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COMMENT

Indefinite Detention of Immigrant Information: Federal and State Overreaching in the Interpretation of 8 C.F.R. § 236.6

INTRODUCTION

Hiu Lui Ng was seventeen when he lawfully entered the United States with his parents and sister in 1992.[1] He filed for asylum and then for adjustment of his status, but never received proper notice of various required court appearances.[2] Consequently, immigration authorities arrested Mr. Ng in July 2007.[3] In April 2008, he began "complaining of excruciating back pain" while in immigration detention.[4] After his family and attorneys repeatedly requested emergency medical treatment, Mr. Ng was accused of faking his injuries and was given some Motrin and a cane.[5] Not until August 2008, after a federal judge ordered that Mr. Ng receive proper medical treatment, did doctors discover that he had terminal liver cancer (which had gone undiagnosed and untreated) as well as a fractured spine and severe bruises allegedly caused by guards' abuse.[6] Mr. Ng died five days later.[7] He had committed no crime, but was treated worse than most criminals.

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1. *See* Lin Li Qu v. Cent. Falls Det. Facility Corp., No. 09-53 S, 2010 WL 2380739, at *1 (D.R.I. June 14, 2010).
2. *Id.*
3. *Id.*
4. Nina Bernstein, *Ill and in Pain, Detainee Dies in U.S. Hands*, N.Y. TIMES, Aug. 13, 2008, at A1.
5. Second Amended Complaint ¶¶ 68-76, Lin Li Qu v. Cent. Falls Det. Facility Corp., No. 09-53 S, (D.R.I. Sept. 8, 2009) 2009 WL 2905301.
6. *Id.* ¶¶ 98, 101.
7. *Id.* ¶ 103.

Unfortunately, Mr. Ng's treatment is not unique. At least 113 people have died in Immigration and Customs Enforcement (ICE) custody since the agency was created in 2003.[8] "Deficient medical care . . . has caused unnecessary suffering for many thousands of people in immigration detention."[9] Many have suffered other forms of harsh punishment and abuse.[10]

The failure to correct these abuses stems partially from the public's inability to discover them. Recently, a Department of Homeland Security report called for increased accountability and transparency with regard to immigration detention.[11] Yet in January 2010, the *New York Times* revealed that although thousands of pages of government documents detail these types of incidents, ICE officials have worked behind the scenes to stymie outside inquiry and cover up evidence of mistreatment.[12] The press and immigrants' rights groups have sought to combat this inhumane treatment by reporting on abuses and filing lawsuits.[13] Records obtained through state and federal open government laws play an essential role in their efforts.[14]

Indeed, following Mr. Ng's death, the *New York Times* ran a series of articles about the tragic death,[15] and the ACLU began a preliminary investigation into a potential lawsuit on Mrs. Ng's behalf.[16] However, the state jail refused to turn over records relating to Ng, citing a 2002 regulation:

8. *See* ACLU, ACLU ANALYSIS OF OBAMA ADMINISTRATION'S PROGRESS IMPROVING IMMIGRATION DETENTION SYSTEM 2 (2010), http://www.aclu.org/files/assets/2010-8-6-ImmigrationDetentionAnalysis.pdf.

9. News Release, Rhode Island ACLU 5 (Feb. 9, 2009), http://www.riaclu.org/documents/Nglawsuithandoutsx.pdf.

10. *See id.*

11. DORA SCHRIRO, IMMIGRATION & CUSTOMS ENFORCEMENT, IMMIGRATION DETENTION OVERVIEW AND RECOMMENDATIONS 28-29 (2009), http://www.ice.gov/doclib/091005_ice_detention_report-final.pdf.

12. Nina Bernstein, *Officials Obscured Truth of Migrant Deaths in Jail*, N.Y. TIMES, Jan. 10, 2010, at A1.

13. *See* Tanaz Moghadam, *Unjustified Immigration Detention Reaches New Lows*, BLOG OF RIGHTS (Apr. 2, 2010, 4:01 PM), http://www.aclu.org/blog/immigrants-rights/unjustified-immigration-detention-reaches-new-lows (arguing that lawsuits and media coverage "highlight the need for independent oversight of the detention system").

14. *See* The Reporters Comm. for Freedom of the Press, *Federal Open Government Guide*, http://www.rcfp.org/fogg/index.php?i=intro; The Reporters Comm. for Freedom of the Press, Introductory Note, *Open Government Guide*, http://www.rcfp.org/ogg/item.php?pg=intro.

15. *See, e.g.*, Bernstein, *supra* note 4.

16. *See* Plaintiff's Opposition to Defendant Central Falls Detention Facility Corporation's Motion for Protective Order at 2, Lin Li Qu v. Cent. Falls Det. Facility Corp., No. 08-7106 (R.I. Super. Ct. Dec. 8, 2008).

8 C.F.R. § 236.6.[17] The regulation, promulgated by ICE's predecessor, the Immigration and Naturalization Service (INS), essentially forbids state and local jails from releasing information regarding federal immigration detainees being housed in their facilities and makes clear that it supersedes state law to the contrary.[18] The state jail claimed that the regulation preempted state law to prohibit the release of any information about any federal detainee who had ever been held in state jails at any time.[19]

The state jail's broad interpretation of 8 C.F.R. § 236.6 has reared its head elsewhere, as other states and the federal government have sought to prevent the release of information about former detainees. In August 2010, the U.S. Department of Justice argued in an appeal to the Supreme Court of Connecticut that the regulation prohibits the release of all immigration detainee information by states for all time.[20] The Connecticut Department of Correction has independently adopted the same position.[21] In Texas, the state Attorney General has approved, under this regulation, the withholding of information about immigration detainees who have died in state jails.[22] Other states may also be invoking the regulation to withhold information about immigration detainees.[23]

The broad interpretation of this regulation prevents the disclosure of abuses in immigration detention and thus hinders the public's ability to pressure the government to correct them. Using basic principles of construction, this Comment argues that this broad interpretation is unwarranted. Properly interpreted, the regulation applies only to information about current detainees.

17. Defendant Central Falls Detention Facility Corp.'s Motion for Protective Order, Lin Li Qu v. Cent. Falls Det. Facility Corp., No. 08-7106 (R.I. Super. Ct. Nov. 21, 2008).

18. *See* 8 C.F.R. § 236.6 (2010).

19. *See id.* Although the ACLU argued that the regulation did not apply to former detainees, it withdrew its records request upon filing suit in federal court.

20. Brief and Appendix for Appellant United States in No. 18624 at 16, United States v. Freedom of Info. Comm'n, Nos. SC 18622, 18623, 18624 (Conn. Aug. 27, 2010).

21. *See* Dep't of Corr. v. Freedom of Info. Comm'n, No. CV 08 4016692S (Conn. Super. Ct. Nov. 17, 2009).

22. Tex. Att'y Gen. Op. No. OR2003-2250, 2003 WL 1890450, at *1 (Apr. 3, 2003).

23. Decisions interpreting the breadth of the regulation's application are likely to remain unpublished because the decision not to release information usually results from informal state agency adjudications, often made by staff in local jails or departments of correction. For an example of an informal adjudication that would not have been reported but for its being mentioned in a judicial opinion, see *Ricketts v. Palm Beach County Sheriff*, 985 So. 2d 591, 592 (Fla. Dist. Ct. App. 2008).

This Comment will proceed in three Parts. First, it will provide a brief overview of the historical circumstances that led to the promulgation of this regulation. Second, it will argue that several different interpretive tools all point toward a narrow reading of the regulation that covers only current detainees, not former detainees. Third, it will show that the interpretations of the regulation offered by the federal government are not entitled to deference by courts.

I. PROMULGATION OF 8 C.F.R. § 236.6 IN THE AFTERMATH OF SEPTEMBER 11

In the weeks and months following the attacks of September 11, 2001, the U.S. government questioned 762 immigration detainees from the New York City area, many of whom were held in county detention facilities in New Jersey.[24] The INS initially ordered the local jails not to disclose any information regarding the detainees.[25]

Because the detainees were being held in secrecy, it was difficult to determine how many lacked legal representation, which the ACLU of New Jersey sought to provide.[26] To obtain access to the names of the detainees, the ACLU sued, citing state freedom of information laws and a century-old state jailkeeper law.[27] On April 12, 2002, the trial court ruled in favor of the ACLU and ordered release of the information.[28]

Five days later, the United States and the counties appealed;[29] the same day, the INS promulgated an emergency regulation, now codified at 8 C.F.R. § 236.6.[30] Thus, the INS effectively overrode the New Jersey trial court by

24. *See* ACLU of N.J. v. Cnty. of Hudson, 799 A.2d 629, 636-37 (N.J. Super. Ct. App. Div. 2002).

25. *See id.* at 637.

26. *See* Jim Edwards, *Stay on Release of Detainee Names Leads to Chaos for Sept. 11 Cases: ACLU, INS at Odds over Meaning of Appellate Order*, 168 N.J. L.J. 337, 351 (2002).

27. *See ACLU*, 799 A.2d 629.

28. *See* ACLU of N.J. v. Cnty. of Hudson, No. HUD-L-463-02, 2002 WL 33943130 (N.J. Super. Ct. Law Div. Apr. 12, 2002).

29. *See* Ronald K. Chen, *State Incarceration of Federal Prisoners After September 11: Whose Jail Is It Anyway?*, 69 BROOK. L. REV. 1335, 1342 (2004).

30. Release of Information Regarding Immigration and Naturalization Detainees in Non-Federal Facilities, 67 Fed. Reg. 19,508, 19,510 (Apr. 22, 2002) (applying from April 17, 2002 forward); *see also* 68 Fed. Reg. 4364 (Jan. 29, 2003) (codifying rule at 8 C.F.R. § 236.6).

issuing a regulation preempting state law; in issuing the new rule, it made this motive clear.[31]

Although the regulation was initially promulgated to prevent the release of information about current detainees, several states and the federal government have since advocated a broad interpretation that covers information regarding all immigration detainees ever housed by a state entity on behalf of the federal government. The next two Parts attempt to show that the regulation should be limited to its original, narrow interpretation.

II. CONSTRUING 8 C.F.R. § 236.6 NARROWLY

Several tools of construction indicate that the broad interpretation given to the regulation by states and the federal government is erroneous.[32] This Comment demonstrates the error of the broad interpretation through intrinsic aids such as text and structure, extrinsic aids such as regulatory history and context, and a substantive canon, the presumption against preemption.

Most importantly, the plain text of this regulation indicates that it does not apply to former detainees. In analyzing statutory text, the Supreme Court recently reemphasized that it looks to "choice of verb tense to ascertain a statute's temporal reach."[33] As the United States itself has argued, several of the Court's cases support the principle that using the present tense to describe an act or status can indicate that the act or status must coincide with another act or status.[34] Additionally, the Dictionary Act, which prescribes rules for

31. A press release accompanying the promulgation of the regulation specifically cited the New Jersey case as the impetus for the new rule. *See* Press Release, Immigration & Naturalization Serv., INS Issues Rule Governing Release of Detainee Information (Apr. 18, 2002) (on file with author).

32. Most authorities agree that the rules commonly associated with statutory interpretation also apply when construing regulations. *See, e.g.*, Thompson v. United States, 87 Fed. Cl. 728, 733 (2009) ("The court notes that the canons of statutory construction apply equally to regulations."); 1A NORMAN J. SINGER & J.D. SHAMBIE SINGER, STATUTES AND STATUTORY CONSTRUCTION § 31:6 (7th ed. 2007) ("A regulation is a written instrument and the general rules of interpretation apply. When a regulation is legislative in character, rules of interpretation applicable to statutes should be used to determine its meaning.").

33. Carr v. United States, 130 S. Ct. 2229, 2236 (2010); *see also* United States v. Wilson, 503 U.S. 329, 333 (1992) ("Congress' use of a verb tense is significant in construing statutes.").

34. *See* Brief for the United States at 18 n.5, *Carr*, 130 S. Ct. 2229 (No. 08-1301); *see also* Dole Food Co. v. Patrickson, 538 U.S. 468, 478 (2003) ("We think the plain text of this provision, because it is expressed in the present tense, requires that instrumentality status be determined at the time suit is filed."); Ingalls Shipbuilding, Inc. v. Dir., Office of Workers' Comp. Programs, 519 U.S. 248, 255 (1997) ("[T]he use of the present tense (*i.e.*, 'enters') indicates that the 'person entitled to compensation' must be so entitled at the time of

interpreting federal statutes, "instructs that the present tense generally does not include the past."[35]

Applying these principles to the regulation shows that the plain language does not apply to former detainees. The regulation states: "No . . . state or local government entity . . . that houses, maintains, provides services to, or otherwise holds any detainee on behalf of [ICE] . . . shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee."[36] The use of the present tense indicates that the government entity's act, housing a certain detainee, must coincide with the prohibition on disclosure of that detainee's information. Thus, if it is not the case that the entity "houses, maintains, provides services to, or otherwise holds" a detainee, then the regulation's plain text indicates that it should not apply.

In interpreting 8 C.F.R. § 236.6, the Department of Justice argues that the last sentence of the regulation demonstrates that the regulation applies to former detainees[37]: "This section applies to all persons and information identified or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information."[38] However, the phrase "such information" refers back to the information discussed in the first sentence: information regarding detainees who are at that time being housed by the facility. Thus, contrary to the government's interpretation, this last sentence means only that a detention facility cannot release any information about a current detainee regardless of when it acquired that information.

In addition to the plain language, the government's choice to codify the regulation in certain parts of the Code of Federal Regulations indicates that it does not apply to former detainees. Both the Supreme Court and states have used titles and section headings to resolve doubt about the meaning of a provision.[39] Indeed, because agencies themselves designate where in the Code

settlement."); Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc., 484 U.S. 49, 56-61 (1987) (interpreting the present tense to refer to the present or future but not the past).

35. *Carr*, 130 S. Ct. at 2236; *see* Dictionary Act, 1 U.S.C. § 1 (2006).

36. 8 C.F.R. § 236.6 (2010).

37. *See* Brief and Appendix for Appellant United States, *supra* note 20, at 17.

38. 8 C.F.R. § 236.6 (2010).

39. *See* 2A SINGER & SINGER, *supra* note 32, § 47:3 (7th ed. 2007) (addressing use of titles by states and the Supreme Court).

of Federal Regulations their regulations should be codified,[40] that choice has interpretive significance. Here, the INS specifically chose to place the regulation in Part 236, Subpart A of Title 8 of the C.F.R.[41] Part 236 is entitled "Apprehension and Detention of Inadmissible and Deportable Aliens; Removal of Aliens Ordered Removed," and Subpart A is entitled "Detention of Aliens Prior to Order of Removal." Unsurprisingly, the other regulations under Subpart A address detention processes and conditions of confinement prior to removal. As a whole, the Subpart is concerned with governing detention, not public access to information. Given the Subpart's title and the subject matter of the surrounding provisions, it seems clear that § 236.6 is concerned with information regarding aliens who have not yet been ordered removed from the country.

Comparing the actual placement of the regulation with potential alternatives further highlights the significance of the actual placement. The government could have placed the regulation in 8 C.F.R. § 103, the section titled and dealing with the "Availability of Records."[42] If the government had desired the regulation to address records of former detainees regardless of their current status, as opposed to detainees "prior to order of removal," it rationally would have chosen this section.

Turning from intrinsic to extrinsic aids, the regulatory history further supports a limited interpretation of this regulation. Two different types of sources provide indications of INS's intent at the time of the regulation's promulgation: contemporaneous statements made by the INS and the historical context of the promulgation.

The INS provided contemporaneous statements of its intent both in the *Federal Register* and in a news release provided to the public. In the *Federal Register*, the INS provided revelatory statements in entries accompanying both the initial interim rule and the final rule. The entry accompanying the final rule states: "This rule applies *only* to release of information about Service detainees *being housed* or maintained in a state or local government entity or a privately

40. OFFICE OF THE FED. REGISTER, NAT'L ARCHIVES & RECORDS ADMIN., FEDERAL REGISTER DOCUMENT DRAFTING HANDBOOK § 1-4 (1998) (requiring instructing agencies to list the proposed C.F.R. citation).

41. Release of Information Regarding Immigration and Naturalization Detainees in Non-Federal Facilities, 67 Fed. Reg. 19,508, 19,511 (Apr. 22, 2002) (directing specifically that the regulation be codified at 8 C.F.R. § 236.6).

42. For instance, § 103.21 addresses "Access by individuals to records maintained about them"; § 103.10 addresses "Requests for records under the Freedom of Information Act."

operated detention facility."[43] Likewise, the entry accompanying the interim rule states: "This rule . . . *only* prevents non-Federal providers from making public disclosures of information pertaining to the Service detainees that the non-Federal provider *is housing* on behalf of the Service."[44] The use of the present progressive tense in both of these statements indicates that the rule should apply only to current immigration detainees.

That interpretation is consistent with other contemporaneous statements made by the INS. The INS issued a press release the day after its interim rule took effect.[45] There, again, it used the present progressive, stating that the regulation "will cover all INS detainees *being housed temporarily* at the facilities on behalf of INS," as well as using the present tense "is housed" and "are held" in describing detainees.[46] One would not say a former detainee is "being housed." Indeed, the consistent use of the present, especially the present progressive, shows a concern for information regarding current detainees, not former detainees.

Another useful tool for interpreting 8 C.F.R. § 236.6 is its historical context and purpose.[47] From its inception, this regulation was designed specifically to override the trial court's ruling in *ACLU of New Jersey, Inc. v. County of Hudson* and to combat the ACLU's efforts to obtain current detainees' names in order to represent them. In the trial court, the United States wrote: "This lawsuit seeks to obtain the disclosure of sensitive information concerning the identities of federal detainees *being housed* in the defendants' county jails . . . . They *are being held* at the defendants' county facilities."[48] The plaintiff's filings agreed that the only information at issue was that related to current detainees.[49]

Finally, the presumption against preemption indicates that this regulation should be construed narrowly. "If Congress intends to alter the usual

43. Release of Information Regarding Immigration and Naturalization Detainees in Non-Federal Facilities, 68 Fed. Reg. 4364, 4367 (Jan. 29, 2003) (emphasis added).

44. Release of Information, 67 Fed. Reg. at 19,510 (emphasis added).

45. Press Release, *supra* note 31.

46. *Id.* (emphasis added).

47. *See* William N. Eskridge, Jr. & Philip P. Frickey, *Statutory Interpretation as Practical Reasoning*, 42 STAN. L. REV. 321, 357-58 (1990).

48. Brief in Support of United States' Motion for Summary Judgment at 1, ACLU of N.J. v. Cnty. of Hudson, No. HUD-L-463-02, 2002 WL 33943130 (N.J. Super. Ct. Law Div. Apr. 12, 2002), 2002 WL 32936709 (emphasis added).

49. *See* Brief of Plaintiffs ACLU and Deborah Jacobs in Opposition to Motion by Intervenor U.S. for Summary Judgment at 2, *ACLU of N.J., Inc.*, No. HUD-L-463-02, 2002 WL 33943130, 2002 WL 32936703 (arguing about "[p]ersons currently held involuntarily by the Hudson and Passaic County jails").

constitutional balance between the States and the Federal Government," the Supreme Court requires it to "make its intention to do so unmistakably clear in the language of the statute."[50] When a federal agency, instead of Congress, preempts state law, it can raise a question of whether "a given state authority conflicts with, and thus has been displaced by, the existence of" a federal law.[51] Essentially, this question asks whether federal law has actually preempted state law. In answering that question, courts utilize the presumption against preemption.

Thus, the question is not whether Congress gave the INS the authority to preempt state laws,[52] but rather whether the INS sought to preempt state laws to such a broad extent. In making that determination, the INS should be held to the same standard of clarity as Congress is held to when it preempts state law. As discussed above, the text of the regulation appears to apply only to current detainees. If the INS intended to alter the states' traditional control over their own records with respect to all immigration detainees ever held in their jails, then the INS should be required to have made that intent explicit and clear. Because the INS did not make such an intent clear, the presumption against preemption applies to narrow the construction of the regulation.

III. NO *AUER* DEFERENCE FOR THE DEPARTMENT OF JUSTICE

In its briefs arguing for an expanded construction of 8 C.F.R. § 236.6, the Department of Justice has relied heavily on claims that reviewing courts owe deference to the Department's interpretation.[53] It cites *Auer v. Robbins* for the proposition that an agency's interpretation of its own regulation is "'controlling unless plainly erroneous or inconsistent with the regulation.'"[54] The Justice Department then argues that its interpretation is not plainly erroneous.

50. Gregory v. Ashcroft, 501 U.S. 452, 460 (1991) (internal quotations and alterations omitted); *see also* BFP v. Resolution Trust Corp., 511 U.S. 531, 544 (1994) (requiring clear federal statutory purpose to displace traditional state regulation).

51. *See* New York v. Fed. Energy Regulatory Comm'n, 535 U.S. 1, 17-18 (2002).

52. Some have certainly argued that Congress did not give INS such authority. *See* Chen, *supra* note 29, at 1352-61; José R. Almonte, Note, *For the Sake of National Security: The Scope of the United States Attorney General's Authority in Light of 8 C.F.R. § 236.6*, 56 RUTGERS L. REV. 817 (2004).

53. *See* Brief and Appendix for Appellant United States, *supra* note 20, at 20-21.

54. 519 U.S. 452, 461 (1997) (quoting Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 359 (1989)).

In examining whether the Department of Justice should receive deference, it is important to understand the *Auer* rule's exceptions, which the Supreme Court emphasized in *Thomas Jefferson University v. Shalala*.[55] There, the Court elaborated that it "must defer to the [agency's] interpretation unless an 'alternative reading is compelled by the regulation's plain language or by other indications of the [agency's] intent at the time of the regulation's promulgation.'"[56] Similarly, in *Gonzales v. Oregon*, the Court refused to give *Auer* deference to the Attorney General's 2001 interpretation of a 1971 Attorney General regulation because the Court believed that the interpretation could not possibly reflect the intent of the Attorney General at the time of the regulation's promulgation.[57] Thus, both plain language and indications of the agency's intent at the time of promulgation allow courts to withhold *Auer* deference. As shown in Part II, both of these factors weigh against granting deference to the Department of Justice's interpretation of § 236.6.

Questions of deference also turn on who is seeking it and what form their interpretation takes. The Supreme Court has "declined to give deference to an agency counsel's interpretation of a statute where the agency itself has articulated no position on the question, on the ground that Congress has delegated to the administrative official and not to appellate counsel the responsibility for elaborating and enforcing statutory commands."[58] Here, the Department of Justice has provided an appellate brief as the only evidence of its interpretation.[59] Withholding significant deference from such an informal interpretation would accord with the Court's ruling in *United States v. Mead*.[60] Furthermore, ICE, not the Department of Justice, now has authority over immigration detention,[61] so ICE should be developing the interpretation.

55. 512 U.S. 504, 512 (1994).

56. *Id.* (quoting Gardebring v. Jenkins, 485 U.S. 415, 430 (1988)).

57. *See* 546 U.S. 243, 258 (2006).

58. Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 212-13 (1988) (internal quotation marks omitted); *see also* Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 168 (1962) ("The courts may not accept appellate counsel's *post hoc* rationalizations for agency [orders].").

59. *See* Brief and Appendix for Appellant United States, *supra* note 20.

60. 533 U.S. 218, 226-27 (2001) (withholding substantial deference because the rulings were informal).

61. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, § 441, 116 Stat. 2135, 2192 (transferring the "detention and removal program" from the INS).

CONCLUSION

The Federalist Papers quote Blackstone to claim that:

> "[t]o bereave a man of life . . . without accusation or trial, would be so gross and notorious an act of despotism as must at once convey the alarm of tyranny throughout the whole nation; but confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore a *more dangerous engine* of arbitrary government."[62]

Immigration detention in the United States produces abuses that a civilized society should not tolerate. Through open government laws, people acquire information that enables them to keep the governors accountable to the governed. States and the Department of Justice have recently urged an unwarranted, overly broad interpretation of 8 C.F.R. § 236.6 that prohibits the disclosure of information regarding former immigration detainees. Multiple tools of construction all point to a limited interpretation that prohibits only the disclosure of information regarding current immigration detainees. Courts should adopt this more limited interpretation, which will protect the ability of reporters and civil rights advocates to shine light on the suffering of past detainees and to hold their jailors accountable.

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62. THE FEDERALIST NO. 84, at 480 (Alexander Hamilton) (Clinton Rossiter ed., 1999) (quoting 1 WILLIAM BLACKSTONE, COMMENTARIES *136).