

Human Rights First

Discrimination, Detention, and Deportation: Immigration & Refugees

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Areas of Focus

Current Initiatives

This amicus brief addresses the obligation of U.S. courts to construe federal statutes, including the Immigration and Nationality Act (INA), in a manner consistent with the nations obligations under binding international treaties. This has been an established canon of statutory construction since *Murray v. The Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64 (1804).

INTRODUCTION AND SUMMARY OF ARGUMENT

This amicus brief addresses the obligation of U.S. courts to construe federal statutes, including the Immigration and Nationality Act (INA), in a manner consistent with the nations obligations under binding international treaties. This has been an established canon of statutory construction since *Murray v. The Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64 (1804). Applying that canon here, this Court should avoid an interpretation of the INA that allows for detention without a prompt individualized determination by a court, independent of the detaining authorities and capable of ordering release, that detention is reasonable, necessary and proportionate under the facts of the particular case.

Interest of Amici

Human Rights First is a non-governmental organization established in 1978 that works to ensure U.S. leadership on human rights globally and compliance domestically with this countrys human rights commitments. Human Rights First operates one of the largest U.S. programs for pro bono legal representation of refugees, working in partnership with volunteer lawyers at leading law firms to provide legal representation without charge to indigent asylum applicants, including some detained in immigration detention facilities across the United States. Human Rights First has conducted research, issued reports and provided recommendations to the United States Government regarding compliance with its legal obligations under international law with respect to its use of immigration detention.

William J. Aceves is the Dean Steven R. Smith Professor of Law at California Western School of Law. He has appeared before the Inter-American Commission on Human Rights, the United Nations Special Rapporteur on Migrants, and the U.S. Commission on Civil Rights. He has widely published in the field of public international law.

Philip G. Alston is the John Norton Pomeroy Professor of Law at New York University School of Law. Since 2014, he has been United Nations Special Rapporteur on extreme poverty and human rights, and from 1986 to 1992 he was the United Nations Childrens Funds Senior Legal Adviser on childrens rights, among other international law expert roles. He has widely published in the fields of international and human rights law.

Cathryn Costello is the Andrew W. Mellon Professor of Refugee & Migration Law at Oxford University. She currently serves as professor of fundamental rights and co-director of the Centre for Fundamental Rights at the Hertie School in Berlin. Professor Costello has widely published on human rights law, including on refugee law and immigration detention.

Franois Crpeau is the Hans & Tamar Oppenheimer Chair in Public International Law at McGill University Faculty of Law. From 2011 to 2017, he was the United Nations Special Rapporteur on the Human Rights of Migrants. Professor Crpeau has widely published in the field of international migration law.

Denise Gilman is clinical professor and director of the immigration clinic of the University of Texas at Austin School of Law. From 1995 to 2000, Professor Gilman served as Human Rights Specialist at the Inter-American Commission of Human Rights at the Organization of American States. She has written and practiced extensively in the international human rights and immigrants rights fields.

Guy Goodwin-Gill is a barrister and Emeritus Professor of International Refugee Law at Oxford University and Emeritus Fellow of All Souls College, Oxford. He served as a Legal Adviser in the Office of United Nations High Commissioner for Refugees from 1976-1988, and was President of the Media Appeals Board of Kosovo from 2000-2003. He is the Founding Editor of the International Journal of Refugee Law and has written extensively on refugees, migration, and matters related to public international law.

James C. Hathaway is the James E. and Sarah A. Degan Professor of Law at the University of Michigan, and Distinguished Visiting Professor of International Refugee Law at the University of Amsterdam. He is the author of *The Rights of Refugees under International Law* (2005) and of *The Law of Refugee Status* (2014, with Michelle Foster). He is the founding director of the University of Michigan's Program in Refugee and Asylum Law.

Manfred Nowak is Professor of International Human Rights Law at Vienna University and Secretary General of the Global Campus of Human Rights based in Venice. In 2016, he was appointed Independent Expert leading the United Nations Global Study on Children Deprived of Liberty, which was presented to the United Nations General Assembly in 2019. He is author of more than 600 books and articles in the field of public law, international law and human rights.

Sarah Paoletti is practice professor of law and the founder and director of the Transnational Legal Clinic at the University of Pennsylvania Law School. She has written extensively on the intersection of migration and international human rights, and the application of international human rights norms in the United States.

Martin Scheinin is British Academy Global Professor at Oxford University. He was a member of the United Nations Human Rights Committee from 1997 to 2004. From 2005 to 2011, he was the first United Nations Special Rapporteur on Human Rights and Counter-Terrorism. He has published extensively on international human rights law.

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