Refugees or Asylees?

By David S. Bloomfield Sr. and Orsolya Hamar-Hilt

*Early in its history, the United States formed, in part, out of a need for freedom of beliefs, actions and speech. However, our founding fathers could not have the foresight to instruct us on modern times, knowing how these ideas would continue to evolve as American values, and at times, points of contention.*

In light of the European refugee crisis, the issue of refugees and asylees to the United States once again became an everyday topic. Undocumented persons in the U.S. and their fate is an issue that has yet been resolved. In fact, it’s now the subject of a lawsuit currently before the United States Supreme Court despite the executive policies by President Obama, Deferred Action for Childhood Arrivals and Deferred Action for Parents of Americans and Lawful Permanent Residents. The subject of legal and illegal immigration is frequently discussed by current presidential candidates. Each of them has a unique approach how to solve the issue. It is questionable whether any of those possible policies, if implemented, would offer a comprehensive solution. In this unresolved matter, a new one arose: The argument is whether the United States should allow Syrian refugees into the country or, more specifically, whether a temporary ban on all Muslims is legally possible.

What is the difference between a refugee and an asylee? According to the United Nation’s 1951 Convention, a refugee is someone who is unable or unwilling to return to his or her country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.

Immigration and Nationality Act 101 (a) (42) defines refugee as “any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion.” The rule further states that the president, in the above described situation, may classify any person who is within the country as a refugee.

To qualify as a refugee, one must receive a referral to the U.S. Refugee Admissions Program. The policy of the USRAP program goes through a convoluted process each year. Immigration law requires that the executive branch review the refugee situation, project the extent of possible participation of the United States in resettling refugees and discuss the reasons for believing that the proposed admission of refugees is justified by humanitarian concerns or is otherwise a national interest.

Following consultations with cabinet representatives and Congress, a determination is drafted for signature by the president. The presidential determination establishes the overall admissions levels and regional allocations of all refugees for the upcoming fiscal year. No refugees may be admitted in the new fiscal year until the presidential determination has been signed.

The U.S. refugee policy is developed and adjusted each year by Congress. The federal government has the final say in the refugee policy; therefore, it is safe to say that current politics always have a lot to do with the outcome. It should be noted that Congress almost always just “rubber stamps” whatever the president sends them.

The concern is whether it is appropriate for Congress to determine which group needs protection. If Congress does not recognize a group of people as an ethnic group then, regardless of the possible humanitarian concern, those people cannot come to U.S. Or can they?

In 2013, an ongoing incident of migration of thousands of Rohingya people from Myanmar, formerly known as Burma, and Bangladesh began. The Rohingyas are a Muslim minority group residing in the Rakhine state, formerly known as Arakan. The Myanmar government refuses to recognize them as one of the ethnic groups of the country, thus they are subjected to strong hostility. Shall the U.S. grant them refugee status despite their religion, or shall we shut down our borders? As an interesting fact, regardless of their religious beliefs, the United States does not recognize them as an ethnic group, thus they are not afforded the refugee status.

The secretary of Homeland Security or the attorney general may grant asylum to an applicant in accordance with certain requirements and procedures or if the secretary or the attorney general determines that such alien is a refugee. The burden of proof is on the applicant to establish that they will be persecuted based on race, religion, nationality, membership in a particular social group or political opinion.

There are two ways of obtaining asylum in the United States: affirmative and defensive asylum. To obtain asylum, the individual has to be physically present in the U.S. Applicants can apply regardless how they arrived to the U.S. or their current immigration status. The application must be filed within one year of the applicant’s arrival to the United States. An asylum applicant has a higher standard of proof than a refugee, who only needs to be a member of the class predesignated by the president.

A defensive asylum is a method to avoid removal from the U.S. Individuals are generally placed into defensive asylum processing in one of two ways: they are referred to
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seriously but are also incredibly thoughtful as they prepare for the exercise. In sum, allowing the law students to prepare the residents for the deposition process gives them a new professional client experience that is otherwise difficult to imitate in an academic setting.

After the course was initially rolled out last September, the feedback was overwhelmingly positive. Jason Cox, a third-year student at Capital University Law School participated in the first offering of the course.

“This class was invaluable as it taught techniques and strategies that could directly be applied to real world situations. Through hands-on development and practice, this class provided me with the assurance that I understand the deposition process and will feel confident walking in to take or defend my first ‘real world, real client’ deposition,” Cox said.

The residents also benefit from this interdisciplinary process, and it allows the residents to interact with professionals from a different field. In the process of the deposition exercise, the residents become the experts on the medical issues and in turn educate the law students on the relevant underlying medicine and factual background. Chief Resident A. Jacob Boucher, MD, PGY-3, in the Grant Family Medicine Residency, found unexpected value in the program.

“Initially, I will admit, I was somewhat skeptical about the experience and how it would benefit me as a practicing physician. My skepticism was gone very quickly into the process. It was a great experience and a perfect way to improve my understanding of the justice system and the importance of practicing clear, appropriate and thorough medicine. I think the fact that both the law students and residents were still in training created an unspoken understanding of helping each other out and working towards a common goal. In my opinion it was an overall impactful experience that is beneficial and should continue to be a part of both our training as family medicine residents as well as the law students training,” Boucher said.

While the depositions course has a unique opportunity to offer both a skills-based interdisciplinary course for the law students, the interdisciplinary education also benefits the residents. With legal educators constantly trying to innovative the educational process for students, it is inevitable that such opportunities for additional skills-based interdisciplinary courses exist and likely will be utilized in the future.

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1. INA 101 (a)(42)