**No. 03-74442**

**IN THE UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

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**Hernan Ismael Delgado,**

**A#78-431-226,**

**Petitioner.**

**v.**

**ERIC H. HOLDER, JR., United States Attorney General,**
**Respondent.**

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On Petition For Review Of An Order Of The Board Of Immigration Appeals

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# Brief Of The Office Of The United Nations High Commissioner For Refugees As *Amicus Curiae* In Support Of Petitioner

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NOT DETAINED

Calendared: Pasadena Week of December 13, 2010

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## Introduction

In *Matter of Carballe*, 19 I&N Dec. 357, 360 (BIA 1986), the Board of Immigration Appeals held that once an alien has been finally convicted of a particularly serious crime, it necessarily follows that the alien is a danger to the community of the United States. This interpretation was reiterated in subsequent decisions, was adopted by the Ninth Circuit in *Ramirez-Ramos v. INS*, 814 F.2d 1394, 1397 (9th Cir. 1987), and has been adopted by every circuit to directly address the issue. *Alaka v. Attorney General of the United States*, 456 F.3d 88, 95 n11 (3d Cir. 2006) (collecting cases).

*Matter of Carballe* and *Ramirez-Ramos*, which adopted the administrative decision out of deference, were wrongly decided. Because *en banc* courts take cases, not issues, *see Fernandez-Ruiz v. Gonzales*, 466 F.3d 1121, 1135 (9th Cir. 2006) (en banc), the Ninth Circuit has an opportunity to correct a fundamental error of interpretation that has for too long propagated in United States asylum law in detriment to the United States' international obligations. Amicus, the Office of the United Nations High Commissioner For Refugees, urges the en banc court to do so.

## Interest of Amicus Curiae

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 Governments, for seeking permanent solutions for their problems. *Statute of the Office of the UNHCR*, U.N. Doc. A/RES/428(v), ¶ 1 (Dec. 14, 1950). According to its Statute, UNHCR fulfils its mandate by, *inter alia*, "[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto". *Statute of the Office of the UNHCR*, U.N. Doc. A/RES/428(v), ¶ 8 (Dec. 14, 1950). UNHCR's supervisory responsibility is also reflected in both the Preamble and Article 35 of the 1951 *Convention Relating to the Status of Refugees*, July 28, 1951, 19 U.S.T. 6259 ["1951 *Convention*"] and Article II of the 1967 *Protocol Relating to the Status of Refugees*, Jan. 31, 1967, 606 U.N.T.S. 267 ["1967 *Protocol*"], obligating States to cooperate with UNHCR in the exercise of its mandate and to facilitate UNHCR's supervisory responsibilities.

In 1968, the United States acceded to the 1967 *Protocol*, which incorporates by reference all the substantive provisions of the 1951 *Convention*. Congress passed the 1980 Refugee Act with the explicit intention to bring the United States into compliance with its international obligations under the 1951 *Convention* and 1967 *Protocol*. United States

courts have an obligation to construe federal statutes in a manner consistent with United States international obligations whenever possible.

The views of UNHCR are informed by almost 60 years of experience supervising the treaty-based system of refugee protection established by the international community. UNHCR provides international protection and direct assistance to refugees throughout the world and has staff in some 120 countries. It has twice received the Nobel Peace Prize for its work on behalf of refugees. UNHCR's interpretation of the provisions of the 1951 *Convention* and its 1967 *Protocol* are both authoritative and integral to promoting consistency in the global regime for the protection of refugees.

This case involves the interpretation and application of the refugee definition in the 1951 *Convention* and its 1967 *Protocol* as implemented in United States law at section 101(a)(42) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101(a)(42). As such, it presents questions involving the essential interests of refugees within the mandate of the High Commissioner. Moreover, UNHCR anticipates that the decision in this case may influence the manner in which the authorities of other countries apply the refugee definition.

## ARGUMENT

### I. THE U.S. IS BOUND BY THE 1951 *CONVENTION* AND 1967 *PROTOCOL RELATING TO THE STATUS OF REFUGEES*.

Article VI of the United States Constitution states that treaties the United States has acceded to "shall be the supreme law of the land." As such, the courts are bound by United States treaty obligations and have a responsibility to construe federal statutes in a manner consistent with those international obligations to the fullest extent possible. *Murray v. Schooner Charming Betsy*, 6 U.S. 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."); *The Paquete Habana*, 175 U.S. 677, 700 (1900) ("International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination.").

The United States acceded to the 1967 *Protocol*, which incorporates Articles 2 – 34 of the 1951 *Convention*, 1967 *Protocol* Art. I ¶1, and amends the definition of "refugee" by removing the temporal and geographic limits

found in Article 1 of the 1951 *Convention*.[1] 1967 *Protocol* art. I ¶¶ (2) and (3).

The United States Supreme Court has recognized that when Congress enacted the Refugee Act of 1980, it made explicit its intention to "bring United States refugee law into conformance with the 1967 United Nations Protocol Relating to the Status of Refugees."[2] *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 436-37 (1987) (citing H.R. Rep. No. 96-608 at 9 (1979)).

"'[O]ne of Congress' primary purposes' in passing the Refugee Act was to implement the principles agreed to in the 1967 United Nations Protocol Relating to the Status of Refugees, to which the United States acceded in 1968." *INS v. Aguirre-Aguirre,* 526 U.S. 415, 427 (1999) (quoting *INS v. Cardoza-Fonseca*, 480 U.S. 421, 436-37 (1987)) (additional

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[1] The 1951 *Convention* definition of a refugee, as amended by the 1967 *Protocol*, states, in relevant part: "[T]he term 'refugee' shall apply to any person who: (2) Owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his [or her] nationality and is unable or, owing to such fear, is unwilling to avail himself [or herself] of the protection of that country . . ..".

[2] The refugee definition is provided in 8 U.S.C. § 1102(a)(42) and states in relevant part: "The term 'refugee' means (A) any person who is outside any country of such person's nationality . . . and is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion . . .."

citation omitted). The obligations to provide refugee protection and not to return a refugee to any country where she or he would face danger lay at the core of the 1951 *Convention* and 1967 *Protocol*.

In fulfilling these requirements, Congress provided a path for refugees to seek asylum in the U.S., 8 U.S.C. §§1101(a)(42) and 1158, and expressed its intent that the provisions of the Refugee Act obligating the Attorney General to refrain from returning refugees to a place where they would face danger "[conform] to the language of Article 33" of the 1951 *Convention*.[3] *INS v. Stevic*, 467 U.S. 407, 421 (1984) (discussing 8 U.S.C. § 1253(h) (1976), now codified at 8 U.S.C. § 1231(b)(3)). The 1980 Refugee Act thus serves to bring the United States into compliance with its international obligations under the 1951 *Convention* and 1967 *Protocol* and so it must be interpreted and applied in a manner consistent with these instruments.

[3] Article 33 of the 1951 Convention addresses the fundamental principle of *non-refoulement* or no return, stating in relevant part: "No Contracting State shall expel or return ('*refouler*') a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion." This principle is reflected in U.S. law under 8 U.S.C. §1231(b)(3): "[T]he Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion."

## II. THE PARTICULARLY SERIOUS CRIME EXCEPTION TO *NON-REFOULEMENT* APPLIES ONLY TO A REFUGEE WHO HAS BEEN *BOTH* CONVICTED OF A PARTICULARLY SERIOUS CRIME AND, ON THE BASIS OF AN INDIVIDUALIZED INQUIRY, BEEN FOUND TO CONSTITUTE A DANGER TO THE COMMUNITY.

As with any treaty provision, the meaning of the "danger to the community" exception to *non-refoulement* under Article 33(2) begins with the text itself. "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." Vienna Convention on the Law of Treaties, Art. 31(1), May 23, 1969, 1155 U.N.T.S. 331.[4] The Supreme Court has embraced this well-established principle of international law, reiterating that "[a]s treaties are contracts between nations, their words are to be taken in their ordinary meaning 'as understood in the public law of nations.'" *Santovincenzo* v. *Egan*, 284 U.S. 30, 40 (1931). Further, the Supreme Court has consistently recognized that when treaty "interpretation follows from the clear treaty language, [it] must, absent extraordinarily strong contrary evidence, defer to that interpretation." *Sumitomo Shoji America, Inc.* v. *Avagliano*, 457 U.S. 176, 185 (1982). *See also United*

[4] Although the United States has signed but not ratified the Vienna Convention, the Department of State, in submitting this treaty for ratification by the Senate, acknowledged that the Convention "is already recognized as the authoritative guide to current treaty law and practice." S. Exec. Doc. L, 92d Cong., 1st Sess. 1 (1971).

*States* v. *Stuart*, 489 U.S. 353, 371 (1989) (Scalia, J., concurring) (if "the Treaty's language resolves the issue presented, there is no necessity of looking further to discover 'the intent of the Treaty parties'"); *id*. at 370 (Kennedy, J., concurring) (same).[5] Thus, the plain meaning of Article 33 is controlling here.

The text of Article 33(2) makes clear that it, *inter alia*, applies to refugees who have been convicted, by a final judgement, of a "particularly serious crime" and, in addition, constitute a "danger to the community" in which they have taken refuge. The first inquiry operates as a threshold requirement for application of the exception; if it is not satisfied, an evaluation of whether the refugee poses a "danger to the community" need not be made. *See* Brief of UNHCR as Amicus Curiae in *N-A-M- v. Mukasey* (No. 08-9527 & 07-9580) at 12 (available at http://www.unhcr.org/refworld/type,AMICUS,UNHCR,USA,,0.html) (last visited Oct 15, 2010) ("UNHCR N-A-M- Brief"). It necessarily follows that a refugee who has been convicted of a particularly serious crime but does not pose a danger to the community shall not be *refouled*. *See* UNHCR N-A-

[5] *See also* Restatement (Third) of Foreign Relations Law of the United States § 325(1) (1987) ("Restatement") ("An international agreement is to be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose.").

M- Brief at 12; Atle Grahl-Madsen, *Commentary on the Refugee Convention 1951:* Articles 2-11, 13-23, 24-30 & Schedule, 31-37 (1963) at 238-239.

The requirement of constituting a "danger to the community" does not operate as a presumption arising out of a past conviction, but instead requires a separate assessment that is both *individualized* and *prospective.* The critical factor is not thus whether the crime comes within the scope of the clause, but whether in the light of the crime and conviction, the refugee constitutes a very serious present or future danger to the community of the country concerned". *See* Sir Elihu Lauterpacht & Daniel Bethlehem, *The Scope and Content of the Principle of Non-Refoulment: Opinion* (2001) (available at http://www.unhcr.org/publ/PUBL/419c75ce4.pdf) at 187. In *A v. Minister for Immigration and Multicultural Affairs,* Burchett and Lee J.J. expressed the view that the "principal statement of exclusion" in Article 33(2) is that the individual constitutes a danger to the community or to national security, not that he or she has been convicted of a particularly serious crime. *See* Guy S. Goodwin and Jane McAdam, *The Refugee in International Law*, (3d ed.) (2007), at 238 n229 & 230.

The plain meaning of this exception has been repeatedly recognized

by commentators and leading refugee law experts.[6] The plain language of the treaty is consistent with the object and purpose of the 1951 *Convention*, which – as stated expressly in its Preamble – is "to assure refugees the widest possible exercise of [these] fundamental rights and freedoms," 1951 *Convention* at Preamble ¶ 2, and with the general principle of law that exceptions to protections under international human rights treaties must be interpreted narrowly.[7] The Supreme Court has recognized the importance of

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[6] *See* Paul Weis, The Refugee Convention, 1951: The Travaux Préparatoires Analyzed with a Commentary at 342 (1995) ("Two conditions must be fulfilled: the refugee must have been convicted by final judgment of a particularly serious crime, and he must constitute a danger to the community of the country."); Gunnel Stenberg, *Non-Expulsion and Non-Refoulement: the Prohibition Against Removal of Refugees with Special Reference to Articles 32 and 33 of the 1951 Convention relating to the Status of Refugees* 221 (1989) (same); Lauterpacht & Bethlehem at ¶ 191 (requirement that the refugee constitute a danger to the community is not met simply because the refugee has been convicted of a particularly serious crime; there must be an additional assessment of dangerousness); James C. Hathaway & Colin J. Harvey, *Framing Refugee Protection in the New World Disorder*, 34 CORNELL INT'L L.J. 257, 291 (2001) ("Article 33(2) authorizes refoulement for refugees who have been 'convicted by a final judgement of a particularly serious crime' and who are found to constitute a 'danger to the community' of the asylum state.").

[7] Preeminent refugee law scholars have noted this point. *See* Paul Weis, The Refugee Convention at 342. (Article 33(2) "constitutes an exception to the general principle embodied in paragraph 1 and has, like all exceptions, to be interpreted restrictively"); Lauterpacht & Bethlehem at 136, ("the fundamental character of the prohibition against *refoulement*, and the humanitarian character of the 1951 Convention more generally, must be taken as establishing a high threshold for the operation of exceptions to the Convention").

hewing to the purposes that animate international agreements: it has counseled not only that those purposes must "be construed in a broad and liberal spirit," but also that "when two constructions are possible, one restrictive of rights that may be claimed under [them] and the other favorable to [those rights], the latter is to be preferred." *Asakura* v. *City of Seattle*, 265 U.S. 332, 342 (1924). Further evidence that the 1951 *Convention* was intended to assure protection of the basic human rights of refugees can be found in the reluctance of the *Convention's* drafters to include any exception to the *Convention's non-refoulement* obligation.[8] For instance, the United States delegate indicated – in response to a proposal from the delegate from the United Kingdom to create exceptions to the *non-refoulement* prohibition – that "it would be highly undesirable to suggest . . . that there might be cases, even highly exceptional cases, where a man might be sent to death or persecution."[9] The United Kingdom delegate later stated that "the authors of [this provision] . . . sought to restrict its scope so as not

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[8] The Report of the *Ad Hoc* Committee on Refugees and Stateless Persons stated that "[w]hile some question was raised as to the possibility of exceptions to Article 28 [later Article 33(1)] the Committee felt strongly that the principle here expressed was fundamental and should not be impaired." UN Doc. E/1850;E/AC.32/8, at 13 (Aug. 25, 1950).

[9] *Ad Hoc* Committee on Refugees and Stateless Persons, *Summary Record of the 40th Meeting*, UN Doc. E/AC.32/SR.40, at 31 (Aug. 22, 1950).

to prejudice the efficiency of the article as a whole."[10]

In understanding the meaning of the terms of an international treaty, State practice in applying it should also be taken into account. Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, Art. 31(3)(b). As the Supreme Court has stated, in considering matters which an international treaty addresses, "the opinions of . . . sister signatories [are] entitled to considerable weight." *Air France* v. *Saks*, 470 U.S. 392, 404 (1985) (internal quotation marks and citation omitted). Article 33(2)'s requirement of a separate inquiry into "danger to the community" is reflected by the State practice of other signatories and State parties to the 1951 *Convention* or its 1967 *Protocol*. For instance, the Supreme Court of Canada has ruled that an immigration judge "must . . . make the added determination that the person poses a danger to the safety of the public . . . to justify *refoulement.*" *Pushpanathan* v. *Canada*, (*Minister of Citizenship and Immigration*), [1998] 1 S.C.R. 982, 999 (Can.). The Administrative Appeals Tribunal of Australia has also cited the risk of recidivism and whether a refugee continues to be a danger to the community as determinative factors when considering whether *refoulement* should take place. *In re Tamayo and*

[10] Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: *Summary Record of the 16th Meeting*, UN Doc. A/CONF.2/SR.16, at 8 (Nov. 23, 1951).

*Department of Immigration* (1994) 37 A.L.D. 786 (Austl.) (indicating that "[t]he reference in Article 33(2) of the convention to a refugee who 'constitutes a danger to the community' is . . . concerned with the risk of recidivism.").

## III. THE BIA'S INTERPRETATION IN *MATTER OF CABELLE* AND ITS PROGENY SHOULD BE DISAPPROVED AND THE PANEL DECISION IN *RAMIREZ-RAMOS V. INS* SHOULD BE OVERRULED.

In *Matter of Cabelle*, the BIA interpreted then-§ 243(h)(2)(B) of the INA, now codified at § 241(b)(3)(B) of the INA, 8 U.S.C. § 1231(b)(3)(B). 19 I&N Dec. at 360. The BIA held that the statute "does not require that two separate and distinct factual findings be made in order to render an alien ineligible for withholding of deportation." *Id.* The BIA agreed that it must be determined that an applicant constitutes a danger to the community but that "the statute provides the key for determining whether an alien constitutes such a danger." *Id.* The BIA concluded that "[i]f it is determined that the crime was a 'particularly serious' one, the question of whether the alien is a danger to the community of the United States is answered in the affirmative." *Id.* The BIA explained that "[w]e do not find that there is a statutory requirement for a separate determination of dangerousness focusing on the likelihood of future serious misconduct on the part of the alien." *Id.*

In *Ramirez-Ramos*, the petitioner argued that the particularly serious crime statute required a two-step inquiry: (1) whether an offense is particularly serious and (2) whether he would be a danger to the community. 814 F.2d 1394, 1397. The Ninth Circuit rejected that argument holding that a "close reading of the language of the statute leads us to the conclusion that the BIA's interpretation is reasonable." *Id.* The Ninth Circuit reviewed the syntax of the sentence to conclude that "had Congress intended the reading [petitioner] urges, it would have written the section with two coordinate clauses joined by a conjunction[.]" *Id.* Neither the BIA in *Cabelle* nor the Ninth Circuit in *Ramirez-Ramos* considered the 1951 *Convention* or the 1967 *Protocol* in reaching their conclusions.

The interpretation presently held by the BIA and ratified by the Ninth Circuit is erroneous as demonstrated above under Section II. The plain language of the statute which is lifted and embodies the plain language of the 1951 *Convention* requires that a two-step inquiry be made before a refugee may be *refouled*. Accordingly, the *en banc* court should disapprove of *Cabelle* and overrule *Ramirez-Ramos*.

## IV. THE 1951 *CONVENTION* AND 1967 *PROTOCOL* AND THE LIMITATIONS OF WHAT A "PARTICULARLY SERIOUS CRIME" MEANS.

Though the Ninth Circuit believes it cannot review the merits of the BIA (or IJ's) decision, *Matsuk v. INS*, 247 F.3d 999 (9th Cir. 2001), as a

matter of statutory interpretation, the term "particularly serious crime" ought to carry the same meaning as that expressed in the 1951 *Convention* and 1967 *Protocol* that it was intended to implement.

Article 33(2) of the *Convention* makes clear that the exception to *non-refoulement* may be considered only when the refugee is convicted of a crime that is deemed "particularly serious." Although the 1951 *Convention* does not specifically list the crimes that come within the ambit of Article 33(2), it is significant that the term "crime" is doubly qualified by the terms "particularly" and "serious," thereby underscoring the high degree of gravity required for the crime to meet this prong of the exception. By comparison, Article 1F(b) of the 1951 *Convention* excludes from refugee protection anyone who "has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee." The "serious non-political crime" ground was intended to apply to persons who had committed an act so grave and unconscionable—a "capital crime or a very grave punishable act"[11]—as to render them undeserving of international protection. UNHCR, *Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the*

[11] UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees,* ¶ 155 (Reedited 1992).

*Status of Refugees*, ¶ I(A)(2) HCR/GIP/03/05 (Sept. 4, 2003) ("UNHCR Exclusion Guidelines").

Consistent with the drafters' view that Article 33(2) be applied narrowly, the addition of the second qualifier "particularly" must be construed to require an even higher threshold and an even more restrictive application than the "serious non-political crime" ground of exclusion in Article 1F(b). *See* UNHCR N-A-M- Brief at 14-15; James C. Hathaway & Colin J. Harvey, *Framing Refugee Protection in the New World Disorder*, 34 Cornell Int'l L.J. 257, 290 (2001) ("While Article 1(F)(b) requires a 'serious' crime, Article 33(2) authorizes refoulement only if the crime is 'particularly serious' … Logically, refoulement under Article 33(2) should be considered only where the crimes usually defined as 'serious' – for example, rape, homicide, armed robbery, and arson – are committed with aggravating factors, or at least without significant mitigating circumstances.") (internal citations omitted). This double qualification—"particularly" and "serious"—is also consistent with the restrictive scope of the exception and underscores that *refoulement* may be contemplated pursuant to this provision only in the most exceptional circumstances. *See, e.g.,* Lauterpacht & Bethlehem at ¶ 186.

A determination as to whether a crime is "particularly serious" for

purposes of Article 33(2), then, hinges not merely on whether the crime is "grave" but on whether it is "exceptionally grave." The gravity of the crime should not be judged solely by its categorization in the country in question, but rather international standards should be applied in making such an assessment. *See* UNHCR N-A-M- Brief at 16. This means that it is not enough to rely simply on the definition of the crime in the text of the local statute for which the refugee has been convicted. The application of the term "particularly serious crime" in the context of an exception to *non-refoulement* must involve the examination of all circumstances related to the crime. A number of factors therefore must be examined. At a minimum, these factors must include the nature of the act, the actual harm inflicted, the intention of the perpetrator and the circumstances of the crime, the conduct of the individual, the form of procedure used to prosecute the crime, the nature of the penalty imposed, and whether most jurisdictions would consider it a particularly serious crime. Only a determination that accounts for all of these factors will satisfy the imposition of the exception to *non-refoulement* under international law.

## V. TO DETERMINE WHETHER A REFUGEE POSES A DANGER TO THE COMMUNITY, AN INDIVIDUALIZED INQUIRY ASSESSING ALL RELEVANT FACTORS MUST BE CONDUCTED

An individualized assessment as to whether a refugee poses a "danger to the community" requires consideration of a variety of factors. At a minimum, the factors to be examined must include the nature and circumstances of the criminal act, the motivation in committing it, when the crime in question was committed, and any mitigating factors such as the individual's mental state at the time the crime was committed, past criminal activities, the possibility of rehabilitation and reintegration within society, and evidence of the likelihood of recidivism. *See Note on Non-Refoulement submitted by the High Commissioner for Refugees to the Executive Committee of the High Commissioner's Programme*, 29th Session, Subcommittee of the Whole on International Protection, ¶ 14 (Aug. 23, 1977) (noting that "where the refugee has been convicted of a serious criminal offence, it is important to take into account any mitigating factors and the possibilities of rehabilitation and reintegration within society."); *see also* Lauterpacht & Bethlehem at ¶ 191 (recognizing the need for an assessment of the facts of the case including mitigating factors). Only a determination that accounts for all of these factors will satisfy the imposition

of the "danger to the community" exception to *non-refoulement* under Article 33(2).

**Conclusion**

For the reasons stated above, the Ninth Circuit should disapprove of *Cabelle* and overrule *Ramirez-Ramos*. In doing so, the court should clearly provide that only crimes which are exceptionally grave may constitute a "particularly serious crime" for asylum and withholding purposes. UNHCR takes no position on the merits as to Mr. Delgado's claim for relief under the INA.

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**CERTIFICATE OF COMPLIANCE WITH FORMAT**

I, H. Elizabeth Dallam, certify that, pursuant to Fed. R. App. P. 32(a) and Ninth Circuit Rule 32-1, this brief is double spaced, using a proportional typeface of 14-point font of Times New Roman and is 19 pages (not including the table of contents, table of authorities, certificate of service, and corporate disclosure statement).

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## CORPORATE DISCLOSURE STATEMENT

I, H. Elizabeth Dallam, certify that, pursuant to Fed. R. App. P. 26.1 the Office of the United Nations High Commissioner for Refugees issues no shares or stock within the meaning of Rule 26.1.

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## CERTIFICATE OF SERVICE

I, H. Elizabeth Dallam, certify that on October 16, 2010, I electronically filed the Brief of Amicus, Office of the United Nations High Commissioner for Refugees with the Clerk of Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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