

# MICHAEL KAGAN

University of Nevada, Las Vegas, William S. Boyd School of Law  
4505 S. Maryland Pkwy, Las Vegas, NV 89154-1001, (702) 895-2675

## ACADEMIC POSITIONS

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**University of Nevada, Las Vegas, William S. Boyd School of Law** 2011 - Present

*Joyce Mack Professor of Law* (2018 - Present)

*Director, UNLV Immigration Clinic* (2016 – Present; Co-Director 2011-2016)

*Professor of Law* (2016 - 2018)

*Associate Professor of Law* (2011 –2016)

**Scholarship:** One of the ten most cited immigration law faculty in the United States, 2016-2020 (*Brian Leiter Law School Reports, Oct. 29, 2021*). Published leading works on the plenary power doctrine, the intersection of immigration law with the First Amendment, Fourth Amendment problems in immigration enforcement, the application of *Chevron* deference in immigration adjudication, deportation defense and empirical research on immigration litigation in federal circuit courts.

**Teaching:** Administrative Law, Immigration Law, Professional Responsibility, International Human Rights, and Immigration Clinic. Currently co-authoring a casebook on professional responsibility, and as editor-in-chief of an international refugee law curriculum.

**Clinic and Community Leadership:** In 2021, led the establishment of the first publicly funded deportation and immigrant legal defense center in Nevada, and the first off-campus office for UNLV Law. The Office opened its doors in 2022.

In 2018, established the University Legal Services program to serve immigrants and their families in the campus community at UNLV (2018) and the College of Southern Nevada (2019).

In 2017, integrated the justice AmeriCorps program providing legal aid to unaccompanied children with the student-led clinic, and establishing the Edward M. Bernstein & Associates Children’s Rights Program (later merged into the Community Advocacy Office).

Guided student attorneys in offering vigorous representation to people facing deportation, including litigation at the administrative level and in the federal Courts of Appeals. Cases involved asylum issues, torture, criminal and “crimmigration” law, Fourth Amendment issues, constitutional due process, child abuse and neglect, and gender equality.

In 2013, established a partnership with the Clark County Public Defender providing advice for criminal defense attorneys on immigration consequences of criminal convictions. Consulted on 500 cases involving plea negotiations for non-citizens in Clark County, NV. In 2016 conducted an assessment of criminal defense of non-citizens by the Washoe County Public Defender. In 2018, these efforts led to the creation of immigration law specialist positions in the public defender offices for Clark and Washoe counties, the two most populous counties in Nevada.

### Grants and Honors:

- PUBLIC INTEREST LAW ASSOCIATION — SILVER STAIRCASE AWARD (lifetime achievement award for contributions to Nevada) (2022).
- ASIAN AMERICAN ADVOCACY CLINIC — UNSUNG HERO AWARD (2018).

- NEVADA SYSTEM OF HIGHER EDUCATION (NSHE) BOARD OF REGENTS recognition for the UNLV Immigration Clinic’s support for undocumented students (2018).
- LA VOZ (LATIN/HISPANIC LAW STUDENT ASSOCIATION) — ORGULLO DE NUESTRA COMUNIDAD (“Pride of the Community”) AWARD (2018).
- LEGAL AID CENTER OF SOUTHERN NEVADA — VOLUNTEER ATTORNEY OF THE MONTH (January 2018).
- FACULTY OPPORTUNITY AWARD (\$29,959) for *Gender, Judging and Deportation: The Immigration Appeals Databases Pilot Study* (2015-2016) (with Rebecca Gill and Fatma Marouf).
- Named 2013-2014 BELLOW SCHOLAR (Association of American Law Schools) for empirical research into the adjudication of immigration appeals in the federal courts.

#### **Honors for the UNLV Immigration Clinic:**

- NEVADA HISPANIC LEGISLATIVE CAUCUS — COMMITMENT TO SERVICE AWARD (2022).
- CLARK COUNTY LAW FOUNDATION — CHAMPION OF ADVOCACY AWARD (2019).
- UNLV STUDENT BAR ASSOCIATION — SERVICE AWARD (first annual) (2019).
- NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES — 2018 INNOVATOR OF THE YEAR (for the UNLV Immigration Clinic and UNLV Kids’ Court work with children).
- COLLEGE OF SOUTHERN NEVADA — DIVERSITY EXCELLENCE AWARD (2017-2018).

#### **Selected Service:**

- UNLV Faculty Senate Committee on Academic Freedom and Ethics (2021 – Present); Chair (2021-22).
- Elected by the law school faculty to Dean’s Advisory Committee (2012-2013, 2013-2014, 2015-2016).
- Appointed to the Nevada Indigent Defense Commission (2016 – 2019).

#### **Other Academic Affiliations**

REFUGEE LAW READER, *Special Editor* (<http://www.refugeelawreader.org>) (2017-18).

Tel Aviv University, Faculty of Law, Refugee Rights Clinic (guest instructor, 2014).

Northwestern University, Center for Forced Migration Studies, Affiliated Faculty (Summer Institute) (2012-2014).

American University in Cairo Center for Migration and Refugee Studies, Short course: *Palestinian Refugees* (February 2012).

#### **American University in Cairo**

*Senior Fellow in Human Rights Law* (2007-2009)

**Courses:** International Refugee Law, Comparative Migration Law (developed as a new course), Palestinian Refugee Issues (interdisciplinary graduate seminar). Supervised masters thesis research. Taught intensive short course on International Refugee Law in summer 2007.

#### **Tel Aviv University Faculty of Law (Refugee Rights Clinic)**

*Instructor* (2004 – 2006)

Helped lead the development of Israel's first legal aid program devoted to advocating the rights of asylum-seekers and refugees, including the development of a new curriculum. Taught refugee law to 20 students each year, and developed the academic curriculum for the clinic. Supervised student-led legal aid in some of Israel's earliest asylum cases.

Established a program supported by the UN Voluntary Fund for Victims of Torture to provide legal, medical and mental health services to asylum-seekers who are victims of torture.

Organized and taught Israel's first training seminars in asylum law for private lawyers.

Minerva Center for Human Rights grant to research the history of the enemy nationals doctrine in the Middle East (2004-2005).

### **American University in Cairo**

*Adjunct Faculty* (Forced Migration and Refugee Studies) (2002 - 2003).

Taught graduate practicum on Refugee Status Determination in Spring 2002, involving students in preparing live client refugee cases.

Taught intensive short course in Advanced Refugee and Human Rights Law (2003).

## **EDUCATION**

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<b>University of Michigan Law School</b>	Juris Doctor <i>Cum Laude</i> 2000
Bates Overseas Fellowship	2001
Colloquium on Challenges in International Refugee Law (Rapporteur)	2001
Michigan Fellow in Refugee and Asylum Law	2000
Research assistant to Prof. James C. Hathaway	1999-2000
Colloquium on Challenges in International Refugee Law (Student participant)	1999
Graduate Student Instructor (GSI); teaching assistant in undergraduate cinema and American history courses.	1998-2000
<b>Northwestern University College of Arts and Sciences</b>	B.A. <i>Cum Laude</i> 1997
Majors in Political Science and American Studies (departmental honors). Phi Beta Kappa Society	

## **MAJOR PUBLICATIONS**

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### **In Progress**

EXPERIENCING PROFESSIONAL RESPONSIBILITY (West Academic) (casebook, co-authored with Michael P. Maslanka and Nancy Dao).

RELATE: REFUGEE LAW TEACHING SUPPORT INITIATIVE, Editor-in-Chief of the English edition. Creating a UN-funded, internationally oriented internet-based refugee law curriculum intended for global use.

## Books

THE BATTLE TO STAY IN AMERICA: IMMIGRATION'S HIDDEN FRONT LINE (Univ. Nevada Press) (2020) (non-fiction trade book, current affairs/memoir).

Foreword Reviews INDIE Best Book of 2020 from a small, independent or university press (political and social sciences) (Gold Winner).

Reviewed positively in *New York Review of Books*, among other publications.

## Scholarly Works

*Mass Surrender in Immigration Court*, 14 UC IRVINE L. REV. \_\_\_\_ (pending).

*Nevada as an Example: Paving the Way for State Immigration Reform in Purple States*, \_\_NEV. L. J. \_\_\_\_ (pending) (with Jorge Padilla and Selena Torres).

*Regulatory Constitutional Law: Protecting Immigrant Free Speech Without Relying on the First Amendment*, 56 GA. L. REV. 1417 (2023) (invited symposium essay).

*In Defense of Deportation Defense*, 56 UC DAVIS L. REV. ONLINE 1 (2022)

*Chevron's Asylum: Reassessing Judicial Deference in Refugee Cases*, 58 HOUS. L. REV. 1119 (2021).

*Chevron's Liberty Exception*, 104 IOWA L. REV. 491 (2019). *Republication in IMMIGRATION AND NATIONALITY LAW REVIEW*.

*What We Talk About When We Talk About Sanctuary Cities*, 52 UC DAVIS L. REV. 391 (2018) (invited symposium essay).

*Toward Universal Deportation Defense: An Optimistic View*, 2018 WISC. L. REV. 305 (2018) (invited symposium essay). *Republished in IMMIGRATION AND NATIONALITY LAW REVIEW*.

*Loud and Soft Anti-Chevron Decisions*, 53 WAKE FOREST L. REV. 37 (2018).

*Invisible Adjudication in the U.S. Courts of Appeals*, 106 GEO. L. J. 683 (2018) (with Fatma Marouf and Rebecca Gill).

For review and commentary, see Gabriel Chin, *Hey Lexis, Hey Westlaw: Please Include All Appellate Decisions in Your Databases*, JOTWELL (Nov. 20, 2017).

*The Public Defender's Pin: Untangling Free Speech Regulation in the Courtroom*, 112 NW. U. L. REV. 1245 (2018) (essay).

*The Impact of Maleness on Judicial Decision Making: Masculinity, Chivalry, and Immigration Appeals*, 7:3 POL. GROUPS, & IDENTITIES 509-528 (2017) (peer reviewed) (with Fatma Marouf and Rebecca Gill), <http://www.tandfonline.com/doi/full/10.1080/21565503.2017.1386572>.

Preliminary report of this research profiled by Joe Palazzolo, *In Federal Appeals Courts, Chivalry Is Not Dead*, THE WALL STREET JOURNAL, LAW BLOG, June 12, 2015, <http://blogs.wsj.com/law/2015/06/12/in-federal-appeals-courts-chivalry-is-not-dead/>.

For earlier version, see Rebecca Gill, Michael Kagan, and Fatma Marouf, *Chivalry, Masculinity and the Importance of Maleness to Judicial Decision Making* (2015, working paper). Available at SSRN: <http://ssrn.com/abstract=2616502>.

*(Avoiding) The End of Refugee Status Determination*, 10 J. HUM. RTS. PRACT. 197 (2017) (essay).

*Is the Chinese Exclusion Case Still Good Law? (The President is Trying to Find Out)* 1 NEV. L. J. FORUM 80 (2017) (essay).

*Shrinking the Post-Plenary Power Problem*, 68 FLA. L. REV. FORUM 59 (2016) (essay).

*When Immigrants Speak: The Precarious Status of Non-Citizen Speech Under the First Amendment*, 57 B.C. L. REV. 1237 (2016).

Included in RODNEY A. SMOLLA, *FIRST AMENDMENT LAW HANDBOOK 2017-2018*.

*Limiting Deterrence: Judicial Resistance to Detention of Asylum-Seekers in Israel and the United States*, 51 TEX. INT'L L. J. 191 (2016) (symposium essay).

*The New Era of Presidential Immigration Policy*, 55 WASHBURN L. J. 117 (2016) (symposium essay).

*Binding the Enforcers: The Administrative Law Struggle Behind Pres. Obama's Immigration Actions*, 50 U. RICH. L. REV. 665 (2016).

*Plenary Power Is Dead! Long Live Plenary Power!* 114 MICH. L. REV. FIRST IMPRESSIONS 21 (2015) (essay).

*Immigration Law's Looming Fourth Amendment Problem*, 104 GEO. L. J. 125 (2015).

*Speaker Discrimination: The Next Frontier of Free Speech*, 42 FLA. ST. U. L. REV. 765 (2015).

For commentary, see *First Amendment: Speech -- Doe v. Harris*, 128 HARV. L. REV. 2082 (2015).

*Do Immigrants Have Freedom of Speech?* 6 CAL. L. REV. CIRCUIT 84 (2015) (essay).

*Immigrant Victims, Immigrant Accusers*, 48 U. MICH. J. L. REFORM 915 (2015).

*A Taxonomy of Discretion: Refining the Legality Debate About Obama's Executive Actions on Immigration*, 92 WASH. U. L. REV. 1083 (2015) (essay).

*Refugees and Israel's Shifting Concept of the 'Enemy National,'* in *REFUGEES IN ISRAEL* (Tally Kritzman-Amir, ed.) (Hebrew, Kibbutz Meuchad — Van Leer Institute) (solicited chapter, translated for publication) (2015).

*Believable Victims: Asylum Credibility and the Struggle for Objectivity*, 16 GEO. J. INT'L AFF. 123 (Winter/Spring 2015) (essay).

*"Unelected Faculty: " Schuette v. Coalition and the Limits of Academic Freedom*, 5 CAL. L. REV. CIRCUIT 326 (2014) (essay).

*Must Israel Accept Syrian Refugees?* 50 TEX. INT'L L. J. FORUM 1 (2014) (essay).

*Buying Time? False Assumptions About Abusive Appeals*, 63 CATH. U. L. REV. 679 (2014) (with Fatma Marouf and Rebecca Gill).

For commentary, see Jill E. Family, *Removing the Distraction of Delay*, 64 CATH. U. L. REV. 99, 100, 110 (2014).

*Justice on the Fly: The Danger of Errant Deportations*, 75 OHIO ST. L. J. 337 (2014) (with Fatma Marouf and Rebecca Gill). *Republished in* IMMIGRATION AND NATIONALITY LAW REVIEW.

Research findings highlighted in Fatma Marouf, Michael Kagan and Rebecca Gill, *A Stay on Deportations*, THE WASHINGTON POST (2 August 2015).

For commentary, see Christopher J. Walker, 75 OHIO ST. L. J. FURTHERMORE 29 (2014) and Chris Walker in YALE JOURNAL ON REGULATION NOTICE AND COMMENT, <http://www.yalejreg.com/blog/marouf-kagan-gill-on-empirical-realities-of-immigration-stays-adlaw-bridge-series-by-chris-walker> (16 October 2014); Kevin J. Lynch, *The Lock-In Effect of Preliminary Injunctions*, 66 FLA. L. REV. 779, 811-812 (2014).

CREDIBILITY ASSESSMENT IN ASYLUM PROCEDURES – A MULTIDISCIPLINARY TRAINING MANUAL, Hungarian Helsinki Committee (2013), available at: <http://www.refworld.org/docid/5253bd9a4.html> (Gábor Gyulai, Ed.; with Jane Herlihy, Stuart Turner, Lilla Hárdi & Éva Tessza Udvarhelyi).

*Dubious Deference: Re-Assessing Appellate Standards of Review in Immigration Appeals*, 5 DREXEL L. REV. 101 (2012).

*The UN “Surrogate State” and the Foundation of Refugee Policy in the Middle East*, 18 U.C. DAVIS J. INT’L L. & POL. 307 (2012).

*Shared responsibility in a new Egypt: A strategy for refugee protection*, American University in Cairo Center for Migration and Refugee Studies (2011), available at: <http://www.aucegypt.edu/gapp/cmrs/documents/kaganrefugeepolicyegypt1109.pdf>.

*Refugee Credibility Assessment and the “Religious Imposter” Problem*, 43:5 VAND. J. TRANSNAT’L L. 1179 (2010).

*Is There Really a Protection Gap? UNRWA’s Role vis-à-vis Palestinian Refugees*, 28 REFUGEE SURV. Q. 511 (2010).

*The (relative) Decline of Palestinian Exceptionalism and its Consequences for Refugee Studies in the Middle East*, 22:4 J. REFUGEE STUD. 417 (2009).

*Rights, Needs and Responsibility: Challenges to Rights-Based Advocacy for Non-Palestinian Refugees’ Health and Education in Lebanon* (with Samira Trad), in FORCED DISPLACEMENT: WHY RIGHTS MATTER? (Lyla Mehta and Kasia Grabska, editors) (Palgrave Press 2008).

*Nowhere to Run: Gay Palestinian Asylum-Seekers in Israel*, Tel Aviv University Public Interest Law Program (2008), available at [http://www.law.tau.ac.il/Heb/\\_Uploads/dbsAttachedFiles/NowheretoRun.pdf](http://www.law.tau.ac.il/Heb/_Uploads/dbsAttachedFiles/NowheretoRun.pdf) (with Anat Ben-Dor).

*Restitution as a Remedy for Refugee Property Claims in the Israeli-Palestinian Conflict*, 19:2 FLA. J. INT’L L. 421 (2007).

*Destructive Ambiguity: Enemy Nationals and the Legal Enabling of Ethnic Conflict in the Middle East*, 38:2 COLUM. HUM. RTS. L. REV. 263 (2007).

*Legal Refugee Recognition in the Urban South: Formal v. De Facto Refugee Status*, 24:1 REFUGE: CANADA’S PERIODICAL ON REFUGEES 11-26 (2007).

*Politically-Preferred Solutions and Refugee Choices: Applying the Lessons of Iraq to Palestine*, in PALESTINIAN REFUGEE REPATRIATION: GLOBAL PERSPECTIVES at 250 (Michael Dumper, ed.) (Routledge 2006).

*Setting Standards of Ethics, Competence and Accountability for Legal Aid in the Context of UNHCR RSD, Asylum Access working paper (2006) (available at <http://rsdwatch.files.wordpress.com/2010/05/kaganethicswpproposal.pdf>).*

Became the basis for the Nairobi Code: Model Rules of Ethics for Legal Advisors in Refugee Cases, 19:4 INT'L J. REFUGEE L. 736 (2007).

*Frontier Justice: Legal Aid and UNHCR Refugee Status Determination in Egypt*, 19:1 J. REFUGEE STUD. 45 (2006).

*The Beleaguered Gatekeeper: Protection Challenges Posed by UNHCR Refugee Status Determination*, 18:1 INT'L J. REFUGEE L. 1 (2006).

Included as a "core" reading in REFUGEE LAW READER, [www.refugeelawreader.org](http://www.refugeelawreader.org), and in JAMES C. HATHAWAY (ED.), HUMAN RIGHTS AND REFUGEE LAW (2014).

*Do Israeli Rights Conflict with the Palestinian Right of Return? Identifying the Possible Legal Arguments*, Badil Resource Center or Palestinian Residency and Refugee Rights Working Paper No. 10 (2005) (available at <http://www.badil.org/en/al-majdal/item/936-do-israeli-rights-conflictwiththepalestinian-right-of-return?identifying-possible-legal-arguments>).

*Falling Through the Cracks: Legal and Practical Gaps in Palestinian Refugee Status – A case study of unrecognized refugees in Lebanon*, legal consultant on report by Frontiers Association (Beirut, Lebanon) (2005).

*Is Truth in the Eye of the Beholder? Objective Credibility Assessment in Refugee Status Determination*, 17 GEO. IMMIGR. L. J. 367 (2003).

Cited in *Kadia v. Gonzales*, 501 F.3d 817 (7th Cir. 2007) (J. Posner) and *J. Singh v. Gonzales*, 403 F.3d 1081 (9th Cir. 2005) (J. Berzon).

Cited by the High Court of Israel, HCJ 8870/11 *Gonzalez v. Ministry of Interior* [2013](Isr.).

Included as a "core" reading in REFUGEE LAW READER, [www.refugeelawreader.org](http://www.refugeelawreader.org).

Translated to Spanish by the UN High Commissioner for Refugees in 2007 for use by adjudicators and lawyers in Spain.

For praise of this article, see, e.g., James P. Eyster, *Searching for the Key in the Wrong Place: Why "Common Sense" Credibility Rules Consistently Harm Refugees*, 30 B.U. INT'L L. J. 1, 14, FN 61 (2012) ("Kagan's thoughts and conclusions about credibility determinations expressed in this article have guided most subsequent research and analysis on the topic."); James A. Sweeney, *Credibility, Proof and Refugee Law*, 21 INT'L J. REFUGEE L. 700 (2009); Rosemary Byrne, *Assessing Testimonial Evidence in Asylum Proceedings: Guiding Standards from the International Criminal Tribunals*, 19(4) INT'L J. REFUGEE L. 609 (2007); and Deborah Anker and Mathew Muller, *Book Review*, 19 INT'L J. REFUGEE L. 599, 600 (2007).

*Assessment of Refugee Status Determination Procedure at UNHCR's Cairo Office 2001-2002*, American University in Cairo Forced Migration and Refugee Studies Working Paper No. 1 (2002), (available at <http://www.aucegypt.edu/academic/fmrs>).

*Persecution in the Fog of War: The House of Lords' Decision in Adan*, 23 MICH. J. INT'L L. 247 (2002) (with William P. Johnson).

Cited in *Refugee Appeal 72635/01* of 6 September 2002, New Zealand Refugee Status Appeals Authority).

## SELECTED SHORTER FORM WRITING

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### Op-Ed Writing

*Building a better DACA*, THE HILL (December 23, 2020), available at <https://thehill.com/opinion/immigration/529902-building-a-better-daca>.

*The Life and Death of Manuela Guzman*, THE NEVADA INDEPENDENT (November 25, 2020), available at <https://thenevadaindependent.com/article/the-life-and-death-of-manuela-guzman>.

*A Federal Court May Have Declared Immigration Arrests Unconstitutional*, THE HILL (September 21, 2020), available at <https://thehill.com/opinion/immigration/516740-a-federal-court-may-have-declared-immigration-arrests-unconstitutional>.

*It's time for Nevada leaders to step up to protect DREAMers*, THE NEVADA INDEPENDENT (July 31, 2020), available at <https://thenevadaindependent.com/article/its-time-for-nevada-leaders-to-step-up-to-protect-dreamers>. (Co-authored with Maria Nieto Orta.)

*Grading the Top Candidates' Immigration Plans*, MEDIUM.COM (January 13, 2020), available at <https://medium.com/@kaganm/grading-the-top-candidates-immigration-plans-c811070dee4>.

*A Nevada ICE Official Echoes White Supremacists, Police need to keep their distance*, THE NEVADA INDEPENDENT (September 10, 2019), available at <https://thenevadaindependent.com/article/a-nevada-ice-official-echoes-white-supremacists-nevada-police-need-to-keep-their-distance>. (Co-authored with Raquel Cruz-Juarez.)

*Five Immigration Questions for Nevada Candidates*, THE NEVADA INDEPENDENT (April 30, 2018), available at <https://thenevadaindependent.com/article/five-immigration-questions-for-nevada-candidates>.

*Jeff Sessions Doesn't Care About Children Seeking Asylum*, THE WASHINGTON POST (Oct. 20, 2017).

*The Truth About Sanctuary Cities*, THE NEVADA INDEPENDENT (June 14, 2017), available at <https://thenevadaindependent.com/article/sanctuary-campaigns-a-political-liability>.

*What Do We Mean When We Talk About Sanctuary Cities?* THE NEVADA INDEPENDENT (May 14, 2017), available at <https://thenevadaindependent.com/article/what-do-we-mean-when-we-talk-about-sanctuary-cities>.

*Teaching Immigration Law in the Age of Trump*, THE CHRONICLE OF HIGHER EDUCATION (January 2017).

*A Stay on Deportations*, THE WASHINGTON POST (August 2, 2015) (with Fatma Marouf and Rebecca Gill).

*On one hand, Obama applauds immigrant activists – as a Texas case argues that unauthorized immigrants have no First Amendment rights*, SALON (May 4, 2015), available at [http://www.salon.com/2015/05/14/on\\_one\\_hand\\_obama\\_applauds\\_immigrant\\_activists\\_as\\_a\\_texas\\_case\\_argues\\_that\\_unauthorized\\_immigrants\\_have\\_no\\_first\\_amendment\\_rights/](http://www.salon.com/2015/05/14/on_one_hand_obama_applauds_immigrant_activists_as_a_texas_case_argues_that_unauthorized_immigrants_have_no_first_amendment_rights/).

*The Conservative Case for DACA: The Intriguing Legal Theory You Won't Hear on Fox News*, SALON (February 19, 2015), available at [http://www.salon.com/2015/02/19/the\\_conservative\\_case\\_for\\_daca\\_the\\_intriguing\\_legal\\_theory\\_you\\_wont\\_hear\\_on\\_fox\\_news/](http://www.salon.com/2015/02/19/the_conservative_case_for_daca_the_intriguing_legal_theory_you_wont_hear_on_fox_news/).

*When Peace Seems Impossible*, THE DAILY BEAST (May 21, 2012).

*Refugees and Obama's American Values*, SEATTLE POST-INTELLIGENCER (December 9, 2008).



*Stop Subsidizing Occupation*, SEATTLE POST-INTELLIGENCER (Guest Op-Ed Column) (January 25, 2005).

## Legal Blogging

*Chevron Goes Missing In An Immigration Case. Again.* YALE J. ON REG.: NOTICE & COMMENT (March 19, 2019), <http://yalejreg.com/nc/chevron-goes-missing-in-an-immigration-case-again/>.

*Brett Kavanaugh and the Case of the Brazilian Gauchos*, YALE J. ON REG.: NOTICE & COMMENT (July 24, 2018), <http://yalejreg.com/nc/brett-kavanaugh-and-the-case-of-the-brazilian-gauchos/>.

*Immigration Cases Make Strange Bedfellows. But Is It a Long-Term Relationship?*, LAW AND LIBERTY (April 26, 2018), <http://www.libertylawsite.org/2018/04/26/immigration-cases-make-strange-bedfellows-but-is-it-a-long-term-relationship-dimaya-sessions-neil-gorsuch/>.

*Should Federal Courts Defer to Jeff Sessions in Immigration Case*, LAW AND LIBERTY (March 27, 2018), <http://www.libertylawsite.org/2018/03/27/should-federal-courts-defer-to-jeff-sessions-in-deportation-case-judicial-deference-immigration-chevron-gorsuch/>.

*Jennings v. Rodriguez Might Not Be About Immigration After All*, YALE J. ON REG.: NOTICE & COMMENT (March 2, 2018), <http://yalejreg.com/nc/jennings-v-rodriguez-might-not-be-about-immigration-after-all/>.

*What 2016 Gorsuch Opinions Could Mean for 2017 Re-Argument in Sessions v. Dimaya*, YALE J. ON REG.: NOTICE & COMMENT (July 3, 2017), <http://yalejreg.com/nc/what-2016-gorsuch-opinions-could-mean-for-2017-re-argument-in-sessions-v-dimaya/>.

*Chevron's Immigration Exception, Revisited.* YALE J. ON REG.: NOTICE & COMMENT (June 10, 2016), <http://www.yalejreg.com/blog/chevron-s-immigration-exception-revisited-by-michael-kagan>.

*Does Chevron Have an Immigration Exception?* YALE J. ON REG.: NOTICE & COMMENT (May 19, 2016), <http://www.yalejreg.com/blog/does-chevron-have-an-immigration-exception-by-michael-kagan>.

*U.S. v. Texas: Some Observations as Briefing Begins*, YALE J. ON REG.: NOTICE & COMMENT (March 9, 2016), <http://www.yalejreg.com/blog/u-s-v-texas-some-observations-as-the-briefing-begins>.

*Immigration Law is Torn Between Administrative Law and Criminal Law*, YALE J. ON REG.: NOTICE & COMMENT (February 12, 2016), <http://www.yalejreg.com/blog/immigration-law-is-torn-between-administrative-law-and-criminal-law-by-michael-kagan>.

*DAPA's Unlawful Presence Problem*, YALE J. ON REG.: NOTICE & COMMENT (February 6, 2016), <http://www.yalejreg.com/blog/dapa-s-unlawful-presence-problem-by-michael-kagan>.

*What If Donald Trump Had Plenary Power?* IMMIGRATIONPROF BLOG (December 7, 2015), [http://lawprofessors.typepad.com/immigration/2015/12/what-if-donald-trump-had-plenary-power-by-michael-kagan.html#\\_msoanchor\\_1](http://lawprofessors.typepad.com/immigration/2015/12/what-if-donald-trump-had-plenary-power-by-michael-kagan.html#_msoanchor_1).

*The Uses and Abuses of Notice and Comment*, IMMIGRATIONPROF BLOG (On-Line Symposium on Texas v. United States) (November 22, 2015),

<http://lawprofessors.typepad.com/immigration/2015/11/on-line-sypoisum-on-texas-v-united-states-michael-kagan-.html>.

*Immigration Arrests Violate the Fourth Amendment*, CRIMMIGRATION.COM (November 12, 2015), <http://crimmigration.com/2015/11/12/immigration-arrests-violate-the-fourth-amendment/>.

*Married, But Separated (Symposium on Kerry v. Din)*, IMMIGRATIONPROF BLOG (On-Line Symposium on Kerry v. Din) (June 18, 2015), available at <http://lawprofessors.typepad.com/immigration/2015/06/symposium-on-kerry-v-din-married-but-separated-by-by-michael-kagan.html>.

*Guest Blog: When UNHCR Does the State's Job: Coping with the reality of mandate status determination*, UN HIGH COMMISSIONER FOR REFUGEES: GLOBAL VIEWS (December 11, 2014), available at <http://blog.unhcr.org/globalviews/when-unhcr-does-the-states-job-coping-with-the-reality-of-mandate-status-determination/>.

*Guest Blog: UNHCR Faces an RSD Crisis*, REFLAW.ORG (University of Michigan Law School) (November 10, 2014), available at <http://www.reflaw.org/unhcr-faces-an-rsd-crisis/>.

*Guest Blog: Commentary on Scialabba v. Cuellar de Osorio*, HAMILTON AND GRIFFIN ON RIGHTS (June 11, 2014), available at <http://hamilton-griffin.com/guest-blog-professor-michael-kagan-scialabba-v-cuellar-de-osorio/>; featured on SCOTUSBLOG <http://www.scotusblog.com/2014/06/wednesday-round-up-234/#more-212871>.

*Why Do We Still Have Refugee Camps*, URBANREFUGEES.ORG (October 8, 2013), <http://urban-refugees.org/debate/why-do-we-still-have-refugee-camps/>.

*Response on LGBT Asylum and Refugee Law*, NYU LAW REVIEW OPINIO JURIS (online) (March 29, 2012) available at: <http://opiniojuris.org/2012/03/29/follow-up-to-nyu-jilp-symposium-on-lgbt-asylum-and-refugee-law/>.

## Foreign Policy Commentary

*Decade of Exile: Syria and the Middle East's Refugee Crisis*, WORLD POLITICS REVIEW (June 23, 2015), available at <http://www.worldpoliticsreview.com/articles/16070/decade-of-exile-syria-and-the-middle-east-s-refugee-crisis>.

*Safe Harbor: Shoring Up the Norm of Nonrefoulement*, WORLD POLITICS REVIEW (Dec. 3, 2013), available at <http://www.worldpoliticsreview.com/articles/13410/safe-harbor-shoring-up-the-norm-of-nonrefoulement>.

*Darfur*, entry in INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES, 2<sup>ND</sup> EDITION (MacMillan Reference 2008).

*UN Reform for the Rest of Us: An Agenda for Grassroots Accountability*, FOREIGN POLICY IN FOCUS (www.fpif.org) (April 14, 2006).

*Israel Tries to Tighten Immigration by Following Europe*, AL MAJDAL (Quarterly magazine of the Badil Resource Center for Palestinian Residency & Refugee Rights) No. 27 (Autumn 2005).

*UN Decision-Making on Refugee Status: Implications for American Asylum Policy* (with Emily Arnold-Fernandez), AMERICAN BAR ASSOCIATION IMMIGRATION AND NATURALIZATION COMMITTEE NEWSLETTER (Summer 2005).

*The Missing Third Leg of UN Accountability*, FOREIGN POLICY IN FOCUS (<http://www.fpif.org/fpifxt/468>) (June 23, 2005).

*At the UN, Palestinian Democracy Tests American and Israeli Limits*, THE ELECTRONIC INTIFADA (available at: [electronicintifada.net/v2/article3882.shtml](http://electronicintifada.net/v2/article3882.shtml)) (May 26, 2005).

*Book Review: Rights in Exile — Janus-Faced Humanitarianism (by Guglielmo Verdirame and Barbara Harrell-Bond)*, 18 JOURNAL OF REFUGEE STUDIES 241 (2005).

*Protecting the Rights of Refugees in Africa: Beginning with the UN Gatekeeper* (with Barbara Harrell-Bond), PAMBAZUKA NEWS 182 (November 11, 2004); re-published in AFRICAN VOICES ON DEVELOPMENT AND SOCIAL JUSTICE (Mkuki Na Nyota Publishers 2005).

*Building Lives on the Edge of War: Sudanese Refugees in Northern Uganda Struggle in Limbo*, THE NEXT AMERICAN CITY (July 2004) (<http://americancity.org/magazine/article/building-lives-on-the-edge-of-war-sudanese-refugees-kagan/>).

*Promises Without Solutions: Iraqi Refugees Left in the Lurch in Lebanon* (with Bashir Osmat and Samira Trad), 18 FORCED MIGRATION REVIEW 42 (2003).

**Personal Blog** : RSDWATCH.COM (*dormant since 2016*).

Established in 2005 to provide independent information about the way the UN refugee agency conducts refugee status determination, and promoting due process reforms.

## SELECTED ACADEMIC PRESENTATIONS & LECTURES

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Keynote Lecture, Reedley College, Individual Liberties and the Constitution Conference (September 24, 2020).

*The Due Process of Cruelty: Trump's Immigration Policy and the Rule of Law*, University of Michigan, Donia Human Rights Center Lecture (October 2019).

*The Path Toward Global Refugee Legal Aid* (convened and chaired panel), International Association for the Study of Forced Migration bi-annual conference, University of Macedonia, Thessaloniki, Greece (July 2018).

*Is a Non-Racist Immigration Law Possible?* Duke Law School, Identity and Politics Speaker/Seminar Series (February 2018).

*Presidential Immigration Law and Endemic Policy Instability*, University of Arizona James E. Rogers College of Law, Rehnquist Center Symposium "Immigration Federalism," (February 2017).

*The End of Refugee Status Determination?* Connecticut Journal of International Law, Symposium on the Global Refugee Crisis, University of Connecticut School of Law (April 2016); International Association for the Study of Forced Migration (Poznan, Poland) (July 2016).

*Nowhere to Run: Gay Palestinian Asylum-Seekers in Israel*, University of Arizona Center for Judaic Studies, Sally & Ralph Duchin Campus Lecture Series (February 2016).

*Finding Refuge: Can Non-Jews Seek Asylum in the Jewish State?* University of Arizona, Pozez Family Lecture (February 2016).

*The Limits of Deterrence, Constitutional Conflicts in Comparative Perspective*, Cardozo School of Law (May 2015).

*Masculinity, Chivalry, and the Gender Gap in Immigration Appeals* (with Fatma Marouf and Rebecca Gill), Western Political Science Association Annual Conference (April 2015).

*Immigrant Victims, Immigrant Accusers*, Symposium: Immigration Reform at 59, University of Michigan Law School (February 2015).

*Dangerous Women and Children*, Symposium: Immigration and Freedom of Movement, University of Texas Law School (February 2015).

*Gendered Justice: The Complex Relationship Between Gender-of-Judge, Gender-of-Attorney, and Gender-of-Litigant Effects in Immigration Appeals on the US Courts of Appeals*, Midwest Political Science Association Conference (April 2014) (with Rebecca Gill and Fatma Marouf).

*We Know We Can't Spot a Liar, But Does the Law Care?* UNLV Saltman Center Conference on Psychology and Lawyering (February 2014).

*Refugee Status Determination in the Middle East and Africa*, UC San Diego Center for Comparative Immigration Studies, Workshop on "Determinants of Refugee and Asylum Admissions Policy in Comparative Perspective" (November 2013).

*The UN Surrogate State Beyond the Camp and the Challenge of Accountability*, University of Connecticut, Human Rights Institute 10<sup>th</sup> Anniversary Conference (September 2013).

*The Price of a Day in Court (Empirical Study of Immigrant Access to the Federal Courts)*, Association of American Law Schools Mid-Year Meeting on Poverty, Immigration and Property (June 2013) (with Fatma Marouf).

*Urban Displacement and The Value of the UN Surrogate State*, Humanitarian Policy Group conference on Urban Displacement and Development (Copenhagen, Denmark) (invited presentation, February 2013).

*The Double Life of Temporary Protection*, panel presentation, Conference on the Israeli Asylum System, The Center on Law and Business (Tel Aviv, Israel – presentation via Skype) (November 2012).

*We Live in a Country of UNHCR: The UN Surrogate State as an Alternative Basis for Refugee Rights*, International Conference on Law and Society, Honolulu (June 2012).

*Refugees to and from the Arab Spring*, American University in Cairo Center for Migration and Refugee Studies (February 2012).

*Dubious Deference: Appellate Review in Factual Adjudication by Administrative Agencies*, Rocky Mountain Junior Scholars Forum (Brigham Young University, September 2011).

*Refugees and Israel's Shifting Concept of the Enemy National*, invited lecture and book chapter in progress, Van Leer Institute (Tel Aviv University, April 2010).

*The State of Refugee Protection in Israel and the Role of the Judiciary*, 8<sup>th</sup> World Conference of the International Association of Refugee Law Judges (Cape Town, January 2009).

*Presentations in Favor of the Palestinian Right of Return and Right to Seek Asylum*, Tel Aviv University conference on the development of an Israeli asylum system (Tel Aviv, April 2008).

*Responsibility Shift: The Challenge of Defining UN and Government roles in Refugee Policy in the Middle East*, American University in Cairo Forced Migration and Refugee Studies seminar (Cairo, March 2008).

*For the Palestinian Right of Return*, debate forum sponsored by Nakhba60, School of Oriental and African Studies (London, January 2008).

*How Well-Founded Should be the Well-Founded Fear of Persecution?*, presentation to Seminar on Credibility Assessment in the Spanish Asylum System (sponsored by UNHCR & Spanish Interior Ministry) (Madrid, November 2007).

*The Decline of Palestinian Exceptionalism: Observation of a Trend*, presentation to American University in Cairo conference on Migration and Refugee Movements in the Middle East and Northeastern Africa (Cairo, October 2007), and at the eleventh bi-annual International Association for the Study of Forced Migration conference (Cairo, January 2008).

*The Refugee from My Enemy is My Enemy: The Detention and Exclusion of Sudanese Refugees in Israel* (with Anat Ben-Dor), Minerva Center for Human Rights, Biannual Conference on Human Rights in Israel (Tel Aviv, December 2006).

*Turkey's Emerging Refugee Law in the Context of International Standards*, Speaker on "International Refugee and Human Rights Law" and workshop moderator on "Refugee Status Determination," Conference organized by the Heinrich Boll Foundation (Istanbul, April 2005).

*Should UNHCR Conduct Refugee Status Determination?* American University in Cairo Forced Migration and Refugee Studies Seminar (Cairo, February 2005).

## **PROFESSIONAL EXPERIENCE**

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### **Asylum Access (San Francisco, CA)**

*Policy Director* (Volunteer 2006 -2009; Paid November 2009 – May 2011)

Originally part of a small group of activists that co-founded Asylum Access in 2005, and worked pro bono in different capacities for the organization until joining headquarters staff in November 2009.

Coordinated global policy advocacy activities for a young US-based international refugee rights organization operating legal aid programs on three continents, involving pro bono law firms, law student interns and staff. Developed strategic plans for Washington and Geneva-focused advocacy and led the organization in building key relationships with US and UN officials. Developed training materials on policy advocacy strategy for Asylum Access. Spearheaded continuing advocacy to improve standards of due process in UNHCR's refugee status determination procedures, leading UNHCR to revise a long-standing policy that had blocked disclosure of evidence to asylum-seekers. Represented Asylum Access at annual UNHCR consultations in Geneva.

From November 2009 to July 2010, served as headquarters liaison with Asylum Access' legal aid program in Thailand, supervising staff and budget planning, legal aid policy, and guiding the program through security crises in Bangkok.

Helped organize the first Southern Refugee Legal Aid Conference (SRLAC) in Nairobi, Kenya, in 2007, and wrote initial drafts for the Model Rules of Ethics for Legal Advisors in Refugee Cases (Nairobi Code) which was promulgated at the conference. Instrumental in initiating the Southern Refugee Legal Aid Network (SRLAN).

### **Africa Middle East Refugee Assistance (AMERA) (Cairo, Egypt)**

*Egypt Country Director (Acting) (2008)*

*Programmes Director (2007)*

Managed the daily operations of a UK-based refugee legal aid organization serving more than 1100 refugees per year with a budget of more than \$400,000, 20-25 paid staff, 30 interpreters and between 10 and 15 volunteers. Led efforts to integrate legal aid, psycho-social services and community outreach to refugees into a coherent program, and helped deepen organizational relationships with the UN High Commissioner for Refugees.

In 2007, chaired the Senior Management Team during a year of institutional transition, taking lead responsibility for handling personnel matters and strategic planning. Asked by the Board of Directors in 2008 to return as acting country director to restructure management. Over a five-month period I restructured office management, hired a new financial manager and supervised the establishment of new financial monitoring systems, and laid groundwork for a stable local management system to go into place in 2009.

**Negotiations Support Unit (Adam Smith International) (Ramallah, West Bank)**

*Legal Consultant (Occasional from 2004 – 2009)*

Commissioned in 2004 to prepare a legal opinion on property restitution rights of Palestinian refugees. Occasional consultation subsequently on international legal issues related to the Israeli-Palestinian conflict.

**Frontiers Association (Beirut, Lebanon)**

*International Legal Consultant (December 2002 - February 2004)*

Working with a group of Lebanese human rights activists, participated in the planning and founding of a new NGO focusing mainly on refugees, until work was obstructed in September 2003 by the arrest on political charges of the center director. Designed a legal counseling program for asylum-seekers, trained and supervised the counseling staff, and wrote research and advocacy reports. Planned research about the voluntariness of Iraqi repatriation. Participated in general managerial decision-making, including recruitment and personnel decisions, budgets, and fundraising.

Conducted legal analysis of the rights of Palestinian refugees in Lebanon who are not registered with UNRWA or Lebanese authorities, published in a report called *Falling through the Cracks* (2005).

**Musa'adeen Refugee Project (Cairo, Egypt)**

*Legal Adviser & Coordinator (August 2001 - November 2002)*

Supported by Yale Initiative for Public Interest Law Fellowship.

Developed and coordinated program to train and organize refugees to help other refugees prepare refugee claims to the UN refugee agency (UNHCR) to protect them from being deported and to access resettlement to the US, Canada and Australia.

Helped develop a supervisory system to improve the quality of casework, established regular information sessions taught by refugees to refugees, organized informational meetings for refugee community leaders, and obtained small grants to support the program.

The program provided individual assistance to more than 200 asylum-seekers over a 12-month period, and taught informational classes to approximately 700.

**Egyptian Organization for Human Rights Refugee Legal Aid (Cairo, Egypt)**

*Consulting Lawyer (August 2001 - November 2002)*

Organized efforts to document refugee protection practices in Egypt in order to promote improvements in refugee policy. This began in late 2001 with a joint letter from Egyptian human rights groups asking for UNHCR to provide rejected asylum-seekers reasons for

rejection, and led in Fall 2002 to the initiation of a series of periodic working papers researched and published by the American University in Cairo.

Initiated and supervised early research on protection of unaccompanied minors and detention of asylum-seekers in Egypt. Also provided general assistance supervising legal aid casework.

**Amnesty International, International Secretariat** (London, England)

*Refugee Policy Consultant* (March - July 2001)

Wrote an Amnesty International policy on the disputed refugee law doctrine called the internal protection alternative (“internal flight alternative”).

**Amnesty International, International Secretariat** (London, England)

*Refugee Team Intern* (Summer 2000)

**Honigman Miller Schwartz and Cohn** (Detroit, Michigan)

*Summer Associate* (2000)

**American Civil Liberties Union of Washington** (Seattle, Washington)

*Law Clerk* (Summer 1999)

Conducted legal research to support litigation in separation of church and state cases, including a school district teaching “intelligent design” creationism in a biology class. Researched systemic inadequacy of criminal defense in Washington State. Drafted legal responses to speech restrictions in preparation for the 1999 World Trade Organization conference in Seattle.

**Center for Human Rights Legal Aid** (Cairo, Egypt)

*Constitutional Project Intern* (June - December 1998)

Researched international and regional human rights law related to freedom of political association. This research led to the publication of a book series in Arabic, Freedom of Association and Political Parties in Egypt (2003).

Represented an Algerian man seeking refugee protection, and continued to provide advocacy for around two dozen asylum-seekers after leaving Egypt, working by e-mail with refugees in Egypt and with staff at the American University in Cairo.

## **PROFESSIONAL CREDENTIALS**

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Member of the New York State Bar

Admitted for limited clinical practice in the State of Nevada

Admitted to practice in the Ninth Circuit Court of Appeals

Admitted to practice in the Fifth Circuit Court of Appeals