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# Using a HUMAN RIGHTS Approach in Immigration Advocacy

## An Introduction

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**H**uman rights advocacy can be a useful tool for those who seek to advance social justice for immigrants in the United States. Here we summarize ways in which domestic immigration practitioners can effectively incorporate human rights norms and strategies into both individual case and policy advocacy. We review relevant international human rights standards and tribunals, strategies for incorporating human rights norms into more traditional advocacy, and the basics of how to bring a case before the Inter-American Commission on Human Rights. And we demonstrate through case examples how human rights advocacy can intertwine with domestic advocacy on behalf of immigrants.

### Benefits and Challenges of Human Rights Advocacy

A human rights approach to advocacy in the United States on behalf of immigrants presents both opportunities and challenges. A human rights framing of social and legal issues increasingly resonates with the U.S. general public, especially young people.<sup>1</sup> Moreover, a growing number of legal aid programs are incorporating human rights in their advocacy.<sup>2</sup> The United States touts itself as a leader in respecting human rights domestically and internationally. Some courts may be more open than in the past to arguments that rely upon international law standards.<sup>3</sup> And some judges invite reference to international human rights law.<sup>4</sup>

<sup>1</sup>THE OPPORTUNITY AGENDA, HUMAN RIGHTS IN THE U.S.: OPINION RESEARCH WITH ADVOCATES, JOURNALISTS, AND THE GENERAL PUBLIC (Aug. 2007), <http://bit.ly/14pFVE4>.

<sup>2</sup>See, e.g., Gillian MacNaughton, *Human Rights Frameworks, Strategies, and Tools for the Poverty Lawyer's Toolbox*, 44 CLEARINGHOUSE REVIEW 437 (Jan.–Feb. 2011); J. Peter Sabonis, *Using a Human Rights Framework at the Maryland Legal Aid Bureau*, *id.* at 450.

<sup>3</sup>See *Lawrence v. Texas*, 539 U.S. 558 (2003) (citing international law principles); *Atkins v. Virginia*, 536 U.S. 304, 316 n.21 (2002) (citing amicus brief of European Union); *Roper v. Simmons*, 543 U.S. 551, 575–78 (2005) (citing international law principles); *Wanjiru v. Holder*, 705 F.3d 258 (7th Cir. 2013) ("We should not lightly presume that Congress has shut off avenues of judicial review that ensure this country's compliance with its obligations under an international treaty"); see generally Ralph G. Steinhardt, *The Role of International Law as a Canon of Domestic Statutory Construction*, 43 VANDERBILT LAW REVIEW 1103 (1990).

<sup>4</sup>Cathy Hollenberg Serrette, *Invoking International Human Rights Law in Litigation: A Maryland Judge's Perspective*, 45 CLEARINGHOUSE REVIEW 238 (Sept.–Oct. 2011).

The United States has not ratified a majority of international human rights treaties, and it has adopted reservations, understandings, and declarations that undercut those treaties it has ratified. A central challenge for advocates is that human rights norms are often soft or aspirational, meaning that they lack an enforcement mechanism. Winning a case before an international tribunal may seem like a symbolic victory that has no concrete effect on a client's life.<sup>5</sup> Moreover, international law-based arguments still are far less persuasive to courts and policymakers than arguments based on U.S. statutes and the Constitution. To infuse human rights norms throughout our advocacy and court system may be a long-haul project. The payoff, however, may well be worth our collective effort. Human rights norms, more than U.S. immigration laws, tend to respect and protect human dignity. Because immigrants are often protected more broadly under international human rights law than under U.S. law, an international tribunal may render a judgment that would be impossible to obtain in a domestic court. Any movement of domestic law toward international human rights standards will likely increase the protections for immigrants in our domestic legal system. Increasing acceptance of a human rights analysis of social or legal issues can also influence the immigration policy shaped by the political branches of government.<sup>6</sup>

### Relevant Human Rights Norms

Before international tribunals, certain international law instruments have the

force of law while others are persuasive authority. U.S. courts have held that the United States is bound only by an international convention or treaty that it has specifically ratified.<sup>7</sup> Even then, an international instrument may not be self-executing and therefore not judicially enforceable in domestic courts unless Congress has passed implementing legislation. However, international norms are persuasive authority in U.S. courts even if they lack the same force as domestic law.<sup>8</sup>

The pivotal 1948 Universal Declaration of Human Rights serves as the inspiration for many other international human rights instruments.<sup>9</sup> Written at the end of World War II in response to the war's atrocities, the Universal Declaration covers a broad range of civil and political rights, among them rights to life, liberty, and security of person.<sup>10</sup> The United States played a large role in drafting the Universal Declaration and was one of the forty-eight United Nations member nations to vote in favor of it.

Since the creation of the Universal Declaration, nations have signed onto at least ten international instruments that are considered to be the core human rights treaties.<sup>11</sup> The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, together with the Universal Declaration, make up the International Bill of Rights. Other international treaties and conventions that encompass core human rights principles are the International Convention on the Elimina-

<sup>5</sup>For a discussion of advocates' efforts to devise strategies for the implementation of a decision of the Inter-American Commission on Human Rights, see Elizabeth M. Schneider et al., *Implementing the Inter-American Commission on Human Rights' Domestic Violence Ruling*, 46 CLEARINGHOUSE REVIEW 113 (July–Aug. 2012).

<sup>6</sup>The Human Rights Institute at Columbia Law School reports on how "states, cities and counties are integrating human rights into local law, policy and practice" and "offers concrete recommendations to advance local policy using a human rights framework" (see Human Rights Institute, Columbia Law School, *Bringing Human Rights Home: How State and Local Governments Can Use Human Rights to Advance Local Policy* (Dec. 2012), <http://bit.ly/18M8i2W>).

<sup>7</sup>See, e.g., *Beharry v. Reno*, 183 F. Supp. 2d 584, 593 (E.D.N.Y. 2002) ("[a] treaty has been sometimes said to have force of law only if ratified"), rev'd on other grounds, *Beharry v. Ashcroft*, 329 F.3d 51 (2d Cir. 2003).

<sup>8</sup>See THE OPPORTUNITY AGENDA, *supra* note 1.

<sup>9</sup>Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948).

<sup>10</sup>*Id.* art. 3.

<sup>11</sup>See Office of the United Nations High Commissioner for Human Rights, *The Core International Human Rights Instruments and Their Monitoring Bodies* (n.d.), <http://bit.ly/11qRrZr>.

tion of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the Rights of Persons with Disabilities.

The United States, however, has ratified only three of these core human rights treaties: the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Of these documents, Congress has incorporated only parts of the Convention Against Torture into domestic law.<sup>12</sup> Moreover, the Senate did not fully consent to the ratification of the convention and included significant reservations and declarations.<sup>13</sup>

In immigration court, people who fear torture at the hands of government actors may apply for relief under Article 3 of the convention.<sup>14</sup> The incorporation of Article 3 into U.S. immigration law is an important example of how international law can expand protections for immigrants.

### Human Rights Norms in Domestic Advocacy

Human rights norms can be incorporated into domestic advocacy through a

variety of strategies. When domestic law is based on international law principles, interpretations of those principles by international tribunals are persuasive authority on the interpretation of domestic law. For example, the U.S. system for protecting refugees is founded on international law refugee and nonrefoulement principles. International law should inform the ways in which immigration judges, the Board of Immigration Appeals, and the federal courts interpret the scope of protection and any bars to protection.<sup>15</sup>

Briefing relevant international law principles in cases involving domestic statutes that lack an international law basis may also be appropriate and effective, either as a separate section in a brief or as a separately filed amicus brief. The adjudicator may declare a lack of authority to rule in accordance with those principles, especially if they conflict with domestic law. However, such briefing can be persuasive and, at the very least, can raise the adjudicator's awareness of ways in which domestic law may be out of step with international law. For example, in a case in which an immigrant needed to show family hardship, an international law argument section or amicus brief could discuss the relevant standards on preserving family unity and the rights of children contained in the Convention on the Rights of the Child. That convention, although not ratified by the United States, remains a respected document in international fora and is relevant when an adjudicator has discretion in making a decision.

<sup>12</sup>Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 108 Stat. 382, 1465 U.N.T.S. 85, 113. The regulations incorporating the convention's protection provisions in immigration proceedings appear at 8 C.F.R. § 208.18 (2013).

<sup>13</sup>See 136 Cong. Rec. 36198–99 (daily ed. Oct. 27, 1990) (referencing reservations and declarations). The immigration regulations implementing the protections under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment reflect these reservations and declarations.

<sup>14</sup>A significant limitation on protection under the Convention as implemented by the United States is the requirement that torture be inflicted with specific intent. See, e.g., *Pierre v. Attorney General*, 528 F.3d 180 (3d. Cir. 2008) (severe pain and suffering that is practically certain to flow from a government agent's actions does not rise to the level of specifically intended torture unless there is also a purpose to inflict pain).

<sup>15</sup>See, e.g., *Immigration and Naturalization Service v. Cardoza-Fonseca*, 480 U.S. 421, 439 n.22 (1987) (“the UNHCR [United Nations High Commissioner for Refugees] Handbook provides significant guidance in construing the Protocol, to which Congress sought to conform”); *Ndom v. Ashcroft*, 384 F.3d 743, 753 n.4 (9th Cir. 2004) (UNHCR Handbook is “persuasive authority in interpreting the scope of refugee status under domestic asylum law”).

Policy advocacy and media strategies can also benefit from a human rights approach. As noted, the public increasingly understands critical social and legal issues as human rights issues, and in this respect the United States is becoming more like other countries, where the human rights framework is already well accepted. The Bringing Human Rights Home Lawyers' Network seeks to hold the United States accountable to the same human rights standards that it seeks to enforce abroad.<sup>16</sup> Efforts are under way to integrate human rights advocacy into the work of legal services offices in the United States.<sup>17</sup> The Center for Human Rights and Humanitarian Law at American University's Washington College of Law has developed the Local Human Rights Lawyering Project "to promote human rights at the local level," partnering with Maryland Legal Aid and Texas RioGrande Legal Aid.<sup>18</sup>

### Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights, based in Washington, D.C., is the primary international forum where individuals may file, against the United States, claims alleging violations of human rights.<sup>19</sup> The commission is part of the Organization of American States.<sup>20</sup> Human rights norms are set forth in the Organization of American States Charter and other governing instruments: the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights.

While the United States has ratified the Organization of American States Charter, it has not ratified the American Convention on Human Rights. Because the United States is a party to the charter and

must follow the provisions in the American Declaration on the Rights and Duties of Man, the Inter-American Commission asserts jurisdiction over the United States to enforce the rights and duties conferred by the American Declaration. The United States typically takes the position that the commission lacks jurisdiction over it, but high-level U.S. representatives appear before the commission and engage on the merits of cases filed against the United States.

The commissioners, independent human rights experts who are from different countries and are elected by the Organization of American States General Assembly, adjudicate cases brought by petitioners who allege human rights violations by government actors. The Inter-American Commission also holds hearings on issues of importance and promotes respect for human rights in other ways, such as issuing reports and recommendations.

Immigrants, or any other interested party including nongovernmental organizations and law firms, can file, against the United States, cases alleging that deportation or mistreatment of immigrants violates the norms encompassed in the Organization of American States Charter and the American Declaration on the Rights and Duties of Man, and other international law instruments and cases may be relevant to interpreting those norms. The Inter-American Commission considers both "merits petitions" and requests for "precautionary measures" to protect individuals who face imminent harm.

Within six months of exhausting any domestic remedies an individual or organization may file a petition on behalf of herself or another. The Inter-American

<sup>16</sup>For information about this movement, see Human Rights Institute, Columbia Law School, Bringing Human Rights Home Lawyers' Network (2013), <http://bit.ly/YKuGFP>.

<sup>17</sup>See *Human Rights: A New [and Old] Way to Secure Justice*, 45 CLEARINGHOUSE REVIEW 165–286 (Sept.–Oct. 2011).

<sup>18</sup>For information about this initiative, see Center for Human Rights and Humanitarian Law, Washington College of Law, American University, Local Human Rights Lawyering Project (2013), <http://bit.ly/16HbOwY>.

<sup>19</sup>For an introduction to the Inter-American human rights system, see Caroline Bettinger-López, *The Inter-American Human Rights System: A Primer*, 42 CLEARINGHOUSE REVIEW 581 (March–April 2009), <http://bit.ly/184HmKl>.

<sup>20</sup>The Organization of American States also includes another tribunal called the Inter-American Court of Human Rights in San Jose, Costa Rica.

Commission considers a merits petition in two phases. It first determines “admissibility,” namely, whether the petition complies with procedural requirements and the commission is competent to hear the case. If the petition is found admissible, the commission sends the petition to the state actor charged with violating human rights, asks for a response, and proceeds on the merits. The commission evaluates the evidence presented and may hold a hearing or conduct its own field investigation. It urges the parties to engage in settlement talks and may encourage holding working meetings in which the parties appear before the commission. If it finds that a human rights violation has occurred, the commission transmits its findings and recommendations and gives the offending country three months to comply. If the country does not comply, the commission issues a decision on the merits and states what remedy it believes appropriate. Formal working meetings may then be held to discuss implementation. Hearings and working meetings are generally held twice a year during sessions in Washington, D.C.

Many cases brought before the Inter-American Commission are filed by law school human rights clinics or the Center for Justice and International Law, a non-profit organization that specializes in advocacy before the commission. Advocates considering filing a merits petition or request for precautionary measures may wish to seek cocounsel from the center or from a law school clinic.

### Inter-American Commission Case Examples

Here we describe cases brought before the commission by or on behalf of immigrants challenging orders by U.S. authorities that they be deported. Although the United States does not treat as binding commission rulings that deporta-

tion would violate human rights norms, creative advocacy nonetheless succeeded in relief being obtained for some of the petitioners.

**Mortlock v. United States.** On July 28, 2008, the Inter-American Commission held for the first time that the United States must balance its sovereign control over immigration with the human rights of people being deported.<sup>21</sup> A merits petition and a petition for precautionary measures were filed on August 15, 2005, on behalf of Andrea Mortlock, a Jamaican national who was suffering from AIDS/HIV and was subject to a final order of removal.<sup>22</sup> The petitions argued that deporting Mortlock would violate her rights to health and to protection against cruel, infamous, and unusual punishment under the American Declaration on the Rights and Duties of Man because she would not receive critical, life-saving medication and treatment in Jamaica. Mortlock had come to the United States as a lawful permanent resident at the age of 15 and was ordered removed in absentia in 1995. She had been convicted of drug trafficking, among other offenses.

The Inter-American Commission granted, on August 19, 2005, precautionary measures asking the United States not to deport Mortlock. She had been in immigration detention, but Immigration and Customs Enforcement officials released her about three weeks after the precautionary measures were granted.

Because of the “exceptional circumstances” of the case, the Inter-American Commission considered admissibility and the merits of the petition at the same time, pursuant to Article 37(3) of its rules.<sup>23</sup> Finding that the United States had violated Mortlock’s right to be free of cruel, infamous, and unusual punishment, the commission granted Mortlock’s merits petition but did not find that the United States had violated her right to health.

<sup>21</sup>*Mortlock v. United States*, Case 12.534, Inter-Am. Comm’n H.R., Report No. 63/08 (2005).

<sup>22</sup>The petitions were brought by Olivia Cassin of The Legal Aid Society of New York; Richard J. Wilson of the International Human Rights Law Clinic, Washington College of Law, American University; and Sarah Loomis Cave of Hughes Hubbard & Reed LLP.

<sup>23</sup>Inter-American Commission on Human Rights, Organization of American States, Rules of Procedure of the Inter-American Commission on Human Rights (approved by the Inter-American Commission at its 137th session, Oct. 28 to Nov. 13, 2009, and modified on Sept. 2, 2011), <http://bit.ly/14ml7vq>.

The United States opposed the case and argued that the commission lacked jurisdiction, that the petition did not establish a human rights violation, and that Mortlock had failed to exhaust domestic remedies because she had sought neither administrative review before the Board of Immigration Appeals nor judicial review. The United States also argued that the American Declaration on the Rights and Duties of Man was a nonbinding document that did not create a right to health or medical care and asserted the United States' absolute sovereign right to formulate and implement immigration policy.

In ruling on the merits on July 28, 2008, the Inter-American Commission recognized that “[m]ember States have the right, as matter of well-established international law, to control the entry, residence, and expulsion of aliens” but also found that, “in exercising this right to expel such aliens, the Member States must have regard to certain protections which enshrine fundamental values of democratic societies.”<sup>24</sup> The commission held specifically that “immigration policy must guarantee to all an individual decision with the guarantees of due process; it must respect the right to life, physical and mental integrity, family, and the right of children to obtain special means of protection.”<sup>25</sup> It further held that “the execution of this immigration policy cannot give rise to cruel, degrading and inhumane treatment nor discrimination based on race, color, religion or sex.”<sup>26</sup>

The Inter-American Commission held that to deport Mortlock to Jamaica would be punishment, stated that “knowingly sending Ms. Mortlock to Jamaica with the knowledge of her current health care regime and the country’s sub-standard access to similar health for those with HIV/

AIDS would violate Ms. Mortlock’s rights, and would constitute a *de facto* sentence to protracted suffering and unnecessarily premature death.”<sup>27</sup> In reaching this conclusion, the commission found it appropriate to interpret the American Declaration on the Rights and Duties of Man’s principles in light of decisions of other international tribunals interpreting other international instruments. As a result of this advocacy the United States did not deport Mortlock and instead issued an order of supervision.

#### **Smith and Armendariz v. United States.**

On July 12, 2010, in a second landmark immigration decision, the Inter-American Commission held that the restrictive 1996 amendments to immigration law violated rights under the American Declaration on the Rights and Duties of Man to family life and due process.<sup>28</sup> The case was the first by an international tribunal to find that the United States’ immigration policy violated human rights norms relating to issues of family separation and the best interest of the child.

This litigation began in March 2001 when three individuals, Alfredo Reyes, Vera Frost, and Samuel Segura, along with the Center for Justice and International Law and the law firm of Gibbs Houston Pauw, filed a merits petition arguing that removal orders affecting the individuals violated international law. The individual petitioners had been subject to mandatory deportation based on minor offenses. The initial petition was dismissed, however, because domestic remedies had not been exhausted since none of the petitioners had pursued judicial review.

In July 2003 Wayne Smith and Hugo Armendariz, having exhausted their do-

<sup>24</sup>*Mortlock v. United States*, Case 12.534, Inter-Am. Comm’n H.R., Report No. 63/08, para. 78 (2005).

<sup>25</sup>*Id.*

<sup>26</sup>*Id.*

<sup>27</sup>*Id.* para. 94.

<sup>28</sup>*Smith and Armendariz v. United States*, Case 12.562, Inter-Am. Comm’n H.R., Report No. 81/10, (2010). In 1996 the Anti-Terrorism and Effective Death Penalty Act, Pub. L. No. 104-132, 110 Stat. 1214 (April 24, 1996), and the Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009 (Sept. 30, 1996), expanded the grounds upon which even longtime lawful permanent residents could be removed and decreased the discretion of immigration judges to halt removal.

mestic remedies by appealing to the court of appeals, filed a second petition. Armendariz's petition for certiorari to the U.S. Supreme Court was also denied.<sup>29</sup> As before, the Center for Justice and International Law and Gibbs Houston Pauw were copetitioners.

Both Smith and Armendariz were long-time permanent residents who had been placed in removal proceedings on account of criminal records. Because of the 1996 changes in immigration law, however, neither was eligible to apply for relief from deportation, and both were deported by the time the Inter-American Commission issued its decision.<sup>30</sup>

Contending that the petition was inadmissible and should be dismissed, the United States argued, *inter alia*, that the American Declaration on the Rights and Duties of Man is only a recommendation and does not create legally binding obligations; that as a member state of the Organization of American States it had no obligation to allow noncitizens to remain within its territory if it determined that they posed a threat to public safety or the well-being of its citizens; and that the petition as to Smith should be dismissed because he had not exhausted domestic remedies by filing a petition for certiorari to the U.S. Supreme Court. The Inter-American Commission rejected these arguments and found the case admissible.<sup>31</sup>

The parties then submitted a merits brief concerning whether U.S. deportation policies violated the American Declaration on the Rights and Duties of Man. Several organizations submitted amicus briefs in support of the petitioners' arguments. On the merits, the Inter-American Commission ruled that the United States' refusal to allow the petitioners to apply for

a waiver violated Smith's, Armendariz's, and their families' rights to protection against abusive attacks on family life and to establish a family under Articles V and VI of the American Declaration. The commission also found that the United States violated the special protections that should be accorded to children who are affected by deportation proceedings as established in Article VII (the right to protection for mothers and children) of the American Declaration. The commission found specifically that Smith and Armendariz "had no opportunity to present a humanitarian defense to deportation or to have their rights to family duly considered before deportation. Nor were the best interests of their U.S. citizen children taken into account by any decision maker."<sup>32</sup> The United States further violated Smith's and Armendariz's rights to due process and a fair trial by failing to provide a judicial mechanism to hear their humanitarian defenses and to offer an effective remedy to preserve their fundamental rights to protection of their family life and protection of their children.<sup>33</sup>

Countries have the right to control the entry, residence, and expulsion of noncitizens, the Inter-American Commission reasoned. However, when implementing immigration policy, a country "must guarantee to all an individual decision with the guarantees of due process; it must respect the right to life, physical and mental integrity, family, and the right of children to obtain special means of protection."<sup>34</sup> Therefore, when a government's decisions involve the potential separation of family, the government must apply a "balancing test," interfering with family life only where necessary to meet a pressing need to protect public order and where the means are propor-

<sup>29</sup>See *Smith v. Ashcroft*, 295 F.3d 425 (4th Cir. 2002), and *Armendariz v. Sonchik*, 291 F.3d 1116 (9th Cir. 2002).

<sup>30</sup>See *supra* note 28.

<sup>31</sup>*Smith v. United States*, Report No. 56/06 paras. 33, 44, 50 (July 20, 2006). This decision was based in part on Armendariz's petition for certiorari having been denied. There was no reason to believe that if Smith had filed a petition for certiorari, which would have raised similar issues, his petition would have been granted.

<sup>32</sup>*Smith and Armendariz v. United States*, Report No. 81/10 para. 59 (July 12, 2010).

<sup>33</sup>*Id.* para. 64.

<sup>34</sup>*Id.* para. 50.



tional to that end. The commission found that “a balancing test is the only mechanism to reach a fair decision between the competing individual human rights and the needs asserted by the State.”<sup>35</sup>

The Inter-American Commission recommended that the United States allow Wayne Smith and Hugo Armendariz to return to the United States to be reunited with their families, at least pending an individualized review that would take humanitarian factors into account. On a more structural level, the commission recommended that the United States reform its policies of mandatory deportation and mandatory detention in order to protect the fundamental human rights of family unity and the best interests of children.<sup>36</sup>

Although the ruling is directed to the United States, the agency that appears before the commission is the U.S. Department of State; the Inter-American Commission has no direct contact with any of the agencies that might actually implement its recommendations, and the State Department has been reluctant to do so. The parties representing Smith and Armendariz have had several meetings with the State Department and have submitted requests to the U.S. Department of Homeland Security to parole Smith and Armendariz back into the United States so that they could pursue their waiver applications. These requests were denied. Wayne Smith passed away in Trinidad and was never reunited with his family. Hugo Armendariz remains in Mexico.

The petitioners plan to ask the Inter-American Commission to hold a public hearing during its session in October 2013 to consider how the principles of international human rights law set forth in the commission’s decisions should be applied to U.S. immigration law and practice. Among the factors that petitioners will urge the commission to consider are (1) ensuring consideration of

humanitarian defenses to removal; (2) using a judicial balancing test in removal cases; (3) making sure that the right to family life and the best interests of children are taken into account before a decision is made to remove someone from the United States; and (4) ensuring that the decisions are made on a case-by-case basis rather than on the basis of broad general policies that target whole classes of individuals for removal.

The petitioners will propose that the Inter-American Commission ask the United States to (1) publish the *Smith and Armendariz* and *Mortlock* decisions on U.S. government websites, especially those of the State Department, Homeland Security, Immigration and Customs Enforcement, and the Executive Office for Immigration Review; (2) encourage immigration judges to consider Inter-American Commission guidelines in exercising discretion over waivers of removal and administrative closing of removal proceedings; (3) incorporate the commission’s guidelines into criteria governing immigration officials’ exercise of prosecutorial discretion; (4) report the commission’s decisions to the U.S. Congress; and (5) issue a special report evaluating the impact of deportations on family life and the interests of children as well as the extent to which U.S. deportation policy complies with the commission’s recommendations.

**Haiti Deportations.** U.S. immigration authorities suspended deportations to Haiti after the devastating January 2010 earthquake there. However, a year later, in the midst of a cholera outbreak, U.S. authorities restarted the deportations, focusing on people with criminal records. Haitian authorities, following long-standing practice, jailed arriving deportees in extremely cramped and bare concrete cells smeared with feces, blood, and vomit. Within a week one man got sick and died.<sup>37</sup> In June 2012 the United Nations independent expert on

<sup>35</sup>*Id.* para. 58.

<sup>36</sup>*Id.* pt. VI (Recommendations).

<sup>37</sup>Associated Press, *Activists Seek End to U.S. Deportations to Haiti* (Feb. 2, 2011), reprinted by Victoria Advocate Publishing (2013), <http://bit.ly/11DQgZa>.

the situation of human rights in Haiti, Michel Forst, urged countries to halt deportations to Haiti and stated that “individuals returned to Haiti are vulnerable to human rights violations, especially the fundamental rights to life, health, and family.”<sup>38</sup>

Haitian nationals facing deportation had already received the due process required by the U.S. immigration system and had exhausted or waived their rights to appeal, and they were too numerous to allow for individual representation. The lack of the usual legal remedies pushed a range of advocates to pursue alternate strategies. Collaboration between law school clinics and nonprofit advocacy organizations to try to stop the Haiti deportations illustrates potential synergy between domestic and human rights advocacy.<sup>39</sup> Individual domestic representation continued but constituted only a part of the effort. Other strategies involved human rights advocacy through the Inter-American Commission and before the United Nations.

On behalf of individuals facing deportation to Haiti, advocates filed multiple petitions for precautionary measures before the Inter-American Commission, which granted at least sixty. Although the United States deported at least twenty-

three of these individuals, the U.S. government acknowledged that it factored the granting of precautionary measures into its deportation calculation. The commission’s involvement also facilitated meetings with the State Department and Homeland Security and with White House officials. The commission has held four formal working meetings on the issue of the Haiti deportations and precautionary measures and has issued news releases expressing concern about the deportations.<sup>40</sup> Advocacy before the commission focused attention on the issue and provided a forum in which the U.S. government was called on to account for its treatment of people facing deportation to Haiti.



Human rights advocacy can take various forms: bringing human rights norms into individual domestic cases, using a human rights framing for messaging about immigration policy, and litigating before international tribunals. Human rights advocacy can complement domestic advocacy, making both types more powerful. Immigration and human rights advocates should work together to accomplish better alignment between U.S. immigration policy and law and international human rights standards.

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<sup>38</sup>U.N. Human Rights Council, 20th Session, Report of the Independent Expert on the Situation of Human Rights in Haiti, Michael Forst, Agenda Item 10, at 16, U.N. Doc. A/HRC/20/35/Add.1 (June 4, 2012), <http://bit.ly/16Cj7Ft>.

<sup>39</sup>For additional information about this advocacy, including the case before the Inter-American Commission, see School of Law, University of Miami, Stop Deportations to Haiti (2013), [www.StopHaitiDeportations.org](http://www.StopHaitiDeportations.org).

<sup>40</sup>The Inter-American Commission held its latest formal working meeting on deportations to Haiti on November 3, 2012. On November 16, the commission issued a press release again calling on the United States “to suspend deportations to Haiti of persons of Haitian origin who are seriously ill or who have family members in the United States” (Press Release, Inter-American Commission on Human Rights, Organization of American States, Annex to Press Release 134/12 on the 146th Regular Session of the IACHR (Nov. 16, 2012), <http://bit.ly/18dO7cY>). The full text of the commission’s statement relating to the deportation of Haitian nationals by the United States is in Part II of the press release. See also Press Release, Inter-American Commission on Human Rights, Organization of American States, IACHR Urges United States to Suspend Deportations to Haiti (Feb. 4, 2011), <http://bit.ly/10KvZoO>.