No. 19-15716

In The United States Court of Appeals for the Ninth Circuit

INNOVATION LAW LAB, et al.,
Plaintiffs-Appellees,

v.

KEVIN M. MCALEENAN,
Secretary of Homeland Security, et al.

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES' *AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLEES' ANSWERING BRIEF

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CORPORATE DISCLOSURE STATEMENT

The Office of the United Nations High Commissioner for Refugees ("UNHCR") is a non-profit entity that does not have a parent corporation. No publicly held corporation owns 10 percent or more of any stake or stock in UNHCR.

Respectfully submitted,

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND LEGISLATIVE HISTORY

OTHER AUTHORITIES

INTEREST OF AMICUS CURIAE[1]

The Office of the United Nations High Commissioner for Refugees ("UNHCR") has a direct interest in this matter as the organization entrusted by the United Nations General Assembly with responsibility for providing international protection to refugees and others of concern and, together with national governments, for seeking permanent solutions to their problems. *See* Statute of the Office of the UNHCR, G.A. Res. 428(V), ¶ 1, (Dec. 14, 1950). UNHCR fulfills its mandate, *inter alia*, by "[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto." *Id.* ¶ 8(a). UNHCR's supervisory responsibility is reflected in the Preamble and Article 35 of the *Convention Relating to the Status of Refugees*, July 28, 1951, 189 U.N.T.S. 137 ("1951 Convention") and Article 2 of the *Protocol Relating to the Status of Refugees*, Jan. 31, 1967, 606 U.N.T.S. 267 ("1967

[1] No person or entity other than UNHCR and its outside counsel authored this brief or provided any funding related to it. This amicus brief does not constitute a waiver, express or implied, of any privilege or immunity which UNHCR and its staff enjoy under applicable international legal instruments and recognized principles of international law. *See* U.N. General Assembly, Convention on the Privileges and Immunities of the United Nations, Feb. 13, 1946, 1 U.N.T.S. 15, http://www.refworld.org/docid/3ae6b3902.html. The parties have consented to the filing of this brief.

Protocol"). Those instruments require States to cooperate with UNHCR in the exercise of its mandate and to facilitate its supervisory role. UNHCR's guidance is relevant to this Court's interpretation of the *1951 Convention* and its *1967 Protocol*, as implemented in Section 101(a)(42) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101(a)(42) (2006).

UNHCR, which has won two Nobel Peace Prizes for its work, is active in some 130 countries at a time when there are 70.8 million people affected by forced displacement worldwide. *See* UNHCR, *Global Trends: Forced Displacement in 2018*, at 2 (June 20, 2019), https://www.unhcr.org/5d08d7ee7.pdf. The views of UNHCR are informed by its close to seven decades of experience supervising the treaty-based system of international refugee protection. UNHCR's interpretation of the *1951 Convention* and its *1967 Protocol* is both authoritative and integral to promoting consistency in the global regime for the international protection of refugees. The Supreme Court has consistently turned to UNHCR for assistance in interpreting the United States' obligations under international refugee instruments. *See, e.g.*,

INS v. Cardoza-Fonseca, 480 U.S. 421, 439 (1987); *INS v. Stevic*, 467 U.S. 407, 421 (1984).

UNHCR exercises its supervisory responsibility by issuing interpretative guidelines on the meaning of the *1951 Convention* and its *1967 Protocol* and other international refugee instruments, including the *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa* and the *Cartagena Declaration on Refugees*. The UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status*, U.N. Doc. HCR/1P/4/ENG/REV.4 (1979, re-edited Jan. 1992; re-issued Dec. 2011; re-issued Feb. 2019) ("Handbook"),[2] represents the first such comprehensive guidance. At the request of States, including the United States, and in the exercise of the Office's supervisory responsibility, the *Handbook* has subsequently been complemented by the UNHCR *Guidelines on International Protection* and various *Guidance Notes*.

UNHCR has a strong interest in ensuring that the United States' refugee policy remains consistent with the obligations that the United States undertook when becoming party to the *1967 Protocol*, and submits this brief to offer guidance to the Court on those obligations.

[2] https://www.unhcr.org/3d58e13b4.html.

Consistent with its approach in other cases, UNHCR takes no position directly on the merits of Plaintiffs' claims but understands that the scope and content of the principle of *non-refoulement* is important to this case. Through this brief, UNHCR addresses the nature of *non-refoulement* obligations, and expresses its interest and concern with the interpretation and application of international refugee instruments as a matter of law and principle.

SUMMARY OF ARGUMENT

The core of the *1951 Convention* and *1967 Protocol* is the obligation of States to safeguard the principle of *non-refoulement*, which is articulated in Article 33 of the *Convention*: "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." *1951 Convention* art. 33, ¶ 1. In addition to protecting individuals from being sent to a State where they would face persecution, the principle of *non-refoulement* protects refugees from being transferred to a State in which they might not face persecution, but from where that State would send the individual on to persecution in a third country, referred to here as "chain *refoulement*."

The obligation to safeguard against *refoulement* of any kind applies to refugees and asylum-seekers alike, regardless of whether the individual has formally been recognized as a refugee. Ensuring adequate protections for asylum-seekers pending their applications and preventing their return to countries where they fear persecution are essential to upholding the central principle of *non-refoulement*.

Any arrangement that involves the return of people who may be in need of international protection from one country to another (a so-called "transfer arrangement") must encompass key refugee protection safeguards in order to avoid placing individuals at risk of *refoulement*. This is so even if the purpose of the transfer is for the asylum-seekers to await their asylum determination by the transferring State in the receiving State. For any such arrangement to be workable under international law, it needs to be governed by a legally binding instrument, challengeable and enforceable in a court of law by affected asylum-seekers. Prior to transfer of asylum-seekers to await asylum determination by the transferring State, the transferring State would need to assess in each individual case whether the receiving State will: (a) (re)admit the person, (b) permit the person to remain while a

determination is made, and (c) accord the person standards of treatment commensurate with the *1951 Convention* and international human rights standards, including—but not limited to—protection from *refoulement.* UNHCR, *Guidance Note on Bilateral and/or Multilateral Transfer Arrangements of Asylum-Seekers*, ¶ 3(vi) (May 2013), https://www.refworld.org/docid/51af82794.html (hereinafter "Bilateral Transfer Arrangement Note"); *see also* UNHCR, *Legal Considerations Regarding Access to Protection and a Connection Between the Refugee and the Third Country in the Context of Return or Transfer to Safe Third Countries*, ¶ 4 (April 2018), https://www.refworld.org/docid/5acb33ad4.html (hereinafter "Legal Considerations Paper").

A return or transfer arrangement that does not provide asylum-seekers with these protections is at variance with the core principle of *non-refoulement* and the fundamental tenets of the *1951 Convention* and its *1967 Protocol.*

ARGUMENT

I. THE UNITED STATES IS BOUND BY THE *1951 CONVENTION* AND ITS *1967 PROTOCOL* RELATING TO THE STATUS OF REFUGEES

The *1951 Convention* and its *1967 Protocol* are the key international instruments governing the protection of refugees. These documents address who is a refugee, his or her rights and responsibilities, and the corresponding legal obligations of States. The *1967 Protocol* binds parties to comply with the substantive provisions of Articles 2 through 34 of the *1951 Convention* with respect to "refugee[s]" as defined in Article 1A(2) of the *1951 Convention*. *1967 Protocol* art. 1(1)–(2). The *1967 Protocol* also removes the geographic and temporal limitations from the *1951 Convention* definition, thus universalizing the refugee definition. *Id.* art. 1(2)–(3).

The core of both the *1951 Convention* and its *1967 Protocol* is the principle of *non-refoulement*, which obliges States not to return a refugee to any country where he or she has a well-founded fear of persecution, i.e., a real risk of serious harm.[3] In 1968, the United States

[3] The prohibition of *refoulement* applies to refugees and asylum-seekers alike, i.e., to those who have not formally been recognized as refugees, and to those whose status has not yet been determined. *See* Note on International Protection, Rep. of Exec. Comm. on the Work of Its Forty-Fourth Session, ¶

acceded to the *1967 Protocol*,[4] thereby binding itself to the international refugee protection regime and the definition of a refugee as contained in the *1951 Convention*.

Congress enacted the Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (1980), expressly to "bring United States refugee law into conformance with the 1967 United Nations Protocol Relating to the Status of Refugees." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 436–37, 437 n.19 (1987)(citing H.R. Rep. No. 96-781, at 19); *see also INS v. Aguirre-Aguirre*, 526 U.S. 415, 427 (1999). The Refugee Act brings the United States into compliance with its international obligations under the *1967 Protocol* and, by extension, the *1951 Convention*. It should be interpreted and applied in a manner consistent with those instruments. *See Cardoza-Fonseca*, 480 U.S. at 437 (By enacting the Refugee Act, Congress intended "that the new statutory definition of 'refugee' be interpreted in conformance with the Protocol's definition"); *cf. Murray*

11, U.N. Doc. A/AC.96/815 (Aug. 1993), http://www.unhcr.org/refworld/docid/3ae68d5d10.html; UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations Under the 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol*, ¶¶ 26–31 (Jan. 2007), http://www.unhcr.org/refworld/docid/45f17a1a4.html.

[4] H.R. Rep. No. 96-781, at 19 (1980) (Conf. Rep.), *as reprinted in* 1980 U.S.C.C.A.N. 160, 160; S. Exec. Doc. No. 14, 90th Cong., 2d Sess. 4 (1968).

v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64, 118 (1804) ("[A]n act of Congress ought never to be construed to violate the law of nations if any other possible construction remains.").

II. AS RECOGNIZED BY U.S. AND FOREIGN COURTS, UNHCR PROVIDES AUTHORITATIVE GUIDANCE FOR INTERPRETING INTERNATIONAL REFUGEE LAW

UNHCR exercises its supervisory responsibility by issuing interpretive guidance on the meaning of provisions contained in the *1951 Convention* and its *1967 Protocol.* The *Handbook* represents the first such comprehensive guidance. At the request of States, including the United States, and in the exercise of the Office's supervisory responsibility the *Handbook* has subsequently been complemented by UNHCR *Guidelines on International Protection*,[5] and various guidance notes which have been welcomed by the Executive Committee and the U.N. General Assembly.[6] These documents draw upon international

[5] UNHCR, *Guidelines on International Protection Nos. 1–13,* reprinted in the *Handbook*.

[6] UNHCR's governing Executive Committee was established by the United Nations' Economic and Social Council in 1958. The Executive Committee functions as a subsidiary organ of the U.N. General Assembly and its report is submitted directly to the General Assembly for consideration. The Executive Committee's functions include advising the High Commissioner in the exercise of his/her functions, and issuing Conclusions on International Protection (often referred to as "ExCom Conclusions"), which address issues in the field of refugee protection and serve as "international guidelines to be

legal standards, analysis of State practice, judicial decisions, Executive Committee Conclusions, academic literature, and UNHCR's views and experience. Courts have relied upon the *Guidelines* and guidance notes in assessing refugee claims, recognizing that UNHCR's "analysis provides significant guidance for issues of refugee law." *Mohammed v. Gonzales*, 400 F.3d 785, 798 (9th Cir. 2005); *see also Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1071 (9th Cir. 2017) (en banc).

III. TRANSFER ARRANGEMENTS REQUIRE SAFEGUARDS UNDER INTERNATIONAL REFUGEE LAW

The *Handbook*, *Guidelines* and *Guidance Notes* all affirm that, while a State may enter into an agreement with another State to facilitate the transfer of asylum applicants, any such agreement must ensure that asylum-seekers receive the protections guaranteed to them

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drawn upon by States, UNHCR and others when developing or orienting their policies on refugee issues." *See* Gen. Conclusion on Int'l Protection, Rep. of Exec. Comm. on Its Fortieth Session, ¶ p, U.N. Doc. A/44/12/Add.1 (Oct. 13, 1989), https://www.unhcr.org/en-us/excom/exconc/3ae68c43c/general-conclusion-international-protection.html. ExCom Conclusions are adopted through consensus by the States which are Members of the Executive Committee and can therefore be considered as reflecting their understanding of legal standards regarding the protection of refugees. At present, 102 states are Members of the Executive Committee, including the United States, which is one of the original members. UNHCR, *Executive Committee*, http://www.unhcr.org/en-us/executive-committee.html.

by the *1951 Convention.* This includes the protection from *refoulement* enumerated in Article 33 of the *1951 Convention*. The "primary responsibility to provide [asylum-seekers] protection rests with the State where asylum is sought," regardless of any existing transfer arrangements. *See Bilateral Transfer Arrangement Note* ¶ 1. In short, a State must still abide by its duties under the *1951 Convention* and the *1967 Protocol* even when implementing transfer arrangements that move refugees and asylum-seekers to another country.

Below, we address key components that a transfer arrangement must have in order to satisfy international standards. First, transfer arrangements should be secured through a binding bilateral or multilateral agreement enforceable by asylum-seekers in a court of law. *See infra* Part B. Second, asylum-seekers cannot be transferred to a third state without first being screened to ensure that they are not subject to *refoulement*. During these "screening interviews," the transferring State must assess, for each individual case, whether the receiving State will: (re)admit the person; permit the person to remain while a determination is made; and accord the person the standards of

treatment commensurate with the *1951 Convention*, including protection from *refoulement*. *Legal Considerations Paper* ¶ 4. *See infra* Part C. Most importantly, the screening interview must ensure individuals will not face a risk of persecution in the receiving State or elsewhere, must be subject to procedural safeguards (such as the right to counsel), and must be appealable by the asylum-seeker. *See id.*

A. International Law Requires that Transfer Arrangements Contain Safeguards to Protect Against *Refoulement*

The *1951 Convention* and the *1967 Protocol* prohibit States from "expel[ling] or return[ing] ('*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." *1951 Convention* art. 33, ¶ 1. Any State with de facto or de jure jurisdiction over an individual remains responsible for fulfilling the guarantees contained within the *1951 Convention* and its *1967 Protocol*.

Article 33 applies to both returns and removals equally. *Id.* (noting the prohibition on *refoulement* "in any manner whatsoever"); *Bilateral Transfer Arrangement Note* ¶¶ 2–3 (prohibiting both the expulsion *and* the return of a refugee to a country where she fears

persecution); *see also* Elihu Lauterpacht & Daniel Bethlehem, *The Scope and Content of the Principle of Non-Refoulement*, in Refugee Protection in International Law: UNHCR's Global Consultations on International Protection (Erika Feller et al. eds., 2003), ¶ 69, https://www.refworld.org/docid/470a33af0.html ("As the words 'in any manner whatsoever' indicate, the evident intent was to prohibit any act of removal or rejection that would place the person concerned at risk. The formal description of the act – expulsion, deportation, return, rejection, etc. – is not material."). The scope of the protection from *refoulement* applies not only to the refugee's country of origin, but to any territory in which there is a threat of persecution. *Id.* ¶ 113 ("The reference is to the frontier of 'territories', in the plural. The evident import of this is that *refoulement* is prohibited to the frontiers of *any* territory in which the person concerned will be at risk – regardless of whether those territories are the country of origin of the person concerned.").

The transferring State does not absolve itself of responsibility to prevent *refoulement* by transferring the individual to a receiving State. *Bilateral Transfer Arrangement Note* ¶ 3(vii). Consequently, the

transferring State remains responsible if the receiving State goes on to *refoule* the transferred person. *Id.* ¶ 4; Guy Goodwin-Gill & Jane McAdam, The Refugee in International Law, 252-53 (3d ed. 2007) ("While a State that *actually* returns a refugee to persecution . . . remains primarily responsible for that act, the first State, through its act of expulsion, may be jointly liable for it.").

The prohibition on *refoulement* applies to refugees who have not yet completed a status determination procedure, in other words, to asylum-seekers. *See Handbook* ¶ 28. Asylum-seekers must be treated on the assumption that they are refugees until their status has been determined, "[o]therwise the principle of *non-refoulement* would not provide effective protection for refugees[.]" Note on International Protection, Rep. of Exec. Comm. on the Work of Its Forty-Fourth Session, ¶ 11, U.N. Doc. A/AC.96/815 (Aug. 31 1993), https://www.refworld.org/docid/3ae68d5d10.html.

B. A Formal, Enforceable, Bilateral Agreement Is Required to Transfer Asylum-Seekers.

Asylum-seekers should ordinarily be processed in the State in which they seek asylum. *See* UNHCR, *Protection Policy Paper: Maritime Interception Operations and the Processing of International*

Protection Claims: Legal Standards and Policy Considerations with Respect to Extraterritorial Processing, ¶ 2 (Nov. 2010), https://www.refworld.org/docid/4cd12d3a2.html (hereinafter "Extraterritorial Processing Paper").[7] Although some States have entered into formal agreements to facilitate the transfer of asylum-seekers to other States to await processing,[8] a State may not use these agreements to "divest itself of responsibility and shift that responsibility to another State" or "as an excuse [by the State] to deny or limit its jurisdiction and responsibility under international refugee and human rights law." *Extraterritorial Processing Paper* ¶ 49. Rather, any agreement should "contribute to the enhancement of the overall protecti[ve] space in the transferring State, the receiving State and/or the region as a whole." *Bilateral Transfer Arrangement Note* ¶ 3(iv).

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[7] *See also Handbook* ¶ 192(vii) ("The applicant should be permitted to remain in the country pending a decision on his . . . request . . . unless it has been established . . . that his request is clearly abusive. He should also be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending.").

[8] For example, several European countries have adopted the "Dublin III Regulation," an arrangement through which asylum applicants may be returned to the member country in which they first arrived. *See* UNHCR, *Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation* (Aug. 2017), https://www.refworld.org/docid/59d5dcb64.html.

In order to ensure that the participating States comply with the mandates of the *1951 Convention*, the agreement should be "governed by a legally binding instrument . . . enforceable in a court of law." *Id.* ¶ (3)(v). Such an agreement should confirm "the existence and availability of certain objective standards of protection in the third [receiving] state" and should give "firm undertakings by that country that those returned will have access to protection, assistance and solutions" including readmission, legal status pending determination, and standards of treatment commensurate with the *1951 Convention* that provides protection from *refoulement. Legal Considerations Paper* ¶ 5.

A transfer arrangement that is not governed by a legally-binding bilateral agreement would fall short of international law. Such an arrangement would not "clarify the responsibilities of each State and the procedures to be followed" in implementing the policy. *Extraterritorial Processing Paper* ¶ 8. Without specific implementation mechanisms in a legally binding instrument such that asylum-seekers could enforce its guarantees in a court of law, a transfer-like arrangement lacks the capacity to ensure that the transferred asylum-seekers retain the rights

due to them. Consequently, such an arrangement would be at variance with international standards.

C. International Law Requires an Adequate Screening Mechanism to Guard Against *Refoulement* and Safeguard Rights.

A State cannot *en masse* transfer asylum-seekers to a third country to await asylum processing. Instead, a transferring state must—***prior to transfer***—assess whether the receiving State will "accord the person standards of treatment commensurate with the 1951 Convention and international human rights standards, including – but not limited to – protection from *refoulement*." *Legal Considerations Paper* ¶¶ 4, 10. Because of "the grave consequences of an erroneous decision" to return someone to a country where they are at risk of persecution, any determination of whether to transfer an individual outside of the country in which they seek asylum must be met with adequate procedural safeguards. The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum No. 30 (XXXIV), Rep. of Exec. Comm. on the Work of Its Thirty-Fourth Session, ¶ e, U.N. Doc. A/38/12/Add.1 (Oct. 20, 1983), https://www.unhcr.org/en-us/excom/exconc/3ae68c6118/problem-manifestly-unfounded-abusive-applications-refugee-status-asylum.html (hereinafter "*Manifestly*

Unfounded or Abusive Applications"); *Bilateral Transfer Arrangement Note* ¶ 3(vi).

Adequate procedural standards for screenings in the context of transfers include an individualized assessment of the facts and circumstances of each case, and should be carried out with certain minimum standards of due process. These include allowing the individual to present her or his views on elements, such as specific needs, heightened risks, and other factors which may preclude the proposed transfer, and to appeal the decision to transfer while remaining in the country. In addition, family unity needs to be maintained, and the best interests of the child need to be a primary consideration. UNHCR, *Note on Legal Considerations for Cooperation between the European Union and Turkey on the Return of Asylum-Seekers and Migrants*, 2 (Mar. 2016), https://www.refworld.org/docid/56ebf31b4.html.

In the context of individualized screening for a possible transfer, the State must assess whether the asylum-seeker fears persecution in the receiving State, or whether there is a risk that the receiving State will *refoule* the individual to yet another State.

Any screening provision set to assess whether a person fears a return to the third State, or fears chain *refoulement*, must use a threshold low enough to prevent *refoulement*. An instructive analogy for such a threshold is the threshold used for accelerated procedures (known in the United States as expedited removal), which is deliberately set low to prevent *refoulement*. In the accelerated procedure context, UNHCR recognizes "that national procedures for the determination of refugee status may usefully include [a] special provision for dealing in an expeditious manner with applications" that are "clearly abusive" or "manifestly unfounded." *Manifestly Unfounded or Abusive Applications* ¶ d (internal quotation marks omitted). However, UNHCR stresses that any such procedures must, taking into account "the grave consequences of an erroneous decision," be "accompanied by appropriate procedural guarantees." *Id.* ¶ e. "[T]he criteria for making . . . a determination should be defined in such a way that no application will be treated as manifestly unfounded or abusive unless its fraudulent character or its lack of any connection with the relevant criteria is truly free from doubt." UNHCR, *Follow-up on Earlier Conclusions of the Sub-Committee on the Determination of Refugee Status with Regard to*

the Problem of Manifestly Unfounded or Abusive Applications, ¶ 19, U.N. Doc. EC/SCP/29 (Aug. 26, 1983), http://www.unhcr.org/en-us/excom/scip/3ae68cd30/follow-up-earlier-conclusions-sub-committee-determination-refugee-status.html.

An effective screening procedure will allow a screening officer to reach a conclusion regarding the existence of a fear without placing the burden on the asylum-seeker to make that claim affirmatively. *See Extraterritorial Processing Paper* ¶ 16.

Screening procedures that contain one or more of the following elements would be considered to lack key safeguards required by international law: applicants are not asked whether they fear harm in the receiving country and must express that affirmatively; applicants do not have access to counsel in the screening procedure; a decision is not appealable by the applicant; and applicants cannot meaningfully prepare their refugee status determination claims by meeting with lawyers and/or receive notice of upcoming court dates, or otherwise be assured of due process in their full asylum hearings.

Without adequate screening procedures, transfer arrangements do not provide adequate guarantees that asylum-seekers will be free

from persecution in the receiving state, or that the receiving state will not in turn *refoule* those individuals to the country of origin. This is true regardless of whether the transfer is labelled "return," "removal," or otherwise.

CONCLUSION

For the foregoing reasons, UNHCR submits that a transfer arrangement without the requirements listed above would be at variance with the United States' international obligations under the *1951 Convention* and its *1967 Protocol*.

Dated: JUNE 26, 2019

Respectfully submitted,

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In Support Of Appellees

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5)(A) and Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14-point font.

This brief complies with the type-volume limitations of Fed. R. App. P. 29(a)(5) and Fed. R. App. P. 32(a)(7)(B) because it contains 3,904 words excluding the parts exempted by Fed. R. App. P. 32(f).

s/ Ana C. Reyes

ANA C. REYES

DATED: JUNE 26, 2019

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on June 26, 2019. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Ana C. Reyes

ANA C. REYES

DATED: JUNE 26, 2019