, including Notes around 10,000 words on the first submission. We strongly encourage you to avoid making your submission longer than necessary, especially given that Notes often increase in length upon resubmission and acceptance.

Format

Please use 12-point Times New Roman font and double-space the text of your Note. For the footnotes, use 10-point Times New Roman font and single-spacing. The Note should use 1-inch margins and include page numbers in the bottom-right corner of the page. Please pay careful attention to spelling, Bluebooking, and other details.

Source Corroboration

All citations, including datasets, must be capable of being corroborated by the *Journal*. In addition, authors must obtain prior, written permission for the use and publication of any non-public material, including but not limited to quotes or paraphrases from interviews, non-public court documents or records of adjudication, and non-public data. This proviso is particularly important if your Note is the product of 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 submissions and resubmissions. The Statement of Originality should accomplish several related objectives:

- First, it should identify the Note'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 an inexpert audience.

- Second, the Statement should clearly and precisely explain the Note's **relationship to the closest existing works** on the topic. What sources does your Note build on, and how does your Note deviate from existing arguments? Every piece of scholarship relies on what has come before, so the Statement should discuss the Note's major sources and intellectual debts, including cited and uncited scholarship. Do not merely list your sources, but 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. Please feel free to discuss ideas or material that would contribute to an appreciation of your argument but were not emphasized in the Note itself.

We use the Statement of Originality to learn more about the nature and extent of a Note's original contribution. The Statement of Originality is not an opportunity to make an extended pitch for your Note 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 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 over-inclusion. We expect authors to identify the literature that comes closest to the Note, to describe this literature accurately, and to explain the relationship between the Note and existing literature honestly. **Please note that we conduct preemption checks for each submission considered by the full committee.** Even beyond the acceptance process, every Note author is expected to stand behind their Note as original and accurate. If it is discovered after acceptance that the Note 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. A sample Statement appears at the end of this document. Be sure to check both legal and non-legal books and periodicals, as well as both online and printed sources. If you decide to work with an NDE in developing your submission, he or she 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: http://library.law.yale.edu/research/preemption-checking.

Resubmission Memorandum

Authors who are resubmitting their Note must include the following materials in their submission package: (1) all Revise & Resubmit letters, including letters from previous volumes of the *Journal*; and (2) a Resubmission Memorandum. The Resubmission Memorandum should describe how the Note has changed since the prior submission, and why these changes have improved or strengthened the Note. Of special interest to the Committee is how the author has chosen to implement suggestions offered in past Revise & Resubmit letters. A page or so should suffice. If you have previously resubmitted your Note, please submit your previous

Resubmission Memorandum as well (i.e., please submit a Resubmission Memorandum corresponding to each Revise & Resubmit letter that you have received for the Note).

V. How To Submit Your Note

The *Journal* accepts student Note submissions only through our website at http://ylj.yalelawjournal.org/authors/index.html. If you have any difficulties with the mechanics of the submission process, please email Managing Editors Josh Blecher-Cohen (josh.blecher-cohen@yale.edu) and Peter Kallis (peter.kallis@yale.edu) with questions.

To submit your Note, go to http://ylj.yalelawjournal.org/authors/index.html and register for an account. Once your account has been created, log in and select the "Submit Work" hyperlink; check the "Student Note" bubble and select "Continue." Follow the instructions to submit the required documents. You must include the following submission materials and upload them in the appropriate fields on our website in Microsoft Word format:

1. **Submission field**: Upload the submission, without your name on it, in this field. The document must include 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.

2. **Statement of Originality field**: Upload your Statement of Originality, without your name on it.

3. **Submission Form field**: Upload your Submission Form into this field. Members of the Notes & Comments Committee will never gain access to the contents of this form, and your personal information will not be used to evaluate your Note. 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 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. The Submission Form is available at http://www.yalelawjournal.org/student-submissions.

4. **R&R 1, R&R 2, R&R 3 fields**: If you have previously submitted your Note (even to prior volumes), upload the original version of any previous Revise & Resubmit Letter(s) associated with your submission.

5. **Resubmit Memo 1, Resubmit Memo 2, Resubmit Memo 3 fields**: If you have previously submitted your Note, upload a Resubmission Memorandum for each Revise and Resubmit Letter.

6. **Note on datasets**: Authors submitting pieces with empirical work should also submit any datasets or coding used. We strongly prefer that data be submitted as a .DO file, but we

will accept other file types compatible with STATA 9 or Word. Please email the file(s) to Managing Editors Josh Blecher-Cohen (josh.blecher-cohen@yale.edu) and Peter Kallis (peter.kallis@yale.edu).

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

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We very much look forward to receiving and reading your Note. Please feel free to contact Managing Editors Josh Blecher-Cohen (josh.blecher-cohen@yale.edu) and Peter Kallis (peter.kallis@yale.edu) if you have any questions.

Best wishes,

The *Yale Law Journal* Volume 129 Notes & Comments Committee

Briana Clark, Simon Brewer, Mary Charlotte Carroll, Alaa Chaker, Zohaib Chida, Rosa Hayes, Thomas Hopson, Lynette Lim, Danielle Zucker, and Ela Leshem.

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

[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).

the causes of domestic violence.[3] The second group of articles connects domestic violence to 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 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 court[8] 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

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[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).

[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).

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 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.

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