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Detained by Design

How AI-Driven Risk Assessment Algorithms Undermine Justice in Humanitarian Immigration Cases

Abhilasha Khanal*

Abstract: This article examines the growing use of artificial intelligence (AI)–driven risk assessment tools in U.S. immigration enforcement, focusing on ICE's "Hurricane Score" within the Alternatives to Detention program. It argues that such tools are fundamentally incompatible with humanitarian immigration proceedings, including asylum, withholding of removal, and protection under the Convention Against Torture, where individualized review and procedural fairness are essential. Drawing on government reports, legal scholarship, and empirical data, the article demonstrates how automated risk scoring systems distort detention decisions, embed systemic bias, and undermine due process by operating with limited transparency and accountability. While proponents claim that these tools enhance efficiency, consistency, and public safety, this article contends that such benefits cannot justify their use in life-or-death adjudications. Ultimately, it concludes that AI-driven risk assessment systems should not be used in humanitarian immigration cases, where the stakes demand human judgment, transparency, and individualized consideration.

Introduction

In recent years, the U.S. immigration system has increasingly adopted artificial intelligence (AI) tools to improve efficiency, reduce case backlogs, and support enforcement decisions.[1] Among these tools are AI-driven risk assessment systems that influence whether individuals are detained or released while their immigration cases are pending.[2] This article argues that such tools should not be used in humanitarian cases: particularly in asylum, withholding of removal, or Convention Against Torture (CAT) proceedings, which require heightened procedural fairness and individualized review.

To illustrate this argument, the article examines the U.S. Immigration and Customs Enforcement's (ICE) Hurricane Score, a machine learning tool used within the Alternatives to Detention (ATD) program.[3] The Hurricane Score is only one example of the Department of Homeland Security's use of AI tools, but it highlights how AI-driven risk assessment tools can—even when they do not directly decide case outcomes—influence detention and

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supervision decisions in ways that undermine due process.[4] For the purposes of this article, the terms "AI-driven" and "automated" risk assessment tools are used interchangeably to refer to systems like the Hurricane Score, which rely on machine learning algorithms to support or shape enforcement decisions.

This article first examines how detention and supervision decisions shaped in part by the Hurricane Score directly impact the fairness and success of asylum, withholding, and CAT applications. It then considers the main arguments in favor of using AI-driven risk assessment tools, before showing why these tools fail to meet the basic standards of fairness and due process that humanitarian immigration claims require.

Background

Before analyzing the legal and procedural risks posed by AI-driven risk assessment tools, like the Hurricane Score, it is important to first understand the humanitarian protections at stake and the role the Hurricane Score plays within immigration enforcement practices.

Understanding the Different Forms of Humanitarian Relief Is Essential Because These Life-or-Death Claims Require Individualized Review

Asylum, withholding of removal, and protection under CAT are all forms of humanitarian relief available to noncitizens who fear persecution, torture, or death if returned to their countries of origin.[5]

Asylum is available to individuals who demonstrate a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group, where the harm is inflicted by the government or actors the government cannot or will not control.[6] If granted, asylum allows the individual to live and work legally in the United States, apply for permanent residency, and eventually pursue citizenship.[7]

Withholding of removal similarly protects individuals from removal but requires a higher standard of proof: the applicant must show that it is more likely than not that they would face persecution upon removal.[8] Although it allows recipients to live and work legally in the United States, withholding of removal does not offer a path to lawful permanent residency or citizenship.[9]

Protection under CAT shields individuals from removal if they can demonstrate that it is more likely than not that they would be subjected to torture by, or with the consent or acquiescence of, a public official in their home country.[10] CAT protection allows lawful presence in the United States and may make the individual eligible for work authorization, depending on

whether they receive withholding of removal or deferral of removal.[11] However, neither form of CAT protection provides a path to lawful permanent residency or citizenship.[12]

All these forms of relief carry life-or-death consequences, making it imperative that each claim be adjudicated through careful, individualized review of facts, credibility, and country conditions. For humanitarian cases, this is an approach that cannot be replaced or meaningfully replicated by automated risk assessment tools.

The Hurricane Score: A Case Study in How AI-Driven Risk Assessment Tools Influence Detention and Undermine Individualized Justice

One of the most prominent examples of AI-driven risk assessment in immigration enforcement is ICE's Hurricane Score, used within the ATD program. Understanding this tool's design and application helps illustrate the broader risks posed by AI-driven assessment systems.

Within ATD, the Intensive Supervision Appearance Program uses a range of case management tools and monitoring technologies to ensure compliance with immigration proceedings and to periodically reassess supervision levels using various factors, including the Hurricane Score.[13] The Hurricane Score is a machine learning algorithm that predicts the likelihood a noncitizen will abscond, assigning a risk rating between one and five based on patterns learned from prior case data.[14] The higher the score, the greater the perceived risk of flight.[15]

The Hurricane Score enables officers to process large volumes of cases quickly by relying on algorithmically generated risk assessments,[16] which can directly affect vulnerable populations whose claims require the most careful and individualized legal review.

Analysis

To fully understand the legal risks posed by AI-driven risk assessment tools in immigration, it is informative to use the Hurricane Score as a case study to illustrate broader systemic problems.

As demonstrated below, the Hurricane Score distorts detention decisions, further embeds systemic biases, and affects due process protections required in humanitarian cases. Further, arguments made in defense of the Hurricane Score, such as claims of increased efficiency and consistency, fail to justify the use of AI tools in proceedings where life, liberty, and protection from persecution are at stake.

Automated Risk Assessment Systems Undermine Humanitarian Immigration Proceedings by Distorting Detention Decisions, Embedding Systemic Bias, and Denying Due Process

Automated risk assessment systems are incompatible with humanitarian immigration proceedings. Understanding how these tools affect detention outcomes and legal safeguards reveals why they are fundamentally incompatible. They distort decision-making, reinforce systemic bias, and deprive applicants of the individualized review and due process protections required in asylum, withholding of removal, and CAT claims.

Preemptive Risk Categorization, Automation Bias, and Reliance on Biased Data Undermine Fairness in Detention Decisions for Asylum, Withholding, and CAT Applicants

A 2024 report, Automating Deportation, revealed that ICE officers frequently exhibit automation bias, a cognitive tendency to place undue trust in algorithmic outputs and defer to tools like the Hurricane Score without critical scrutiny.[17]

The Hurricane Score assigns each noncitizen a flight risk rating from one to five based on prior case data patterns and plays a critical role in shaping ICE detention and supervision decisions.[18] The score does not account for an individual's specific circumstances, humanitarian claim type, or underlying vulnerability.[19] By introducing an automated numerical risk assessment into the decision-making process, the Hurricane Score reduces both the need and the incentive for officers to conduct a thorough, individualized evaluation of each case.

In 2024, the Office of Inspector General (OIG) published a report on ICE's Risk Classification Assessment (RCA) process, which revealed that in fiscal year (FY) 2023, ICE officers released only 3 percent of noncitizens who received a "detain" recommendation from the automated risk assessment system.[20] This blind reliance is particularly troubling in humanitarian contexts, where detention has been shown to significantly reduce the likelihood of securing relief.[21] Detained applicants often face substantial barriers to gathering evidence, accessing legal representation, and preparing their cases.[22] The isolation of detention also weakens community support and may negatively influence an immigration judge's perception of the applicant's credibility or ties to the United States.[23]

Moreover, the Hurricane Score relies on historical enforcement data that may reflect systemic biases against certain nationalities, racial groups, or individuals with prior immigration encounters.[24] Because the algorithm is trained on past outcomes, the system risks replicating injustices that were shaped by over-policing, inequitable access to legal counsel, or flawed discretionary choices.[25] As a result, humanitarian applicants are often flagged as high-risk, not due to their actions or intentions, but because of demographic or experiential traits that correlate with bias in the training data.

The Hurricane Score may therefore silently predetermine legal outcomes by shaping the detention context in which those claims are presented, often to the detriment of individuals seeking protection from persecution or torture.

Opaque Risk Scoring Systems Deny Applicants a Fair Opportunity to Understand, Challenge, or Correct the Basis of Their Detention

An opaque machine learning, like the Hurricane Score, is a risk assessment system that operates without meaningful transparency or accountability. ICE does not disclose the algorithm's inputs, the weight assigned to each factor, or how the model adapts over time.[26] According to the OIG report on ICE's RCA process, even ICE officers are often unable to explain how a specific risk score is generated, due in part to inconsistent use of the tool across field offices and a lack of clear guidance on how it should be applied.[27] This absence of standardization and transparency raises serious due process concerns.

The Due Process Clause of the Fourteenth Amendment guarantees procedural protections to all "persons," including noncitizens, which encompasses the right to a fair opportunity to understand and challenge the basis of any decision that affects their liberty or ability to remain in the United States.[28] Proponents of AI-driven tools like the Hurricane Score view officer deference to algorithmic outputs as a feature rather than a flaw. They see it as a mechanism to enhance efficiency and ensure uniformity across decisions.[29] However, this very deference undermines due process when applied to opaque tools that lack transparency or clarity. When officers, judges, or adjudicators rely on scores they cannot interrogate or verify, the legitimacy of the entire adjudicatory process is called into question.

The OIG report on ICE's RCA process further shows a broader pattern of opacity surrounding these tools.[30] For example, ICE failed to conduct RCAs for 33 percent of detained noncitizens in FY 2023 and for 43 percent in FY 2022, highlighting inconsistent application of its own automated risk assessment protocols.[31] In addition, ICE's ongoing Freedom of Information Act backlog includes approximately 10,000 pending requests.[32] This backlog, the second largest within the Department of Homeland Security, continues to obstruct public insight into how these systems and scores function.[33]

No matter how efficient or well-intentioned, any system that withholds the reasoning behind or the basis for its decisions is fundamentally incompatible with the fairness required in life-or-death humanitarian proceedings.

Proponents of AI-Driven Risk Assessment Tools Argue That These Systems Enhance Efficiency, Ensure Consistency, and Promote Public Safety in Immigration Enforcement

Despite the serious risks posed by AI-driven detention systems, these tools continue to be widely used and defended by immigration authorities.[34]

Proponents argue that automated risk assessment improves the overall efficiency of enforcement, promotes consistency across adjudications, and helps identify individuals who may present a threat to public safety.[35] The following section outlines the most common justifications advanced by proponents of these tools.

AI-Driven Risk Assessment Tools Are a Means of Enhancing Efficiency in Immigration Proceedings

Supporters of automated risk assessment tools argue that AI helps agencies process large volumes of immigration cases more quickly than human officers can. The immigration system is overwhelmed by record backlogs and resource shortages,[36] and algorithmic tools like the Hurricane Score are promoted as solutions to streamline operations. ICE is responsible for handling hundreds of thousands of cases per year, and they regularly cite workload burdens as justification for implementing AI in decision support systems.[37] Automation also allows officers to make faster decisions about supervision or detention by providing a quick, standardized risk score.[38] Supporters argue that efficiency is essential for ICE to function without expanding resources or compromising enforcement goals.[39]

These Tools Promote Consistency and Reduce Subjectivity

One common argument from proponents of AI-driven risk assessment systems is that human decision-makers are prone to bias, inconsistency, and subjectivity, which algorithms can mitigate through standardized inputs.[40] This argument is particularly appealing in immigration enforcement, where discretion has historically resulted in wide disparities among jurisdictions and individual officers.[41] To address this, AI-driven tools are designed to apply criteria objectively across cases, preserving uniformity and reducing variation in how risks are assessed.[42] The belief is that using AI to "level the field" across ICE field offices can increase procedural fairness and reduce complaints about arbitrariness. Supporters see uniformity in initial risk determinations as a way to restore trust in a system often criticized for its lack of transparency and consistency.[43]

AI-Driven Risk Assessment Tools Help Protect Public Safety by Flagging High-Risk Individuals

Defenders of AI-driven risk scoring systems argue that predictive tools help identify individuals who may pose a threat to public safety or have a high likelihood of absconding.[44] These tools are said to supplement officer judgment with data-based indicators that might otherwise be overlooked during manual review.[45] ICE officers often rely on these assessments to prioritize detention for individuals flagged as high-risk, aiming to ensure better use of

limited resources.[46] However, as shown in the OIG's report, in FY 2022 and FY 2023, ICE released only 3 percent of noncitizens recommended for detention by the RCA tool. This reflects a sharp decline compared to earlier practices, when approximately 40 percent of individuals arrested by ICE were released, with or without bond, following the initial implementation of RCA in 2013.[47]

Reuters reported that in 2017, internal policies were changed to eliminate the release option entirely from the algorithm, even for individuals who posed no threat, leading to near-automatic detention recommendations.[48] This significant drop in release rates illustrates how algorithmic deference can obscure policy-driven shifts that undermine individualized assessment and due process, while creating the illusion of balance between national security and humanitarian protection goals.

Despite Their Appeal, AI-Driven Risk Scoring Systems Cannot Be Justified in Humanitarian Proceedings Because They Undermine Individualized Review and Jeopardize Due Process

The supporters' arguments may highlight the perceived benefits of AI-driven risk assessment tools, but they fail to withstand scrutiny when measured against the legal standards, ethical obligations, and procedural safeguards required in humanitarian immigration proceedings.

Efficiency Gains Cannot Justify Outcomes That Undermine Due Process and Individualized Review

While efficiency is an important factor to consider, it becomes irrelevant when it is at the cost of fairness and accuracy in life-or-death cases. Acknowledging that both human judges and AI systems are susceptible to bias and error, it is crucial to recognize the distinct nature of these imperfections. Human adjudicators, despite inconsistencies, operate within a framework that allows for appeals and transparency. In contrast, AI systems like the RCA often lack clarity, making it challenging to identify and rectify errors.[49] Moreover, studies have shown that these systems can perpetuate existing biases, particularly against marginalized groups.[50] Therefore, in the context of life-or-death decisions inherent in humanitarian immigration cases, the emphasis should be on ensuring transparency and accountability, qualities more readily associated with human judgment than with opaque algorithmic processes.

The Hurricane Score and similar systems prioritize rapid assessments over individualized case analysis, undermining the due process required in asylum, withholding of removal, and CAT claims.[51] In practice, automation bias leads officers to defer to scores rather than engage in thorough, fact-based evaluations.[52] As mentioned earlier, the OIG report on ICE's RCA process showed that ICE adhered to 97 percent of "detain" recommendations in FY

2023.[53] This approach may contribute to faster case processing, but it fails to protect the rights of applicants whose liberty and safety depend on careful legal analysis.

Each person who passes through the immigration system carries a distinct story, shaped by trauma, hope, and hardship, none of which can be meaningfully captured by a numerical score. Justice is upheld when these individuals are recognized as more than data points. Empathy, along with transparency and accountability, must guide decisions where human lives are at stake.

Efficiency in government decision-making is not inherently negative. However, it becomes incompatible with justice when it overrides the individualized assessments that humanitarian protections demand.

Apparent Consistency Masks Systemic Bias Embedded in Algorithmic Design and Data

AI tools are praised for promoting consistency; however, the consistency is illusory if the tools are applied to data already skewed by decades of biased enforcement and discretionary practices. For instance, the Hurricane Score relies on historical ICE case data, which disproportionately reflects the overpolicing of certain nationalities and communities, as well as disparities in access to legal representation.[54] Applying the same scoring rules to already biased data perpetuates historical inequities and prior injustices. It replicates and cements the very disparities the system claims to eliminate. Rather than equalizing outcomes, AI-driven tools risk entrenching structural discrimination under the appearance of uniformity.

It is true that algorithmic tools can bring desirable consistency in certain aspects of decision-making, however, such benefits must be weighed against the depth and durability of the bias embedded in the training data. Some level of imperfection or bias may ultimately be tolerable in pursuit of fairer outcomes, but achieving that balance requires time, transparency, and careful oversight. The historical data informing these systems is saturated with inequities that will not be undone through quick fixes or minor model adjustments.[55] Unlike humans, who can evolve their reasoning over time through cultural and institutional change, machine learning systems reflect the world as it has been, not as it ought to be.[56]

Predictive Risk Scores Are Unreliable, Unreviewable, and Incompatible with Basic Procedural Fairness

Public safety concerns are often invoked to justify the use of predictive tools, but there is little evidence that automated risk assessment scores accurately identify individuals who will abscond or pose a danger.[57] Additionally, these scores are generated by opaque algorithms that cannot be meaningfully reviewed or challenged by applicants or their counsel, making it procedurally

indefensible to detain someone.[58] This is especially true when detention is based directly on a score that neither the detainee nor their attorney can question in cases where liberty and life are at stake.[59]

AI tools may appear neutral. However, when they operate as unreviewable systems, they violate the due process rights of noncitizens by denying them the right to participate meaningfully in their own defense. In humanitarian immigration proceedings, where the consequences of error include persecution, torture, or death, such opacity and lack of accountability cannot be encouraged.

As shown by the above analysis, AI-driven risk assessment tools may offer administrative convenience, but they are fundamentally incompatible with the individualized review and due process required in humanitarian immigration cases. Their continued use in detention decisions risks undermining fairness and denying protection to those most in need.

Conclusion

Humanitarian immigration proceedings, especially those involving asylum, concern an exceptionally vulnerable population. The stakes often include persecution, torture, or death. In such cases, fairness and individualized review are not optional; they are constitutional imperatives. AI-driven risk assessment tools like ICE's Hurricane Score are promoted for their efficiency and consistency, and their use in detention and supervision decisions often undermines due process. These systems rely on opaque algorithms trained on historically biased data, which erodes applicants' ability to understand or challenge the forces shaping their cases.

Proponents of utilizing AI-driven risk assessment tools in immigration argue that such tools help streamline overwhelmed immigration systems, standardize officer discretion, and promote public safety. These goals may be valid in theory; in practice, AI-driven risk assessment tools reduce complex human realities into numerical scores that ICE officers frequently follow without meaningful scrutiny. The benefits come at a cost that is too high for humanitarian claims where lives are at stake.

Ultimately, efficiency cannot justify injustice. These tools lack transparency, accountability, and consideration of individual circumstances, yet they can significantly influence who is detained and under what conditions. In doing so, they compromise the fairness of the entire adjudicatory process. The Hurricane Score may streamline decisions, but at what cost? In humanitarian proceedings, where fairness and individualized review are essential, relying on opaque and biased algorithms undermines due process and risks unjust outcomes. These tools were never designed for justice; they should not be used in spaces where it is most urgently needed.

It is therefore essential to reevaluate and constrain the use of AI-driven risk assessment systems in contexts where liberty and life hang in the balance.

Notes

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