

US Supreme Court

Case: INS v. Aguirre-Aguirre, 526 U.S. 415 (1999)

Date: May 3, 1999

Votes: Unanimous

Opinion: Kennedy

Tags: Immigration, asylum, withholding of deportation, political opinion, serious nonpolitical crimes, burning buses, atrocious acts

Question(s) Presented: Did BIA err in denying withholding of removal to respondent when it found that he had engaged in “serious nonpolitical crimes”?

Holdings: 9th Circuit decision reversed because it didn’t give *Chevron* deference to BIA’s understanding of “serious nonpolitical crime” exception.

Rationale:

- “Given the violent nature of respondent’s acts, and the fact the acts were in large part directed against innocent civilians,” respondent was ineligible for withholding/asylum. (423)
- Respondent’s acts did not have to reach a finding of “atrociousness” to qualify as “serious nonpolitical crimes.”

Facts: Guatemalan native charged with deportability for illegal entry into the U.S. Applied for asylum & withholding. Testimony about political activity and threats, as well as protests of high bus fares and disappearance of students. (Would set buses on fire, riot in stores.)

Legal History, Prior Appeals & Trial Court Input:

- **IJ:** Testimony included political activity. IJ granted applications because of likelihood of persecution for political activities.
- **BIA:** respondent not entitled to withholding of removal because of serious nonpolitical crimes. IJ’s order vacated; respondent ordered removed.
- **9th Circuit CA:** “BIA had applied incorrect interpretation of the serious nonpolitical crimes provision”; case remanded. (418) BIA should have considered 9th Circuit’s own precedent re. political success and necessity of protester’s methods, and they ought to have balanced respondent’s criminal acts against the risk of persecution if he returned to Guatemala.

Attorneys’ Arguments:

- **For Gov’t:** the disproportionately destructive nature of the acts outweighed the political necessity of them.
- **For Respondent:** the political necessity of the acts outweighed their criminal nature.

Appeals to Statute & Precedent:

- **8 U. S. C. § 1253(h)(1):** withholding of deportation mandatory if life or freedom would be threatened on account of protected ground.
- **8 U. S. C. § 1253(h)(2)(C):** Withholding does not apply if AG believes “there are serious reasons for considering that the alien has committed a serious nonpolitical crime outside the U. D. prior to the arrival of the alien in the U.S.”
- ***Matter of McMullen*, 19 I&N Dec. 90 (BIA 1984):** political nature of a crime outweighs its common law character, unless crime is grossly disproportional to political ends.
- ***McMullen v. INS*, 788 F.2d 591 (CA9 1986):** what political protest acts are atrocious
- ***INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987):** withholding of removal v. asylum. Also, BIA should be accorded *Chevron* deference.
- ***Matter of Rodriguez-Coto*, 19 I&N Dec. 208 (1985):** can’t alter seriousness of “serious nonpolitical crime” just because there’s evidence of persecution.

Dicta/Discussion:

- “In the course of its analysis, the CA failed to accord the required level of deference to the interpretation of the serious nonpolitical crime exception adopted by the AG and BIA.” (424)
- *Chevron* deference applicable here:
 - “...judicial deference to the Executive Branch is especially appropriate in the immigration context [and the delicate balance of diplomacy] . . . A decision by the AG to deem certain violent offenses committed in another country as political in nature, and to allow the perpetrators to remain in the US, may affect our relations with that country or its neighbors. The judiciary is not well positioned to shoulder primary responsibility for assessing the likelihood and importance of such diplomatic repercussions.” (425)
- “As a matter of plain language, it is not obvious that an already-completed crime is somehow rendered less serious by considering the further circumstance that the alien may be subject to persecution if returned to his home country.” (426)
- “The BIA, in effect, found respondent ineligible for withholding even on the assumption he could establish a threat of persecution.” (426)

- Re. guidance from UN handbook on refugees (on which CA apparently relied): “The U. N. Handbook may be a useful interpretative aid, but it is not binding on the AG, the BIA, or US courts.” (428)
- “The BIA’s formulation does not purport to provide a comprehensive definition of the [serious nonpolitical crimes] exception, and the full elaboration of that standard should await further cases, consistent with the instruction our legal system always takes from considering discrete factual circumstances over time.” (429)
- “Our decision takes into account that the BIA’s test identifies a general standard (whether the political aspect of an offense outweighs its common-law character) and then provides two more specific inquiries that may be used in applying the rule: whether there is a gross disproportion between means and ends, and whether atrocious acts are involved.” (429-30)
- “Under this approach, atrocious acts provide a clear indication that an alien’s offense is a serious nonpolitical crime.” (430) [Though the criminal aspect could outweigh the political aspect even without a finding of “atrociousness.”]
- “The BIA concluded respondent had committed serious nonpolitical crimes by applying the general standard established in its prior decision, so it had no need to consider whether his acts might also have been atrocious.” (431)
- “...in this case the BIA determined respondent’s acts were not political based on the lack of proportion with his objectives. . . . Even in a case with a clear causal connection, a lack of proportion between means and ends may still render a crime nonpolitical.” (432)