



Center for Gender & Refugee Studies

Reforms Needed to Bring the United States into Compliance with the Refugee Convention & Protocol

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The [1951 Convention Relating to the Status of Refugees and its 1967 Protocol](#) codify international legal protections for refugees, individuals who fear persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion. The most important of these protections is the principle of “*nonrefoulement*,” which prohibits countries from returning refugees to territories where they fear persecution on account of a protected ground.

As a state party to the Refugee Protocol, the United States is bound by both international law and the U.S. Constitution to comply with these international obligations. It is also clear that Congress intended for U.S. law to conform to the Convention and Protocol. In passing the [1980 Refugee Act](#), which codified the current U.S. asylum and withholding of removal framework, Congress adopted language from the Convention and Protocol and expressly stated that it intended for the Refugee Act to be interpreted consistently with those treaties. The Supreme Court has accordingly recognized that one of Congress’ primary purposes in passing the Refugee Act was to bring U.S. law into conformance with its international obligations under the Refugee Convention and Protocol.

U.S. Law Does Not Fully Comply with International Legal Obligations

In seeking to align U.S. legal standards with international law, legislators, policymakers, and courts – including the Supreme Court – have looked to various sources of interpretive guidance, most notably the [United Nations High Commissioner for Refugees](#), the agency tasked with supervising the application of the Convention’s and Protocol’s provisions.

However, U.S. law also diverges from international legal standards in significant ways. For example, under the Convention and Protocol, the mandatory protection of *nonrefoulement* is triggered anytime a person proves they meet the “refugee” definition. But while U.S. law uses the same refugee definition found in international law, a person who meets that definition would be protected from *refoulement* only if an adjudicator also found them deserving of asylum in the exercise of discretion or if they proved they will “more likely than not” face persecution if returned (a much harder standard to satisfy than the “well-founded fear” required by the Convention and Protocol). In addition, U.S. law establishes much more extensive bars to protection than provided for in international law. These statutory inconsistencies with the Convention and Protocol must be addressed

by Congress. For their part, federal agencies and courts of appeals have also construed certain of the legal elements required to prove eligibility – such as particular social group and nexus – much more narrowly than the Convention and Protocol. Many of these limitations on protection can be addressed without action by Congress. It is important to do so, as deviations from U.S. law's international moorings have resulted in the *refoulement* of bona fide refugees who would have found protection under international standards.

The Center for Gender & Refugee Studies (CGRS) tracks case trends, including by analyzing outcomes in cases involving arguments grounded in international law. CGRS recently released an advisory for practitioners on *Raising International Law Arguments in Claims for Asylum and Withholding of Removal*. The advisory provides a substantive overview of U.S. refugee law's grounding in the Convention and Protocol. It also provides strategies and practical guidance for practitioners who wish to advance arguments arising out of these international instruments.

Recommendations for Reform

Attorneys: Argue that asylum and withholding eligibility standards must be interpreted in line with the Convention and Protocol, citing to [authoritative guidance](#) interpreting these instruments as well as domestic sources of law. Such arguments may help individual clients secure protection and benefit the wider community by helping to educate adjudicators.

Policymakers and Legislators: Consult international law guidance and seek to align U.S. legal standards and interpretations thereof with the Convention and Protocol in administrative rulemaking as well as in future statutory amendments as was done in the [Refugee Protection Act of 2022](#).

Individuals interested in reading the full practice advisory, *Raising International Law Arguments in Claims for Asylum and Withholding of Removal*, and obtaining additional resources can fill out a case intake form at <https://cgrs.uchastings.edu/assistance>. Readers interested in obtaining a copy for purposes other than a specific case may email their request to cgrs-ta@uchastings.edu. Those interested in reform recommendations may write to CGRS@uchastings.edu.