

Mass deportations violate U.S. and international law.

They're also crimes against humanity.

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President Donald Trump...credit: Fulton County Sheriff's Department

President Trump's order to arrest and deport millions of undocumented immigrants, including hundreds of thousands of refugees, violates US obligations under the 1967 Protocol on the Status of Refugees. The US Senate ratified that treaty unanimously in 1968. 147 nations are States Parties to the treaty.

The US adopted the Refugee Protocol into US law in the United States Refugee Act of 1980, passed unanimously by the Senate and signed by President Jimmy Carter, who noted, "The Refugee Act reflects our long tradition as a haven for people uprooted by persecution and political turmoil."

The 1967 Protocol and the 1951 Convention on the Status of Refugees

Article 1 defines "refugee" as any person who is outside the country of his or her nationality owing to a well-founded fear of being persecuted for reasons of race, religion, nationality,

membership of a particular social group, or political opinion, and who is unable or, owing to such fear is unwilling to return to his or her country.

Refugees seeking asylum who cross borders illegally are not to be considered criminals.

Article 31 says states shall not impose penalties, on account of their illegal entry or presence, on refugees coming from a territory where their life or freedom was threatened. They must promptly present themselves to the authorities and show good cause for their illegal entry or presence.

Article 33, the heart of the Refugee Convention, says: “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.”

Convicted criminals are not eligible to be protected as refugees. **Article 1 F** denies refugee status to anyone against whom there is evidence of a war crime, crime against humanity, or a serious non-political crime.

However, **Article 32** holds that States Parties shall not expel a refugee from their territory except in pursuance of a decision reached in accordance with due process of law. Massive ICE roundups and forced deportations without trials fall far short of that standard.

Refugees who have sought asylum are lawfully present in the US under both US and international law. They are not criminals for entering without visas. So, too, are persons granted Temporary Protected Status (TPS) by Presidential Order. Venezuelans, Haitians, Cubans, Salvadorans, and others fleeing dictatorships or countries controlled by criminal gangs were granted protected status by President Biden.

The US might invoke **Article 9** and claim that the smuggling of fentanyl by undocumented migrants is a grave and exceptional circumstance that threatens US national security and requires their expulsion.

The fatal flaw in this rationale is that many of the people being deported are already in the US and pose no more threat to national security than ordinary American citizens. Two-thirds of undocumented immigrants in the US have lived in the US for ten years or more.

Countries expected to resettle deportees are not legally obligated to accept the return of their citizens. They may invoke **Article 4** of the Refugee Protocol and dispute any US “national security” claim in the International Court of Justice.

Refugee Protocol **Article 9** requires a State Party to give one year’s notice to the UN Secretary-General to withdraw from (denounce) the Protocol before the denunciation takes effect.

Trump's deportations are crimes against humanity.

At Nuremberg, Nazi leaders were tried for crimes against humanity that included forced deportations of Jews. Today, forced deportations are outlawed by many decisions of the International Criminal Tribunal for the Former Yugoslavia. In 2002, the International Criminal Court became a permanent world tribunal to try such crimes.

The Rome Statute of the International Criminal Court Article **(7(1)(d))** makes deportation or forcible transfer of a population a crime against humanity.

The Rome Statute defines deportation as “forced displacement of the persons concerned by expulsion or other coercive acts from the area where they are lawfully present, without grounds permitted under international law.”

The US is not a State Party to the Rome Statute. The ICC cannot try US citizens unless they commit a crime against a citizen or on the territory of a country that is a State Party to the ICC.

125 nations are States Parties to the ICC Statute. If the US deports a citizen of El Salvador, the Dominican Republic, Ecuador, Colombia, Guatemala, Afghanistan, Brazil, Bosnia, DR Congo, Nigeria, Ukraine or 114 other ICC States Parties, those countries could ask the ICC Prosecutor to bring charges against a US official who participated in the deportation of their citizens.

There is no immunity in the ICC for crimes against humanity committed by heads of state or government officials. Though it is politically unlikely, even President Trump himself could be charged for these mass deportations and put on trial.

President Trump has now rescinded Temporary Protected Status for Venezuelans and wants to deport 600,000 Venezuelans back into the tyranny run by the Marxist dictator Maduro of Venezuela. President Trump's Proclamation revoking their Temporary Protected Status was arbitrary and capricious. The ACLU filed a lawsuit February 3 to vacate Trump's Proclamation. The US Supreme Court should block these deportations because they violate both US and international law.

Universal Jurisdiction

Crimes against humanity, like genocide, torture, and war crimes, are crimes of universal jurisdiction. Like piracy, they can be prosecuted no matter where the crime was committed and regardless of the defendant's nationality. Such crimes constitute peremptory norms (*jus cogens*) and violate duties owed to all of humanity (*erga omnes*.)

Fifteen countries enforce universal jurisdiction in their courts: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Israel, Mexico, Netherlands, Senegal, Spain, Switzerland, and the United Kingdom. The US has universal jurisdiction for torture and genocide.

US officials who order or carry out mass deportations are committing crimes against humanity. In the future, they may travel for business or vacation. If they travel to a country with universal jurisdiction, their identities are verified, and evidence is prepared against them, they could be arrested and charged as soon as they step off their flights in Paris, Barcelona, Mexico City, or Copenhagen. They could be put on trial there for crimes against humanity. It would not be an auspicious way to begin a vacation.

Dr. Gregory H. Stanton is the Founding President of Genocide Watch and the Alliance Against Genocide. He founded the Cambodian Genocide Project. He was a Professor in Genocide Studies at George Mason University and was the James Farmer Professor in Human Rights at the University of Mary Washington. He was a law professor at Washington and Lee University. He wrote the UN Resolutions in the State Department that established the International Criminal Tribunal for Rwanda. He wrote the rules of the Khmer Rouge Tribunal. He holds degrees from Oberlin, Harvard Divinity School, Yale Law School, and a Ph.D. from the University of Chicago.

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