BEYOND GRANT OR DENY

A More Nuanced Ordering of U.S. Asylum Outcomes

Beyond a grant or denial in asylum hearings, there are additional possible outcomes that are typically ignored in the literature. Despite a clear ordering of benefits, from most to least beneficial, such ordering does not align with demands of the legal standards in order to be granted relief. Our study finds that immigration judges' decisions do not reflect the legal ordering of the types of relief but rather more accurately reflect the substantive ordering of those options.

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Typically, asylum decisions in U.S. immigration courts are characterized as dichotomous in nature: either an alien receives relief or they are deported from the country. Beyond a grant or denial, there are additional possible outcomes in asylum hearings. We argue that these intermediate outcomes are important and that including them in the examination of asylum outcomes in the United States is essential to an understanding of what these courts do, how they do it, and how various policy proposals are likely to affect the work of immigration judges (IJs) and the fate of thousands of aliens seeking asylum in the United States. To further complicate matters, the benefits that accrue to the applicants vary under the different forms of relief. Despite a clear ordering of benefits, from most to least beneficial, such ordering does not align with demands of the legal standards in order to be granted relief. We have anecdotal evidence from immigration attorneys and from observing asylum hearings that suggest that judges consider the benefits the type of relief grants. Furthermore, the judges may negotiate with the immigration and Immigration and Customs Enforcement (ICE) attorneys to give unilaterally a mid-level of relief, in cases in which it is too difficult to make a clear call, in exchange for a promise not to appeal a case. Given the nature of these decisions, it is likely that such difficult cases represent a significant component of the IJs' large caseload. Thus a dichotomous conceptualization (grant or deny) of potentially ordered outcomes may obscure valuable information[1] and limit our understanding of asylum decision making by immigration judges. We ultimately treat the issue as an empirical question that is salient in terms of policy and the study of asylum decision making.

The key decision maker in determining the fate of most asylum applicants is the immigration judge (IJ). Immigration judges have been the subject of considerable scrutiny. Recent studies document significant variation in grant rates across judges, even among those serving on the same court.[2] For example, the U.S. General Accounting Office noted that in 2008 the likelihood of receiving a grant of asylum was 420 times greater if an applicant drew the judge most likely to grant asylum as opposed to the judge least likely to grant asylum *in the same court.*[3] The U.S. Commission on International Religious Freedom concluded that outcomes of individual asylum claims have come "to depend largely on chance; namely, the IJ who happens to be assigned to hear the case."[4] These disparities across courts and across judges have raised significant questions about the quality and consistency of justice in immigration courts. In the inter-

national relations literature, another set of scholars using average country of origin grant rate by either immigration judge, asylum officers, and/or Immigration and Naturalization Service (INS) district directors have sought to understand the role of legal norms and national interests of U.S. asylum decisions. While the results are somewhat mixed, these studies generally find that asylum outcomes are influenced by both legal norms and U.S. interests.[5]

In all of the empirical studies of asylum decisions of which we are aware the outcome is treated as a dichotomous choice: either the applicant is granted relief or not. Although this approach to the asylum process seems reasonable, we believe it oversimplifies the complexity of the asylum law and asylum decision making. Under U.S. law, applicants can make simultaneous claims for three different forms of relief, each of which carries different standards of evidence, a different delineation of what behavior and status is protected, as well as different bars and restrictions on eligibility.[6] We argue that there are two potential underlying orderings to these outcomes: one premised on the legal requirements for receiving a particular form of relief and one premised on the substantive benefits attached to a particular type of relief.

We recognize that the facts and components of the law that IJs consider are vague.[7] Law notes "the indeterminacy of the governing legal standards" in asylum cases, which leaves judges "to define vague yet crucial terms—'political,' 'persecution,' 'well-founded fear,' 'more likely than not'—on a case-by-case basis" with "precedent provid[ing] only limited guidance, given the dependence of asylum claims on case-specific facts."[8] And as David Martin observes, the "basic facts in any particular [asylum] case are highly elusive" and "the adjudicator has to decide what happened in a distant country" with only two imperfect sources: general human rights country reports and the personal testimony of the asylum seeker.[9]

An Overview of the Asylum Process and Immigration Courts

U.S. law provides three treaty-based forms of relief or protection for individuals fleeing persecution. The first two forms of relief, asylum and withholding of removal, are based on the 1951 U.N. Refugee Convention and its Optional Protocol, and the 1980 Refugee Act, which codifies in domestic law the obligations under the Convention. The third, protection against return delineated in Article 3 of the Convention Against Torture (CAT), is limited to torture. As of 1999, the United States is also bound under this obligation through the Foreign Affairs Reform and Restructuring Act of 1998. Each of the three forms of protection offers different levels of relief or benefits, and each form of relief is decided according to a different legal standard under U.S. law. The most significant criterion for obtaining asylum status is the basic definition of refugee (or "asylee" in our context) in the 1980 Refugee Act, which is based on the Refugee Convention Article 1 qualification for a refugee: "[A]ny person who is outside any country of such person's nationality…and who is unable or unwilling to return to, or 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."[10] U.S. law also delineates bars to eligibility for asylum status such as having been a "persecutor of others," convicted of an aggravated felony, having previously filed and been denied asylum, or "posing a danger to the security of the United States."

Withholding of removal or non-refoulement is based on the Convention's Article 33 non-return obligation and does not confer asylum status; rather, individuals granted withholding of removal live with a final deportation order filed by the IJ prior to granting withholding, and consequently if the individual leaves the United States after being granted withholding of removal, this

action in effect "self-enforces" that deportation order and the individual cannot ordinarily return for several years.[11] The Refugee Act makes withholding of removal a mandatory protection rather than discretionary. A key difference between asylum and withholding is the standard of proof. Such a distinction may be unique to the United States.[12] The differences in standards are based on the U.S. Supreme Court jurisprudence, which has been widely criticized and rejected by other signatories to the Convention as being "inconsistent with the U.N. Refugee Convention's protection against refoulement, the raison d'être for an international scheme of refugee protection."[13] In INS v. Stevic the Court explicitly distinguished the well founded fear standard from withholding of removal, arguing that the language used in Article 33 was inherently different from the language in Article 1 in regard to asylum.[14] Article 33 refers to whether the individual's "life or freedom would be threatened" (emphasis added) which the Court interpreted to impose a higher burden of proof than they would subsequently apply to asylum, even though as Deborah Anker points out, "the core substantive provisions (persecution, the standard of harm, and the grounds)" are the same.[15] In INS v. Cardoza-Fonseca the Court subsequently applied the lower "reasonable possibility" standard of persecution to the well founded fear provision in Article 1.[16]

The higher "more likely than not" probability standard of proof has also been applied by U.S. officials thus far in regard to the non-refoulement provision of CAT which requires that a person have "substantial grounds for believing" the he/she "would be in danger of being subjected to torture," although this standard has been criticized by the Committee Against Torture.[17] Protection under the CAT is distinct from withholding of removal under the Convention in that the category of persons is limited to possible victims of torture; however, its prohibition against return is "absolute and allows for no exceptions."[18] Thus, it has the advantage of having no bars to eligibility and does not require that the feared torture be linked to group status or political opinion.

In terms of relief, individuals granted asylum status are permitted to remain in the United States for an indefinite period and may apply for permanent resident status after one year. In addition, asylum relief is also granted to the asylee's present family members who were included in their asylum application, and in addition asylees may petition to bring eligible family members to the United States. Withholding of removal offers no status, just protection against being returned to the persecuting country. It does not provide relief for family members nor does it provide the ability to petition to bring family over. It does not provide a path to lawful permanent residence. It does, however, give recipients (but not their family) the ability to apply for work authorization. Similar to withholding of removal, relief under CAT does not provide a path to lawful permanent residency, nor does it provide relief for family members. It does allow recipients to apply for work authorization but at the same time allows the United States to detain CAT recipients or to remove them to a safe third country.

The asylum adjudication process today spans two executive departments—the Department of Justice (DOJ) and the Department of Homeland Security (DHS). Generally speaking, the jurisdiction over the asylum process between the DOJ and DHS can be demarcated as: "DHS has jurisdiction over 'border' or credible fear interviews and first instance affirmative asylum applications (for persons who voluntarily apply before the institution of removal proceedings)," and "DOJ has jurisdiction over asylum applications determined in the course of removal proceedings, as well as over withholding of removal and applications for protection under the Convention Against Torture."[19] Immigration judges are administrative adjudicators who are formally appointed by the deputy

attorney general; however, the Executive Office of Immigration Review (EOIR) and the chief immigration judge handle their hiring. Current qualifications set by the attorney general only require that the candidates have seven years of prior legal experience. IJs arguably have less structural independence than federal judges and potentially less independence than administrative law judges. Nonetheless, they maintain a high degree of independence. The Immigration and Nationality Act (Section 240) states that "in deciding the individual cases before them… IJs shall exercise their independent judgment and discretion." Immigration judges act as trial level judges at this stage with asylum hearings being somewhat adversarial in process if the applicant has an attorney. A non-citizen who is physically present in the United States may seek asylum through either an affirmative or defensive process. In the affirmative process the applicant voluntarily identifies herself through her application with the United States Citizenship and Immigration Service (USCIS). The individual may or may not have valid status in the United States at the time of the application, but the application is not initiated during removal proceedings. In the affirmative process, once an application is filed, applicants will receive notice to be fingerprinted and then will receive a notice to appear for an interview with an asylum officer, who will review their application in a non-adversarial process in which the applicants must bring their own interpreter, if they desire one. A supervisor within the Administrative Office of Courts (AOC) reviews asylum officer decisions.

In the defensive process, generally, the non-citizen has been apprehended within the United States and is in removal proceedings in immigration court when the applicant submits an application for asylum. A second stream of defensive applicants consists of aliens who arrive at a U.S. port of entry without proper documentation and who are placed in the expedited removal procedures that went into effect in 1998 under the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA). If these individuals express a fear of persecution, they are detained, and they receive a "credible fear" interview with an asylum officer; otherwise the immigration officer at the port of entry can deny admission and summarily remove the alien. If the aliens are found credible by the asylum officer, the individual is referred to an immigration judge for a hearing. In the defensive process, applicants can apply for all three forms of relief, if appropriate.

Operationalizing Asylum Decision Outcomes

As we noted above, asylum decisions can be ordered either in terms of the legal standards triggered in the case or in terms of the substantive benefits accrued to the applicant. We posit the following legal ordering: (1) no relief, (2) asylum, (3) withholding of removal under CAT, and (4) withholding of removal based on the standard of proof. Granting of asylum is entirely discretionary under U.S. asylum law, whereas, withholding of removal and withholding under CAT is not and the standard for giving protection is whether the odds of future persecution is "more likely than not." In other words, to get asylum an applicant needs to prove a possibility of persecution, whereas, to get any type of withholding the applicant must prove a probability of persecution upon return. While the standards of proof make withholding of removal and withholding under CAT less likely than asylum, there are legal dimensions of these protections that broaden somewhat the possibility of protection. Unlike asylum claims, neither CAT nor withholding claims are subject to the one-year time limit.

To distinguish further between the two types of withholding we note that withholding under CAT has no bars to eligibility (thus protection can be granted to criminals, terrorists, or persecutors), and while future torture is the only form of

persecution from which an applicant is protected, the torture need not be linked to one of the five protected grounds (race, religion, nationality, political opinion, social group). This is not true of general withholding of removal, which does have bars to eligibility (such as applying after the one-year deadline in U.S. law), and, further, an applicant must prove that persecution is linked to one of the required protected grounds.

Alternatively, the ordering may be based on the substantive benefits granted to an applicant given the awarding of a particular form of relief. If this is true, then the expected ordering would be: (1) no relief, (2) withholding under CAT, (3) withholding, and (4) asylum. The substantive benefits attached to withholding under CAT are limited: An applicant receiving this form of relief can still be removed from the country at any time if a safe third country is available, family members get no relief, and the United States can detain the applicant when appropriate. The benefits of withholding of removal are slightly more generous. Recipients gain the ability to work but face potential future removal if the DHS chooses to reopen their case due to changed country conditions; similarly, they gain no relief for family members. However, those granted withholding of removal do not have a status *per se* as do asylees and are only protected from return to the potentially persecuting country. The strongest distinctions between withholding of removal and protection from CAT lie more in the legal standards than in benefits; however, there are significant distinctions in benefits in that under CAT the United States may detain CAT recipients or remove them to a safe third country. Asylum confers the greatest benefits: It provides relief for family members, the ability to remain in the United States, and the potential of permanent residence.

Asylum Case Data

Government-imposed limitations restrict all non-governmental studies of asylum decisions. Congress only allows the EOIR to report a limited set of case factors such as the form(s) of relief requested, type of relief granted, country of origin, language spoken, and whether the applicant had legal representation. Thus the USCIS or EOIR are not allowed to report a host of significant information on asylum cases. We gathered case data via a series of Freedom of Information Act (FOIA) requests to the USCIS and the EOIR between 2011 and 2012. We were interested only in decisions in cases on the merits for asylum claims. We counted all cases in which the alien made a claim for asylum, withholding of removal, or withholding of removal under CAT, and in which the IJ made a decision on the merits of that claim. In an attempt to make inferences that are as generalizable as possible, we included all of these cases, regardless of the country of origin of the applicant or the number of cases decided by a particular IJ.

We analyzed data from 1999-2010. By 2005, the two types of withholding had become considerably more likely outcomes for asylum seekers: Withholding and withholding under CAT constituted 18 percent of all types of relief granted. Therefore, these alternatives are being chosen regularly and with increasing frequency. Table 1 displays the types of relief given by year by IJs from 1999 through 2010.

[Production Note: Table 1]

Along with the outcome of interest, we collected a large set of independent variables on the country conditions in the applicant's country of origin (based on reports from the U.S. State Department), the strategic relationship the United States has with that country (including bilateral trade and whether the United States gives military assistance), and variables representing the characteristics of the applicant (including language spoken, whether the case was considered affirmative or defensive, and whether the applicant was detained or had ever been detained). We also created a measure of the

policy preferences of IJs since most theories of judicial decision making assume that policy preferences can be a dominant factor in decision making.[20] Our measure is based on a factor analysis of a number of background characteristics that scholars have noted are predictive of the likelihood an IJ will grant asylum. The characteristics include whether an IJ ever worked for the INS, DHS, or the EOIR (which indicates a general reluctance to grant relief to asylum seekers) and whether an IJ ever worked for an NGO (indicating a greater proclivity to grant relief). A full discussion of this factor score is discussed in the online appendix that accompanies this paper.

Identifying the Correct Ordering of Forms of Relief

In order to determine whether judges treat the asylum outcomes as though they have a substantive or legal ordering, we need a model that can discern the underlying order for our dependent variable. One such approach is known as a stereotype logit model.[21] Although we do not wish to go into great detail here (interested readers may find more on this modeling approach in the online appendix), this procedure allows us to identify which ordering—substantive or legal—is supported by the data. In other words, instead of simply imposing an ordering on the data, the stereotype logit model allows the data to determine whether such an ordering makes sense. In addition to estimating the effects of variables on the dependent variable, the process also allows us to estimate parameters of the ordering. Therefore, we can conclude if a particular ordering is supported by the data (given the model) and whether the individual choices contained therein are distinguishable from one another.[22] These parameters, known as phi parameters, help to scale each of the choices on a common metric. What matters is the relative ordering of the phi parameters—if an ordering fits the data, then $phi_1 > phi_2 > phi_3 > phi_4$. This relative ordering means that the choices made by IJs accord with our a priori assumptions about the ordering. Below we estimate two separate models, one with a substantive ordering and one with a legal ordering, to test whether either set of orderings fits with how IJs tend to decide asylum cases. There are four phi parameters to estimate because there are four potential choices facing an IJ in each model: (a) no relief, (b) withholding under CAT, (c) withholding, and (d) asylum. The table below presents the results of this estimation strategy for the two potential orderings in our data. The substantive ordering fits the data quite well: The ordering of the phi parameters is as expected and each of the parameters is distinguishable based on the 95 percent confidence intervals in the brackets (i.e., there is no overlap). This means that we can be confident that the differences between the categories are unlikely to occur by chance. Therefore, it appears that IJs consider withholding under CAT as substantively more similar to no relief and withholding as close to a grant of asylum. On the other hand, the legal ordering does not agree with our a priori expectation and is not supported by the data. The parameter representing the choice of asylum (phi_2) is negative, putting it closer to withholding than to the other parameters. For the reasons we have discussed above, this is unlikely if the IJs are basing their decisions on the legal burdens and barriers to relief specified in the law. To test our assumption that the relative legal ordering was not driving our results, we estimated a third stereotype logit, in which the ordering of the two withholding categories was reversed, and saw no change in our substantive conclusions.

[Production Note: Table 2]

As a check on the robustness of our findings, we analyzed the frequency of appeal for IJ decisions by the type of relief they granted. These findings reinforce the notion that the applicants themselves view outcomes in the same way as do IJs,

with appeals most likely in instances in which no relief is given and least likely in cases in which asylum is given, and the two types of withholding falling in between no relief and asylum. Appeals are undertaken 79 percent of the time when the outcome is no relief, 47 percent of the time when withholding under CAT is granted, 17 percent of the time when withholding is given, and just four percent of the time when asylum is granted. What is more, since virtually all appeals are filed by aliens, it is telling that 90 percent of the appeals in cases in which asylum is granted are appeals filed by the DHS—implying that DHS sees the grant of asylum as the outcome likely to be most burdensome fiscally. All of this suggests that the relative ordering of virtually every relevant actor in the asylum decision making process (IJ, alien, and government attorney) is the substantive ordering suggested by our stereotype logit model.

It is important to note that using the substantive ordering that we advocate does not alter the conclusion that there are wide disparities in the rates of relief granted by IJs grant. Comparing the variance of our substantive ordering of the outcomes and a more straightforward relief/no relief dichotomy using the coefficient of variation[23] suggests that there is little difference in the degree of dispersion among outcomes. Put differently, IJs appear equally divergent whether one uses a more traditional dichotomous measure or the substantive ordering we suggest. This means that one of the central problems uncovered by scholars of the asylum process is driven by something other than how we measure asylum outcomes.

One clear implication of our finding is that there is a substantive, but not a legal, ordering in IJ asylum decisions. The IJs appear to be responding to U.S. asylum law in an innovative fashion, somewhat contrary to the law on the books. Interestingly, the substantive ordering in U.S asylum law closely mirrors the legal standards that exist in the rest of the world. This is significant because U.S. asylum law imposes in withholding of removal a higher legal expectation of potential harm than it does for asylum. On paper, the higher threshold arguably deviates from the standard within international law and may compromise U.S. compliance with the norms of *non-refoulement* under the Refugee Convention. In practice, it appears that IJs have ameliorated this difference by treating withholding of removal as a mid-level, less generous form of relief that falls short of full asylum status and benefits.

Furthermore, the ordering of outcomes we have uncovered fits the trend seen in Western European states over the last several decades. There has been an increase in admission rates coupled with a significant decrease in the benefits. Additionally, there has been an increase in applicants not being granted full Convention status, but instead being granted relief on a temporary or ad hoc basis.[24] This point can be illustrated by simply looking at Table 1, in which the less beneficial substantive forms of relief (both types of withholding) increase from nine percent of the total of all types of relief granted in 1999 to over 15 percent in 2010. This is significant because it demonstrates a path by which the United States can fulfill its treaty obligations and avoid the long-term economic consequences that may attach to increasing the granting of asylum.

Conclusion

Broadening our conceptualization of asylum decisions beyond a dichotomous choice between granting or denying relief has allowed us a more nuanced understanding of the complexities of asylum outcomes. Our evidence suggests that the IJs' decisions do not reflect the legal ordering of the types of relief but rather more accurately reflect the substantive ordering of those options. This implies that IJs may be responding to a disconnect in the law between the level of benefits provided and the standard of evidence required for relief. In addition, U.S. judges do

not have the option that European and even Australian adjudicators have of granting a temporary status, such as Australia's three-year temporary protection visa that confers "no right to permanent settlement or family reunion"[25] or the U.K.'s Exceptional Leave to Remain that grants temporary relief on humanitarian grounds.[26] Lacking these options in the United States, the mid-level of relief may provide some leeway for IJs to offer protection in difficult-to-call cases.

Regardless of the IJs' intent in individual asylum decisions, the overall effect of IJ decision making is to pull U.S. policy closer to the international standard where asylum and withholding are not distinguishable in terms of the expectation of harm. Thus, in practice, this innovation among IJs may bring the United States closer to fulfilling its Convention obligations. Moreover, granting the status of permanent removal of withholding allows the United States to fulfill its obligations at a lower level of benefits to the recipients, which decreases the fiscal burden on the United States. This pattern of restricting access to benefits and the substitution of temporary protection for permanent asylum is consistent with the practice common among Western European states.[27] ★

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1. Peter Kennedy, A Guide to Econometrics (6th Ed.) (Malden, MA: Blackwell Publishing, 245, 2008).

2. Transactional Records Access Clearinghouse (TRAC), *Judges Show Disparity in Denying Asylum*, July 31, 2006. http://trac.syr.edu/immigration/reports/160/; Stephen H. Legomsky, *Learning to Live with Unequal Justice: Asylum and the Limits of Consistency* Stan. L. Rev.60: 413-75, 2007; Ramji-Nogales, Andrew I. Schoenholtz, and Philip G. Schrag, *Refugee Roulette: Disparities in Asylum Adjudication*. Stan. L. Rev. 60(2): 295-411, 2007; Ramji-Nogales et al. 2007, Jaya Ramji-Nogales, Andrew I. Schoenholtz, Philip G. Schrag, and Edward Kennedy, Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform (New York: New York University Press, 2009).

3. Government Accountability Office, Significant Variation Existed in Asylum Outcomes across Immigration Courts and Judges, GAO-08-940, 2008.

4. U.S. Commission on International Religious Freedom, Report on Asylum Seekers in Expedited Removal—Report Card Two Years Later http://www.uscirf.gov/images/stories/pdf/scorecard_final.pdf February 2008, 115.

5. Marc R. Rosenblum and Idean Salehyan, *Norms and Interests in US Asylum Enforcement,* Journal of Peace Research 41(6): 677-697, 2004; Idean Salehyan and Marc R. Rosenblum, *International Relations, Domestic Politics, and Asylum Admissions in the United States*, Political Research Quarterly 61(1): 104-121, 2008; Andy J. Rottman, Christopher J. Fariss and Steven C. Poe, *The Path to Asylum in the US and the Determinants for Who Gets In and Why,* International Migration Review 43(1): 3-34, 2009; Jennifer S. Holmes and Linda Camp Keith, *Does the Fear of Terrorists Trump the Fear of Persecution in Asylum Outcomes in the Post-September 11 Era?* PS: Political Science, Symposium on Torture and Terrorism, 43(3): 431-5, 2010.; Linda Camp Keith, Jennifer S. Holmes, and Banks Miller, *U.S. Asylum Decisions: A Cognitive Approach to Understanding Immigration Judge Decision Making* Law and Policy, 35(4), forthcoming.

6. We have anecdotal evidence from private-practice immigration attorneys and non-profit legal counsel that most often claims will be filed for relief under each form of protection.

7. Lawrence Baum, *Judicial Specialization and the Adjudication of Immigration Cases*, Duke L.J. 59(8): 1501-1561, 2010; Stephen Legomsky, *Restructuring Immigration Adjudication*. Duke L.J. 59 (8): 1635-1720, 2010.

8. David S. Law, *Strategic Judicial Lawmaking: Ideology, Publication, and Asylum in the Ninth Circuit*, U. Cin. L. Rev. 73(3): 817-866, 2005, 830.

9. David A. Martin, *The 1995 Asylum Reforms: A Historic and Global Perspective.* Center for Immigration Studies. Washington D.C. http://www.cis.org/node/172 , 2000, 3.

10. INA § 101 (a)(42)(A), 8 U.S.C.A. § 1101(a)(42)(A).

11. Deborah E. Anker, Law of Asylum in the United States, 2011 Edition (West Publishing. 2011), 8.

12. *Id*, at 7.

13. *Id*, at 42 and citations within.

14. *INS v. Stevic*, 467 U.S. 407 (1984)

15. Anker, *supra* n. 11 at 7.

16. *INS v. Cardoza-Fonseca,* 480 U.S. 421 (1987)

17. Anker, *supra* n. 11 at 596-98.

18. Anker, *supra* n. 11 at 8.

19. Anker, *supra* n. 11 at 12.

20. For example, Jeffrey Segal and Harold Spaeth, The Supreme Court and the Attitudinal Model Revisited (New York: Cambridge, 2002).

21. James Anderson, *Regression and Ordered Categorical Variables (with Discussion)*, Journal of the Royal Statistical Society, Series B 46: 1-30, 1984.

22. See Bradford Jones and Chad Westerland, *Order Matters(?): Alternatives to Conventional Practices for Ordinal Categorical Response Variables* Unpublished Manuscript, 2006 for a more technical discussion.

23. The coefficient of variation is calculated as the standard deviation of a variable divided by its mean. Using the coefficient of variation allows one to compare the variance in two sets of variables which are scaled on separate metrics.

24. A. Böcker and T. Havinga, *Asylum Applications in the European Union: Patterns and Trends and the Effects of Policy Measures*, Journal of Refugee Studies 11(3): 245-66, 1998; Lisa Hassan, *Deterrence Measures and the Preservation of Asylum in the United Kingdom and United States,* Journal of Refugee Studies 13(2): 184–204, 2000; Lisa Schuster, *A Comparative Analysis of the Asylum Policy of Seven European Governments,* Journal of Refugee Studies 13(1): 118-132, 2000; Stephen Castles and Ellie Vasta, *Australia: New Conflicts around Old Dilemmas* in Controlling Immigration:

A Global Perspective, eds. Wayne A. Cornelius, Takeyuki, Philip L. Martin, and James F. Hollifield, (Stanford, CA: Stanford University Press, 2004); Wayne A. Cornelius, *Spain: The Uneasy Transition from Labor Exporter to Labor Importer* in Controlling Immigration: A Global Perspective, eds. Wayne A. Cornelius, Takeyuki, Philip L. Martin, and James F. Hollifield, (Stanford, CA: Stanford University Press, 2004); Matthew Gibney, The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees (Cambridge, UK: Cambridge University Press, 2004); Phillip Muus, *The Netherlands: A Pragmatic Approach to Economic Needs and Humanitarian Considerations* in Controlling Immigration: A Global Perspective eds. Wayne A. Cornelius, Takeyuki, Philip L. Martin, and James F. Hollifield (Stanford, CA: Stanford University Press, 2004); Carl Levy, *The European Union after 9/11: The Demise of a Liberal Democratic Asylum Regime?* Government and Opposition 40(1): 26-59, 2005.

25. *Supra*, Castles and Vasta, n 24 at 166

26. Lisa Hassan, *Deterrence Measures and the Preservation of Asylum in the United Kingdom and United States.* Journal of Refugee Studies 13(2): 184–204, 2000.

27. *Id,* 120.

TABLE 1. Types of Relief Granted by Immigration Judges, 1999-2010

Year	Number of Cases Decided	Asylum Rate	Withholding Rate	Withholding (CAT) Rate	Any Form of Relief
1999	27,483	0.31	0.03	0.00	0.34
2000	26,319	0.36	0.03	0.00	0.39
2001	26,573	0.37	0.03	0.00	0.40
2002	32,334	0.35	0.03	0.00	0.39
2003	38,452	0.35	0.04	0.00	0.40
2004	35,432	0.36	0.06	0.00	0.42
2005	32,450	0.36	0.07	0.01	0.44
2006	32,363	0.42	0.08	0.01	0.51
2007	28,408	0.43	0.08	0.01	0.52
2008	25,020	0.43	0.07	0.01	0.51
2009	22,423	0.45	0.08	0.01	0.54
2010	20,162	0.49	0.08	0.01	0.58

TABLE 2. Stereotype Logit Analysis of Ordering

Substantive Ordering		Legal Ordering	
phi1 (No Relief)	1	phi1 (No Relief)	1
phi2 (Withholding under CAT)	0.79 [.65, .93]	phi2 (Asylum)	-0.38 [-.58, -.20]
phi3 (Withholding)	0.27 [.16, .37]	phi3 (Withholding under CAT)	0.70 [.53, .88]
phi4 (Asylum)	0	phi4 (Withholding)	0

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