

STATE RIGHTS AND FEDERAL RESPONSIBILITIES TO SYRIAN REFUGEES

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Following the terrorist attacks in Paris last November, more than half of the United States has refused to accept Syrian refugees into their territories. ¹ Their refusals are a direct violation of federal and international law, yet that has not stopped state governors from proclaiming their stance, some in full awareness of their lack of legal authority. The federal government is now faced with the task of handling this large legal violation on top of addressing terrorism and national security. The state's refusals are not legally, some not even factually, sound, and, further, they are not evidence of a need to change federal immigration law, but rather a demonstration of the chaos that ensues when trust is lost in the federal government and fear reigns in place of law. There is a power struggle between the state and federal government because states do not feel justified in implanting the responsibility they hold to respect federal refugee law. However, the states' refusals are a result of fear and discrimination, rather than legal justification, and thus contribute to the struggle faced by international law in combating terrorist threats. This paper will argue that federal law, in this instance, the Refugee Act of 1980 and its related laws, must therefore be met and respected in order to address gross violations of human rights and safety, and it is therefore in the best interest of the states to comply.

I. INTRODUCTION

This paper will be discussing the current controversy over the admittance of refugees from Syria into United States of America. There is a power struggle between state and federal governments regarding the admission of Syrian refugees into the United States because the state governments do not feel justified in accepting their responsibility to uphold federal law. This paper will ultimately argue that it is in the best interest of the states to abide by federal law and recognize their lack of legal jurisdiction in disallowing Syrian refugees admittance into their states in accordance with the Refugee Act of 1980.

This paper will form its basis from Article VI of the U.S. Constitution to demonstrate the legal authority the federal government has over state governments and further illustrate its developed legal authority through the Refugee Act of 1980 and the Civil Rights Act of 1964 against discriminatory practices. The U.S. Constitution is an integral piece of this argument's foundation because its Supremacy Clause, located within the sixth article of the Constitution, mandates that federal law be the "supreme law of the land,"² giving federal policies preemption over any attempted state policies or legal

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action against them. This paper will further discuss the importance of the Supremacy Clause to demonstrate that the state refusals against accepting Syrian Refugees are in direct violation of the legal foundation upon which the United States was created. To further illustrate this point, this paper will also refer to the *Arizona v. United States* case in which Arizona attempted to pass a bill in violation of federal immigration law. The repercussions of the attempted Arizona law, likewise to the state refusals to accept Syrian Refugees, are also in direct violation of the Civil Rights Act of 1964, which explicitly prohibits discriminatory legislation.³

The Refugee Act of 1980 will serve as this paper's main focus, as it is the core federal document that the majority of the United States is protesting against. The Refugee Act of 1980 provides a comprehensive definition of what classifies as a "refugee" and provides legal guidance onto the admission of refugees into the United States. This paper will demonstrate that since this federal document is protected against oppressive state action under the Article VI under the Constitution and the Civil Rights Act of 1964, the current Refugee Crisis within state governments has no legal ground. The issue therefore lies not in the legal justification the federal governments have over the state governments but rather the power struggle that emits from this legal authority. The separation of state and federal law exists to assist in issues such as the Syrian Refugee Crisis in order to bring unity and clarity in moments of national security crises.

This paper will therefore also go into a discussion of the potential consequences that would emit from allowing state control over federal policies and turn to examples such as the *Arizona v. United States* case in order to demonstrate the purpose and utility of federal policies including the Constitution and Civil Rights Act of 1964. Following a discussion of possible consequences of state action, this paper will analyze the current issue and state governor justifications in order to bring light to the reasons why state governments feel the need to supervene over federal law. Finally, the conclusion will review the arguments discussed and express that the power struggle between state and federal governments is rooted in fear and must not alter the workings of the current legal system for the sake of national security and legal order.

In order to bring clarity to this issue, I will first offer an overview of the history of refugee law in the federal government in order to lay the foundation of my argument. The arrival of refugees into the United States has been a focus of the United States government, most notably through the War Refugee Board of 1944, which worked to rescue Jewish refugees and victims across the globe from Nazi occupied territories and concentration camps. The WRB effectively rescued 200,000 Jewish victims through a coordinated effort with Jewish organizations, neutral countries, diplomats, and resistance groups across Europe.

Previous to the 1944 establishment, immigration policy was designed against the arrival of Jewish refugees in fear they would act as agents for Nazi Germany under blackmail and threaten the safety of the nation.⁴ The State Department claimed winning the war was a far more effective strategy for saving the victims of Nazi atrocities than admitting them for asylum. Despite confirmed reports of the Nazi concentration camps and extermination of Jewish people in 1942, information regarding the mass murders was not released to the public until 1943.⁵ In response to the news, multiple American Jewish organizations, in conjunction with the Treasury Department, urged the President to respond to the genocide and criticized the administration for its "relative inaction"⁶ on

implementing legislation towards the rescue of Jewish victims. Eventually, the responsibility to protect and save the victims of German Nazi policies superseded the fear of threats to national security, and President Roosevelt signed Executive Order 9417, establishing the WRB.⁷

Following the War Refugee Board, immigration law continued to develop and made refugee rescue an essential function of the federal government. The first legislation approved by Congress supporting such efforts emerged in 1948 through the Displaced Persons Act, allowing for the admission of 205,000 displaced Europeans.⁸ Four years later, the 1952 statute reaffirmed the nation's quota system while limiting immigration from the Eastern Hemisphere, establishing "preferences for skilled workers and relatives of U.S. citizens and permanent resident aliens,"⁹ and tightening security measures. This progressed into President Lyndon B. Johnson's decision to eliminate the quota system through the Immigration and Nationality Act Amendments of 1965. These Acts allowed for immigration from all parts of the world into the United States and lifted barriers from the Eastern Hemisphere. Two years earlier, the United Nations added the 1967 Protocol to their 1951 Convention, which outlined a legal definition of refugees as any person who,

"owing to wellfounded [sic] fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."¹⁰

The convention also included agreements obliging signatories against refoulement, or return, of refugees to countries where they may face persecution.¹¹ The United States, a signatory to the 1967 Protocol, provided for the admittance of refugees "fleeing Communism, largely from China, Hungary, Korea, Poland, and Yugoslavia"¹² as well as those fleeing from Fidel Castro's regime with the help of multiple ethnic and religious organizations in addition to governmental efforts.

In 1975, following the fall of Saigon, Vietnam, the United States generated temporary funding for the Refugee Task Force which allowed for the resettlement of hundreds of thousands of Indochinese refugees. This event spurred the development of The Refugee Act of 1980, which officially standardized the refugee resettlement process and procedures within the United States. The Act, along with incorporating the UN 1951 Convention definition of "refugee," officially authorized federal assistance to refugee efforts and established the Office of Refugee Resettlement, a federal program within the United States Department of Health and Human Service's Administration for Children and Families dedicated to the assistance and funding of refugee relocation programs and services. The program is open to refugees, asylees, Cuban/Haitian entrants, Special Immigration Visa holders, Amerasians¹³, unaccompanied alien children, and victims of human trafficking.¹⁴ Since the emergence of this Act and affiliated programs, the U.S. has admitted over 3 million refugees.

The question this paper will be addressing is whether or not states have a legal right to refuse Syrian refugees into their states. I find that they do not have this legal authority, as it is a violation of the 1980 Refugee Act.¹⁵ In accordance with the United States

Refugee Act of 1980, victims of persecution in Syria are as welcome as any other victims of persecution seeking refuge in the United States so long as it is conducted through proper protocol and screening measures.¹⁶

Syria has been a major focus for ISIS in its implantation of terrorist strategy and ideology since The Arab Spring, a period of democratic protest and uprising within the Middle East. These uprisings and domestic chaos soon gave rise to ISIS, otherwise known as the Islamic State of Iraq and Syria. The Syrian revolution, a result of reform efforts and protests against the President of Syria, Bashar al-Assad, contributed further to the destabilization of Syrian security and political development, eventually developing into the Syrian Civil War. As a result of this immense chaos and growth in ISIS power, millions of Syrians are fleeing the country in fear of persecution by the Islamic state militants. In response to the events in Syria, the federal government has amended its already 12-month screening process to allow for highlighted attention on Syrian refugee applicants during the enhanced security check portion of the screening process. This “highlighted attention” includes “an enhanced review of Syrian cases, which may be referred to USCIS Fraud Detection and National Security Directorate for review.”¹⁷

On November 13, 2015, a coordinated terrorist attack was committed against Paris, France, leaving 130 dead and hundreds wounded. The Islamic State terrorist group, ISIS, coordinated the attacks, proclaiming France as “on the top of the list of targets of the Islamic State.”¹⁸ Within two hours, six attacks, bombs, and explosions occurred within various public areas in Paris, causing fear, chaos, and prompting immediate raids in France and Brussels in search of suspects.¹⁹

Following the Paris attacks, state governors across the United States immediately issued reports stating their refusal to allow Syrian refugees into their state, fearful of their state’s security. Many claim that the relocation of Syrian refugees puts their citizens in harm’s way²⁰ while others request amendments to current federal refugee law to allow for state authorization and oversight over the placement and administration of refugees. Other states cite the rumor that a Syrian was involved in terrorist attacks in Paris and Greece, claiming that such rumors give enough credence to a position against the admittance of Syrian refugees. The Syrian in question had actually died months before the attack, and his passport was stolen and used by one of the ISIS terrorists.²¹ In total, 31 states have issued refusal statements to the President opposing the Reform Act of 1980 and its affiliated Refugee Admissions Program in the name of preserving state security.²²

Not only are these refusals factually and legally unsound, they are also not legally authorized to exist at all according to Title I of the 1980 Refugee Act²³ stating the U.S.’ responsibility to respond to refugee needs as well as Title VI of the Civil Rights Act of 1964 which prohibits the refusal of federal assistance to people on account of race, color, or national origin.²⁴ The Office of Refugee Resettlement federally funds the Refugee programs, to ignore legal procedures and policies is to allow state governments the power to enact authority in the name of fear rather than in name of the law. The state refusals to these federal procedures are a direct opposition of federal principles²⁵ and exist as evidence of mistrust between state and federal governments, especially as governors are requesting more information on screening procedures despite the immense efforts and amendments to the current screening process that the federal government have already implemented for the screening of Syrian refugees.

This paper will analyze these findings and explore the specific legal jurisdiction held

by state governments regarding refugee resettlement and status of Syrians. It will also explore the specificities within the Refugee Act of 1980 and further analyze the particular claims, concerns, and complaints issued by the refusing states in order to establish whether or not there is legitimate legal concern. I have found that there is no legal jurisdiction for the states to issue their claims, and that their claims are built upon a foundation of fear and discrimination as opposed to law. Fear for national security exists with each global crisis and terrorist threat that comes with a refugee crisis, and it is up to the federal government to amend its procedures so that they ensure national security and maintain the American principle of rescuing refugees, as stated in Article 1 of the Refugee Act of 1980.²⁶ States must realize that their lack of legal authority exists for a purpose, for the benefit of their own state as well as the nation and its founding legal principles. Otherwise, they are adding to the legal burden of the federal government by forcing the issue of legal penalties for violating federal law.

II. FEDERAL LAW AND REFUGEES

The controversy surrounding Syrian refugees and federal aid requires an understanding of what the federal laws are surrounding refugees and what those procedures entail. This section will evaluate The Refugee Act of 1980, paying close attention to its requirements for refugee applicants as well as its requirements for state participation and federal aid. It will also point out the Act's isolation of any discussion regarding the refugees and their admittance into the country to members of the federal government only.²⁷ The reason for this is to retain the state government's role to providing the previously agreed upon federal service to cleared refugees, as this section will demonstrate.

The Refugee Act of 1980 acts as the federal standardized procedure and policy regarding refugees in the United States. It builds off over three and half decades of refugee law development, most recently through its developments off the 1965 Immigration and Nationality Act. Title I of the 1980 Act establishes "it is the historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands"²⁸ including humanitarian assistance for care and maintenance as well as efforts for resettlement, transportation, admission into the United States, and arrival transitioning aid. The Act goes further to encourage all nations to provide such assistance and resettlement opportunities, for to do otherwise would be against the principles of the United States.

Given that the Reform Act establishes itself as founded upon the Constitutional principles of the United States, it is therefore protected under the Supremacy Clause of the Constitution. The Constitution grants this Act supreme authority within the nation, overruling any state laws or acts against it.²⁹ This also effectively means the state refusals to accept Syrian refugees are refusals in opposition of the legal principles that form the foundation for the United States government. They go against the historical responsibility and policy of the United States, the Constitution, and the federal efforts towards aiding those in need.

Title II of the Act officially defines a refugee as any person outside the country of his

or her nationality, or if such person does not identify with a nationality, any person outside of the country he or she last resided. This person must also be either unable or unwilling to return to that country due to a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Integral to this definition is the following note, which states that refugees do not include those who have “ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.”³⁰ This definition derives from the 1951 Convention issued by the UN, solidifying itself as united with the principles of international law. The Immigration and Nationality Act of 1965 adds that refugees, once admitted into the United States, are protected under the 14th amendment of the Constitution, meaning that their refugee status may not be influenced by their original country of origin.

According to this definition, Syrian victims fulfill the requirements to apply as refugees. Considering the fact that ISIS is the world’s leading terrorist organization with repeated terrorist assaults across the globe and continuous, unceasing recruitments and attacks upon the Syrian population, the victims’ fear of persecution is completely sound. The United Nations Refugee Agency announced 10.8 million of the 22 million Syrian population was in need of humanitarian assistance with 6.5 million displaced and seven million forced abroad as a result of fear of persecution.³¹ Not only are Syrians applicable for refugee status, but those who are admitted into the United States following the screening process are protected, as all refugees are, under the 14th amendment. Their Syrian origin is therefore irrelevant to their status as refugees once granted admission into the United States, making all state refusals against their admission federally and constitutionally unsound. The state governors may not refuse refugees of any origin because to do so is against the 14th amendment, protecting refugees against discrimination of their country of origin.

Title II continues to extend its specifications regarding refugees, including spouses and children of any refugee as qualified for admission.³² Considering the fact that over 50% of admitted Syrian refugees are children, state governors have no more right to refuse their admittance as they would to the refugees themselves.³³ The women and children seeking admission into the United States as refugees are granted the same rights and protection as refugees under the Act, making the state refusal against them equally unsound.

Most relevant to this discussion is Sec 207 (e) of the Act, which states that discussions about the proposed admission of refugees are to be held between the President, members of the Committees on the Judiciary of the Senate, and the House of Representatives. These discussions will entail reasons for believing the admission is justified according to the principles stated in Title I of The Refugee Act of 1980, leaving the ultimate decision of their proposed admission to those members of said discussion only.³⁴ In other words, state governors have no say into both the discussion and analysis of the refugee admission as well as the ultimate decision. Not only are states unable to infiltrate federal immigration law per its design and separation from state government, but the Refugee Act itself is designed to keep state opinions out of the discussion, holding the debate and analysis of the refugee applicants and their histories with the federal government only. State governors, therefore, contain no right to review the admission decision or request information on the refugee screening details because that would not

only be a direct violation of the Refugee Act of 1980, but it would delay the federal process in screening the hundreds of thousands of applicants into the United States, destabilize the federal aspect of the process itself, and introduce a far larger security threat to the nation through the transparency of applicant information.

Governor Doug Ducey of Arizona cites 8 USC, Section 1522 (a) within The Refugee Act of 1980 in his request to “receive immediate consultation by federal authorities per the United States Refugee Act, and that the federal government take into account the concerns and recommendations of the state of Arizona...in our efforts to keep our homeland safe.”³⁵ Under 8 USC Section 1522 (a), the Director of The Office of Refugee Resettlement must consult the representatives of state governments concerning the resettlement of refugees into their states and to strategize that resettlement. The purpose of these discussion is not to determine whether or not the governor feels the state is at a security risk or not, that discussion has already been held between the federal departments involved in the security screening process. The discussions and consultations serve the purpose of 8 USC, Section 1522 (a)(2)(c) which states after consultations, the Director will implement policies to ensure the refugee’s is not relocated into “an area highly impacted by the presence of refugees or comparable populations.”³⁶ The idea is to ensure the state has the necessary means to accommodate the refugees. The potential harm caused by the refugee is in relation to those resources, not in relation to the existence of the refugee as a security threat. Governor Ducey is therefore misinterpreting the federal mandate for state consultation in requesting consultation in regards to state security. This same section, 8 USC Section 1522 (a) also states within Section (5) that “assistance and services funded under this section shall be provided to refugees without regard to race, religion, nationality, sex, or political opinion,”³⁷ meaning that Syrian refugees may not be denied resources after granted refugee status by any state on account of their Syrian origin and/or religious affiliation. Governor Doug Ducey, therefore, may not request consultation in reference to the Syrian refugees specifically out of any other potential refugee. To do so would be a violation of 8 USC 1522 (a)(5) as a discriminatory practice. The Reform Act of 1980 is designed as such to cover all security measures and consultation within the federal department and consult the state only on such matters that the state has in-depth knowledge on, such as the resources available to provide for refugees. Any discussions in reference to security threats are not the responsibility or legal authority of the state, and if it were, it would violate the principles of the Reform Act of 1980, prolong the process of refugee resettlement, and invite discriminatory practices in violation of the Constitution and federal law.

III. THE LEGAL AUTHORITY OF STATES

In order to properly understand the controversy surrounding the state refusals against the admittance of Syrian refugees, it is necessary to first analyze the legal authority of states in regards to federal procedures and provisions. This section will analyze what legal rights states have in participation with the federal procedures, and it will ultimately find that, in accordance with Article VI of the Constitution, the Refugee Act of 1980, and the Civil Rights Act of 1964, states have no legal authority to issue any

type of refusal for federal aid within their state.

As discussed in the previous section, in basic state v. federal law, the Supremacy Clause of the Article VI of the Constitution disallows state governments the ability to overrule a federal law. This is known as preemption. Any federal law that outlines a certain procedure or federal stance on specific issue preempts any following attempted laws or bills by states in contradiction of the previous preempted federal law. In other words, the federal statutes are the “supreme law of the land,”³⁸ as stated through the Supremacy Clause within Article VI of the Constitution.³⁹ The supremacy clause comes into effect in instances in which state law contradicts federal law. This is not the case with refugee law, since the federal government, as opposed to state governments, controls immigration law.⁴⁰ Laws regarding immigration are held within the federal government’s authority, making any state laws or policies against immigration, such as the state refusal of Syrian refugees, not only a breach in legal territory, but also subject to federal preemption.

For instance, in *Arizona v. United States*, Arizona passed the S.B. 1070 bill, which Governor Jan Brewer later signed into law, and this law was later found to have been preempted by federal immigration law, making it unconstitutional to pass as proposed. The law allowed Arizona police to question the immigration status of anyone within their state so long as there is “reasonable suspicion” that they are residing in the state illegally.⁴¹ Within the same year, the four provisions of the act were brought into federal court to ensure they were not in contradiction with federal law, and if so, to identify which provisions were preempted by federal law. Many in the nation worried this law would pave the way for further anti-immigration and discriminatory procedures, giving justification for biased opinions based on a person’s appearance or behavior in order to characterize it as under “reasonable suspicion.” The court concluded federal immigration law preempted three out of the four provisions, claiming their efforts created more interference with current federal immigration law.⁴² This case demonstrates the obstacles states face when attempting to challenge federal law or encroach on federal territory.

It may be reasonably expected that any proposed bills contradictory to the Refugee Act of 1980 will follow the order of *Arizona v. United States*⁴³ and be deemed preempted by federal law under the supremacy clause, due to their conflicting efforts and causes. Contradictory bills to the Refugee Act of 1980 imply discriminatory efforts against refugees of a certain country of origin, likewise to how the S.B. 1070 bill implied discriminatory efforts against people of a certain race or appearance. The Refugee Act is designed as such to prevent this discrimination and protects against such efforts under the Civil Rights Act of 1964. Any refusals against the principles and procedures outlined in the bill are therefore against federal law. Some states seem to recognize this; out of the 31 state refusals to the admittance of Syrian refugees, 4 states have explicitly admitted to their awareness of their lack in legal authority on this issue.⁴⁴ However, state governors believe that the safety of their state overrides their limited state authority within federal territory and, further, claim that the Syrian refugees are a direct threat to that safety, necessitating a justified cause for refusal.⁴⁵

IV. CONSEQUENCES OF STATE ACTION

Having discussed the legal distinctions between the state and federal government, this section will address the importance of those distinctions and the possible consequences of allowing state action in opposition to federal policies. It is found that if states were given the right to go against their legal responsibility to uphold The Refugee Act of 1980, Article VI of the U.S. Constitution, and The Civil Rights Act of 1964 by refusing to accept Syrian refugees into their state or by requesting further screening privileges outside their jurisdiction, they would be threatening the federal structure and legally protected values of the United States.

The separation of state and federal government is such in order to avoid possible instances of social discrimination, as cultural views are quite varied throughout the United States. This is why the Civil Rights Act of 1964 exists; once the United States established itself as a nondiscriminatory entity in its legal administrations, it included the federal act in order to solidify these purposes and values. The Act states explicitly in that it aims to “to prevent discrimination in federally assisted programs,”⁴⁶ and any direct and isolated state effort against the admission of specific refugees from a specific country of origin would classify as an act of discrimination, thereby directly violating the legal principles and responsibility of the United States. The federal structure of the U.S. would be threatened by allowing state power over federal programs because it would allow further acts of discriminatory practices without legal punishment.

This is best exemplified through the *Arizona v. United States* case, discussed earlier, in which the subnational state of Arizona attempted to pass the S.B. 1070 bill, giving state officers the legal authority to question the immigration status of any person “after [the officers have] had probable cause to arrest that individual for some other crime.”⁴⁷ The case discusses multiple provisions of the bill including this one, which specify the right to detain these individuals until immigration status has been determined and to release or remove such individuals upon discovery of their immigration status.

The court, as Justice Sonia Sotomayor points out, is concerned with the length of detention for these individuals more-so than the probable cause for stopping and searching because the Supreme Court Justices questioned whether federal law preempted the procedures set out by the S.B. 1070 bill. The court investigates this and other details of the bill before clarifying with Paul D. Clement, the state advocator for the petitioners of Arizona, whether or not this proposed bill and its source concedes to current federal law. Justice Scalia asks, “You'll concede that the -- that the State has to accept within its borders all people who have no right to be there, that the Federal Government has no interest in removing?” and his question is later emphasized by Justice Kennedy when he asks Mr. Clement, “Can we say, or do you take the position that a State must accept within its borders a person who is illegally present under Federal law?” and receives an answer of “No.”

Here we have evidence of state resistance to federal policy, which led to the creation of S. B. 1070. However, as the case moves forward, the court finds that many of the sections within S. B. 1070 stand in direct violation of federal law, such as Section 5(c)'s target on employment. As Justice Sotomayor and Ginsburg reiterate, what the Bill appears to do is to “regulate more”⁴⁸ the policies and standards already set out and addressed by federal law. The source of the bill's intent appears to cause only more

questions and tension, as suggested by Justice Kennedy.⁴⁹

Most importantly, the bill attempts to enforce discriminatory procedures that require legal analysis in order to determine its justification, and the court ultimately determines it has none. The policies set forth by the bill attempt only to give state officers the unnecessary, discriminatory right to question individuals by their own reasonable suspicions and hold them for any amount of time justified under the Fourth Amendment, and the court found that the regulations necessary to prevent these procedures from encroaching onto discriminatory territory already existed, making the S.B. 1070 bill unnecessary and preempted by federal law.

Had the S.B. 1070 bill not been contested in court and found to be preempted by federal law, the state of Arizona would have been allowed to supervene over current federal immigration law and all the history and legal developments that contributed to its inception. States would be given the right to find their own justifications for their own discriminatory practices, and the history of law and its conscious, societal developments would all be moot because the legal lessons learned from them, such as the Civil Rights Act of 1964, would no longer be held as anchored foundations in federal and thereby state law.

Furthermore, not only would allowing state action allow for an influx of discriminatory legislation, but it would also crumble the federal foundation upon which the United States stands. The Supremacy Clause in Article VI of the Constitution declares federal supremacy over any state action in order to avoid the consequences discussed earlier⁵⁰, and if such consequences were allowed to occur, then the Supremacy Clause and the Constitution in which it lies would be useless to the federal government's legal authority. Therefore, in order to preserve the authority and legal foundation of the United States, the Constitution and all its policies, specifically in this case the Supremacy Clause, must be respected and upheld in their entirety.

V. LEGAL AND STATISTICAL ANALYSIS OF STATE REFUSAL CLAIMS

Alongside the legal framework surrounding this controversy, it is important to analyze the content of the state refusals in order to analyze their origin and discuss whether they hold enough ground to consider amendments to federal law, which is what this section will discuss. It will first analyze the counterargument to the admittance of Syrian refugees as voiced by the governors of all refusing states and then analyze those arguments for legal and statistical legitimacy, which it will ultimately find do not exist in abundance.

A foundational fear amongst all state refusals is a concern for state safety. Following the attacks in Paris, in which ISIS coordinated a series of shootings and explosions that killed 130 people and wounded many others, many state governors fear ISIS' next target and worry that by admitting Syrians into their states, they are opening themselves up to a higher risk of harm. The reason for this is multi-faceted. As previously discussed, Syria is currently faced with a plethora of human rights violations committed by multiple groups including ISIS. Much of the refugee movement in Syria is due to the terrorism and conflict occurring in Syria, as stated by UN High Commissioner for Refugees, Antonio Guterres.⁵¹ However, this only intensifies the association between Syrians and terrorist

activity, activating fear and need for security amongst state governments.

Over 50% of the 31 state refusals include statements citing state security in the wake of the threat of terrorism and use these concerns as justification against opening their doors to the Syrian victims. Maryland, for instance, stated they would “cease any additional settlements of refugees from Syria in Maryland until the U.S. government can provide appropriate assurances that refugees from Syria pose no threat to public safety.” Many states echo this request for enhanced assurance of state safety, and even the states abiding by federal refugee law have asked for the government to “make absolutely sure that all refugees receive the highest level of background and security screening before consideration for resettlement,” in the words of North Dakota Governor Jack Dalrymple. The concern that Syrian refugees will threaten state security is therefore shared among all states, whether they are refusing or allowing refugee admittance.

Many states also cite that a Syrian citizen was part of the Paris attacks, and due to this speculation, state governors believe they are justified in opposing all Syrian refugees. Governor Rick Scott of Florida claims “one of the terror attacks suspects gained access to France by posing as a Syrian refugee,”⁵² Nikki Haley of South Carolina cites that “reports surfaced that at least one of the attackers entered France by claiming to be a refugee hoping to escape the conflict in Syria,”⁵³ and nearly 50% of the refusals reference the recent attacks in Paris as evidence of a deeper need to restrict Syrian refugee relocation within the United States.

In order to address these concerns, I will first analyze the claims against Syrians as a result of the Syrian passport found in the Paris attacks and then address the more general, universal concern for security in regards to Syrian refugees through a legal perspective.

Governors Nikki Haley and Rick Scott are correct that one of the Paris attackers obtained a fake Syrian passport and posed as a refugee in order to gain access into Paris for the attacks. However, the failure to detect the assailant’s true identity is not grounds to mistrust the American federal process for refugee screening. The attacker gained access into Europe through the Aegean Sea and into Leros, which is controlled by Greek authorities. The Greek screening and immigration process is compromised due to Greece’s lack of staff and equipment resources, according to the Wall Street Journal, forcing them to “carry out only a simple procedure that involves taking people’s data and fingerprints, and sometimes asking them a few questions, before giving them permission to travel onward.”⁵⁴ After this screening process, the Paris attacker was no longer questioned on his identity because it was already identified as Syrian in police records.

This, however, holds little similarity to the strenuous procedure involved in screening Syrian refugees entering the United States. For state governors to critique the screening process set forth by the federal government in response to the loose Greek screening process is not only illogical but also evidential of a deep mistrust and misunderstanding of the federal government and of the federal screening procedures. The governmental system in the U.S. differs largely from the processes in Greece, and the U.S. federal refugee laws reflect those differences. In order for a Syrian to gain refugee status within the United States, their entire identity and background is thoroughly checked and rechecked again. The United States is not plagued with a lack of resources or equipment in their screening procedures as Greece is, allowing them the ability to utilize seven different departments in screening fingerprint databases, conducting interviews, collecting and assessing documents, and analyzing background information. A refugee

applicant must first face the UN Refugee Agency, which collects all necessary documents and performs the initial assessment and interviews. This assessment includes state-of-the-art iris scans, particularly set forth for Syrian refugees. The federal government, already aware of the danger and intentions of terrorist organizers to pose as Syrians, decided to implement extra screening checks on applicants originating from Syria in order to ensure accurate information. This is a procedure requested by state governors in their refusals and requests regarding Syrian refugees. It already exists. Furthermore, following the UN Refugee Agency evaluation, refugee applicants go through four more steps involving a re-analysis of their files and information collection by the Resettlement Support Center, enhanced security checks by the National Counterterrorism Center and Intelligence Community, the FBI, the Department of Homeland Security, and the State Department, further interviews by multiple officers of the USCIS, an additional collection of fingerprints, re-interviews, and a full biometric security analysis of the collected fingerprints through the databases of the FBI, the DHS, and the U.S. Department of Defense.

The United States takes no chances with their screening process in order to assure all admitted refugees were thoroughly checked and contain accurate information regarding their information. It is therefore unreasonable for state governors to imply the lack of proper security in Greek's process is grounds to suspect the U.S. of equal inadequacy, particularly because the improvements requested by these governors already exist in the system. Domestic security must not be viewed in reflection of the legal processes of different countries because that to do so is to ignore U.S. law.

Statistically, only two% of the admitted Syrian refugees are males of "military age", according to [find stat], which would be the ideal candidates for terrorist activity. The remaining 98% consist of women and children, and children make up nearly half of that percentage. These numbers are not statistics on the people fleeing Syria for refugee status but rather the people permitted refugee status by the United States following the screening process. The U.S. is stringent on ensuring those admitted into the U.S. properly and rightly fulfills the requirements set forth by the Reform Act of 1980, and though this definition also exists within the UN's 1951 Convention, it is explicitly present within federal law in order to ensure its application.

States also ask that as a result of the Paris attacks and ISIS activity in Syria, they refuse refugees of Syrian origin regardless of the screening process because they believe the threat for terrorist activity in correlation to a Syrian origin is great enough to warrant a refusal. This is a widely unconstitutional and discriminatory stance to take, especially in retrospect of the federal screening process. As previously stated, the Reform Act of 1980 grants admitted refugees protection under the 14th amendment, which means their right to life, liberty, and the pursuit of happiness within the U.S. may not be abridged or refused by state legislation. Therefore, each state refusal is a direct federal violation of the 14th amendment.

Furthermore, specific banning of refugees of Syrian origin despite the 1two-month screening procedure determining their safety and impact on the nation is a direct violation of the Article 6 of the Civil Rights Act of 1964, which prohibits "against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color, or national origin."⁵⁵ This Act exists to prevent exactly what the state governors are attempting to do with their state refusals. States are

not allowed to single out refugees of Syrian origin and deny them from access to refugee relocation because the refugee program is a facet of immigration law, a federal law and realm of federal authority, because to do so would be discriminatory. The federal government is already fully aware of the dangers and safety concerns of the nation, which is why they are thoroughly re-examining their screening process and ensuring it provides the highest quality security that the nation can offer. However, the question of whether or not the admitted refugees are a safety concern is not the responsibility of the state, it is the responsibility of the federal government and after the federal government has deemed it safe for an individual to enter the U.S. as a refugee, the state government must trust their decision and follow through with the federal procedure to assess their relocation resources.

The state claims in reference to the individual posing as a Syrian refugee in Paris is also legally unsound because the law recognizes each refugee and analyzes their personal background in accordance to the screening procedures outlined in Title II of the Refugee Act of 1980.⁵⁶ They are not analyzed in reference to past individuals but rather of the particular security threats associated with that particular person's background information. Therefore, to condemn an entire ethnicity from entering the U.S. simply because past individuals of that ethnicity have been associated with terrorist activity is to issue a blanket ideology that all Syrians are inherently dangerous, and this is fundamentally wrong and in violation of the principles of U.S. law.

VI. COMPROMISES AND SOLUTIONS TO THE SYRIAN REFUGEE DEBATE

The question remains, then, of what states can do to voice their insecurity in regards to the admittance of Syrian refugees. This section will analyze possible compromises and solutions to the Syrian Refugee Debate that may be reached without breaching federal law.

The only appropriate compromise a state government could make in regards to the refugee relocation process would be to avoid any direct state action benefitting the program outside direct refusal. In other words, states could request their personal departments and funding not be used to serve the process without denying their resources entirely. This, however, is unnecessary, because the program is already federally controlled and the resources discussed between state governments and the Director of the Office of Refugee Resettlement in order to ensure the state is not harmed or exhausted of its resources through the program.

To avoid violating federal law, states cannot refuse to grant federal funds to the Office of Refugee Resettlement because to do so would be in violation of the Civil Rights Act of 1964, as discussed earlier. However, they could make the process difficult by refusing to implement and allocate resources fit for refugees within the state. They may also issue recommendations to the Director in critique of their specific state's resources and ability to house the refugees, though most of this would also be in violation of the anti-discriminatory practices of federal law since their underlining reason would be to deter refugees of Syrian origin for no more reason than the fact that they are Syrian. They may, also, of course, and as they have been doing, submit formal requests to the President urging further attention into individual state concerns and request further screening

information for the consideration of state governors. This request is a questionable one to make because the federal government must exercise extreme caution in releasing information to state governments in order to ensure information security; however, transparency in regards to the stringency involved within the screening process may give state governors the security they need to ensure their state security needs are not being overlooked. Viewing the current screening process and analyzing its information, which is all publically available to state governors and any person with a computer, however, could also accomplish this. Any requests for further details may encroach on national security and thus must be treated carefully and rightfully denied if appropriate.

CONCLUSION

In conclusion, states contain no legal jurisdiction or justification to refuse the resettlement of Syrian refugees into their states according to the 1980 Refugee Act⁵⁷, the Civil Rights Act of 1964⁵⁸, and Article VI of the Constitution⁵⁹. The Refugee Act affirms the duty of the United States to protect refugees in the name of the country's founding principles towards protecting against prosecution,⁶⁰ and it isolates that responsibility and decision-making to the federal government.⁶¹ The Supremacy Clause in the Constitution, which guarantees federal supremacy in its jurisdiction, overriding any state claims that go against federal procedures and principles further supports this.⁶² Finally, the Civil Rights Act of 1964 bars against discrimination towards any of the admitted refugees, legally prohibiting state governors to issue statements of refusal to admit refugees specifically from Syria on account of their country of origin.⁶³ In sum, states lack any legal authority to make the claims they are making, let alone stand by them.

The only solution to the debate surrounding Syrian refugees is to trust the current federal proceedings and request further information in order to fulfill understandings of its security procedures. The law already accommodates for the fears and concerns issued by the state refusals and letters through its associated constitutional principles, screening procedures, and multi-faceted approach to immigration and refugee law.

Since the admittance of Jewish refugees fleeing Nazi Germany in 1944, the United States has affirmed itself as a nation dedicated to the needs of humanitarian concern. President Obama went so far as to even liken the Syrian refugees to the Pilgrims who fled England in search of religious freedom.⁶⁴ These laws did not emerge gracefully; they were met with intense protest and debate regarding the safety of the nation and the security threats held by potential refugees. People worried the Jewish refugees could be undercover spies, and others feared that by opening the nation's doors to victims of persecution, the nation would also be opening their doors to the persecution itself. It was due to the multiple Jewish organizations that these concerns were addressed as minor in comparison to the global issue faced by the Jewish victims of 1944. With proper screening procedures, the United States could house the victims and maintain their constitutional principles without putting their nation at stake. Otherwise, the nation would be turning its back on its origin as a haven life, liberty, and the pursuit of happiness.

If state governments were given the power to refuse federal procedures without consequence, then an entire slew of discriminatory procedures against individuals on account of race, gender, political opinion, sexual orientation, and more. For instance, laws such as the proposed legislature in *Arizona v. United States* would be abundant

across the country, allowing state troopers the ability to discriminate against non-white individuals or individuals with a foreign accent and/or appearance under the grounds of “reasonable suspicion.” States may even be able to refuse access at all to such individuals without any clear or legitimate indication

Not only are state governments denied the legal authority to make any type of refusal to federal resources for refugees, but their refusals are built off of fear and discrimination as opposed to law. They blatantly ignore the copious amount of effort put forth by the federal government to ensure proper screening procedures by likening the loose procedures of the Greek process as justification for skepticism. Furthermore, they attempt to discriminate an entire ethnicity on the basis of nothing more than affiliated harm with an ethnicity. Syrians are more closely affiliated with the devastation caused by ISIS because their country is one of the most involved with terrorist activity. It is in the midst of a Civil War, and this persecution and violence does not make all its citizens capable of “reasonable suspicion” for terrorism, just as a man of Mexican descent and foreign accent may not be deemed worthy of “reasonable suspicion” for containing illegal citizenship as claimed in the 1070 Bill in Arizona. The victims of Syria deserve to find peace, and it is the duty of the U.S. to honor its legal foundations and principles in support of providing that peace.

¹ <http://www.cnn.com/2015/11/16/world/paris-attacks-syrian-refugees-backlash/>

² Article VI

³ Civil Rights Act 1964

⁴ <http://www.usmmm.org/wlc/en/article.php?ModuleId=10007094>

⁵ <http://www.usmmm.org/outreach/en/article.php?ModuleId=10007749>

⁶ Ibid.

⁷ Ibid.

⁸ <http://www.rcusa.org/history>, http://www.fairus.org/facts/us_laws

⁹ Ibid.

¹⁰ Text of the 1967 Protocol Article 1 (<http://www.unhcr.org/3b66c2aa10.html> pg 14)

¹¹ <http://www.unhcr.org/3b66c2aa10.html>

¹² <http://www.state.gov/j/prm/releases/factsheets/2015/244058.htm>

¹³ “Individuals fathered by a U.S. citizen and born in Vietnam after January 1, 1962 and before January 1, 1976.” <http://www.acf.hhs.gov/programs/orr/resource/who-we-serve-merasians>

¹⁴ Ibid.

¹⁵ Refugee Act of 1980 Article 1

¹⁶ Refugee Act 1980 Title II (<https://www.gpo.gov/fdsys/pkg/STATUTE-94/pdf/STATUTE-94-Pg102.pdf>)

¹⁷ <https://www.whitehouse.gov/blog/2015/11/20/infographic-screening-process-refugee-entry-united-states>

¹⁸ http://www.nytimes.com/2015/11/15/world/europe/isis-claims-responsibility-for-paris-attacks-calling-them-miracles.html?_r=0

¹⁹ <http://www.bbc.com/news/world-europe-34818994>

²⁰ <http://www.newsweek.com/where-every-state-stands-accepting-or-refusing-syrian-refugees-395050>

²¹ <http://www.nytimes.com/live/paris-attacks-live-updates/syrian-passport-reportedly-was-stolen-or-fake/>

²² Ibid.

²³ <https://www.gpo.gov/fdsys/pkg/STATUTE-94/pdf/STATUTE-94-Pg102.pdf>

²⁴ <http://www.justice.gov/crt/title-vi-civil-rights-act-1964-42-usc-2000d-et-seq>

²⁵ Article 1 Refugee Act of 1980

²⁶ Ibid.

²⁷ Section 207e

²⁸ Refugee Act 1980

²⁹ Constitution Article VI

³⁰ Ibid.

³¹ <http://www.unhcr.org/pages/49e486a76.html>

³² Refugee Act 1980

³³ <https://www.whitehouse.gov/blog/2015/11/20/infographic-screening-process-refugee-entry-united-states>

³⁴ Section 207e

³⁵ <http://www.newsweek.com/where-every-state-stands-accepting-or-refusing-syrian-refugees-395050>

³⁶ 8 USC Sec 1522 (a)(2)(c)

³⁷ 8 USC Sec 1522 (a)(2)(5)

³⁸ <https://www.law.cornell.edu/constitution/articlevi>

³⁹ Ibid.

⁴⁰ <http://www.lawhelp.org/resource/the-differences-between-federal-state-and-loc>

⁴¹ <https://www.aclu.org/feature/arizonas-sb-1070>

⁴² <http://www.scotusblog.com/2012/06/s-b-1070-in-plain-english/>

⁴³ <https://www.oyez.org/cases/2011/11-182>

⁴⁴ <http://www.newsweek.com/where-every-state-stands-accepting-or-refusing-syrian-refugees-395050>

⁴⁵ Ibid.

⁴⁶ Civil Rights Act 1964 Preamble

⁴⁷ Transcript of Arizona v. US case Sonia Sotomayor

⁴⁸ Ibid.

⁴⁹ Transcript^

⁵⁰ Article VI Constitution

⁵¹ <http://www.cbc.ca/news/world/un-syrian-refugees-paris-attacks-1.3331292>

⁵² <http://www.vox.com/2015/11/16/9746456/map-syrian-refugees-governors>

⁵³ Ibid.

⁵⁴ <http://www.wsj.com/articles/paris-stadium-attacker-entered-europe-via-greece-1447698583>

⁵⁵ 42 USC <https://www.gpo.gov/fdsys/pkg/USCODE-2008-title42/html/USCODE-2008-title42-chap21-subchapV.htm>

⁵⁶ Refugee Act 1980 Title II

⁵⁷ Refugee Act 1980

⁵⁸ Civil rights Act 1964

⁵⁹ Article VI Const.

⁶⁰ Article 1 Refugee Act 1980

⁶¹ Section 207e Refugee Act 1980

⁶² Article VI Constitution

⁶³ Civil Rights Act 1964

⁶⁴ <http://abcnews.go.com/Politics/president-obama-compares-syrian-refugees-mayflower-pilgrims-states/story?id=35431907>