

Beyond the Borders: Protecting People, not just Territory

By Jip Aukes

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Abstract

This blog examines whether contemporary U.S. mass deportation policies are at risk of violating the international law principle of non-refoulement. It argues that while states possess sovereign rights, including the authority to control their borders, the accelerated procedures observed in the United States and within Immigration and Customs Enforcement (ICE) practices risk undermining individual human rights protections and may render refugee protection ineffective in practice.

Key words: Non-Refoulement, Mass deportation, International Refugee Law, Human Rights Law, Collective Expulsion, U.S. Immigration Policy, State Sovereignty

Introduction

Recently, the United States (U.S.) has shown a renewed emphasis on large-scale deportation proposals as part of the broader agenda to reform immigration, such as the agenda to end protection statuses for Haitians.¹ Political actors advocate these measures as necessary tools for deterrence, border control, and national security.² Traditionally, deportation is viewed as an expression of state sovereignty, allowing states to control their borders and determine who may remain within their territory.³ But this authority is not unlimited, as international law imposes constraints when the deportation of individuals exposes them to serious harm. Amongst these constraints is the foundational principle of non-refoulement. Shortly, the principle of non-refoulement prohibits states from returning refugees to a country where they face risk of persecution, torture, or other serious harm.⁴

¹ Reuters, 'Trump administration asks Supreme Court to end Haitian protected status' (11 March 2026) <https://www.reuters.com/world/trump-administration-asks-supreme-court-end-haitian-protected-status-2026-03-11/> accessed 18 March 2026.

² US House of Representatives, House Republican Conference, *Homepage* <https://www.gop.gov/> accessed 3 March 2026.

³ Nicholas De Genova and Nathalie Peutz (eds), *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement* (Duke University Press 2010).

⁴ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, art 33

Thus, the question arises as to whether contemporary large-scale deportations risk breaching the principle of non-refoulement.

The principle of non-refoulement

The principle of non-refoulement is a cornerstone of both international refugee law and international human rights law. It is codified in Article 33(1) of the Convention relating to the Status of Refugees which states that no state shall expel or return (“Refouler”) someone who is a refugee to territories where their life or freedom would be threatened based on race, religion, nationality, membership of a particular social group, or political opinion.⁵ Although this convention focuses on the formal protection of recognised refugees, the principle of non-refoulement is widely regarded as a rule of customary international law that would be binding on all States irrespective of treaty ratification.⁶

However, the principle of non-refoulement is more broadly reinforced within human rights instruments. Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) prohibits the transfer of any person to a state where there are substantial grounds to believe they would be in danger of being subjected to torture.⁷ Moreover, the International Covenant on Civil and Political Rights has been interpreted to prohibit the removal of an individual where there is a real risk of torture, cruel, inhumane, or degrading treatment.⁸ While Article 33(2) of the Refugee Convention provides limited exception on grounds of national security, the prohibition under Article 3 CAT and under human rights law is absolute.⁹ Importantly, the principle of non-refoulement applies to any individual that faces the risk of persecution, torture, or serious harm, not just formally recognised refugees.¹⁰ It requires individualised assessments of risk before removal to ensure that deportation decisions are not carried out without proper examination on an individual level.

⁵ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, art 33

⁶ United Nations High Commissioner for Human Rights, *The Principle of Non-Refoulement under International Human Rights Law* (OHCHR 2018).

⁷ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 art 3.

⁸ International Organization for Migration, *Information Note on Non-Refoulement* (IOM 2023)

⁹ https://www.iom.int/sites/g/files/tmzbdl2616/files/our_work/ICP/IML/2023-updated-impl-information-note-on-non-refoulement.pdf

¹⁰ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 art 33(2).

¹⁰ *Ibid.*

International case law further clarifies the principle of non-refoulement. In *Hirsi Jamaa and Others v Italy*, Italy intercepted migrants at sea and returned them to Libya without assessing their individual protection needs.¹¹ Therefore, the European Court of Human Rights held that returning migrants who were intercepted at sea without an individual assessment violated the non-refoulement principle.¹² The court emphasised that the absence of a reasonable and objective examination of individual circumstances rendered the protection against refoulement ineffective in practice.¹³

Mass deportation and collective expulsion

In practice, “mass-deportation” refers to the large-scale removal of non-citizens within a short time.¹⁴ This is often done through expedited administrative procedures.¹⁵ Policies that underlie this are seen prioritising speed and volume which aim to remove broad categories of individuals rather than conduct detailed case-by-case evaluations. But mass deportations do not automatically violate international law. However, it risks doing so when procedural protection is weakened. If deportation processes become automatic in nature, as seen in the U.S., it will become more likely that individuals who need extra protection will be deported in violation of non-refoulement obligations.

Accelerated procedures raise concerns under international law when they limit access to legal representation and restrict appeals. The central risk is that of collective expulsion, which is prohibited under Article 4 of the protocol No. 4 of the ECHR. and occurs when a group of individuals is removed without a reasonable and objective examination of their individual circumstances.¹⁶ Even when migration control is framed as legitimate, procedural fairness and access to due process remain essential to safeguard human rights.

The case of the U.S. and the Immigration and Customs Enforcement (ICE) show this speed and volume precisely. In May 2025, the Homeland Security Advisor Stephen Miller has set a daily

¹¹ *Hirsi Jamaa and Others v Italy* (2012) 55 EHRR 21 (GC).

¹² *Hirsi Jamaa and Others v Italy* (2012) 55 EHRR 21 (GC).

¹³ *Ibid.*

¹⁴ Forum Together, ‘Mass Deportation in the U.S.: Explainer’ <https://forumtogether.org/article/mass-deportation-in-the-u-s-explainer/> accessed 3 March 2026.

¹⁵ *Ibid.*

¹⁶ Protocol No 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the First Protocol (adopted 16 September 1963, entered into force 2 May 1968) ETS No 46 art 4.

arrest quota of three thousand individuals.¹⁷ Simultaneously, the number of individuals regardless of their U.S. citizens status that are targeted and deported, has risen.¹⁸

The Problem of speed

Contemporary U.S. immigration enforcement practices show the tension between deterrence-based policy and the obligations set by the international community to protect. Expedited deportation procedures allow immigration authorities to remove individuals without a full hearing before an immigration judge.¹⁹ While such procedures - or the lack of them - are regulated under U.S. domestic law/policies, their accelerated nature narrows or removes the space in which individuals can raise claims of needed protection.²⁰

In the earlier stages, access to legal counsel is often limited, in particular for individuals who are being held in immigration detention centres, such as the *Krome North Service Processing Center* (referred to as “Alligator Alcatraz”), where Amnesty International already flags grave human rights violations and even torture.²¹ The fairness of these processes may be complicated further as the conditions of detention, such as language barriers, lack of information, and restricted communication, all undermine the justice of the process and limit the grounds on which the individuals invoke human rights.²² Simultaneously, the heavy caseload and political pressure on the adjudication systems can contribute to insufficient reviews.²³

The central legal question becomes whether a system that is designed for deterrence can comply with international protection obligations. If protection screenings become superficial, the risk of incorrect return increases. In these cases, individuals may be deported without a meaningful opportunity to demonstrate the danger they face, which again raises concerns under the

¹⁷ Kaleah Haddock, Diana Roy, ‘ICE and Deportations: How Trump Is Reshaping Immigration Enforcement’ (Council on Foreign Relations, 12 July 2019) <https://www.cfr.org/articles/ice-and-deportations-how-trump-reshaping-immigration-enforcement> accessed 3 March 2026.

¹⁸ Transactional Records Access Clearinghouse, ‘Immigration Quick Facts’ <https://tracreports.org/immigration/quickfacts/> accessed 3 March 2026.

¹⁹ Vera Institute of Justice, *Weaponizing the System: One Year of Trump’s Attacks on Due Process* (2026) <https://www.vera.org/explainers/weaponizing-the-system-one-year-of-trumps-attacks-on-due-process> accessed 3 March 2026.

²⁰ *Ibid.*

²¹ Amnesty International, *Torture and Enforced Disappearances in the Sunshine State* (AMR 51/0511/2025, 2025) https://www.amnesty.nl/content/uploads/2025/12/AMR_51_0511_2025-Torture-and-enforced-disappearances-in-the-Sunshine-State-vf.pdf accessed 3 March 2026.

²² *Ibid.*

²³ Kaleah Haddock, Diana Roy, ‘ICE and Deportations: How Trump Is Reshaping Immigration Enforcement’ (Council on Foreign Relations, 12 July 2019) <https://www.cfr.org/articles/ice-and-deportations-how-trump-reshaping-immigration-enforcement> accessed 3 March 2026.

principle of non-refoulement. Not only incorrect returns occur, but ones where U.S. citizens are arrested and held based on suspicion.²⁴

Is the United States Bound?

However, is the U.S. even legally bound by non-refoulement? The U.S. ratified the Convention Against Torture and the International Covenant on Civil and Political Rights; thus, they accept the binding obligations not to return an individual to a risk of torture or cruel, inhumane, or degrading treatment.²⁵ However, ratification was accompanied by reservations, understandings, and declarations, including the limitations on the domestic enforceability of certain provision which create limitations on domestic enforceability.

Beyond treaty commitment, one may argue that non-refoulement has attained a status of customary international law that binds States irrespective of specific treaty participation.²⁶ This strengthens the claim that the U.S. remains internationally obligated even where domestic procedural limitations exist.

Conclusion

States retain sovereign authority to regulate their borders and determine the conditions under which non-citizens may enter to remain within their territory. Deportation, as an expression of that authority, is not prohibited under international law. However, sovereignty does not operate in a legal vacuum. It is exercised within a framework of binding international obligations, which include the duty of non-refoulement. While the United States is an exceptionally contemporary case where it seems that the rules of both formal international law are pushed aside, it remains important to critically test these cases against the legal framework.

The legality of large-scale deportations ultimately depends on the integrity of the procedures through which the decision to deport is made. When efficiency, deterrence, and speed begin to overshadow the protection of individuals, the risk emerges that the principle of non-refoulement becomes little more than a formal commitment without practical effect.

²⁴ Lomi Kriel and Mica Rosenberg, 'U.S. Citizens Have Been Arrested and Detained by Immigration Authorities: Here's How It Happens' (ProPublica, 16 October 2025) <https://www.propublica.org/article/immigration-dhs-american-citizens-arrested-detained-against-will> accessed 3 March 2026.

²⁵ Office of the United Nations High Commissioner for Human Rights, 'Human Rights Indicators'

²⁶ United Nations High Commissioner for Human Rights, *The Principle of Non-Refoulement under International Human Rights Law* (OHCHR 2018).



Ultimately, the scope of protection refugees and other vulnerable individuals depends not solely on treaty ratification, but also on the procedural safeguards that are embedded in deportation systems. To conclude, the central focus of the U.S. policies, which are that of speed and mass, do increase the risk of violating the principle of non-refoulement. Without any meaningful access to fair review, the principle of non-refoulement has been eroded in practice in the U.S. case, which shows that in cases where people do not get the opportunity to invoke their fundamental human rights because of the policies from the Trump administration and ICE.

***Jip Aukes** (1999, She/Her) is a master's student in Law and Politics of International Security at the Vrije Universiteit Amsterdam, with a strong interest in the intersection of human rights, gender-equality and applying her background in sociology to legal doctrine.*



Bibliography

Amnesty International, *Torture and Enforced Disappearances in the Sunshine State* (AMR 51/0511/2025, 2025) https://www.amnesty.nl/content/uploads/2025/12/AMR_51_0511_2025-Torture-and-enforced-disappearances-in-the-Sunshine-State-vf.pdf accessed 3 March 2026

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85

Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137

De Genova N and Peutz N (eds), *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement* (Duke University Press 2010)

Forum Together, ‘Mass Deportation in the U.S.: Explainer’ <https://forumtogether.org/article/mass-deportation-in-the-u-s-explainer/> accessed 3 March 2026

Haddock, K., Roy, D, ‘ICE and Deportations: How Trump Is Reshaping Immigration Enforcement’ (Council on Foreign Relations, 12 July 2019) <https://www.cfr.org/articles/ice-and-deportations-how-trump-reshaping-immigration-enforcement> accessed 3 March 2026.

Hirsi Jamaa and Others v Italy (2012) 55 EHRR 21

International Organization for Migration, *Information Note on Non-Refoulement* (IOM 2023) https://www.iom.int/sites/g/files/tmzbd12616/files/our_work/ICP/IML/2023-updated-impl-information-note-on-non-refoulement.pdf

Kriel L and Rosenberg M, ‘U.S. Citizens Have Been Arrested and Detained by Immigration Authorities. Here’s How It Happens.’ (ProPublica, 16 October 2025) <https://www.propublica.org/article/immigration-dhs-american-citizens-arrested-detained-against-will>

Office of the United Nations High Commissioner for Human Rights, ‘Human Rights Indicators’ <https://indicators.ohchr.org>

Protocol No 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the First Protocol (adopted 16 September 1963, entered into force 2 May 1968) ETS No 46

Reuters, ‘Trump administration asks Supreme Court to end Haitian protected status’ (11 March 2026) <https://www.reuters.com/world/trump-administration-asks-supreme-court-end-haitian-protected-status-2026-03-11/> accessed 18 March 2026

Transactional Records Access Clearinghouse, ‘Immigration Quick Facts’ <https://tracreports.org/immigration/quickfacts/> accessed 3 March 2026

United Nations High Commissioner for Human Rights, *The Principle of Non-Refoulement under International Human Rights Law* (OHCHR 2018)

US House of Representatives, House Republican Conference, *Homepage* <https://www.gop.gov/> accessed 3 March 2026

Vera Institute of Justice, *Weaponizing the System: One Year of Trump’s Attacks on Due Process* (2026) <https://www.vera.org/explainers/weaponizing-the-system-one-year-of-trumps-attacks-on-due-process> accessed 3 March 2026