Affording Discretion to Immigration Judges: A Comparison of Removal Proceedings in the United States and Canada

Adam Collicelli

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Abstract: In the United States, immigration judges lack the discretion to consider defenses during the removal proceedings of legal, non-citizen residents if they have committed an aggravated felony. American citizen children face the significant risk of lifelong separation from parents, who commit relatively minor crimes, because the definition of an aggravated felony is so broad. Canadian immigration laws, akin to those in a majority of developed countries, grant judges the crucial opportunity to weigh the separation of a parent and citizen child in the removal decision. This Note argues that Congress should follow Canada’s example by passing the proposed Child Citizen Protection Act. Such an equitable approach is necessary to adhere to the Convention on the Rights of the Child. Although the United States is not a party to that Convention, its duty as a signatory may still require it to promote the best interests of citizen children in its immigration courts. Further, the principles governing that Convention may be morphing into an international custom, which would place American removal proceedings directly at odds with binding international law.

Introduction

Mario Pacheco, a native of Mexico, became a legal permanent resident (LPR) of the United States in 1981 when he was only two months old. In the twenty-four years that he lived on U.S. soil, Mario obtained a general equivalency diploma, worked sixty hour weeks in the shipping department of a warehouse, and cared for his three U.S.
Presently, he faces removal (deportation) for possession of 2.5 grams of marijuana with intent to distribute, a state misdemeanor but an aggravated felony under immigration law. Stunned at the severe repercussions for his son’s relatively minor offense, which occurred when he was only nineteen, Mario’s mother stated, “[h]e’s being punished for something he did when he was a teenager. He didn’t even go to jail.” His young children now may live their lives without a father. According to current U.S. law, judges have no discretion to weigh Mario’s meager criminality against the life-altering consequences of separating him from his children.

Mihailo Krusarouski, originally from the former Yugoslavia, moved to Canada at the age of thirteen. Between 1971 and 1995, Mihailo had accrued thirty criminal convictions, including assault, breaking and entering, and impaired driving. Canada’s Immigration and Refugee Board Appeal Division (IRBAD) determined that Mihailo’s subsequent removal order was legally valid. In exercising its discretionary jurisdiction, however, IRBAD determined that Mihailo should not be removed. This decision was based heavily upon the best interests of his baby daughter. To help ensure that the baby was raised by both of her parents, IRBAD stayed the execution of the removal order conditioned upon Mihailo’s personal rehabilitation.

The startling contrast between Mario’s and Mihailo’s stories serves to showcase a very distressing distinction between U.S. and Canadian immigration laws. Though Canadian law has, since 2002, become more restrictive, discretionary review of removal orders by IRBAD remains available for a wide range of lesser criminals if they are LPRs.

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2 See Human Rights Watch, supra note 1, at 21.
3 Id.
4 Id.
5 See id.
8 Id.
9 Id.
11 See Krusarouski, I.A.D. T99-04248.
12 See id.
13 See id.
14 See id.; Human Rights Watch, supra note 1, at 21.
This legal procedure is not an anomaly.\textsuperscript{16} In fact, the lack of discretion available to U.S. immigration judges to consider defenses to deportation made by LPRs convicted of an aggravated felony puts this country in a clear minority among industrialized states.\textsuperscript{17} Though there are certainly situations where the removal of an LPR is appropriate, as with very violent criminal offenders, the U.S. immigration system’s current rigidity eliminates any possibility of equitable treatment for those residents who clearly deserve it.\textsuperscript{18}

Part I of this Note provides a brief survey of the current state of immigration law that governs the growing population of LPRs in the United States. Part II focuses on current U.S. immigration laws that have the capability of rendering such residents, with relatively minor criminal convictions, removable without any discretionary examination of mitigating factors. In particular, this Note examines the compelling factor of a citizen child’s best interests. Next, it discusses the discretionary jurisdiction of the Canadian immigration system and its source in international law, which is, in part, its ratification of the Convention on the Rights of the Child (CRC). Finally, Part III argues that passage of the Child Citizen Protection Act (CCPA),\textsuperscript{19} which was recently proposed in the House of Representatives, is in line with the international legal standards found in the CRC and represents one remedy for this serious injustice of U.S. immigration law.

I. Background

Between the years 1997 and 2005, over 600,000 non-citizens have been removed from the United States due to criminal convictions.\textsuperscript{20} In 2002 alone, the number of criminal deportees surpassed the total of those between 1905 and 1986.\textsuperscript{21} The numbers of this type of removal have continually risen in the last decade, springing from 51,874 in 1997
to 90,426 in 2005.\textsuperscript{22} Of those removed in 2005, it is estimated that around 80,000 were LPRs.\textsuperscript{23}

In 2005, 64.6\% of the removals for criminal convictions were based on non-violent offenses, 20.9\% on violent offenses, and 14.7\% on “other” undisclosed crimes.\textsuperscript{24} The most common crimes leading to removal involve drugs, non-sexual assault, and the amorphous group of “other” offenses.\textsuperscript{25} Though this latter category is somewhat mysterious, stories of deportations for minor offenses have been far from uncommon in recent years.\textsuperscript{26}

Besides having obvious negative effects on the deportees, these removals have particularly distressing consequences on families.\textsuperscript{27} Since 1997, approximately 1.6 million husbands, wives, sons, and daughters have been separated from family members because of this process.\textsuperscript{28} The separation may be legally enforced, as in cases where the U.S. citizen child is not accepted into the country to which the parent is removed.\textsuperscript{29} More often, however, the family division results from the parent’s desire to leave the child in the United States to enjoy better living standards, education, and job opportunities.\textsuperscript{30}

The removal of Gerardo Antonio Mosquera, an LPR in the United States for thirty years, depicts one tragic consequence of this all-too-common occurrence.\textsuperscript{31} Mosquera was removed after selling ten dollars worth of marijuana to a police informant.\textsuperscript{32} His wife and children, all U.S. citizens, were left to fend for themselves.\textsuperscript{33} Mosquera’s seventeen

\begin{footnotes}
\footnotetext{22}{Human Rights Watch, \textit{supra} note 1, at 38.}
\footnotetext{23}{See Kanstroom, \textit{supra} note 21, at 196 (noting that though the government does not disclose how many of those removed were LPRs, as opposed to illegal border-crossers, the figure can be estimated).}
\footnotetext{24}{Human Rights Watch, \textit{supra} note 1, at 5–6.}
\footnotetext{25}{\textit{Id.} at 42.}
\footnotetext{28}{See Human Rights Watch, \textit{supra} note 1, at 44.}
\footnotetext{30}{See id.}
\footnotetext{32}{See id.}
\footnotetext{33}{See id.}
\end{footnotes}
year old son, unable to cope with the loss of his father, committed suicide.\textsuperscript{34}

The immigration laws of many countries provide for judicial discretion in removal proceedings, helping to alleviate the sometimes unjust and often devastating consequences associated with mandatory deportations due to criminal convictions.\textsuperscript{35} Human Rights Watch reported that sixty-one governments currently allow LPRs to present defenses prior to deportation.\textsuperscript{36} Forty-six of those states do so because they are a party to the European Convention of Human Rights.\textsuperscript{37} Twenty-four governments allow family-related defenses as part of their domestic law.\textsuperscript{38}

Canadian domestic law currently provides discretion to impartial immigration judges to consider family ties prior to removal.\textsuperscript{39} Even though this discretion has been restricted in recent years, LPRs that are not “serious criminal[s]”\textsuperscript{40} may appeal removal orders and the judges must weigh “humanitarian and compassionate considerations” including “the best interests of a child directly affected by the decision.”\textsuperscript{41} The United States, on the other hand, provides absolutely no discretion for the broad spectrum of LPRs that are designated as aggravated felons.\textsuperscript{42}

Representative Jose Serrano (D--NY) recently sponsored the CCPA in an effort to provide U.S. immigration judges with the opportunity to employ at least some discretion in such cases.\textsuperscript{43} The bill would amend § 240(c)(4) of the Immigration and Nationality Act to allow immigration judges to weigh the execution of a removal order against the best interests of the child when faced with the possibility of separating a non-citizen parent from a U.S. citizen child.\textsuperscript{44} Serrano’s bill would supply this discretionary jurisdiction broadly to cases involv-

\textsuperscript{34}See id.

\textsuperscript{35}See Human Rights Watch, supra note 1, at 49–50; Yuval Merin, The Right to Family Life and Civil Marriage under International Law and Its Implementation in the State of Israel, 28 B.C. Int’l. & Comp. L. Rev. 79, 79–80 (2005) (noting how international law has long recognized and protected the family unit for the crucial role it has in human society).

\textsuperscript{36}Human Rights Watch, supra note 1, at 49–50.

\textsuperscript{37}Id.; see also Merin, supra note 35, at 122.

\textsuperscript{38}Human Rights Watch, supra note 1, at 49–50.


\textsuperscript{40}Immigration and Refugee Protection Act § 64.

\textsuperscript{41}Id. § 69(2).


\textsuperscript{43}See H.R. 1176, 110th Cong. (2007); Schepers, supra note 29.

\textsuperscript{44}See H.R. 1176.
ing any “alien” parent, even undocumented residents.\textsuperscript{45} The CCPA is presently under consideration in the House of Representatives, but has not made any progress since it was referred to an immigration subcommittee in March 2007.\textsuperscript{46}

II. Discussion

A. Current U.S. Laws & Rationales Behind Those Laws

The U.S. government has always held and utilized the power to remove any non-citizen as an inherent part of its sovereignty.\textsuperscript{47} Removal, however, was not a common procedure in the nation’s first century and was reserved for those that posed a serious threat to society.\textsuperscript{48} Instead, most legislation focused on controlling entry into the United States.\textsuperscript{49}

In 1952, the McCarran-Walter Act developed much of the procedures governing deportations that exist in current immigration law.\textsuperscript{50} Until 1990, the § 212(c) waiver was in place, which allowed LPRs convicted of a crime the ability to provide defenses to deportation, including the negative impact on a child, before an immigration judge.\textsuperscript{51} This discretion to weigh family unity into a removal proceeding was available to any LPR who had resided in the United States for at least seven years.\textsuperscript{52}

In the past decade, however, as the number of immigrants has risen\textsuperscript{53} and the threat of terrorist attacks has increased, the executive branch has begun using its power to remove non-citizens more frequently and boldly.\textsuperscript{54} This newly invigorated removal power was made

\begin{itemize}
  \item \textsuperscript{45} See id. This bill only restricts discretion in removal proceedings for cases involving criminal convictions based on threats to national security or sex trafficking. Id.
  \item \textsuperscript{48} See Hutchinson, supra note 47, at 12–13; Human Rights Watch, supra note 1, at 10.
  \item \textsuperscript{49} See Human Rights Watch, supra note 1, at 10.
  \item \textsuperscript{50} See id.
  \item \textsuperscript{51} See Immigration and Nationality Act § 212(c), 8 U.S.C. § 1182(c) (1988) (repealed 1996).
  \item \textsuperscript{52} See id.
  \item \textsuperscript{54} Human Rights Watch, supra note 1, at 16.
\end{itemize}
possible by legislation that was adopted, in large measure, to defend the nation from terrorism.\footnote{See id. at 17–18.} In his signing statement for one such piece of legislation, President William J. Clinton warned against the loose connection between terrorism and LPRs with criminal convictions: “This bill . . . makes a number of major, ill-advised changes in our immigration laws having nothing to do with fighting terrorism. These provisions eliminate most remedial relief for long-term residents.”\footnote{William J. Clinton, Statement on Signing the Antiterrorism and Effective Death Penalty Act of 1996, 32 Weekly Compilation of Presidential Documents 720 (Apr. 24, 1996).}

The president’s signing statement was in reference to the first of two remarkably powerful immigration bills passed by Congress in 1996.\footnote{See id.} The Antiterrorism and Effective Death Penalty Act (AEDPA) broadened the list of criminal convictions that would designate a non-citizen as an “aggravated felon”\footnote{See Immigration and Nationality Act § 101(a)(43). There are other criminal offenses besides aggravated felonies that render non-citizens deportable, such as crimes of moral turpitude and failure to register as a sex offender. See Immigration and Nationality Act § 237(a)(2).} and thus subject to removal.\footnote{See Immigration and Nationality Act § 237(a)(2)(A)(iii); Anti-Terrorism and Effective Death Penalty Act, Pub. L. No. 104-132, § 440(e), 110 Stat. 1214 (1996).} The seventeen new crimes included forgery, bribery, obstruction of justice, and certain offenses relating to gambling and prostitution.\footnote{Anti-Terrorism and Effective Death Penalty Act § 440(e).} The Board of Immigration Appeals has shown its willingness to designate a broad array of criminal offenses as aggravated felonies.\footnote{See Mary E. Kramer, Immigration Consequences of Criminal Activity: A Guide to Representing Foreign-Born Defendants 162 (2005).} As a result, certain misdemeanor offenses under state law have been construed as aggravated felonies under the federal statute.\footnote{See, e.g., United States v. Urias-Escobar, 281 F.3d 165, 167 (5th Cir. 2002); Human Rights Watch, supra note 1, at 21 (noting that Mario was only a misdemeanor offender under Illinois law); see also Kramer, supra note 61, at 162.}

Also in 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which lowered the term of imprisonment required to become an aggravated felon from five years to only one year.\footnote{See Immigration and Nationality Act § 101(a)(43); Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, § 321(a), 110 Stat. 3009-546 (1996).} In addition, section 322(a)(1)(B) of IIRIRA construes even one-year convictions with suspended sentences as aggravated felonies.\footnote{See Immigration Reform and Immigrant Responsibility Act § 322(a)(1)(B).} Therefore, immigration judges cannot recognize lenient judg-
ments handed out in criminal court that allow lesser criminal offenders the opportunity to serve probation instead of time in prison.\textsuperscript{65}

Moreover, AEDPA specifically prevents immigration judges from allowing § 212(c) waivers for any aggravated felons, not just those with at least five-year imprisonments, as was practiced previously.\textsuperscript{66} Without the ability to file a § 212(c) waiver, a staggering amount of LPRs are facing mandatory removal proceedings for an increasingly wide array of relatively minor offenses.\textsuperscript{67} Immigration judges simply do not have the ability to provide any discretionary relief in such cases.\textsuperscript{68} Senator Edward Kennedy (D–MA) predicted the repercussions of these broad laws: “An immigrant with an American citizen wife and children sentenced to one year of probation for minor tax evasion and fraud would be subject to this procedure. And under this provision, he would be treated the same as ax murderers and drug lords.”\textsuperscript{69}

**B. Current Canadian Approach in Relation to the CRC**

Until 2002, the Canadian Immigration Act allowed LPRs broad access to petition for relief following a removal order.\textsuperscript{70} The current Immigration and Refugee Protection Act (IRPA) restricts discretionary appeals to lesser criminals, effectively eliminating the discretion provided for “serious criminals” who had been punished with two years in prison.\textsuperscript{71}

Though the candidate pool for discretionary relief has decreased, the process remains largely the same.\textsuperscript{72} The petitions may be brought before the IRBAD, which possess discretionary jurisdiction and an obligation to examine “humanitarian and compassionate” considerations.\textsuperscript{73} Canadian law requires that immigration judges at this stage examine all of the relevant circumstances of the case to determine whether a deportation should occur.\textsuperscript{74}

\textsuperscript{65}See id.; Cook, supra note 26, at 308–09.

\textsuperscript{66}See Immigration and Nationality Act § 212(c); Anti-Terrorism and Effective Death Penalty Act, Pub. L. No. 104-132, § 440(a), (d), 110 Stat. 1214 (1996).

\textsuperscript{67}See generally Human Rights Watch, supra note 1, at 3–83.

\textsuperscript{68}See Anti-Terrorism and Effective Death Penalty Act § 440(a), (d).

\textsuperscript{69}Human Rights Watch, supra note 1, at 24–25.


\textsuperscript{72}See id. § 63(3).

\textsuperscript{73}See id. § 67(1)(c).

\textsuperscript{74}See id. § 69(2).
In *Ribic v. Canada*, a twenty-six-year-old citizen of Yugoslavia legally entered Canada in 1983 to marry Janez Solar.\(^{75}\) The marriage, however, never occurred and Ribic found herself in violation of immigration law and removable.\(^{76}\) The IRBAD then laid out the different types of factors that immigration judges must weigh in employing “equitable jurisdiction” with regard to all the circumstances of the case.\(^{77}\) These include the seriousness of the offense that led to the removal order, the likelihood of rehabilitation, length of time spent living in Canada, family ties in Canada, and negative impact on the family that the removal would cause.\(^{78}\)

The family unit factor is most pertinent for the purpose of this Note. The Canadian Supreme Court, in *Baker v. Canada*, reviewed a removal order faced by a woman with dependent Canadian citizen children.\(^{79}\) The Court decided, in part, that the Appeal Division judge should consider the effects of a removal on a family: “[F]or the exercise of the discretion to fall within the standard of reasonableness, the decision-maker should consider children’s best interests as an important factor, give substantial weight, and be alert, alive and sensitive to them.”\(^{80}\)

One important rationale given in *Baker* for emphasizing the importance of this discretionary judgment in appeals to removal orders is Canada’s ratification of the CRC.\(^{81}\) The Court adopted the values and objectives of this treaty as a part of Canadian domestic law despite the fact that it has not been implemented by Parliament and is not legally binding.\(^{82}\) The Court reasoned that international law, “both customary and conventional,” must be reflected when possible in the interpretation of Canadian legislation.\(^{83}\)

### C. The United States and the CRC

The CRC entered into force on September 2, 1990.\(^{84}\) The relevant provisions in the CRC are Articles 3 and 9.\(^{85}\) Article 3 establishes

\(^{76}\) Id. ¶¶ 1, 10.
\(^{77}\) Id. ¶ 14.
\(^{78}\) See id.
\(^{80}\) Id. ¶ 75.
\(^{81}\) See id. ¶¶ 69–71.
\(^{82}\) See id.
\(^{83}\) Id. ¶ 70.
\(^{85}\) See id. arts. 3, 9.
that all courts of law, legislatures, and administrative agencies should act with the "best interests of the child" as a primary concern. In Article 9, separation of a child from his or her parents can only occur after judicial review that is attentive to the child’s best interests.

Though a whopping 192 states are parties to the CRC, the United States and Somalia remain the only two states that still have not ratified it. Former U.S. Ambassador to the United Nations Madeleine Albright signed the CRC in February 1995. President Clinton, however, never submitted the document to the Senate for ratification and the administration of President George W. Bush has expressed its clear opposition to the treaty.

III. Analysis

The United States should adopt a more discretionary approach, allowing immigration judges to weigh such factors as family unity before removing LPRs, like the procedure employed under the Canadian IRPA. In fact, there may be an obligation to take such action, derived from the nation’s duty as a signatory to the CRC and possibly even under a nascent international custom that the CRC may now embody. The CCPA currently before Congress represents a good first step toward both sustaining the overall purpose of the CRC and supplying the more equitable judicial review that is provided not only by Canada, but by numerous other States.

86 Id. art. 3, para. 1.
87 Id. art. 9, para. 1.
92 See Stunt & Brilmayer, supra note 27, at 229–30; see also Human Rights Watch, supra note 1, at 46–47 (arguing for a more discretionary approach based on sources of international law other than the CRC, including the International Covenant on Civil and Political Rights and the American Convention on Human Rights).
93 See H.R. 1176, 110th Cong. (2007); Human Rights Watch, supra note 1, at 49.
The legislative aim of the 1996 immigration reform in the United States was similar to the 2002 reform in Canada: to make it easier for non-citizens with serious criminal convictions to be removed from the country. Canada maintained an important balance in providing discretionary review for lesser criminals and only eliminating it for serious offenders. The IRPA restricts the review of removal orders for “serious” criminal offenders, who were punished with a term of imprisonment of two years or more. A similar measure in the United States, ensuring that § 212(c) waivers are only eliminated for very serious criminal offenders, is a feasible option.

The United States, however, has simply gone too far in its attempt to reach an otherwise laudable national security goal. With such an expansive list of crimes now designated as aggravated felonies, the need for judicial discretion is dire. In the absence of any discretion, the many LPRs in the United States that have lived here since infancy are treated the same as immigrants that have only recently arrived. Similarly, a rapist or a murderer receives the same immigration penalty as a mother convicted of stealing baby clothes that cost $14.99. In situations where lesser offenders are parents, the need for some sort of balancing approach becomes even more apparent. Considering a citizen child’s interests in this process would provide the children of such offenders with some hope of avoiding potentially permanent separation from their parents. Under the CRC, this type of balancing approach would be necessary as immigration courts are required to take the child’s best interests as a “primary consideration.”

The U.S. government refuses to ratify the CRC, stifling the family unity factor in removal proceedings, because of religious and political
pressure that stems from a fear of excessive government involvement in the parent-child relationship.\textsuperscript{105} There is a concern that ratification would delegate parental control to an international authority and weaken parents’ rights.\textsuperscript{106} Also, the CRC directly conflicts with U.S. law by banning the death penalty for juveniles.\textsuperscript{107} Yet, the United States could simply make reservations to the CRC, as many other nations have done,\textsuperscript{108} in order to ratify the core of the treaty.\textsuperscript{109} Many of President Bush’s hesitations relate to provisions outside of Articles 3 and 9, which are most relevant for removal proceedings.\textsuperscript{110} Still, the United States has not made reservations and instead refuses to ratify the treaty altogether.\textsuperscript{111}

Even though the United States has not ratified the CRC, its signature on this treaty still provides some attenuated responsibilities under Article 18 of the Vienna Convention on the Law of Treaties.\textsuperscript{112} In particular, the United States is obliged to “refrain from acts which would defeat the object and purpose of a treaty.”\textsuperscript{113} The broad language of Article 3 suggests that a “best interests of the child” standard encompasses even actions where children are only indirectly involved.\textsuperscript{114} In this way, non-discretionary and potentially permanent separation of a parent from a child by an immigration court defies an objective of the CRC.\textsuperscript{115}

In addition, a universal norm preserving family unity may eventually become customary international law, placing a direct obligation on the United States to weigh the needs of children into removal proceedings despite its refusal to ratify the CRC.\textsuperscript{116} The emergence of this custom is supported by the development of the “best interests of the child” standard into a “ubiquitous feature of international institu-


\textsuperscript{106} See Canadian Children’s Rights Council, \textit{supra} note 90.

\textsuperscript{107} See id.

\textsuperscript{108} See CRC, \textit{supra} note 84, Declarations and Reservations.


\textsuperscript{110} See Smolin, \textit{supra} note 105, at 90–107.

\textsuperscript{111} See CRC, \textit{supra} note 84, Declarations and Reservations; Anderson, \textit{supra} note 90.

\textsuperscript{112} Vienna Convention on the Law of Treaties, \textit{supra} note 109, art 18.

\textsuperscript{113} Id.

\textsuperscript{114} See CRC, \textit{supra} note 84, art. 3.


\textsuperscript{116} See Starr & Brilmayer, \textit{supra} note 27, at 230.
Furthermore, the International Court of Justice has noted that extremely widespread participation in a treaty may itself sufficiently establish a customary law. As 192 States (all but the United States and Somalia) have ratified the CRC, a new international custom may already exist, legally binding the United States.

Canadian cases such as Naidu v. Canada show that a discretionary approach in removal proceedings does not provide unlimited support to any person with a citizen child. There, a Canadian LPR was deported based on a 2001 conviction for trafficking cocaine. Naidu, however, utilized his ability to appeal this decision before the Immigration Appeal Division in 2003. The Appeal Division stayed Naidu’s removal order based on the best interests of his son, with the condition that Naidu maintain a clean criminal record in the future. By imposing this condition, minor offenders, now fully cognizant of the consequences of their behavior, can remain in Canada to care for their children if they avoid further trouble with the law. Naidu continued his criminal behavior, however, and now faces an arguably more deserved removal where the needs of his son will likely not rescue him.

To provide a similar discretionary approach, the U.S. Congress should adopt Representative Serrano’s proposed CCPA in adherence with the international legal standards that are already in place and those that continue to evolve. This legislation would ensure that immigration judges do not have their hands completely tied in removal proceedings that significantly affect a U.S. citizen child. If necessary to ensure passage, the bill should be amended to apply discretionary jurisdiction only to LPR parents, instead of to the much broader group of all legal and illegal non-citizens.

The CCPA would not create an automatic safety net for all non-citizen parents facing removal. An impartial immigration judge

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117 Id. at 225, 229–31.
119 See CRC, supra note 84, Status of Ratifications.
121 Id. ¶ 3.
122 Id. ¶ 4.
123 Id. ¶ 5.
124 See id. ¶¶ 5–6.
126 See CRC, supra note 84; North Sea Continental Shelf, 1969 I.C.J. at 42; H.R. 1176, 110th Cong. (2007); Starr & Brilmayer, supra note 27 at 229–31.
127 See H.R. 1176; Serrano, supra note 46.
128 See H.R. 1176.
129 See id.; Serrano, supra note 46.
would make the final decision with full knowledge of the facts.\(^{130}\) Even in Canada, where commitment to the CRC led to wide discretionary jurisdiction, the mere existence of a citizen child will not always prevent a parent’s removal.\(^ {131}\) Thus, in *Baker v. Canada*, the Canadian Court concluded that the child’s best interests must not necessarily be the strongest of all considerations to be weighed by the decision-maker, but must certainly be one such consideration.\(^ {132}\) In the same way, the CCPA would include the child’s best interests as one equitable factor in the judicial review of a removal order, allowing for at least some opportunity to offer a defense in the face of this colossal penalty.\(^ {133}\)

**Conclusion**

Canada’s immigration law, in line with international norms, provides discretion to immigration judges in removal proceedings, better securing family unity for LPRs. New restrictions associated with the IRPA ensure that discretionary relief be granted to only lesser criminals. For the LPRs able to appeal their removal orders, the effect of a parent’s removal on a Canadian citizen child must be considered, in part, due to Canada’s adherence to the CRC.

The United States, though not a party to this treaty, should nonetheless take on the responsibilities associated with the international custom that the CRC now embodies or soon will represent. The injustices leveled upon long-term LPRs that stem from a decade of harsh legislation need to be tempered. Perhaps the best hope to make quick progress toward this end is to focus initially on the numerous U.S. citizen children that are being immeasurably harmed by current immigration laws. Accordingly, Congress should closely deliberate over Congressman Serrano’s proposed CCPA, which represents a real opportunity to adopt a removal procedure similar to the sensible approach taken by our northern neighbor.

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\(^ {130}\) See H.R. 1176.


\(^ {133}\) See H.R. 1176.