

No. 17-302

In the Supreme Court of the United States

RONY ESTUARDO PEREZ-GUZMAN
AKA RONNIE PEREZ-GUZMAN,

Petitioner,

v.

JEFFERSON B. SESSIONS, III,
UNITED STATES ATTORNEY GENERAL,

Respondent.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit**

**BRIEF OF SCHOLARS OF IMMIGRATION
AND INTERNATIONAL LAW AS *AMICI
CURIAE* IN SUPPORT OF PETITIONER**

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INTEREST OF THE *AMICI CURIAE*¹

The seven *amici curiae* are distinguished scholars of international law, refugee rights, and the immigration laws of the United States. The names and biographical information of the *amici*, who are participating in their individual capacities and not as representatives of the institutions with which they are affiliated, are appended to this brief.

Amici have a strong interest in the questions presented by the petition. As some of the world's leading scholars on these topics, *amici* are interested in the proper interpretation and application of U.S. laws in accordance with the United States' obligations under the Refugee Protocol and international law. In concluding that refugees like petitioner are ineligible for asylum, the court below deferred to agency regulations and resolved a statutory conflict in a manner that violates this nation's obligations to refugees under international law.

INTRODUCTION AND SUMMARY OF ARGUMENT

Over two centuries ago, this Court laid down the fundamental principle of statutory interpretation that “an act of Congress ought never to be construed

¹ Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* or their counsel made a monetary contribution to its preparation or submission. Counsel of record for both parties received notice at least 10 days prior to the due date of the intention of *amici* to file this brief. Petitioner has given blanket consent to the filing of briefs as *amici curiae*, and respondent has consented to the filing of this brief. Respondent's written consent to this filing has been filed concurrently with the brief.

to violate the law of nations if any other possible construction remains.” *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804). The court below did not apply that bedrock doctrine, instead deferring to regulations under *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), to reconcile two provisions of the Immigration and Nationality Act (INA) in a manner that flouts the United States’ treaty obligations to refugees.²

Specifically, this case involves the interplay between 8 U.S.C. § 1158 and 8 U.S.C. § 1231(a)(5). Congress enacted Section 1158 in 1980 to implement the United States’ treaty obligations under the Refugee Protocol and Refugee Convention. Consistent with Article 31 of the Refugee Convention, which prohibits penalizing refugees based on unlawful entry or presence, Section 1158 (as amended) authorizes “[a]ny alien” to apply for asylum “irrespective of such alien’s status.” 8 U.S.C. § 1158(a)(1). Sixteen years later, Congress enacted Section 1231 to streamline deportations by, among other things, purporting to bar individuals with reinstated removal orders—those whose previous removal orders have been reinstated after a second unlawful entry—from obtaining “any relief under this chapter” (which includes Section 1158).

² The relevant international instruments are the Convention Relating to the Status of Refugees, 189 U.N.T.S. 137 (1951) (the “Refugee Convention”); and the Protocol Relating to the Status of Refugees, 19 U.S.T. 6223, 606 U.N.T.S. 267 (1967) (the “Refugee Protocol”). Copies of the Refugee Convention and the Refugee Protocol are reproduced in the appendices to this brief.

Without squarely addressing the interplay between these two statutory provisions, the Attorney General has promulgated regulations that permit individuals subject to reinstated removal orders to seek “withholding of removal only.” 8 C.F.R. § 1208.31(e).³ The court below deemed 8 C.F.R. § 1208.31(e) an agency interpretation that refugees subject to reinstated removal orders are ineligible for asylum, and deferred to that interpretation under *Chevron* as a reasonable construction of the statutory scheme. Pet. App. 23-31.

The petition cogently explains why this Court’s review is justified to resolve the administrative-law question of whether courts may invoke *Chevron* to resolve a statutory conflict. See Pet. 13-23. *Amici* do not dwell on that question here. Rather, as scholars of immigration and international law and refugee rights, *amici* elaborate on why this Court’s review is warranted to clarify that, consistent with the United States’ treaty obligations, the INA must be interpreted to permit refugees in reinstatement proceedings to seek asylum.

Indeed, proper application of the *Charming Betsy* doctrine produces the only possible interpretation harmonizing the asylum system with international law: Section 1231’s bar on seeking “relief” does not include requests for asylum. The Refugee Protocol prohibits penalizing refugees based on unlawful entry or presence—yet the categorical bar preventing refugees subject to reinstated removal orders from seeking asylum (and its correlated rights and bene-

³ A separate regulation permits refugees subject to reinstated removal orders to seek protection under the Convention Against Torture. See 8 C.F.R. § 1208.16(c)(4).

fits) is just such a penalty. As Judge Stahl recognized in a powerful and well-reasoned dissent in another case, the contrary interpretation of the INA endorsed here “trample[s]” and “violates” the United States’ international treaty obligations. *Garcia v. Sessions*, 856 F.3d 27, 61 (1st Cir. 2017) (Stahl, J., dissenting), reh’g denied, 2017 WL 4246813 (1st Cir. Sept. 25, 2017). Simply put, treaties should be respected, not violated.

Moreover, the immigration-law question presented—whether refugees with reinstated removal orders are eligible to apply for asylum—is one of enormous practical consequence. Withholding of removal does not provide the full range of substantive rights under the Refugee Convention that the Refugee Protocol mandates—including the unrestricted right to work and the ability to travel outside of the United States. Withholding of removal also does not provide refugees with adjustment to lawful permanent resident status or derivative status for family members. And there is a much higher evidentiary burden to obtain withholding of removal (or CAT protection) than asylum, meaning that for a substantial number of genuine refugees, the only realistically available options are asylum or a return to persecution. Declaring certain refugees categorically ineligible for asylum thus has potentially life-or-death consequences for significant numbers of those refugees.

This Court’s review is therefore essential.

ARGUMENT

I. The Decision Below Violates The United States' Treaty Obligations And Two Hundred Years Of Precedent.

By allowing Section 1231 to prevent refugees from seeking asylum based on a prior removal, the Ninth Circuit adopted an interpretation of the immigration laws that violates the United States' obligations under the Refugee Protocol. The *Charming Betsy* doctrine requires the opposite result.

A. Section 1158 Codifies Treaty Obligations; Section 1231 Does Not.

The United States' system of asylum is derived from the United States' international treaty obligations, and, based on those obligations, allows a refugee to apply for asylum "irrespective of such alien's status." 8 U.S.C. § 1158(a)(1).

There are two principal instruments establishing refugee rights under international law: The Refugee Convention and the Refugee Protocol. The Refugee Convention sets forth a rights regime, which the Refugee Protocol incorporates. (The Refugee Protocol also updated slightly the definition of "refugee" to eliminate geographical and temporal restrictions.) As this Court has recognized on multiple occasions, "[i]n 1968 the United States acceded to the [Refugee] Protocol," which "bound parties to comply with the substantive provisions of Articles 2 through 34 of the [Refugee] Convention * * * with respect to 'refugees' as defined in Article 1(2) of the Protocol." *INS v. Stevic*, 467 U.S. 407, 416 (1984); see *INS v. Cardoza-*

Fonseca, 480 U.S. 421, 429 (1987) (describing same); 19 U.S.T. 6223, 6259-6276, T.I.A.S. No. 6577 (1968).⁴

Section 1158, implemented by the Refugee Act of 1980 (Pub. L. No. 96-212, 94 Stat. 102), codifies the United States' obligations with respect to the Refugee Protocol. This Court has remarked that “[i]f one thing is clear from the legislative history of the new definition of ‘refugee,’ and indeed the entire 1980 Act, it is that one of Congress’ primary purposes was to bring United States refugee law into conformance with the [Refugee Protocol].” *Cardoza-Fonseca*, 480 U.S. at 436.

Consistent with the Refugee Convention and Protocol, Section 1158 allows refugees to apply for asylum “irrespective of such alien’s status.” 8 U.S.C. § 1158(a)(1). That provision is required to conform with Article 31(1) of the Refugee Convention, which prohibits penalizing an individual based on unlawful entry or presence: “The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who * * * enter or are present in their territory without authorization.” App., *infra*, 21a (Art. 31(1)). This mandate reflects the reality that refugees, by definition, are fleeing persecution (see 8 U.S.C. § 1101(a)(42)) and cannot be expected to remain at risk in their home country while trying to obtain refugee status from abroad. *E.g.*, James C. Hathaway, *THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW* 406 (2005).

⁴ When acceding to the Refugee Protocol, the United States provided partial reservations only with regard to Articles 24 and 29 (relating to social security and taxes)—reservations not relevant in this case. See 19 U.S.T. 6223.

Section 1231, by contrast, makes no reference to the United States' treaty obligations. It was enacted through the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) (Pub. L. No. 104-208, Div. C, 110 Stat. 3009 (1996)) as a method to streamline deportations. It purports to bar any individual with a reinstated removal order from obtaining "any relief" under the INA. 8 U.S.C. § 1231(a)(5). Nothing in the text or history of IIRIRA, however, suggests that Congress sought to limit, or act contrary to, the United States' Refugee Protocol obligations.⁵

Indeed, the Department of Homeland Security has elsewhere recognized that Section 1231's bar on "any relief" was not meant to displace treaty obligations. For example, DHS still allows individuals subject to reinstated removal orders to seek withholding of removal and protection under the Convention Against Torture. See Pet. App. 14 (citing 8 C.F.R. § 1208.31(e); 8 C.F.R. § 1208.16(c)(4)).

Withholding of removal and protection under the Convention Against Torture stem from international obligations and remain available to refugees subject to reinstated removal orders precisely *because* Congress and DHS recognized that the United States must respect its international obligations. *E.g.*, *Cardoza-Fonseca*, 480 U.S. at 440 ("[W]ithholding of deportation, or *nonrefoulement*, * * * corresponds to Article 33.1 of the [Refugee] Convention."); Regula-

⁵ If anything, IIRIRA reflects a continued desire to *comply* with the Refugee Protocol because the legislation amended Section 1158(a)(1) by broadening "an" alien to "any" alien (Pub. L. No. 104-208, Div. C, 110 Stat. 3009 (1996))—reflecting the broad eligibility for asylum mandated by the Refugee Protocol.

tions Concerning the Convention Against Torture, 64 Fed. Reg. 8478-01, 8478 (Feb. 19, 1999) (interim rule with request for comments) (relief from removal made available under the Convention Against Torture “to implement United States obligations under Article 3” of that Convention).

As *amici* next explain, the same international treaty obligations motivating these exceptions to Section 1231’s bar on “any relief” require permitting refugees to seek asylum.

B. The *Charming Betsy* Doctrine Requires Interpreting The INA To Permit Refugees Subject To Reinstated Removal Orders To Seek Asylum.

1. Under the *Charming Betsy* doctrine, a statute “ought never to be construed to violate the law of nations if any possible construction remains.” *Schooner Charming Betsy*, 6 U.S. (2 Cranch) at 118. Courts have a consequent obligation to interpret statutes in a manner consistent with treaty obligations, as long as Congress has not clearly expressed a contrary intention. This Court has described the *Charming Betsy* doctrine as “a firm and obviously sound canon of construction against finding implicit repeal of a treaty in ambiguous congressional action.” *Trans World Airlines, Inc. v. Franklin Mint Corp.*, 466 U.S. 243, 252 (1984); see also, *e.g.*, *Weinberger v. Rossi*, 456 U.S. 25, 32 (1982) (*Charming Betsy* doctrine applies to treaty obligations); *Chew Heong v. United States*, 112 U.S. 536, 550 (1884) (“[T]he stipulations of treaties should be observed” with “inviolable fidelity.”). This doctrine advances important goals of international security, commerce, and comity. See *Chew Heong*, 112 U.S. at 539-40; see also *United States v. Thomas*, 893 F.2d 1066, 1069 (9th Cir.

1990) (*Charming Betsy* doctrine applied “out of respect for other nations”).

This Court has accordingly applied the *Charming Betsy* doctrine throughout the centuries in a wide variety of contexts. See, e.g., *Trans World Airlines*, 466 U.S. at 251-53 (holding that Warsaw Convention provisions were enforceable despite a later conflicting statutory enactment, in part because of international considerations); *Weinberger*, 456 U.S. 25 (1982) (applying *Charming Betsy* to international treaty obligations); *Clark v. Allen*, 331 U.S. 503, 517 (1947) (explaining that where rights to succession of property under state law conflict with treaty provisions, “the state policy must give way”); *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10, 21 (1963) (National Labor Relations Act should not be interpreted contrary to a “well-established rule of international law that the law of the flag state ordinarily governs the internal affairs of a ship”); *Liberato v. Royer*, 270 U.S. 535 (1926) (Pennsylvania Workmen’s Compensation Act should not be construed to conflict with a treaty); *Chew Heong*, 112 U.S. at 550 (construing a statute consistent with treaty obligations); *United States v. Forty-Three Gallons of Whisky*, 108 U.S. 491, 496 (1883) (“The laws of congress are always to be construed so as to conform to the provisions of a treaty, if it be possible to do so.”).

2. Notwithstanding the *Charming Betsy* doctrine’s long-established pedigree as a tool of statutory construction, the court below did not apply the doctrine and instead deferred to an agency interpretation of the INA that violates the United States’ treaty obligations.

That interpretation violates several different Articles of the Refugee Convention.

Most clearly, it violates Article 31's prohibition on penalizing refugees for their illegal entry or presence: "The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who * * * enter or are present in their territory without authorization." App., *infra*, 21a (Art. 31(1)). This duty requires contracting states "to exempt refugees fleeing persecution from sanctions that might ordinarily be imposed for breach of the asylum state's general migration control laws." Hathaway, *supra*, at 405-06; see generally Gregor Noll, ART 31 1951 CONVENTION, IN THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND ITS 1967 PROTOCOL 1243 (Andreas Zimmermann ed., 2010); Guy Goodwin-Gill and Jane McAdam, THE REFUGEE IN INTERNATIONAL LAW (2007).

Article 31 prohibits such penalties because a refugee "is rarely in a position to comply with the requirements for legal entry," including passport and visa requirements—indeed, the very nature of being a refugee may require crossing borders covertly to access protection. Hathaway, *supra*, at 406 (quoting UN Ad Hoc Committee on Refugees and Stateless Persons, AD HOC COMMITTEE ON STATELESSNESS AND RELATED PROBLEMS, STATUS OF REFUGEES AND STATELESS PERSONS - MEMORANDUM BY THE SECRETARY-GENERAL, 3 January 1950, E/AC.32/2); see also Noll, *supra*, at 1248. A state party is not required to formally amend its laws to comply with the Refugee Convention and Refugee Protocol; rather, it may comply by *interpreting* its existing immigration laws to comport with its duties under the Convention and Protocol. Hathaway, *supra*, at 405-06.

Interpreting Section 1231 to categorically bar applications for asylum imposes a penalty of the type the Refugee Convention and Refugee Protocol proscribe. If applied to asylum seekers, Section 1231 purports to prevent refugees from seeking asylum in this country because they entered without authorization for a second time, regardless of the individual's actual entitlement to refugee status. This Court has previously recognized that Section 1231 penalizes “the alien’s choice to continue his illegal presence, after illegal reentry.” *Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 44 (2006). Thus, the *only* reason for closing the door on the ability to seek asylum is the individual’s second unlawful entry and continuing presence, *not* because of a substantive failure to qualify as a refugee. That result constitutes the type of immigration penalty that Article 31 of the Refugee Convention prohibits (*see Hathaway, supra*, at 405-08)—put another way, that interpretation improperly levies a generic immigration penalty against a refugee without regard to the individual’s status as a refugee. See App., *infra*, 21a (Art. 31(1)).

Without addressing Article 31, the court below suggested that the availability of withholding of removal and CAT protection justifies denying refugees like petitioner eligibility for asylum. Pet. App. 26-29. But withholding of removal and CAT relief fail to cure the penalty problem—and in fact also fail to secure other rights guaranteed by the Refugee Convention.

For example, Article 17 guarantees to refugees unrestricted access to employment: specifically, “the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employ-

ment.” App., *infra*, 15a (Art. 17(1)). Yet recipients of withholding of removal must apply for work authorization on an annual basis (8 C.F.R. § 274a.12(a)(10)), and lengthy processing times mean that many lose the right to work in the meantime. See also *Garcia*, 856 F.3d at 47 (Stahl, J., dissenting) (“Such aliens must apply for [authorization] before it expires, often encountering long processing delays, and cannot work legally unless and until the authorization document is renewed.”).

Likewise, recipients of withholding of removal cannot get a travel document to travel outside of the United States, yet Article 28 secures that right for refugees: “Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory.” App., *infra*, 20a (Art. 28).⁶ Far from being permitted to travel internationally, an individual granted withholding of removal must still be ordered removed (*Matter of I-S- & C-S-*, 24 I. & N. Dec. 432, 433-34 (BIA 2008)), and any departure from the United States would constitute self-deportation (8 C.F.R. § 241.7). Thus, as Judge Stahl put it, preventing refugees like petitioner from seeking the opportunity to apply for asylum and thereby potentially obtain a travel document “is a per se violation of the Convention.” *Garcia*, 856 F.3d at 57 (Stahl, J., dissenting); see also UNHCR, THE REFUGEE CONVENTION, 1951: THE TRAVAUX PRÉPARATOIRES ANALYSED

⁶ Refugees must also receive the right to travel freely within the United States (App., *infra*, 20a (Art. 26)), but many recipients of withholding of removal are subject to orders of supervision that limit their movement or require them to live in a certain region of the country.

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(Article 28 is “a mandatory obligation”).⁷

Moreover, even if withholding of removal or CAT protection provided all substantive rights guaranteed by the Refugee Convention and Protocol (which they do not), a refugee is required to meet a much higher evidentiary burden to obtain those forms of relief than to obtain asylum. To be eligible for asylum, an individual need only show “a well-founded fear of persecution.” *Cardoza-Fonseca*, 480 U.S. at 444. This means “it need not be shown that the situation will probably result in persecution”; rather, “it is enough that persecution is a reasonable possibility.” *Id.* at 440 (quoting *Stevic*, 467 U.S. at 424-25).

Withholding of removal, by contrast, requires demonstrating a “clear probability” of persecution—i.e., that it is “more likely than not that the alien would be subject to persecution.” *Stevic*, 467 U.S. at 424. And CAT protection similarly requires establishing that one is “more likely than not” to be tortured if returned to the proposed country. 8 C.F.R. § 1208.16(c)(2). In other words, the decision below requires those with reinstated removal orders to prove they are “super-refugees” by showing a probability of persecution or torture—a heightened evidentiary burden not supported by the Refugee Protocol. See James C. Hathaway & Anne K. Cusick, REFUGEE

⁷ Beyond the Refugee Convention, there are advantages to asylum compared to other modes of relief. See, e.g., *Lanza v. Ashcroft*, 389 F.3d 917, 933 (9th Cir. 2004) (explaining how withholding of removal, unlike asylum, does not form a basis for legal permanent resident status or derivative status for family members, and does not prohibit removal to a non-risk country).

RIGHTS ARE NOT NEGOTIABLE, 14 Geo. Immigr. L.J. 481, 485-86 (2000).

Nor, finally, is it responsive to the above concerns to say, as the court below did, that asylum is a discretionary form of relief. Pet. App. 26. While the ultimate grant of asylum is discretionary, asylum is the *only* vehicle under U.S. law that delivers the substantive rights required by the Refugee Protocol. A refugee who enters this country without being allowed to apply for asylum has no opportunity to obtain the full substantive rights that the Refugee Protocol mandates its signatories provide. As a result, preventing a refugee from the opportunity to even *seek* asylum and obtain those corresponding rights does not comport with the Refugee Protocol.

In short, withholding of removal and CAT protection alone are not enough to comply with the United States' treaty obligations. A refugee who is prevented from seeking asylum but obtains withholding of removal is still penalized on account of his illegal entry or presence.

3. For the above reasons, the court below should have applied the *Charming Betsy* doctrine and held that there is only one permissible way to interpret the two statutes at issue to uphold the United States' treaty obligations: Give full meaning to Section 1158's authorization for individuals to apply for asylum "*irrespective of such alien's status*" (8 U.S.C. § 1158(a)(1) (emphasis added)) and harmonize the statutes by interpreting "relief" in Section 1231 *not* to include asylum.

That interpretation is consistent with the language, structure, and history of the two statutes for the reasons petitioner explains. See Pet. 24-28. It is

also the proper construction in light of international law: Limiting the reach of the bar in Section 1231 avoids penalizing refugees based on unlawful entry or presence, and consequently avoids violating the United States' obligations under the Refugee Convention and Protocol, including Article 31. See pages 10-14, *supra*.

Indeed, there is no indication at all here (let alone a clear one) that Congress intended Section 1231 to supplant Section 1158 and modify the United States' treaty obligations. See *Trans World Airlines*, 466 U.S. at 252 (“There is, first, a firm and obviously sound canon of construction against finding implicit repeal of a treaty in ambiguous congressional action.”); *Chew Heong*, 112 U.S. at 555 (“It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results” that violate treaty provisions.). To the contrary, as the court below recognized, when enacting Section 1231, Congress did not “sp[ea]k directly to whether individuals subject to reinstated removal orders may apply for asylum.” Pet. App. 18. That recognition *reinforces* the conclusion that Section 1231 was not intended to disturb the United States' obligations under the Refugee Protocol.

Moreover, this interpretation is consistent with the fact that “any relief” in Section 1231 does not actually mean “any relief.” See *Fernandez-Vargas*, 548 U.S. at 35 n.4 (“Notwithstanding the absolute terms in which the bar on relief is stated, even an alien subject to [§ 1231(a)(5)] may seek withholding of removal.”). As the court below recognized, Section 1231's bar on “relief” does not preclude an individual from seeking “withholding of removal, CAT protection and U Visas—all forms of relief that, like asy-

lum, arise under chapter 12.” Pet. App. 26. And as discussed *supra* (at pages 7-8), withholding of removal and CAT protection remain available despite Section 1231 precisely in order to comply with the United States’ treaty obligations. It is therefore already established that Section 1231’s prohibition on seeking “any relief” must give way to the United States’ international obligations.

II. Refugees’ Eligibility For Asylum Is A Recurring Question Of Exceptional Importance.

The immigration-law question presented is important for many of the same reasons that the decision below is wrong: The decision below impermissibly penalizes refugees and deprives them of the substantive rights guaranteed them by this country’s treaty obligations.

This issue arises with great frequency: in fiscal year 2013, for example, DHS issued 170,247 reinstatement orders, representing “39 percent of all removals” for that year. Dep’t of Homeland Sec. Office of Immigration Statistics, *Immigration Enforcement Actions: 2013*, at 5, 7 & tbl. 7 (Sept. 2014), https://www.dhs.gov/sites/default/files/publications/Enforcement_Actions_2013.pdf. And DHS further observed that “[t]he number of removals based on a reinstatement of final orders increased every year between 2005 and 2013.” *Id.* at 7. While not all of the individuals subject to reinstatement are would-be asylum seekers, surely a sizable number are. Indeed, the frequency with which this issue arises is reflected in the numerous courts that have considered the issue—albeit many without detailed analysis or attention to the international law implications. See generally Pet. 33-35.

The immigration-law question presented here thus has substantial importance for thousands of individuals. The decision below has the starkest consequences for genuine refugees who satisfy the asylum burden but are unable to meet the heightened standards of proof for withholding or removal and CAT protection (see pages 13-14, *supra*). These refugees are denied protection and returned to persecution—a result with potentially life-or-death implications.

But even for individuals who can meet the heightened “super-refugee” standard, the decision below still imposes substantial penalties. As detailed above, neither withholding of removal nor CAT protection provides asylum’s array of substantive rights required by the Refugee Convention and Protocol—including rights to unrestricted travel and employment status. See pages 11-13, *supra*. These are no mere trifles, but fundamental guarantees secured by the United States’ treaty obligations. Yet if allowed to stand, the decision below categorically bars a significant number of refugees from being able to seek those guarantees.

In short, review is warranted when, as here, an erroneous statutory decision threatens nationwide harm. See E. Gressman et al., *SUPREME COURT PRACTICE* § 4.13 (10th ed. 2013).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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APPENDICES

APPENDIX A
Identities of the *Amici Curiae*

Institutional affiliations are provided for identification purposes only.

Erwin Chemerinsky is the Dean of Berkeley Law School and the Jesse H. Choper Distinguished Professor of Law. Prior to joining Berkeley, he was the founding Dean and Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law, at University of California, Irvine School of Law, with a joint appointment in Political Science. He is the author of ten books, including the leading casebook and treatise on constitutional law and treatise on federal court jurisdiction, and more than 200 law review articles. In January 2017, National Jurist magazine again named Dean Chemerinsky as the most influential person in legal education in the United States.

Guy S. Goodwin-Gill is Emeritus Fellow of All Souls College, Oxford, Emeritus Professor of International Refugee Law, University of Oxford, and a Barrister at Blackstone Chambers, London, where he practices in public international law generally, and in human rights, citizenship, refugee and asylum law. He has represented *pro bono* the Office of the United Nations High Commissioner for Refugees as ‘Intervener’ in a number of appeals in the United Kingdom House of Lords and Court of Appeal, and has been counsel for refugees and asylum seekers in the UK Court of Appeal and Supreme Court. He is an Honorary Associate of the Refugee Studies Centre, Oxford, an Honorary Senior Fellow of Melbourne Law School, University of Melbourne, and he has recently been appointed Professor at the University of

New South Wales, where he will also be Acting Director of the Kaldor Centre for International Refugee Law during the Director's leave of absence in 2017-18. He is the Founding Editor of the *International Journal of Refugee Law* (Oxford University Press) and was Editor-in-Chief from 1989-2001. He has lectured and published widely on the international law governing the movement of people between States and the protection of refugees, and he is the author, with Professor Jane McAdam, of a leading treatise, *The Refugee in International Law* (Oxford: Oxford University Press, 3rd ed., 2007; 4th ed. forthcoming 2018). Since its first publication in 1983, this work has been regularly cited by the highest courts of several jurisdictions.

James C. Hathaway is the James E. and Sarah A. Degan Professor of Law at the University of Michigan, where he is Director of the Program in Refugee and Asylum Law. He is also Distinguished Visiting Professor of International Refugee Law at the University of Amsterdam. Professor Hathaway previously held the positions of Dean and William Hearn Chair of Law at the University of Melbourne, and Professor of Law and Associate Dean at Osgoode Hall Law School in Canada. He is the author of two leading treatises on international refugee law, *The Rights of Refugees under International Law* (2005) and *The Law of Refugee Status* (2014, with Michelle Foster). His analysis of refugee law has been relied upon by leading courts around the world, including the British House of Lords and Supreme Court, the High Court of Australia, and the Supreme Court of Canada.

Kevin R. Johnson is the Dean, Mabie-Apallas Professor of Public Interest Law, and Professor of

Chicana/o Studies at UC Davis School of Law. He has taught a wide array of classes, including immigration law, civil procedure, complex litigation, Latinos and Latinas and the law, and Critical Race Theory, and has published extensively on immigration law and civil rights, including *Understanding Immigration Law* (2009) and *Immigration Law and the US-Mexico Border* (2011).

Hiroshi Motomura is the Susan Westerberg Prager Professor of Law at the School of Law, University of California, Los Angeles, where he teaches immigration law, immigrants' rights, and civil procedure. He is the author of two influential books on immigration law: *Immigration Outside the Law* (2014); and *Americans in Waiting: The Lost Story of Immigration and Citizenship in the United States* (2006), and he is a co-author of two widely used law school casebooks: *Immigration and Citizenship: Process and Policy* (8th ed. 2016); and *Forced Migration: Law and Policy* (2d ed. 2013). He is also the author of many widely cited law review articles on immigration law, including a pioneering article on statutory interpretation in immigration law cases. He was selected as a Guggenheim Fellow in 2017.

Victor C. Romero is the Associate Dean of Academic Affairs, Maureen B. Cavanaugh Distinguished Faculty Scholar, and Professor of Law at Penn State Law. He has written extensively on immigration policy and individual rights, and his research emphasizes the law's impact on marginalized groups, with a special interest in both legal and cultural borders. Professor Romero's publications include *Alienated: Immigrant Rights, The Constitution, and Equality in America* (2005) and *Immigration and the Constitu-*

tion (3 volumes) (co-edited with G. Chin & M. Scaperlanda, 2001).

Stephen W. Yale-Loehr is a Professor of Immigration Law Practice at Cornell Law School and is of counsel at Miller Mayer in Ithaca, New York. He is the co-author of *Immigration Law and Procedure*, the leading 21-volume treatise on U.S. immigration law, and the coauthor or editor of many additional books. He chairs the asylum committee of the American Immigration Lawyers Association (AILA). Professor Yale-Loehr is annually listed in *Chambers Global*, *Chambers USA*, and *An International Who's Who of Corporate Immigration Lawyers* as one of the best immigration lawyers in the world.

APPENDIX B

**CONVENTION RELATING TO THE STATUS
OF REFUGEES**

**ADOPTED ON 28 JULY 1951 BY THE UNITED
NATIONS CONFERENCE OF PLENIPOTEN-
TIARIES ON THE STATUS OF REFUGEES
AND STATELESS PERSONS CONVENED UN-
DER GENERAL ASSEMBLY RESOLUTION 429
(V) OF 14 DECEMBER 1950**

**ENTRY INTO FORCE: 22 APRIL 1954, IN AC-
CORDANCE WITH ARTICLE 43**

Preamble

The High Contracting Parties,

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms,

Considering that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and the protection accorded by such instruments by means of a new agreement,

Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation,

Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States,

Noting that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner,

Have agreed as follows:

CHAPTER I GENERAL PROVISIONS

ARTICLE 1. - DEFINITION OF THE TERM “REFUGEE”

A. For the purposes of the present Convention, the term “refugee” shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and owing to well-founded 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.

In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B. (1) For the purposes of this Convention, the words “events occurring before 1 January 1951” in article 1, section A, shall be understood to mean either (a) “events occurring in Europe before 1 January 1951”; or (b) “events occurring in Europe or elsewhere before 1 January 1951”; and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily reacquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) He has been guilty of acts contrary to the purposes and principles of the United Nations.

ARTICLE 2. - GENERAL OBLIGATIONS

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

ARTICLE 3. - NON-DISCRIMINATION

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

ARTICLE 4. - RELIGION

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

ARTICLE 5. - RIGHTS GRANTED APART FROM THIS CONVENTION

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

ARTICLE 6. - THE TERM "IN THE SAME CIRCUMSTANCES"

For the purposes of this Convention, the term "in the same circumstances" implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

**ARTICLE 7. - EXEMPTION FROM RECIPRO-
CITY**

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.

2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.

3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.

4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3.

5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

**ARTICLE 8. - EXEMPTION FROM EXCEP-
TIONAL MEASURES**

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which,

under their legislation, are prevented from applying the general principle expressed in this article, shall, in appropriate cases, grant exemptions in favour of such refugees.

ARTICLE 9. - PROVISIONAL MEASURES

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

ARTICLE 10. - CONTINUITY OF RESIDENCE

1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.

2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

ARTICLE 11. - REFUGEE SEAMEN

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic con-

sideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

CHAPTER II JURIDICAL STATUS

ARTICLE 12. - PERSONAL STATUS

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee.

ARTICLE 13. - MOVABLE AND IMMOVABLE PROPERTY

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

ARTICLE 14. - ARTISTIC RIGHTS AND INDUSTRIAL PROPERTY

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting States, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

ARTICLE 15. - RIGHT OF ASSOCIATION

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

ARTICLE 16. - ACCESS TO COURTS

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.

2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvi*.

3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

**CHAPTER III
GAINFUL EMPLOYMENT**

ARTICLE 17. - WAGE-EARNING EMPLOYMENT

1. The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:

(a) He has completed three years' residence in the country;

(b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefit of this provision if he has abandoned his spouse;

(c) He has one or more children possessing the nationality of the country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

ARTICLE 18. - SELF-EMPLOYMENT

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

ARTICLE 19. - LIBERAL PROFESSIONS

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

**CHAPTER IV
WELFARE****ARTICLE 20. - RATIONING**

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

ARTICLE 21. - HOUSING

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations

or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

ARTICLE 22. - PUBLIC EDUCATION

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

ARTICLE 23. - PUBLIC RELIEF

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

ARTICLE 24. - LABOUR LEGISLATION AND SOCIAL SECURITY

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters;

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, hol-

idays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

(ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

CHAPTER V ADMINISTRATIVE MEASURES

ARTICLE 25. - ADMINISTRATIVE ASSISTANCE

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5. The provisions of this article shall be without prejudice to articles 27 and 28.

ARTICLE 26. - FREEDOM OF MOVEMENT

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances.

ARTICLE 27. - IDENTITY PAPERS

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

ARTICLE 28. - TRAVEL DOCUMENTS

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by Parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

ARTICLE 29. - FISCAL CHARGES

1. The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or

may be levied on their nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

ARTICLE 30. - TRANSFER OF ASSETS

1. A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.

2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

ARTICLE 31. - REFUGEES UNLAWFULLY IN THE COUNTRY OF REFUGE

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such

refugees a reasonable period and all the necessary facilities to obtain admission into another country.

ARTICLE 32. - EXPULSION

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

ARTICLE 33. - PROHIBITION OF EXPULSION OR RETURN (“REFOULEMENT”)

1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly

serious crime, constitutes a danger to the community of that country.

ARTICLE 34. - NATURALIZATION

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

**CHAPTER VI
EXECUTORY AND TRANSITORY PROVISIONS**

ARTICLE 35. - CO-OPERATION OF THE NATIONAL AUTHORITIES WITH THE UNITED NATIONS

1. The Contracting States undertake to cooperate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:

- (a) The condition of refugees,
- (b) The implementation of this Convention, and
- (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

ARTICLE 36. - INFORMATION ON NATIONAL LEGISLATION

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

ARTICLE 37. - RELATION TO PREVIOUS CONVENTIONS

Without prejudice to article 28, paragraph 2, of this Convention, this Convention replaces, as between Parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946.

**CHAPTER VII
FINAL CLAUSES**

ARTICLE 38. - SETTLEMENT OF DISPUTES

Any dispute between Parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

ARTICLE 39. - SIGNATURE, RATIFICATION AND ACCESSION

1. This Convention shall be opened for signature at Geneva on 28 July 1951 and shall thereafter be deposited with the Secretary-General of the United Nations. It shall be open for signature at the European Office of the United Nations from 28 July to 31 August 1951 and shall be re-opened for signature at the Headquarters of the United Nations from 17 September 1951 to 31 December 1952.

2. This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open from 28 July 1951 for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

ARTICLE 40. - TERRITORIAL APPLICATION CLAUSE

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps

in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

ARTICLE 41. - FEDERAL CLAUSE

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of parties which are not Federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

ARTICLE 42. - RESERVATIONS

1. At the time of signature, ratification or accession, any State may make reservations to articles of

the Convention other than to articles 1, 3, 4, 16 (1), 33, 36-46 inclusive.

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

ARTICLE 43. - ENTRY INTO FORCE

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

ARTICLE 44. - DENUNCIATION

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.

3. Any State which has made a declaration or notification under article 40 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

ARTICLE 45. - REVISION

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

ARTICLE 46. - NOTIFICATIONS BY THE SECRETARY-GENERAL OF THE UNITED NATIONS

The Secretary-General of the United Nations shall inform all Members of the United Nations and nonmember States referred to in article 39:

(a) Of declarations and notifications in accordance with section B of article 1;

(b) Of signatures, ratifications and accessions in accordance with article 39;

(c) Of declarations and notifications in accordance with article 40;

(d) Of reservations and withdrawals in accordance with article 42;

(e) Of the date on which this Convention will come into force in accordance with article 43;

(f) Of denunciations and notifications in accordance with article 44;

(g) Of requests for revision in accordance with article 45.

In faith whereof the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments.

Done at Geneva, this twenty-eighth day of July, one thousand nine hundred and fifty-one, in a single copy, of which the English and French texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in article 39.

**APPENDIX C
PROTOCOL RELATING TO THE STATUS OF
REFUGEES**

THE PROTOCOL WAS TAKEN NOTE OF WITH APPROVAL BY THE ECONOMIC AND SOCIAL COUNCIL IN RESOLUTION 1186 (XLI) OF 18 NOVEMBER 1966 AND WAS TAKEN NOTE OF BY THE GENERAL ASSEMBLY IN RESOLUTION 2198 (XXI) OF 16 DECEMBER 1966. IN THE SAME RESOLUTION THE GENERAL ASSEMBLY REQUESTED THE SECRETARY-GENERAL TO TRANSMIT THE TEXT OF THE PROTOCOL TO THE STATES MENTIONED IN ARTICLE V THEREOF, WITH A VIEW TO ENABLING THEM TO ACCEDE TO THE PROTOCOL

**ENTRY INTO FORCE 4 OCTOBER 1967, IN
ACCORDANCE WITH ARTICLE VIII**

The States Parties, to the present Protocol,

Considering that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January 1951,

Considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

Considering that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951,

Have agreed as follows:

ARTICLE 1. GENERAL PROVISION

1. The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.

2. For the purpose of the present Protocol, the term “refugee” shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article I of the Convention as if the words “As a result of events occurring before 1 January 1951 and...” and the words “...as a result of such events”, in article 1A(2) were omitted.

3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article IB(I)(a) of the Convention, shall, unless extended under article IB(2) thereof, apply also under the present Protocol.

ARTICLE 2. CO-OPERATION OF THE NATIONAL AUTHORITIES WITH THE UNITED NATIONS

1. The States Parties to the present Protocol undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol.

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the States Parties to the present Protocol undertake to provide them

with the information and statistical data requested, in the appropriate form, concerning:

- (a) The condition of refugees;
- (b) The implementation of the present Protocol;
- (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

ARTICLE 3. INFORMATION ON NATIONAL LEGISLATION

The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.

ARTICLE 4. SETTLEMENT OF DISPUTES

Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

ARTICLE 5. ACCESSION

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialized agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

ARTICLE 6. FEDERAL CLAUSE

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of States Parties which are not Federal States;

(b) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to the present Protocol shall, at the request of any other State Party hereto transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol, showing the extent to which effect has been given to that provision by legislative or other action.

ARTICLE 7. RESERVATIONS AND DECLARATIONS

1. At the time of accession, any State may make reservations in respect of article IV of the present Protocol and in respect of the application in accordance with article I of the present Protocol of any provisions of the Convention other than those contained in articles 1, 3, 4, 16(1) and 33 thereof, provided that

in the case of a State Party to the Convention reservations made under this article shall not extend to refugees in respect of whom the Convention applies.

2. Reservations made by States Parties to the Convention in accordance with article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.

3. Any State making a reservation in accordance with paragraph I of this article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

4. Declarations made under article 40, paragraphs I and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the contrary is addressed by the State Party concerned to the Secretary-General of the United Nations. The provisions of article 40, paragraphs 2 and 3, and of article 44, paragraph 3, of the Convention shall be deemed to apply *mutatis mutandis* to the present Protocol.

ARTICLE 8. ENTRY INTO PROTOCOL

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.

2. For each State acceding to the Protocol after the deposit of the sixth instrument of accession, the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

ARTICLE 9. DENUNCIATION

1. Any State Party hereto may denounce this Protocol at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the State Party concerned one year from the date on which it is received by the Secretary-General of the United Nations.

ARTICLE 10. NOTIFICATIONS BY THE SECRETARY-GENERAL OF THE UNITED NATIONS

The Secretary-General of the United Nations shall inform the States referred to in article V above of the date of entry into force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol, and of declarations and notifications relating hereto .

ARTICLE 11. DEPOSIT IN THE ARCHIVES OF THE SECRETARIAT OF THE UNITED NATIONS

A copy of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, signed by the President of the General Assembly and by the Secretary-General of the United Nations, shall be deposited in the archives of the Secretariat of the United Nations. The Secretary-General will transmit certified copies thereof to all States Members of the United Nations and to the other States referred to in article 5 above.