Using International Human Rights Strategies to Challenge Immigration Detention and Removal in the United States: A Beginners Manual for Immigration Attorneys

by Sandra Grossman, Ariel Rawls, and Carlos Ayala

*"Neutrality helps the oppressor, never the victim. Silence encourages the tormentor, never the tormented." — **Elie Wiesel***

Sandra Grossman is the Managing Partner of Grossman Young & Hammond, a full-service immigration and international human rights law firm with offices in Washington, D.C. and Maryland. She represents individuals across a wide range of immigration and international human rights matters, both before U.S. courts and agencies and in venues and adjudicatory bodies abroad, including before the United Nations Committee Against Torture, the Inter-American Commission on Human Rights, and INTERPOL.

Ariel Rawls is an Attorney at Grossman Young & Hammond specializing in immigration and international human rights law. She has significant experience assisting clients in challenging abusive INTERPOL Red Notices and mitigating their impact on immigration relief and international travel. Ariel has served as an expert in U.S. immigration court on Red Notice processes and has filed petitions before the United Nations Committee Against Torture. She has previously worked with members of the U.N. Committee Against Torture and the International Law Commission and has represented clients before the Inter-American Commission on Human Rights.

Carlos Ayala is a leading constitutional law scholar and international human rights attorney, serving as President of the International Commission of Jurist, Head of the Constitutional Law Chair at "Andrés Bello" Catholic University and as Professor of International Human Rights Law at Oxford University, Georgetown University, American University Washington College of Law, University of Bologna, and Pan American University. A former President of the Inter-American Commission on Human Rights, he has litigated landmark cases before the Inter-American Court of Human Rights and United Nations treaty bodies. He is a trusted advisor to international organizations, an author on constitutional and international law, and a recognized advocate for human rights across the Americas.

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This practice advisory introduces immigration attorneys to the role that international human rights mechanisms can play in protecting noncitizens facing prolonged immigration detention or removal from the United States. It provides an overview of several international bodies that may be relevant to these cases, including the United Nations Committee Against Torture (UNCAT), the Inter-American Commission on Human Rights (IACHR), and the United Nations Working Group on Arbitrary Detention (UNWGAD). The advisory explains why complementary advocacy before these venues may benefit clients, outlines the basic procedures for engaging them — including requests for urgent or precautionary measures — and discusses how decisions or recommendations from international human rights bodies may be used as persuasive authority in domestic immigration proceedings and federal litigation. Many of the legal strategies outlined here are in the beginning stages, as we, the authors, are still exploring their full potential. We aim to provide others with the preliminary information and courage needed to continue developing these pathways. Afterall, the challenging times we live in, call for creative solutions and extraordinary advocacy.

WHY CONSIDER INTERNATIONAL HUMAN RIGHTS ADVOCACY IN IMMIGRATION CASES?

Although U.S. immigration law provides judicial review in cases involving serious due process violations, prolonged and arbitrary detention, and removal from the United States, these avenues have proven to be insufficient to protect individual rights, especially over the last several years. Particularly in the practice of immigration law, where adjudication often sits at the intersection of law, foreign and domestic policy, and politics, the argument for a greater role for international law in U.S. immigration strategy, is perhaps greater than anywhere else. International law strategies are not just normative; they are grounded in existing U.S. doctrine, statutory interpretation, and precedent. International law, including citation to authoritative sources and venues, provides external, objective benchmarks that are not dependent on domestic political cycles, politicized enforcement priorities, and fluctuating interpretations of statutory terms. Under international law, the principle of non-refoulement is absolute, as is the prohibition on torture. Framing legal issues as violations of binding international norms, rather than as mere discretionary relief, may increase the likelihood of federal court engagement and substantive scrutiny.

In certain circumstances, especially where domestic remedies have or are failing, international human rights mechanisms can provide an additional forum for seeking urgent protection. International adjudicatory bodies and sources can issue recommendations, findings, or urgent requests for interim measures that may influence government decision-making and provide persuasive authority in domestic litigation, even issuing binding decisions on states that can help to save human lives. From a litigation strategy perspective, international law is indispensable for record building, preserving issues for higher courts and potential international review. While international law mechanisms are slower and may not result in immediate benefit, at the very least, utilizing international law mechanisms to address significant due process violations carried out by U.S. immigration authorities will help to create a record for attorneys who seek to ensure that these violations are not repeated by future administrations. Additionally, drawing the attention of other states to human rights violations occurring in our country may help foster global consensus to support victims of such violations.

> *"It means a great deal to those who are oppressed to know that they are not alone."*
> — **Amnesty International**

OVERVIEW OF KEY INTERNATIONAL MECHANISMS

Although other mechanisms exist, three are particularly relevant in U.S. immigration cases because of their subject-matter expertise and impact. These are: (1) the United Nations Committee Against Torture, which monitors compliance with the Convention Against Torture; (2) the Inter-American Commission on Human Rights, which oversee human rights protections in the Americas; and, (3) the United Nations Working Group on Arbitrary Detention, which investigates cases of detention that may violate international law. Each body has distinct jurisdictional requirements, procedures, and forms of relief that practitioners should understand before submitting petitions or urgent requests.

United Nations Committee Against Torture

The U.N Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) is a core international human rights treaty that prohibits torture and obligates state parties to adopt necessary precautions and procedures to prevent its commission.[1] Currently, 175 countries have ratified the Convention, including the United States.[2] The United Nations Committee Against Torture (the Committee) is the expert body established under Article 17 of the CAT to monitor state compliance, issue interpretive guidance, and receive individual complaints from victims in countries that have accepted the Committee's jurisdiction under Article 22 of the CAT. The Committee consists of 10 experts of "high moral standing and recognized competence in the field of human rights."[3] The experts, who must be nationals of State Parties, are elected by those States by secret ballot, for a term of four years and are eligible for re-election.

For immigration practitioners, Article 3 of the Convention is key. It prohibits refoulement – the return of an individual to a country where there are substantial grounds for believing they would face torture or cruel, inhuman, or degrading treatment.[4] The principle of non-refoulement applies equally to direct removal and removal through third countries (i.e., chain-refoulement), and requires state parties to conduct an individualized assessment of a person's risk of torture in the country of removal.[5]

The Committee expressly states in its General Comment No. 4 (recommended reading for immigration practitioners litigating third country removals) , that a "person at risk should never be deported to another State from which the person may subsequently face deportation to a third State in which there are substantial grounds for believing that the person would be in danger of being subjected to torture."[6] Where a U.S. immigration judge has already determined that an individual faces a substantial likelihood of torture, for example, where removal is being withheld under CAT or the Immigration and Nationality Act (INA), practitioners may rely on that finding to support arguments concerning international non-refoulement obligations.

It is important to note that the United States has not accepted the Committee's individual complaint procedure under Article 22 of the CAT.[7] This means that individuals may not directly file complaints against the United States for violations of the Convention. They can, however, file complaints against third countries who have accepted Article 22 and are engaged in the ever more

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[1] *United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (adopted Dec. 19, 1984), www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading (hereinafter "CAT").

[2] To view the list of states who have ratified CAT, *see* https://indicators.ohchr.org/. The United States signed the CAT in April 1988 and ratified the treaty in October 1994. U.S. ratification was subject to certain declarations, reservations, and understandings, including that the Convention was not self-executing, and therefore required domestic implementing legislation to take effect.

[3] *Fact Sheet No. 17, The Committee against Torture*, OHCHR, https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet17en.pdf.

[4] *CAT*, *supra* note 1. ("No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.").

[5] *General Comment No. 4*, United Nations Committee Against Torture, CAT/C/GC/4 (Sept. 4, 2018), https://docs.un.org/en/CAT/C/GC/4.

[6] *Id*. ¶ 12.

[7] As of April 3, 2026, 71 countries have accepted the Committee's individual complaint procedure under Article 22 of the CAT. *See* UN Treaty Body Database, OHCHR, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CAT.

frequent third-country removal practice. Where the United States engages in chain-refoulement by removing someone to a third country that has accepted Article 22, and that country subsequently transfers the individual(s) to a country where they are likely to be tortured, practitioners may file a complaint against the third country before the Committee. The goal is to stop that second removal or transfer, or at the very least, create a record of violations of the Convention.

To determine whether a proposed country of removal has accepted the individual complaints mechanism of the CAT, practitioners may view ratification status by country or treaty at the online UN Treaty Body Database.[8] Importantly, the Committee has made it clear that diplomatic assurances cannot be used to circumvent the principle of non-refoulement.[9]

In the last year, countries such as Ghana, South Sudan, Equatorial Guinea, Qatar, Kuwait, El Salvador, and Egypt, among others, have accepted deportees from the United States. Subsequently, these same countries then transfer those individuals onward to their home countries – including to countries where many of these individuals had established protection claims.[10] In such cases, as shown below, the Committee may intervene and has recently done so.

In the case of Ghana, at the request of immigration attorneys at Grossman Young & Hammond, LLC, the Committee expeditiously issued interim measures to prevent the onward refoulement of a group of individuals from various West African countries, who were deported from the United States to Ghana.[11] On September 22, 2025, the Committee ordered Ghana, who had accepted the Committee's jurisdiction under Article 22, to refrain from deporting the individuals to their countries of origin until it had completed review of their complaint alleging Ghana's violations of the CAT.[12] Specifically it stated that the Committee "has decided to request the State party to refrain from deporting the complainants to Nigeria, The Gambia, Togo, Mali, Liberia *or any other third country where there are substantial grounds for believing that they would be in danger of*

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[8] UN Treaty Database, *supra* note 4.

[9] *General Comment No. 4*, *supra* note 7, ¶ 20; *see also,* Sarah Joseph et al., *Seeking Remedies for Torture Victims, A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies*, 1, 245 (World Organization Against Torture (OMCT) 2014), https://www.omct.org/site-resources/legacy/handbook4_eng_04_part4_2020-12-11-144643.pdf (noting that "a government will seek a diplomatic assurance when it believes, in light of what it knows about the practices of the receiving State, that there is in fact a risk of torture or ill-treatment if the individual is returned to that State. Thus, the returning State is aware that torture and ill-treatment is systemically practiced in the receiving State, but seeks to return the individual regardless").

[10] *See* Robbie Corey-Boulet & Emmanuel Bruce, *Ghana took in Trump's deported West Africans. Then it forced them home*, REUTERS (Jan. 16, 2026), https://www.reuters.com/world/africa/ghana-took-trumps-deported-west-africans-then-it-forced-them-home-2026-01-16/ (confirming Ghana's refoulement of individuals removed from the United States); Patricia Caro, *The United States deported migrants to Iran and Venezuela despite plans for military interventions*, EL PAIS (Mar. 9, 2026), https://english.elpais.com/international/2026-03-09/the-united-states-deported-migrants-to-iran-and-venezuela-despite-plans-for-military-interventions.html (describing the United States' refoulement of Iranian individuals to Iran via Qatar and Venezuelan individuals via Honduras); *What Are Third-Country Removals? Understanding Their Use in U.S. Immigration Policy*, American Immigration Council (Dec. 5, 2025), https://www.americanimmigrationcouncil.org/fact-sheet/what-are-third-country-removals-factsheet/ (reporting that "countries who have agreed to accept third-country migrants have said that the aim of the agreement is to take them temporarily before sending them home").

[11] Mattathias Schwartz & Chris Cameron, U.*N. Human Rights Office Asks Ghana to Halt Deportations of Migrants Sent From U.S.*, NEW YORK TIMES (Sept. 26, 2025), https://www.nytimes.com/2025/09/26/us/politics/migrants-ghana-deportations.html. A redacted copy of the complaint is included at Annex 1.

[12] Annex 2, Copy of the Committee's Interim Measures Letter (Sept. 22, 2025).

being subjected to torture, while their case is under consideration by the Committee." (emphasis added). After issuance of the interim measure, the Committee gave Ghana the opportunity to provide its own response and counterarguments; an opportunity which Ghana did not take advantage of by the deadline imposed by the Committee. The Committee is expected to rule on admissibility in the next few months and, if admissibility is found, on the merits in 1-2 years. In the meantime, however, Ghana is placed on notice as to its potential violations of the Convention Against Torture.

Interim measures issued by the Committee are available in urgent situations, such as the one described above, to prevent irreparable harm and create a record of treaty violations. In deportation cases, the Committee requires that a request for interim measures be submitted at least three working days before a scheduled deportation flight.[13] Attorneys should act quickly once removal becomes imminent and include documentation confirming the planned removal date and destination country. Although such measures are not legally binding in U.S. courts, they can be useful in advocacy efforts aimed at delaying removal or highlighting potential violations of international law. Two sample, redacted complaints are attached to this Practice Advisory.[14]

How to File an Individual Communication (Complaint) and Request for Interim Measures Before the Committee Against Torture

Individual communications and requests for interim measures must be submitted jointly through the OHCHR portal and cannot be filed separately.

- **Submission via the OHCHR Portal**

  Practitioners wishing to submit a complaint to the Committee must create an online account with the Office of the United Nations High Commissioner for Human Rights and submit identifying information about the alleged victim(s), including their full legal name, gender, date of birth, and contact information, along with (where possible) a signed authorization form permitting representation.[15] Submissions should also include:

  - A clear, chronological statement of facts outlining the alleged torture or cruel, inhuman, or degrading treatment;
  - Specific provisions of the Convention alleged to have been violated;
  - Domestic remedies pursued, including outcomes or explanations if remedies were unavailable;
  - Explanation of interim measures sought (if any), including the imminent and irreparable risk to the individual, why urgent protection is necessary, and the specific measure sought (e.g., release from detention, delayed deportation, medical care, transfer to safe conditions, etc.); and,
  - Supporting evidence, such as medical records, affidavits, detention records, and relevant court decisions.

[13] OHCHR, *Guidelines for Interim Measures*, ¶ 4, www.ohchr.org/sites/default/files/documents/hrbodies/cescr/Guidelines_on_Interim_Measures.docx.
[14] *See* Annexes 2-3.
[15] To create an account and submit a complaint, visit the OHCHR's website, *See* https://complaints.ohchr.org/.

➢ **Admissibility**

All communications must be found admissible before the Committee can reach the merits. Admissibility is governed by Rule 113 of the Committee's procedural rules.[16] To be considered admissible, communications must:

- Allege acts covered by the Convention Against Torture;
- Be sufficiently substantiated with facts and evidence;
- Demonstrate exhaustion of domestic remedies, unless unavailable, ineffective, or unduly delayed[17]; and,
- Not be under examination by, or previously examined by, another international procedure of investigation or settlement[18]

➢ **Committee Review**

Once admissibility is found and the complaint is registered, the Committee reviews written submissions from the complainant and the State Party. The Committee does not independently investigate facts and instead relies on the evidence presented by the parties.

Final decisions can take approximately 18 to 24 months, although interim measures may be issued much more quickly in urgent cases. If the Committee finds a violation of the Convention, it then initiates follow-up procedures to monitor compliance with its recommendations, and the decision will be published in the Committee's annual report, documenting a State Party's failure to abide by its treaty obligations.

Inter-American Commission on Human Rights

Within the regional human rights system of the Organization of American States (OAS), the bodies are the Inter-American Court of Human Rights (IACtHR) and the Inter-American Commission on Human Rights (IACHR). The Court, based in San José, Costa Rica, serves as the final judicial authority interpreting the American Convention on Human Rights and other Inter-American human rights treaties, issuing binding decisions on cases and advisory opinions. The IACHR, based in the headquarters of the OAS in Washington DC, receives and reviews petitions alleging violations of human rights by all OAS member states. It also monitors state compliance and may issue recommendations and precautionary measures. Unlike the Committee Against Torture, the IACHR has jurisdiction over the United States through the American Declaration of the Rights and Duties of Man, the IACHR Statute, and the OAS Charter.[19]

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[16] CAT, *Rules of Procedure*, CAT/C/3/Rev.7, Rule 113, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2F3%2FRev.7&Lang=en.

[17] *See CAT*, *supra* note 1, Art. 22(5)(b) (stating that exhaustion of domestic remedies is not required "where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention").

[18] *Id*. Art. 22(5)(a); *Rules of Procedure*, *supra* note 16, Art. 113(d).

[19] *American Declaration of the Rights and Duties of Man*, Organization of American States (adopted in 1948), https://www.oas.org/en/iachr/mandate/Basics/american-declaration-rights-duties-of-man.pdf; *Charter of the*

For practitioners representing individuals in the United States, the IACHR is the relevant forum since the United States has not ratified the American Convention or accepted the Court's contentious jurisdiction in cases.[20] The United States is one of several OAS Member States that has not yet ratified the American Convention on Human Rights.[21] Normally, the Court reviews cases referred by the Commission after it has completed its examination and has issued a final report. However, because the United States has not accepted the Court's jurisdiction, petitioners alleging violations by or involving cases against the United States cannot access the Court. Hence, all filings must proceed through the Commission, and there is no possibility of subsequent review by the Court.

The IACHR can review individual petitions against the United States for violations of rights protected under the American Declaration, including rights to liberty, due process, asylum, humane treatment, and protection against arbitrary detention.[22] The Commission has "long scrutinized the U.S. regarding issues like the death penalty, immigration, racial justice, and the detention center in Guantánamo Bay, Cuba."[23] If the IACHR finds a petition admissible, it then proceeds to issue a report on the merits with its findings and recommendations to the State, which may include reparation measures to: suspend removal or deportation, improve detention conditions, provide compensation to the victim(s), or implement reforms to prevent future violations.

The Commission may also grant precautionary measures in urgent situations involving a risk of serious or irreparable harm.[24] That said, due to new regulations and backlogs, the Commission may take weeks or even months to issue precautionary measures. Nevertheless, precautionary measures may still be useful in some circumstances, as these requests may be submitted without

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Organization of American States (Apr. 30, 1948), https://www.oas.org/en/sla/dil/docs/inter_american_treaties_A-41_charter_OAS.pdf.

[20] Although the Court lacks jurisdiction over contentious matters involving the United States, it retains advisory jurisdiction under Article 64 of the American Convention. This allows the Court to interpret human rights treaties and provide authoritative guidance on their scope. The United States, as a member of the OAS, is subject to the Court's advisory jurisdiction and can participate in the Court's review, typically through the submission of comments.

[21] The United States signed the American Convention in 1977 but has yet to ratify it. *Multilateral Treaties: American Convention*, OAS, https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm (last visited Apr. 5, 2026).

The countries that have ratified the American Convention are: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela. In relation to all other States of the OAS, the Commission is competent to receive petitions alleging violations of the American Declaration or other Inter-American treaties of human rights ratified by the State. *See* OAS, *Human Rights in the Inter American System*, https://www.oas.org/ipsp/images/English%20FAQs.pdf.

[22] *See American Declaration of the Rights and Duties of Man*, *supra* note 19, Arts. I (right to life, liberty and personal security), XI (right to the preservation of health and to well-being), XXV (right of protection from arbitrary arrest) XXVI (right to due process of law), XXVII (right of asylum).

[23] Michael Camilleri & Danielle Edmonds, *An Institution Worth Defending: The Inter American Human Rights System in The Trump Era*, THE INTER-AMERICAN DIALOGUE, (June 2017), https://thedialogue.org/wp-content/uploads/2024/12/IACHR-Working-Paper_Download-Resolution.pdf.

[24] *See* IACHR, *Precautionary measures: their practice as a guarantee of respecting rights and preventing irreparable damage*, www.oas.org/en/iachr/jsForm/?File=/en/iachr/decisions/mc/about-precautionary.asp.

filing a full petition and before domestic remedies have been exhausted,[25] for example in urgent removal or detention contexts or where domestic litigation is ongoing. The Commission has indeed issued measures requesting that a government suspend deportation, address detention conditions, or otherwise protect an individual while their petition is under review.[26]

When litigating *habeas corpus,* asylum, or bond cases, practitioners may also cite to IACHR precedent as support for the client's cases. For example, in Precautionary Measure No. 5-11 (Feb. 1, 2011), the IACHR granted urgent protection to five Haitian nationals facing deportation from the United States to Haiti, ordering the U.S. to suspend their removal and ensure adequate procedural review of their deportation cases, given the serious risk to their lives and health.[27] On May 31, 2011, the Commission expanded this measure to 33 additional Haitian nationals, whose identities are kept confidential, requesting that the United States suspend their deportation until Haiti could guarantee minimum standards for detention and medical care and until U.S. procedures adequately considered the beneficiaries' family ties and right to family life.[28] The Commission also requested updates on implementation and cooperation with petitioners.[29] Immigration attorneys may utilize these decisions to further advocate for their own clients.

In the immigration context, the Commission has engaged extensively with U.S. law and practice through both thematic reporting and the review of individual petitions. In its 2010 report, the Commission identified systemic concerns with the U.S. immigration system, including the overuse of detention, barriers to access to counsel, and deficiencies in procedural safeguards, particularly for asylum-seekers and other vulnerable populations.[30] The Commission has reinforced these principles in subsequent regional reporting, emphasizing due process protections, non-refoulement obligations, and the need for individualized custody determinations.[31]

Importantly for practitioners, the Commission found U.S. responsibility in individual cases involving detention and removal practices, including failures to provide meaningful review, prolonged or arbitrary detention, and violations of the right to life and humane treatment in enforcement contexts.[32] These cases demonstrate that the Commission is receptive to claims where

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[25] For a full guide on how to request precautionary measures, *see* www.oas.org/en/IACHR/jsForm/?File=/en/IACHR/decisions/MC/request-precautionary.asp.

[26] For a list of precautionary measures granted by year and country, including those involving the United States, *see* IACHR, *Precautionary Measures Database,* https://www.oas.org/en/IACHR/decisions/MC/precautionary.asp.

[27] IACHR, Precautionary Measure No. 5-11, Gary Resil, Harry Mocombe, Roland Joseph, Evel Camelien, and Pierre Louis, United States (Feb. 1, 2011) (granting precautionary measures protecting five individuals facing deportation to Haiti due to risk to life and health), *extended* on May 31, 2011.

[28] *Id*.

[29] *Id*.

[30] IACHR, *Report on Immigration in the United States: Detention and Due Process* (2010), www.oas.org/en/iachr/migrants/docs/pdf/Migrants2011.pdf.

[31] IACHR *Human Mobility: Inter-American Standards* (2019), www.oas.org/en/iachr/reports/pdfs/HumanMobility.pdf.

[32] *See, e.g.*, IACHR Report No. 63/08, Case of Andrea Mortlock (United States) (2008), https://cidh.oas.org/annualrep/2008eng/USA12534eng.htm (finding violations related to mandatory detention and lack of proportionality review); IACHR Report No. 81/10, Case of Wayne Smith & Hugo Armendáriz (United States) (2010), https://cidh.oas.org/annualrep/2010eng/USPU12562EN.doc (addressing prolonged detention and removal of lawful permanent residents).

practitioners can document systemic deficiencies, especially where domestic remedies are ineffective, delayed, or incapable of preventing irreparable harm.

Practitioners can also trigger IACHR scrutiny by pairing individual petitions with requests for precautionary measures in urgent removal or detention cases, particularly where there is a risk of refoulement, prolonged detention without review, or serious medical or safety concerns. Submissions are especially effective where they are supported by evidence of broader patterns already documented in IACHR reports. The Commission also regularly convenes hearings and working meetings between petitioners and government representatives.

These meetings allow petitioners to directly engage with a commissioner who is actively following the case and to discuss the adoption of precautionary measures or the implementation of the IACHR's follow-up recommendations. Working meetings are particularly valuable for practitioners seeking to maintain sustained pressure on government officials, ensuring that the State takes concrete steps to comply with the IACHR's recommendations.

In addition to these case-specific meetings, the Commission may hold thematic hearings on broader human rights concerns, including multiple recent hearings focused specifically on U.S. immigration enforcement policies. These hearings are typically triggered by requests from coalitions of civil society organizations and provide a public forum to present evidence, expert testimony, and first-hand accounts directly to Commissioners. Recent hearings have addressed issues such as detention practices at the U.S. border, systemic violations against migrants and asylum seekers, and the use of third-country deportation agreements.[33] In these proceedings, advocates have successfully raised concerns regarding arbitrary detention, lack of access to asylum, family separation, and refoulement, often prompting the Commission to call for greater transparency, accountability, and compliance with international human rights standards.[34]

Importantly, these hearings demonstrate that practitioners can proactively engage the IACHR outside of individual petitions by requesting thematic hearings—particularly where they can document patterns of harm affecting broader groups. For U.S. immigration practitioners, perhaps acting through AILA, participation in or coordination with such hearings can amplify individual cases, build a broader evidentiary record, and ideally increase pressure on the U.S. government by situating client harms within systemic violations already under active review by the IACHR.

How to File Petitions and Requests for Precautionary Measures to the IACHR

[33] IACHR, *United States: Human Rights Situation of Migrants, Refugees, and Asylum Seekers*, Hearing No. 13, 193rd Period of Sessions (July 24, 2025), www.oas.org/en/iachr/sessions/hearing.asp?Hearing=3841; IACHR, *United States: Detention Practices at Borders*, Hearing No. 6, 192nd Period of Sessions (Mar. 3, 2025), https://oas.org/en/iachr/sessions/hearing.asp?Hearing=3800; IACHR, *Impact of Forced Deportations to Third Countries*, 195th Period of Sessions (Mar. 11, 2026), https://cgrs.uclawsf.edu/en/news/inter-american-commission-human-rights-holds-public-hearing-impact-united-statess-forced.

[34] *See, e.g.*, IACHR, *Human Rights Situation of Migrant and Refugee Children and Families in the United States*, 153rd Period of Sessions (Oct. 27, 2014), www.oas.org/en/iachr/sessions/hearing.asp?Hearing=1766; IACHR, *Policies that Prevent Access to Asylum in the United States*, 161st Period of Sessions (Mar. 21, 2017), www.oas.org/en/iachr/sessions/hearing.asp?Hearing=2066; IACHR, *Rights of Haitians in mobility in the United States* (Mar. 9, 2023), www.oas.org/en/iachr/sessions/hearing.asp?Hearing=3632.

Practitioners may seek relief before the Inter-American Commission on Human Rights by submitting (1) an individual petition alleging human rights violations and/or (2) a request for precautionary measures in urgent situations. Both are administered through the IACHR's online portal.

- **Use the Official IACHR Petition System and Forms**

  Petitions must be submitted through the IACHR's online portal,[35] which incorporates a structured petition form.[36] Practitioners should follow the form closely and ensure that all required sections are completed. Key components include:

  - Petitioner and victim information (identity, contact details, and legal representation);
  - State concerned (e.g., United States);
  - Statement of facts (a clear, chronological account of the alleged violations);
  - Rights allegedly violated under the American Declaration of the Rights and Duties of Man (applicable to the United States);
  - Domestic remedies pursued (judicial or administrative actions taken or, if not exhausted, a justification for why this requirement should be excused); and,
  - Supporting documentation (such as court decisions, detention records, or affidavits).

  The Commission also provides a dedicated section for precautionary measures, which may be submitted together with a petition or independently.

- **Admissibility Requirements and Key Sections**

  Following submission, the Commission conducts an admissibility review to determine whether the petition meets procedural requirements. Practitioners should ensure the petition clearly addresses:

  - Exhaustion of domestic remedies or applicable exceptions (exhaustion is not required if only requesting precautionary measures);[37]
  - Timeliness (the Commission generally requires that a filing be made within six months of a final domestic decision, if applicable);[38] and,
  - Non-duplication (i.e., the matter is not pending before another international body).[39]

- **Exceptions to Exhaustion of Domestic Remedies**

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[35] To access the portal, visit: www.oas.org/en/iachr/jsForm/?File=/en/iachr/portal/default.asp; *see also* IACHR, *User Manual for Petitioners*, www.oas.org/en/iachr/portal/help/petitioners/NetHelp/#!Documents/howtocreateandsubmit.htm.
[36] IACHR, *Petition and Case System*, https://www.oas.org/es/cidh/docs/folleto/CIDHFolleto_eng.pdf (including a complete copy of the required form for submitting a petition).
[37] *See Rules of Procedure of the Inter-American Commission on Human Rights*, Art. 31 (2013), www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp.
[38] *Id.* Art. 32(1).
[39] *Id.* Art. 33.

Although the Commission generally requires exhaustion of domestic remedies, important exceptions apply. A petition may proceed where:

- Remedies are unavailable or ineffective;
- There has been unwarranted delay in adjudication; or
- The petitioner has been denied access to remedies.[40]

Where an exception is invoked, practitioners should explicitly explain and document the basis within the relevant section of the form.

➢ **Requesting Precautionary Measures**

In situations involving serious, urgent, and irreparable harm, practitioners may request precautionary measures. The request should:

- Describe the nature of the risk (e.g., threats to life, health, or personal integrity);
- Demonstrate urgency and irreparability; and,
- Specify the measures sought (such as release from detention or access to medical care).

Precautionary measures may be requested independently or as part of a petition. If filing independently, exhaustion of domestic remedies is not required. Precautionary measures requests are evaluated separately and can be submitted at any time.

➢ *5.* **Submission and Procedural Stages**

All filings are submitted electronically through the IACHR portal. After submission:

- The Commission conducts an initial review for completeness
- The petition proceeds to admissibility analysis
- If admitted, it advances to the merits stage, where substantive violations are assessed

Unfortunately, it can take several years for the IACHR to adjudicate a petition. On the other hand, precautionary measures are usually addressed within a few weeks or months, depending on the urgency. Practitioners may request "prioritization" of their petition in cases of seriousness, urgency, or imminent risk to life or personal integrity. Under the IACHR's Rules of Procedure, the Commission may shorten deadlines for submissions, jointly review admissibility and merits, and accelerate procedural steps where delay could cause irreparable harm.[41] Explicitly requesting prioritization in a petition or separate submission—while documenting the imminent risks—can speed up consideration, complement precautionary measures, and ensure the Commission promptly addresses urgent threats promptly.

[40] *Id.* Art. 31(2).
[41] *Id.* Arts. 30(4), 30(7), 37.3.

Despite its challenges and slow pace of adjudication, filings before the IACHR represent an underutilized legal strategy for practitioners seeking to document human rights abuses committed by the U.S. government.

United Nations Working Group on Arbitrary Detention

The United Nations Working Group on Arbitrary Detention (WGAD) is a special procedure of the United Nations Human Rights Council that investigates cases of detention that may violate international human rights law under certain categories.[42]

It is worth noting that the WGAD is the only non-treaty-based mechanism whose mandate expressly provides for consideration of individual complaints. The Working Group acts on information submitted to its attention regarding alleged cases of arbitrary detention by sending urgent appeals as well as communications under its regular procedure to the governments involved, in order to clarify and/or bring their attention to these cases.

WGAD's mandate, filing procedures, fact sheets, thematic reports, and other resources are publicly available through the Office of the United Nations High Commissioner for Human Rights.[43] The Working Group also publishes formal opinions addressing individual cases of alleged arbitrary detention, which practitioners can review through the OHCHR database or other legal research platforms.[44]

Unlike some treaty bodies, the WGAD may review complaints against any state, including the United States, regardless of whether the country has accepted a specific treaty complaints procedure and without having to exhaust domestic remedies. WGAD considers individual communications alleging arbitrary detention under five preestablished categories and may issue formal opinions determining that detention is arbitrary under international standards, including the Universal Declaration of Human Rights and, where applicable, the International Covenant on Civil and Political Rights.[45] In addition to reviewing individual cases, the Working Group produces country reports and thematic analyses addressing detention practices worldwide.

The five categories developed by the WGAD to determine when detention is deemed arbitrary under international law are the following:[46]

- **Category I:** When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of their sentence or despite an amnesty law applicable to them);
- **Category II:** When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal

[42] *Human Rights Council Resolution No. 1991/42*, A/RES/45/111 (1991) (establishing the WGAD); *see also Human Rights Council Resolution No. 60/8*, A/HRC/RES/60/8 (Oct. 6, 2025) (extending the WGAD's mandate to 2028).

[43] *See* OHCHR, *Working Group on Arbitrary Detention Home Page*, www.ohchr.org/en/special-procedures/wg-arbitrary-detention.

[44] OHCHR, *Opinions and Reports of the Working Group on Arbitrary Detention*, www.ohchr.org/en/special-procedures/wg-arbitrary-detention/opinions-and-reports.

[45] WGAD, *Mandate*, www.ohchr.org/en/special-procedures/wg-arbitrary-detention/mandate.

[46] *See* WGAD, *About Arbitrary Detention*, www.ohchr.org/en/about-arbitrary-detention.

Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights;

- **Category III:** When the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.
- **Category IV:** When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy; and
- **Category V:** When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights.

Along with the other Special Procedures of the United Nations, the WGAD has developed an "urgent action" procedure for time-sensitive cases in which there are sufficiently reliable allegations that a person may be detained arbitrarily and that the continuation of the detention may constitute a serious danger to that person's health or life. Even when no such threat is alleged to exist, the Working Group might still determine that there are particular circumstances that warrant urgent action.[47]

An urgent appeal or a letter of allegation is sent to the Government of the State concerned through diplomatic channels. This letter requests that the Government involved take appropriate measures to ensure that the detained person's right not to be deprived arbitrarily of their right to liberty and to fair proceedings before an independent and impartial tribunal. The letter also demands that the individual's rights to life and to physical and mental integrity are respected.

For immigration practitioners, the WGAD may be particularly relevant in cases involving prolonged, indefinite, or otherwise unlawful immigration detention. Practitioners may submit communications arguing that immigration detention lacks a legal basis, lacks meaningful judicial review, or violates fundamental protections against arbitrary detention under international law.[48] WGAD does not require exhaustion of domestic remedies before considering a communication, making it especially useful where domestic legal avenues are stalled or unable to secure timely release or review of detention.[49]

WGAD has issued opinions implicating U.S. detention practices. For example, in Opinion No. 10/2013, WGAD examined the detention of a U.S. national, Mr. Obaidullah, highlighting

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[47] WGAD, *Revised Fact Sheet No. 26 (rev 1)* (2024), www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-26-rev-1-working-group-arbitrary-detention. Communications requesting the Working Group to launch an urgent appeal should be sent to hrc-wg-ad@un.org. Requests for urgent appeals can also be made through the online submission tool.

[48] U.N. Human Rights Council, *Basic Principles and Guidelines on Remedies and Procedures on Arbitrary Detention*, U.N. Doc. A/HRC/30/37 (2015).

[49] *Revised Fact Sheet No. 26 (rev 1)*, *supra* note 47 (overview of definition of arbitrary detention).

concerns about the lawfulness and due process of his detention.[50] More recently, in Opinion No. 68/2024, the WGAD found that the continued detention of an Afghan refugee, involving both the United States and the United Arab Emirates, was arbitrary under international standards, and recommended remedies including release and compensation.[51]

WGAD has addressed systemic detention issues in the United States, particularly in immigration contexts. In its 2017 country visit report, the Working Group expressed concern that immigrants were subjected to "mandatory detention under punitive conditions . . . often indistinguishable from those applicable to persons who had been sentenced to punishment in the criminal justice system," with some individuals detained for six months to more than a year without resolution.[52] The report emphasized that detention decisions should be subject to prompt and meaningful review to ensure compliance with international standards.[53] Most immigration practitioners will agree that this report can and should be updated to reflect today's detention conditions and to draw attention to continuing violations of basic human rights.

WGAD jurisprudence regarding Guantánamo Bay (2009–2017), also underscores that long-term, unreviewed detention may be classified as arbitrary, noting that detainees held for years "had not been afforded due process, such as the right to prompt review of the lawfulness of their detention before a judicial authority."[54] The principles outlined in these cases are directly applicable to U.S. immigration detention, providing practitioners with a persuasive international standard for challenging indefinite or mandatory detention.

How to File an Individual Communication with the WGAD

Submissions to the WGAD may be filed electronically either by email or through the OHCHR portal and must include a consent form signed by the detained individual, or confirmation from counsel that the individual has authorized the submission.[55] Complaints are generally limited to twenty pages and should include key information such as the place and date of detention, whether the individual has access to legal counsel, a summary of relevant legal proceedings, and the legal arguments explaining why detention should be considered arbitrary under international law.[56]

- **Use the Official WGAD Model Questionnaire**

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[50] WGAD, Opinion No. 10/2013 (United States of America) (July 25, 2013), https://digitallibrary.un.org/record/769166/files/A_HRC_WGAD_2013_10-EN.pdf.

[51] WGAD, Opinion No. 68/2024 (Mr. B.) (Nov. 2024), https://digitallibrary.un.org/record/4092622 (finding the United States and the United Arab Emirates responsible for arbitrary detention of Afghan refugee).

[52] UN Human Rights Council, *Report of the Working Group on Arbitrary Detention on its visit to the United States of America*, A/HRC/36/37/Add.2, ¶ 27 (2017), https://docs.un.org/en/A/HRC/36/37/Add.2.

[53] *Id*.

[54] WGAD, Opinion No. 89/2017 (United States) (Guantánamo Bay), A/HRC/WGAD/2017/89, ¶ 37(d) (2017), www.ohchr.org/Documents/Issues/Detention/Opinions/Session80/A_HRC_WGAD_2017_89.pdf.

[55] The OHCR website contains the WGAD's model questionnaire, along with a consent form, both of which need to be completed. OHCHR, *Complaints and Urgent Appeals: Working Group on Arbitrary Detention*, www.ohchr.org/en/special-procedures/wg-arbitrary-detention/complaints-and-urgent-appeals.

[56] *Submitting Communications to the WGAD*, OHCHR, www.ohchr.org/en/special-procedures/wg-arbitrary-detention/submitting-communications.

Submissions must be prepared using the WGAD's Model Questionnaire (Individual Complaint Form), available through the OHCHR website.[57] Key sections include:

- Identity of the detained person (Section I)
- Arrest and detention details (Section II), including date, location, and responsible authorities
- Legal basis for detention (Section III), including charges, applicable laws, and procedural status
- Description of circumstances and alleged violations (Section IV), where practitioners should clearly connect the facts to one or more of the WGAD's five categories of arbitrary detention
- Steps taken at the national level (Section V), including any judicial or administrative remedies pursued
- Consent and authorization (final section), confirming that the submission is made with the detainee's permission

Practitioners should ensure that each section is completed as thoroughly as possible, with supporting documentation appended where available (e.g., detention orders, court filings, or medical records).

➢ **Legal Argumentation and Relevant Categories**

The submission should explicitly identify which of the WGAD's categories of arbitrary detention apply (see above section) and provide legal analysis grounded in international standards such as the Universal Declaration of Human Rights and, where applicable, the International Covenant on Civil and Political Rights. Clear, structured argumentation significantly increases the likelihood of meaningful engagement by the Working Group.

➢ **No Requirement to Exhaust Domestic Remedies**

Importantly, the WGAD does not require exhaustion of domestic remedies before considering a communication. While Section V of the Model Questionnaire asks for information about steps taken at the national level, a petitioner may proceed even if domestic litigation is ongoing, delayed, or ineffective. This makes the WGAD particularly valuable in situations involving prolonged detention, lack of timely judicial review, or systemic barriers to relief.

➢ **Submission Method**

Completed communications may be submitted:

- By email to the WGAD Secretariat at OHCHR; or
- Through the OHCHR online complaints portal

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[57] *Supra* note 55.

Submissions should generally not exceed 20 pages, excluding annexes, and should be concise but factually detailed.

- **Urgent Action Requests**

  Where the case involves an imminent risk to life, health, or fundamental rights, practitioners should clearly indicate that the submission is an urgent appeal and explain the basis for urgency within the form. This may trigger expedited consideration and immediate communication with the relevant government.

USING INTERNATIONAL DECISIONS IN U.S. LITIGATION

Although findings and recommendations from international bodies are not directly binding on U.S. courts, international law and citations to authoritative sources play an important role in domestic advocacy, especially in the immigration context. Courts must interpret statutes consistently with international obligations.[58] Practitioners can strategically cite international law decisions as persuasive authority in immigration proceedings, habeas corpus litigation, and civil-rights cases.[59] This is particularly relevant when U.S. law incorporates the same standards, such as in cases under CAT.[60] In some cases, interim or protective measures from international bodies can also support arguments related to non-refoulement obligations, due process concerns, or the United States' international legal commitments. Understanding how to strategically incorporate these materials into domestic advocacy can strengthen legal arguments and highlight the broader human rights implications of individual cases.

Persuasive Authority for Interpreting CAT-Based Relief

Although U.S. courts are bound by domestic implementing legislation rather than the treaty itself, international CAT materials — including Committee observations, General Comments, and individual communications — can be cited as persuasive authority to interpret the scope of Article 3 protections against torture. In immigration cases, federal courts often consider these sources when evaluating whether a petitioner faces a "more likely than not" risk of torture if removed. For example, the Second Circuit in *Quintanilla v. Garland* cited Article 3 and related international guidance in assessing a petitioner's risk of torture upon return to their home country, reflecting the ways that international jurisprudence can inform domestic factfinding.[61] Similarly, courts in other circuits, including the Third Circuit in *Kamara v. Attorney General*, the Ninth Circuit in *Quijada-Aguilar v. Lynch*, and the Fourth Circuit in *Rodriguez-Arias v. Whitaker*, referenced relevant international norms apply the "more likely than not" standard while

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[58] The Charming Betsy doctrine is a longstanding canon of statutory interpretation in U.S. law that directs courts to construe federal statutes, where possible, so they do not conflict with federal law. *See e.g.*, *Murray v. the Schooner Charming Betsy,* 6 U.S. 64 (1804) ("An Act of Congress ought never to be construed to violate the law of nations if any other possible construction remains . . . . ").

[59] *See, e.g.*, *Filártiga v. Peña-Irala*, 630 F.2d 876, 890–91 (2d Cir. 1980) (citing international human-rights norms in civil suit for torture and noting "[t]he law of nations . . . is part of the law of the United States").

[60] *See Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (explaining how the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA) implements Article 3 of CAT).

[61] *Quintanilla v. Garland*, 16 F.4th 893, 900–01 (2d Cir. 2021) (considering Article 3 risk and citing international guidance on torture).

referencing relevant international norms to contextualize risk.[62] All of these courts have made clear that they will look to international law as a source of enforceable legal norms.

Persuasive Authority in Arbitrary Detention and Habeas Corpus

International authoritative sources may also be utilized in prolonged detention cases. In *Zadvydas v. Davis*, the Supreme Court addressed indefinite immigration detention, reading a reasonableness limitation into the post-removal-period detention statute. While the majority focused on domestic constitutional avoidance, Justice Kennedy's dissent explicitly referenced international views on the detention of refugees and asylum seekers, including reports from the WGAD and UNHCR Guidelines, supporting the principle that both removable and inadmissible individuals are entitled to be free from detention that is "arbitrary or capricious."[63] This demonstrates that international reporting can and does inform high-level judicial analysis. Similarly, the D.C. Circuit in *Rasul v. Myers* cited international instruments to demonstrate a global consensus on the right to challenge unlawful detention.[64] International law is in fact, not merely persuasive; it can define binding legal standards.

Leveraging IACHR and WGAD Reports

Practitioners can also leverage findings and opinions from WGAD and the IACHR, even though these decisions are not binding. WGAD has consistently found that prolonged or indefinite detention without meaningful judicial review is arbitrary, a principle directly relevant to U.S. immigration detention practices.[65] IACHR reports and precautionary measures provide context about systemic deficiencies, illustrate patterns of harm, and show that specific detention practices have been scrutinized by an independent international body.[66]

Key Strategic Takeaways:

- **Integrate CAT and other treaty standards:** Federal and circuit courts regularly rely on CAT in evaluating removal and torture-risk claims. Cases such as *Nasrallah* and *Quintanilla* demonstrate that international obligations can influence both factual and legal determinations.
- **Use international reports as persuasive evidence:** WGAD opinions and IACHR reports provide authoritative documentation of country conditions, systemic detention issues, and arbitrary or inhumane practices.
- **Frame universal norms in domestic litigation:** Precedents such as *Filártiga* illustrate that norms recognized by the international community can support arguments in habeas and civil-rights contexts, enhancing credibility and weight of claims.

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[62] *Kamara v. Attorney General*, 420 F.3d 202, 213-14 (3d Cir. 2005); *Quijada-Aguilar v. Lynch*, 799 F.3d 1303, 1308 (9th Cir. 2015); *Rodriguez-Arias v. Whitaker*, 915 F.3d 968, 972–73 (4th Cir. 2019).
[63] *Zadvydas v. Davis*, 533 U.S. 678, 732 (2001) (Kennedy, J., dissenting).
[64] *Rasul v. Myers*, 563 F.3d 527, 532 (D.C. Cir. 2009).
[65] *See e.g.*, WGAD, Opinion No. 89/2017 concerning Ammar al Baluchi (United States of America), A/HRC/WGAD/2017/89, WGAD, ¶¶ 36-37 (reiterating that prolonged and indefinite detention without due process is arbitrary, including failure to provide prompt judicial review).
[66] *Supra* notes 27, 33–34.

Advocacy before international courts and venues may not always and immediately benefit a client's case, for example, by stopping an unlawful detention or preventing transfer to a third country. But by thoughtfully incorporating international decisions and reporting into domestic filings, practitioners can strengthen individual cases, generate sustained oversight of systemic issues, and remind adjudicators of the importance of upholding widely recognized and accepted principles of the basic human rights standards. Immigration adjudication often reduces claims to credibility, discretion and policy, yet the reality is that the challenges faced by immigrants in the United States implicate clearly established violations of universally binding international norms, including the prohibition on torture and the principle of non-refoulement. Immigration attorneys have a special role to play in reminding adjudicators (and the world), that international human rights law sets baseline protections that the United States cannot lawfully violate, regardless of political climate.