

BRIEF *AMICUS CURIAE* OF THE ADVOCATES FOR HUMAN RIGHTS

in support of the

REQUEST FOR PUBLIC THEMATIC HEARING

CONCERNING U.S. DEPORTATION POLICY AND THE RIGHTS OF MIGRANTS

BEFORE THE

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

149TH PERIOD OF SESSIONS

PURSUANT TO

ARTICLE 66 OF THE RULES OF PROCEDURE

OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Michele McKenzie
Advocacy Director
The Advocates for Human Rights
330 Second Avenue South Suite 800
Minneapolis, MN 55402
Tel.: 612.341.3302
Fax: 612.341.2971
E-mail: mmckenzie@advrights.org

Suzanne Turner, Dennis Hranitzky, Diane Princ,
Sarah Rivard
Dechert LLP
1900 K St. NW
Washington, D.C. 20006, U.S.A.
Tel.: 202.261.3300
and
1095 Avenue of the Americas
New York, NY 10036, U.S.A.
Tel.: 212.698.3500

Attorneys for Amicus Curiae

INTEREST OF THE ADVOCATES FOR HUMAN RIGHTS

The Advocates for Human Rights (“AHR”) respectfully submits this report in further support of the request for a hearing pursuant to Article 66 of the IACHR Rules of Procedure filed by Gibbs Houston Pauw, the Center for Justice and International Law (CEJIL), the Stanford Law School Immigrants’ Rights Clinic, and the Boston College Post-Deportation Human Rights Project to present evidence on the continued widespread violations of family rights and the rights of children protected under the American Declaration. The mission of AHR is to help individuals realize their human rights in the United States and around the world. For 30 years, AHR’s innovative programming has touched the lives of refugees and immigrants, women, ethnic and religious minorities, children, and other marginalized communities whose rights are at risk. AHR strengthens accountability mechanisms, raises awareness, and fosters tolerance. Adapting traditional human rights methodologies to conduct cutting-edge research, AHR has produced 75 reports documenting human rights practices in 25 countries.

In this case, AHR’s interest is in protecting the international human right to family unity, which is universally recognized across international law. As set forth more fully herein, the United States’ mandatory deportation of immigrants violates this fundamental and universal human right.

INTRODUCTION

AHR files this report in support of the request for a hearing to present evidence on the continued widespread violations by the United States of family rights and the rights of children protected under the American Declaration. As this Court recognized in its July 2010 Order in the case of *Wayne Smith and Hugo Armendariz v. The United States of America* (Case No.

12.561 and 12.562), U.S. law subjects non-citizens with an aggravated felony conviction to mandatory deportation without any consideration of the critical facts of the individual's case, including his or her family or community ties, the length of his or her residence, or the presence of his or her spouse, children, or other family members in the United States. This Court held that U.S. law violates the American Declaration on the Rights and Duties of Man ("American Declaration") and well-settled international law. To further highlight the correctness of this Court's July 2010 Order, AHR submits this brief report to address recent developments in international human rights law beyond the American Declaration. These sources of law uniformly provide that even if States have the sovereign right to exclude non-citizens from their borders, they must consider each individual's unique circumstances – including any effect of the proposed deportation on the individual's right to family unity – before deporting the individual.

United States law continues to require mandatory deportation of non-citizens without regard to the individual's right to family unity for a host of reasons. The United States mandatorily deports people without consideration of the unique circumstances of the individuals in cases involving convictions for aggravated felonies,¹ false claims to United States citizenship,² illegal reentry following unlawful presence in the United States,³ reinstatement of prior orders of

¹ 8 U.S.C. §1227(a)(2)(A)(iii) states that any alien who has been convicted of an "aggravated felony" as defined by 8 U.S.C. §1101(a)(43) is deportable. Aliens who are unlawfully present in the United States and are convicted of an aggravated felony are deportable subject to expedited proceedings, without a hearing before an immigration judge, pursuant to 8 U.S.C. §1228. A person convicted of an aggravated felony is barred from seeking cancellation of removal pursuant to 8 U.S.C. §1229b(a)(3).

² 8 U.S.C. §1227(a)(3)(D) states that any alien who falsely claimed U.S. citizenship is deportable. No waiver of inadmissibility is available for false claims to United States citizenship, effectively rendering individuals unable to qualify for cancellation of removal.

³ 8 U.S.C. §1182(a)(9)(C)(i)(I) renders permanently inadmissible an individual who is present in the United States for more than 1 year, subsequently departs the United States, and attempts to or does reenter the United States without being admitted.

removal,⁴ findings by an immigration judge of a frivolous asylum claim,⁵ and other reasons. The United States' mandatory deportation practices violate well-settled international human rights law protecting family life and the rights of children and should be abandoned.

ARGUMENT

A. Mandatory Deportation Violates the Right to Family Unity and the Best Interests of the Child, as Recognized Under the International Covenant for Civil and Political Rights and the Convention on the Rights of the Child, and Is a Form of Impermissible National Origin Discrimination.

1. Mandatory Deportation Violates the International Human Right to Family Unity.

Article 16 of the Universal Declaration on Human Rights (“UDHR”) and Article 23 of the International Covenant for Civil and Political Rights (“ICCPR”) both secure the international human right to family unity, providing that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”⁶ Furthermore, Article 17 of the ICCPR provides that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence”⁷

In a line of important recent decisions, the Human Rights Committee has interpreted Articles 23 and 17 to recognize explicitly the importance of conducting an individualized consideration of the effect of a deportation on family unity. In determining whether a deportation

⁴ 8 U.S.C. §1231(a)(5) provides that if the attorney general finds that an alien has illegally reentered the United States after having been removed or departed voluntarily under an order of removal, the original order shall be reinstated and is not subject to reopening.

⁵ 8 U.S.C. §1158(d)(5) states that if the attorney general finds that an applicant for asylum has made a frivolous asylum application, the alien shall be permanently ineligible for any immigration benefits in the United States.

⁶ Universal Declaration of Human Rights, Dec. 10, 1948, art. 16(3) U.N. Doc A/810 [hereinafter “UDHR”]; International Covenant on Civil and Political Rights, Art. 23, Dec. 19, 1966, pmbl., 999 U.N.T.S. 171 [hereinafter “ICCPR”].

⁷ ICCPR, Art. 17.

violates Article 17, a State Party must analyze both (1) whether interference in the family life would result and (2) whether such interference is arbitrary.⁸

To constitute impermissible interference in the family life, the deportation must create “substantial changes to long-settled family life.”⁹ In *Winata v. Australia*, the Committee concluded that Australia had violated Articles 23 and 17 when it attempted to deport the Indonesian parents of a thirteen-year-old child born and raised in Australia.¹⁰ There would be “substantial changes to long-settled family life” if the minor were child forced to remain alone in the State or if the child were to accompany his parents to a country he does not know.¹¹

A parent’s prior criminal acts, without more, are not sufficient to overcome the prohibition against arbitrary interference with the family. In *Madefferi v. Australia*, an Italian national with prior criminal convictions was found to be unlawfully present in Australia. He married an Australian national and together they had four minor children, all born in Australia. The State justified its decision to deport Madefferi largely on his illegal presence in the State as well as his dishonesty and “bad character” stemming from prior criminal acts, but the Committee noted that Madefferi’s outstanding sentences in Italy had been extinguished and there was no warrant for his arrest.¹² In determining whether the decision to deport was arbitrary, the Committee observed that if the father were deported and the family emigrated to avoid separation, the children would have to live in a country they do not know with a language they

⁸ U.N. C.C.P.R. Human Rights Committee, *Winata v. Australia*, Judgment of Jul. 26, 2001, Communication No. 930/2000, U.N. Doc. CCPR/C/72/D/930/2000 (2001).

⁹ *Winata*, *supra* note 3, ¶ 7.2; *Madefferi v. Australia*, Judgment of July 26, 2004, Communication No. 1011/2001, U.N. Doc. CCPR/C/81/D/1011/2001 (2004).

¹⁰ *Winata*, *supra* note 3, ¶ 7.2.

¹¹ *Winata*, *supra* note 3, ¶ 7.2.

¹² *Madefferi*, *supra* note 4, ¶ 9.8.

do not speak.¹³ As such, the Committee found the State had violated Article 17's prohibition on arbitrary interference with the family because the reasons the State provided for the deportation were "not pressing enough to justify... interference to [the] extent with the family..."¹⁴

To avoid such impermissible "arbitrary interference," a State must allow due consideration of the deportee's family connections and all other relevant circumstances. In *Stewart v. Canada*, the Committee found that Canada did not violate Articles 17 and 23 of the Convention because: (1) its decision to deport Stewart, a permanent resident, was based upon Canada's Immigration Law, which expressly provided for the deportation of permanent residents if convicted of serious offenses; (2) the Immigration Appeal Division "is empowered to revoke the deportation order 'having regard to all of the circumstances of the case'"; and (3) Stewart was afforded the opportunity to present evidence of his family connections during the appeal process.¹⁵ The Commission found that "interference with Mr. Stewart's family relations that will be the inevitable outcome of his deportation cannot be regarded as either unlawful or arbitrary when the deportation order was made under law in furtherance of a legitimate state interest and due consideration was given in the deportation proceedings to the deportee's family connections."¹⁶

2. **Mandatory Deportation Violates the Human Rights of Children.**

Mandatory deportation precludes consideration of the best interests of the deportee's child and violates that child's right to be heard. Article 9(1) of the U.N. Convention on the Rights of the Child (CRC) provides that "a child shall not be separated from his or her parents

¹³ *Madefferi*, *supra* note 4, ¶ 9.8.

¹⁴ *Madefferi*, *supra* note 4, ¶ 9.8.

¹⁵ U.N. C.C.P.R. Human Rights Committee, *Stewart v. Canada*, Judgment of December 1996, Communication No. 538/1993 (1996).

¹⁶ *Id.*, ¶ 12.10.

against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.”¹⁷ Further, “in all actions concerning children . . . , the best interests of the child shall be a primary consideration.”¹⁸ As the Committee on the Rights of the Child recently emphasized, if a decision has the potential to separate parent and child, “it is *indispensable* to carry out the assessment and determination of the child’s best interests.”¹⁹ And in any proceedings affecting the child’s interests, including deportation proceedings, “the child shall in particular be provided the opportunity to be heard . . . either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”²⁰

Moreover, separating a child from his or her parents is permissible only as a last resort—not as a perfunctory consequence of a generally applicable mandatory deportation law. As the Committee on the Rights of the Child recognized in its recent General Comment on the best interests of the child, “[g]iven the gravity of the impact on the child of separation from his or her parents, such separation should only occur as a last resort measure, as when the child is in danger of experiencing imminent harm or when otherwise necessary; separation should not take place if less intrusive measures could protect the child.”²¹ Such circumstances are rarely if ever present when a parent in the United States faces mandatory deportation.

3. **Mandatory Deportation Is Impermissible National Origin Discrimination.**

¹⁷ Convention on the Rights of the Child, Dec. 12, 1989, 1577 U.N.T.S. 43, art 9(1) [hereinafter “CRC”].

¹⁸ Convention on the Rights of the Child, Dec. 12, 1989, 1577 U.N.T.S. 43, art 3(1) [hereinafter “CRC”].

¹⁹ Committee on the Rights of the Child, General Comment No. 14, UN Doc. No. CRC/C/GC/14, para. 58 (May 29, 2013) (emphasis added).

²⁰ CRC, art. 12(2).

²¹ Committee on the Rights of the Child, General Comment No. 14, UN Doc. No. CRC/C/GC/14, para. 61 (May 29, 2013).

State Parties must respect and ensure all rights contained in the ICCPR and CRC “without distinction of any kind, such as . . . national . . . origin”²² of the child or parent.²³ The ICCPR “gives aliens all the protection regarding rights guaranteed therein, and its requirements should be observed by States parties in their legislation and in practice as appropriate.”²⁴ The ICCPR does not automatically recognize a right of aliens to enter and reside in a country, but the Human Rights Committee in General Comment 15 observed that “an alien may enjoy the protection of the [ICCPR] even in relation to entry or residence,” “in certain circumstances,” such as “when considerations of non-discrimination . . . and respect for family life arise.”²⁵

Mandatory deportation that separates children from their non-U.S.-national parents amounts to impermissible national origin discrimination. Article 13 of the ICCPR permits expulsion of non-citizens who are lawfully present in a country, so long as there is a lawful basis for the expulsion and the decision is subject to review by a competent authority.²⁶ But Article 24 of the ICCPR and Article 2(1) of the CRC recognize that each child has the right to the protection of the family, without regard to the parent’s national origin. The CRC also obliges States to “include measures to prevent separation” of parents and children.²⁷ U.S. law gives extensive protections to children whose parents are U.S. nationals before those children may be separated from their parents. Yet U.S. law affords the children of non-nationals *no* procedural protections or “best interests” determinations before the parent faces mandatory deportation and is separated from the child.

²² ICCPR, Art. 2(1); see also Art. 24.

²³ CRC, Art. 2(1).

²⁴ Human Rights Committee, General Comment No. 15, U.N. Doc. HRI/GEN/1/Rev.1, para. 4 (1994).

²⁵ Human Rights Committee, General Comment No. 15, U.N. Doc. No. HRI/GEN/1/Rev.1, para. 5 (1986).

²⁶ ICCPR, Art. 13.

²⁷ Committee on the Rights of the Child, General Comment No. 6, UN Doc. No. CRC/GC/2005/6, para. 14 (Sept. 1, 2005).

B. Mandatory Deportation Violates the Right to Family Unity Under the European Convention On Human Rights.

1. The European Convention Recognizes the Right To Family Unity.

The European Convention on Human Rights (“European Convention”) recognizes and protects the principle of family unity. Specifically, Article 8 of the European Convention provides:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Mandatory deportation violates the right to family unity because it precludes an individualized determination that: (1) a particular deportation furthers a legitimate State interest, (2) the deportation is necessary to achieve that interest, and (3) the interest is proportionate to the violation of the deportee’s right to family unity in the circumstances of the case. In the context of immigration, the European Court of Human Rights (“European Court”) has repeatedly recognized that Article 8 provides broad protection of the individual’s right to family unity from disproportionate intrusion by state actors. In considering whether an immigrant’s deportation or prohibited reentry would interfere with the individual’s right to family unity, the European Court employs a balancing test to weigh the individual’s rights – including to stay with or rejoin her family – against the state’s legitimate interest in controlling immigration.²⁸ Under this test, a state’s interference with an individual’s family life “will be in breach of Article 8 of the

²⁸ Eur. Ct. H.R., *Omojudi v. The United Kingdom*, Judgment of March 25, 2010, No. 1820/08, ¶ 38.

Convention unless it can be justified under paragraph 2 of the Article 8 as being in accordance with the law, as pursuing one or more of the legitimate aims listed therein, and as being necessary in a democratic society in order to achieve the aim or aims concerned” and “proportionate to the legitimate aim pursued.”²⁹ In determining whether interference with the family satisfies this test, the European Court considers, *inter alia*:

- The length of the applicant’s stay in the country from which he or she is to be expelled;
- The applicant’s family situation, such as the length of the marriage, and other factors expressing the effectiveness of the couple’s family life;
- Whether the spouse knew about the offence at the time when he or she entered into a familial relationship;
- Whether there are children of the marriage, and if so, their age;
- The seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled; and
- The best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and.³⁰

If, after considering these criteria, the European Court concludes that a State’s action interferes disproportionately with the individual’s right to family unity, that action violates Article 8.³¹ Mandatory deportation precludes consideration of such criteria and therefore violates Article 8 as a matter of law.

2. Recent European Court Decisions Underscore the Importance of Considering the Individual’s Specific Facts and Circumstances in

²⁹ *Id.*

³⁰ *Id.* ¶ 41.

³¹ See, e.g., Eur. Ct. H.R., *Osman v. Denmark*, Judgment of September 14, 2011, No. 38058/09; Eur. Ct. H.R., *Nunez v. Norway*, Judgment of September 28, 2011, No. 55597/09; Eur. Ct. H.R., *Butt v. Norway*, Judgment of April 4, 2013, No. 47017/09.

Protecting His or Her Right to Family Unity Under International Law.

Since this Court's decision in July 2010, the European Court has considered several challenges to states' expulsion of immigrants as violating Article 8's right to family unity.³² In each of these cases, the European Court has reaffirmed that international law requires each State to consider the specific facts and circumstances before interfering with the right to family unity.

Osman v. Denmark

In determining whether a fair balance between the right to family unity and the State's interests has been struck, a State must give considerable weight to the presence of the excluded person's close family in the State, the length of her stay in the State, and her language and educational ties to the State. In 2011, the European Court in *Osman v. Denmark* concluded that the State's exclusion of the applicant – separating her from her family in Denmark – violated her right to family unity under Article 8. Originally born in Somalia, the applicant had moved to Denmark with her family at the age of seven. Until age 15, the applicant lived in Denmark with her family and attended school. Then her father took her to Kenya to take care of her paternal grandmother in a refugee camp.³³ Two years later, the applicant contacted the Danish embassy in Nairobi seeking to return to live with her mother and siblings in Denmark.³⁴ Danish immigration authorities denied this request, and the applicant challenged that denial in the European Court.³⁵

Reviewing the state's interests as compared to the applicant's interests – including the applicant's "right to respect for family life" and desire to see her mother – the European Court concluded that Denmark had violated Article 8 because "it cannot be said that the applicant's

³² *See id.*

³³ *Osman*, ¶¶ 6-11.

³⁴ *Id.* ¶ 12.

³⁵ *See generally id.*

interests have sufficiently been taken into account in the authorities' refusal to reinstate her residence permit in Denmark or that a fair balance was struck between the applicants' interests on one hand and the State's interest in controlling immigration on the other."³⁶ The European Court applied the balancing test in concluding that the State's denial of the applicant's request to re-enter Denmark was not "necessary in a democratic society," considering that (1) "the applicant spent the formative years of her childhood and youth in Denmark," (2) the applicant spoke "Danish and received schooling in Denmark," and (3) the applicant's "divorced parents and older siblings live in Denmark."³⁷ Although that the applicant had social, cultural and family ties in Kenya and Somalia as well, the length of the applicant's stay in Denmark and the fact that her close family remained in Denmark, meant that the State needed to provide "very serious reasons . . . to justify the authorities' refusal to restore the applicant's residence permit."³⁸

Nunez v. Norway

Even if there are strong State interests in favor of deportation, Article 8 requires States to consider whether deportation is in the best interests of the deportee's children. In *Nunez v. Norway*, the applicant challenged Norwegian immigration authorities' order to expel her for being present unlawfully in Norway as a violation of her right to family unity under Article 8, because the expulsion would separate her from her two young daughters who were born and raised in Norway.³⁹ The applicant had first entered Norway in 1996 as a tourist but was soon ordered to leave after being arrested on suspicion of shoplifting; she returned to Norway illegally

³⁶ *Id.* ¶¶ 74-77.

³⁷ *Id.* ¶ 60.

³⁸ *Id.* ¶ 65.

³⁹ *Nunez v. Norway*, ¶ 12.

a few months later with a different passport.⁴⁰ The applicant later returned to Norway, where she lived for over ten years, during which time she had two children.⁴¹ She was later arrested and given an expulsion order.

In considering the best interests of the children, States must give considerable weight to any close ties between the deportee and his or her minor children, including the deportation's disruption of those family bonds. The European Court first noted that in light of the applicant's misstatements to Norwegian authorities and continued illegal presence there, "the public interest in [favor] of ordering the applicant's expulsion weighed heavily in the balance when assessing the proportionality under Article 8 of the Convention."⁴² Nevertheless, the Court proceeded to "examine whether particular regard to the children's best interest would nonetheless upset the fair balance under Article 8."⁴³ At issue for the children were the facts that they had lived permanently with the applicant for over four years and that the applicant had been their primary caregiver from their birth until their father was given custody upon the expulsion order.⁴⁴ Additionally, the children, "who had lived all their lives in Norway, would remain in the country in order to live with their father, a settled immigrant."⁴⁵ In its conclusion, the Court noted, "the applicant's expulsion with a two-year re-entry ban would no doubt constitute a very far-reaching measure vis-à-vis the children." Accordingly, in light of, *inter alia*, "the children's long lasting and close bonds to their mother, . . . the disruption and stress that the children had already experienced . . . , the Court is not convinced in the concrete and exceptional circumstances in the

⁴⁰ *Id.* ¶¶ 6-7.

⁴¹ *Id.* ¶ 9.

⁴² *Id.* ¶¶ 72-73.

⁴³ *Id.* ¶ 77.

⁴⁴ *Id.* ¶ 70.

⁴⁵ *Id.* ¶ 80.

case that sufficient weight was attached to the best interests of the children for the purposes of Article 8 of the Convention.”⁴⁶

Butt v. Norway

In considering family ties and the best interests of the child, States must look beyond the child’s biological parents when the child has close emotional links with other family members living in the State, and must also consider the length of the child’s stay in the State. Most recently, the European Court in *Butt v. Norway* concluded that Norway had violated the applicants’ right to family unity under Article 8.⁴⁷ The applicants were born in Pakistan but had moved to Norway with their mother when they were still young children. They lived in Norway for several years with their mother and extended family, including an aunt and uncle, and attended school there. Their mother moved applicants back to Pakistan for four years; after this time, and while still minors, they returned once more to Norway and lived there from that point forward with their uncle and aunt and other close relatives.⁴⁸ They attended school in Norway and spoke and wrote Norwegian.⁴⁹ Because their mother had returned them to Pakistan for four years as young children, however, the Norwegian immigration authorities withdrew their residency permit and ordered the applicants deported.⁵⁰ In concluding that the order violated Article 8, the European Court noted that both applicants “had close emotional links” to their aunt and uncle and so had “family life” in Norway as to fall within the scope of Article 8.⁵¹ In light of these close ties and the applicants’ long stay in Norway, the Court concluded that it was “not

⁴⁶ *Id.* ¶ 84.

⁴⁷ *Butt v. Norway*, ¶ 91.

⁴⁸ *Butt v. Norway*, ¶¶ 5-10.

⁴⁹ *Id.* ¶ 25.

⁵⁰ *See id.* ¶¶ 5-10.

⁵¹ *Id.* ¶ 76.

satisfied that the authorities of the respondent State acted within their margin of appreciation when seeking to strike a fair balance between its public interest in ensuring effective immigration control, on one hand, and the applicants' interests in remaining in Norway in order to pursue their private- and family life, on the other hand.”⁵²

Thus, in the three years since this Court's decision in this case, the European Court has repeatedly recognized broad rights to family unity into this right in the context of immigration. It is clear that these decisions further underscore that the United States' mandatory deportation of immigrants continues to violate the international human right to family unity because it precludes consideration of the circumstances surrounding a deportation and whether the State interests outweigh the right to family unity and the best interests of any children affected by the deportation.

C. Mandatory Deportation Violates the Right to Family Unity and the Protections Against National Origin Discrimination Under the African Charter on Human and Peoples' Rights.

The African Charter on Human and Peoples' Rights also secures the right to family unity.⁵³ In particular, Article 18 provides that the “family shall be the natural unit and basis of society” and “shall be protected by the State which shall take care of its physical health and moral.”⁵⁴ The African Charter on the Rights and Welfare of the Child adds that the family “shall enjoy the protection and support of the State for its establishment and development.”⁵⁵

⁵² *Id.* ¶ 90.

⁵³ African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Art. 18, *entered into force* Oct. 21, 1986.

⁵⁴ African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Art. 18, *entered into force* Oct. 21, 1986.

⁵⁵ African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), Art. 18, *entered into force* Nov. 29, 1999.

The African Commission on Human and Peoples' Rights ("African Commission") has repeatedly "condemned" the practice of "ignoring the interest of the family during the deportation process."⁵⁶ Because States have an affirmative obligation to give protection to the family under Article 18, a State violates the right to family when it summarily deports a parent and leaves the parent's minor child in the State without parental protection.⁵⁷ The protections in Article 18 are particularly relevant when the child is in "a critical stage of her studies" and cannot depart with the deported parent, and when the child is "very close" to the parent.⁵⁸

Moreover, deporting a non-national under circumstances that would not give rise to the deportation of a State's own citizens amounts to national origin discrimination, in violation of the prohibition against discrimination in Article 2 of the African Charter.⁵⁹ "[A]lthough the African Charter does not bar deportations *per se*," the African Commission has repeatedly reaffirmed "its position that 'a state's right to expel individuals is not absolute and it is subject to

⁵⁶ See Af. Commission on Human and Peoples' Rights, *Good v. Republic of Botswana*, Communication No. 313/05, para. 214, judgment of May 26, 2010; see also Af. Commission on Human and Peoples' Rights, *Modise v. Botswana*, Communication No. 97/93_14AR, para. 93, judgment of Nov. 6, 2000; Af. Commission on Human and Peoples' Rights, *Amnesty International v. Zambia*, Communication No. 212/98, paras. 58-59, judgment of May 5, 1999.

⁵⁷ See Af. Commission on Human and Peoples' Rights, *Good v. Republic of Botswana*, Communication No. 313/05, para. 213, judgment of May 26, 2010.

⁵⁸ See Af. Commission on Human and Peoples' Rights, *Good v. Republic of Botswana*, Communication No. 313/05, para. 209 judgment of May 26, 2010.

⁵⁹ African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Art. 2, *entered into force* Oct. 21, 1986 ("Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status."); Zimbabwe Lawyers for Human Rights and Institute for Human Rights and Development in Africa v. Zimbabwe, Communication No. 294/04, para. 94, judgment of Apr. 3, 2009 ("It would be interesting to know what the government would have done if Mr Meldrum was a Zimbabwean. Surely, the Respondent State would not have deported its own national to another country. The only logical reason the State deported him under then prevailing circumstances was because he was a non-national. In the opinion of the Commission therefore, it appears that the victim was targeted because he is not a national of the Respondent State, and this according to the Commission constitutes a violation of Article 2 of the Charter.").

certain restraints,' one of those restraints being a bar against discrimination based on national origin."⁶⁰

CONCLUSION

For all of the reasons more fully stated herein, the Advocates for Human Rights urges the Court to find that U.S. immigration laws imposing mandatory deportation violate well-settled international human rights law.

Date: August 21, 2013

Respectfully submitted,

Michele McKenzie
Advocacy Director
The Advocates for Human Rights

Suzanne Turner, Sarah Rivard, Dennis Hranitzky, Diane Princ
Attorneys
Dechert LLP

⁶⁰ See Af. Commission on Human and Peoples' Rights, *Institute for Human Rights and Development in Africa v. Angola*, Communication No. 292/04, para. 79, judgment of May 22, 2008.