

Laura Dubinsky



Call: 2002

Email: l.dubinsky@doughtystreet.co.uk

Profile

Laura works extensively in public law at all levels, with a particular focus on cases with a refugee, immigration, ECHR or EU law dimension. Her practice includes civil liberties litigation, such as challenges to administrative detention through habeas corpus, judicial review and civil actions for damages. She is also instructed in ECHR and EU law cases in the supranational courts.

Laura frequently acts for NGOs and both legally aided and high net worth individuals.

Examples of significant cases in which Laura has acted in recent years:

- *R (Humnyntskyy) v Secretary of State for the Home Department* [2020] EWHC 1912 (Admin): leading counsel for three successful claimants in challenge to the Home Office's policy and practice concerning accommodation for destitute immigrants under paragraph 9, Schedule 10, Immigration Act 2016.
-

CI (Nigeria) v Secretary of State for the Home Department [2019] EWCA Civ 2027 [2020] Imm. A.R. 503 | [2020] I.N.L.R. 191: leading counsel for the successful appellant in significant case concerning Article 8 ECHR and the circumstances in which a long-resident immigrant may be subject to deportation.

- *Secretary of State for the Home Department v Viscu* [2019] EWCA Civ 1052, [2019] 1 WLR 5376, [2020] 1 All E.R. 988: leading counsel for the Intervener, the AIRE Centre, in appeal concerning EU law protections from expulsion for long resident immigrants and the approach to be taken to a period of custody in a young offenders' institution.
- *R (DN (Rwanda)) v Secretary of State for the Home Department* [2020] UKSC 9, [2020] AC 698: Junior counsel for Intervener Bail for Immigration Detainees in leading case concerning false imprisonment and sequential decision-making.
- *R (JL) v Secretary of State for the Home Department* [2018] 1 WLR 4623: leading counsel for the successful appellant in challenge to employment prohibition (EU law grounds).
- *R (Help Refugees) v Secretary of State for the Home Department* [2018] EWCA Civ 2098 leading counsel in the Divisional Court and junior counsel in the Court of Appeal for the partially successful claimant NGO. Challenge to the fairness of procedures applied to transfer decisions for unaccompanied minors under the 'Dubs Amendment' and to the local authority consultation.
- *R (Lauzikas) v Secretary of State for the Home Department* [2019] 1 WLR 6625 leading counsel for the partially successful /appellant in important case concerning EU law protections applicable to administrative detention and the approach to causation and damages.
- *B (Algeria) v Secretary of State for the Home Department* [2018] AC 418 junior counsel for the Intervener Bail for Immigration Detainees in appeal before Supreme Court concerning power to impose bail conditions.

Education

BA (Oxon)

MA (Columbia University NYC)

CPE

Related practice areas

Administrative & Public Law

Immigration

International Human Rights Law
Actions Against the Police and Public Authorities
Anti-Trafficking
Children's Rights Group

What the Directories say

Chambers and Partners

Listed as “Star of the Immigration Bar” in Junior Counsel Rankings every year since 2013 and continuing; listed also in Civil Liberties (Band 3) and Public Law (Band 4):

‘A leading light at the Immigration Bar, Dubinsky is famed among peers and clients alike for her nous and insight into complex asylum and detention law. Her depth of knowledge is reflected by her routine appearances in the highest courts, where she frequently advises on landmark litigation concerning detention and removal.’ ‘She is especially strong in cases involving EU freedom of movement and human rights law’.

"A brilliant barrister, whose commitment and passion for her clients' cases is unmatched. She is a wonderful advocate, who is always so well prepared." "She is very knowledgeable and passionate. She is extremely hard-working and has a strong ability to turn things around quickly." "Laura does fantastic work. She is very innovative and takes on difficult cases." "A fearsome opponent who is first-rate at analysing legal problems." "She is very, very hard-working and highly intellectual." Her knowledge is encyclopaedic. She is very, very effective and her work is second to none for immigration detention." "Committed and passionate about her work." " a stickler for detail, who leaves no stone unturned in pleadings." "Very authoritative."

Legal 500

Listed in Immigration (Band 1); Civil Liberties (Band 3); Administrative and Public Law (Band 4):

“She is ferociously smart and her results speak for themselves.” “She loves an intellectual challenge and has an encyclopaedic knowledge of public law.” “She has a mastery of domestic and European human rights law.”

Publications

Laura is the primary author of Foreign National Prisoners, Law and Practice, LAG 2012.

Background

Before coming to the Bar, Laura Dubinsky worked as a senior trade union campaigner in the United States and Canada with UNITE, the North American textile and garment workers' union. She directed large-scale campaigns for trade union recognition and collective agreements.

Public Law

Laura appeared as leading counsel for three successful claimants in *R (Humnyntskyyi) v Secretary of State for the Home Department* [2020] EWHC 1912 (Admin), a significant case concerning accommodation for immigrants under paragraph 9, Schedule 10, Immigration Act 2016; systemic unfairness; destitution and Article 3 ECHR; and false imprisonment. The Home Office's policy and practice concerning the provision of that accommodation to destitute foreign national former offenders were declared systemically unfair.

Laura was instructed as junior counsel for the Intervener, Bail for Immigration Detainees in the Supreme Court in *R (DN (Rwanda)) v Secretary of State for the Home Department* [2020] UKSC 9, [2020] AC 698, an important case establishing the vitiating effect of a prior unlawful decision upon an authorisation for detention.

In *R (Help Refugees) v Secretary of State for the Home Department* [2018] EWCA Civ 2098, the leading case concerning s.67 Immigration Act 2016 (the 'Dubs amendment'), consultation duties and procedural fairness, Laura was leading counsel in the Divisional Court and junior counsel in the Court of Appeal for the partially successful claimant NGO.

Laura was junior counsel for the Interveners BID and Medical Justice in the Supreme Court in *R (O) v Secretary of State for the Home Department*, [2016] 1 WLR 1717. There, the Supreme Court gave guidance on the interpretation of published Home Office policy on the detention of the mentally ill; and held that there was no statutory immunity from liability for public law errors where a person was detained following a court recommendation for deportation.

Laura was counsel for the claimant in *R (Adelana) v Secretary of State for Justice* [2008] EWHC 2612 (Admin) in which the SSJ's policy precluding the grant of Release on Temporary Licence for many prisoners subject to confiscation orders was found to be unlawful on grounds of fettering of discretion.

She was junior counsel for the appellant in *R (Francis) v Secretary of State for Justice* [2012] EWCA Civ 1200, a primarily unsuccessful challenge to Secretary of State for Justice's policy

on the grant of Home Detention Curfew to foreign national prisoners.

Laura was counsel for the claimant in *R (Mayaya) v SSHD* [2011] EWHC 3088 (Admin)/C4/2011/3273, a successful test challenge to the SSHD's policies on leave to remain for foreign national former offenders on grounds of fettering of discretion (partially successful in Administrative Court, appeal on further points then allowed by consent in Court of Appeal).

Immigration and Asylum

EU free movement law

Laura was leading counsel for the AIRE Centre, intervening, in *Secretary of State for the Home Department v Viscu* [2019] EWCA Civ 1052, [2019] 1 WLR 5376, [2020] 1 All ER 988, in which the Court of Appeal gave guidance on the application of EU law protections from expulsion to long-resident EU nationals and, in particular, the approach to be taken to youth custody and integration.

Laura was leading counsel for the successful appellant in *R (JL) v SSHD* [2018] 1 WLR 4623, in which the Secretary of State conceded in the Court of Appeal that the prohibition of employment by an EU national must in itself be proportionate and justified and cannot be the automatic consequence of a decision to deport.

She was also leading counsel for the partially successful claimant/ appellant in the Administrative Court and Court of Appeal in *R (Lauzikas) v Secretary of State for the Home Department* [2019] 1 WLR 6625 . That is the first domestic case to clarify that the administrative detention of an EU national must satisfy a necessity test and cannot be based on previous convictions alone.

Laura was junior counsel for the appellant in a landmark case heard by the Grand Chamber of the CJEU on a preliminary reference (Case C-304/14 CS v SSHD). The Grand Chamber held that a third country national parent or carer can only be expelled, where this would cause the constructive expulsion of a dependent EU Citizen from the territory of the EU, where the third country national poses a 'genuine, present and sufficiently serious threat to one of the fundamental interests of society'.

She was junior counsel for the appellant in *Nouazli v SSHD*, [2016] 1 WLR 1565 concerning the question of whether the detention power conferred by Regulation 24(1) of the EEA

Regulations 2006 was compatible with EU law. The appeal before the Supreme Court was unsuccessful.

Laura was counsel for the appellant in *Arranz v SSHD* [2017] UKUT 294, in which the President of the Upper Tribunal Immigration and Asylum Chamber set out the test for the deportation of EU nationals. Note: following fresh CJEU authority, the Secretary of State's appeal concerning one aspect of the *Arranz* judgment (the *Bouchereau* test) was allowed by consent.

Refugee law

Laura was leading counsel on behalf of the United Nations High Commissioner for Refugees in a country guidance appeal before the Upper Tribunal concerning Eritrea. The Upper Tribunal found in *MST and Others, UNHCR Intervening, (CG)* [2016] UKUT 443 (IAC) that the Secretary of State's guidance to her caseworkers concerning safety on return to Eritrea was unlawful; and reaffirmed earlier country guidance which extended higher protection to Eritrean asylum applicants.

Laura's previous immigration and asylum cases include *R (J) v SSHD* [2009] EWHC 705 (Admin) (successful challenge and guidance case on certification under s.96 Nationality Immigration and Asylum Act 2002); and *HS (Afghanistan) v SSHD* [2009] EWCA Civ 771 and *M v SSHD* [2006] EWCA Civ 798 (successful reasons challenges).

In *HJ and HT v SSHD* [2011] 1 AC 596. Laura was junior counsel for the Appellant HJ (successful Supreme Court challenge overturning a line of domestic authority holding that refugee status is to be denied to gay men who will avoid persecution on return by concealing their sexuality).

Article 8 ECHR

Laura was leading counsel for the successful appellant in *CI (Nigeria) v Secretary of State for the Home Department* [2019] EWCA Civ 2027 [2020] Imm. A.R. 503 | [2020] I.N.L.R. 191, an important case concerning Article 8 ECHR and the approach to be taken to long-resident immigrants who arrive in the UK as children.

Immigration detention

Laura acts in immigration detention challenges at all levels.

Laura was leading counsel for the partially successful appellant/respondent in *R (Lauzikas) v SSHD* [2019] 1 WLR 6625, important litigation establishing the scope of EU law protections applicable to detained EU nationals including the application of a necessity test; and

concerning also causation and damages.

She was junior counsel for the appellant WL in *WL and KM v SSHD* [2011] 2 WLR (successful Supreme Court challenge to detention pursuant to an unlawful hidden policy, overturning line of authority which had held causation to be a defence to false imprisonment). BID instructed Laura as junior counsel in *R (SK) v SSHD* [2011] 1 WLR 1299 in which the Supreme Court held that a failure to carry out detention reviews, without more, rendered detention unlawful. She again acted as junior counsel in an intervention by BID in *B (Algeria) v SSHD* [2018] 2 WLR 651, in which the Supreme Court affirmed that the bail power under the Immigration Act 1971 is conditional upon there being a power to detain that can lawfully be exercised at the time. Laura was again instructed as junior counsel by BID in *R (DN (Rwanda) v Secretary of State for the Home Department* [2020] AC 698, in which the Supreme Court accepted that a material public law error in an anterior immigration detention bearing upon the decision to detain gives rise to the tort of false imprisonment.

Laura's other immigration detention cases include *R (Abdi) v SSHD* Times, March 11, 2011 (successful challenge to the detention of a former foreign national prisoner, guidance given on the relevance of time spent on appeal). She was also sole counsel for the Intervener, Liberty, in *R (Suppiah and Others) v SSHD* [2011] EWHC 2 (Admin), (2011) 108(4) LSG 18 (partially successful challenge to the detention of children under Immigration Act powers).

Interface of asylum and extradition

Laura has acted in a series of cases concerning the interface between asylum and extradition. She was leading counsel for the unsuccessful claimant in *R (Troitino) v National Crime Agency* [2017] EWHC 931 (Admin), on the question of what constitutes an "asylum claim" for the purposes of invoking the bar to extradition in s.39(3) Extradition Act 2003.

International Human Rights Law

Laura has been instructed in litigation around the prohibition of torture. She was instructed as junior counsel by a consortium of human rights organisations intervening in *A and Others v SSHD* [2006] 2 AC 221 (inadmissibility of evidence obtained under torture). She was also junior counsel for the Interveners in both the Court of Appeal and House of Lords in *Ronald Jones & Others v Saudi Arabia* [2007] 1 AC 270 (sovereign immunity and claims against foreign states over torture).

Laura also acts in cases with an EU law dimension. She was junior counsel in Case C-165/14 CS *v Secretary of State for the Home Department*, a landmark case in the Grand Chamber of the Court of Justice concerning the protections enjoyed by EU Citizens from constructive expulsion from EU territory.

She is also instructed in the ECtHR and has acted for applicants and interveners in a series of communicated applications – to date either settled or unsuccessful- challenging the lack of time limits in the UK's regime for the detention of immigrants.

Actions Against the Police and Public Authorities

Laura's practice includes civil claims for damages. In *E v the Home Office*, Unreported, Central London County Court, 9CL01651, 10 June 2010, she acted for the successful claimant who was awarded £57,500 (including £25,000 exemplary damages) for a period of one month's unlawful detention. In *S, C, D v Home Office* Unreported, HQ09X01155, Queen's Bench Division Laura acted on behalf of three claimants who won damages exceeding £100,000 in total for a period of 3 and a half months' unlawful detention, including exemplary damages, before a Master.

Equality and Discrimination

Laura was junior counsel for one of the successful appellants in the landmark Supreme Court challenge concerning Refugee convention protection for gay and lesbian applicants. In *HJ and HT v SSHD* [2011] 1 AC 596, the Supreme Court overturned a line of domestic authority holding that refugee status was to be denied to gay men who will avoid persecution on return by concealing their sexuality.

She was junior counsel for the appellant in *Nouazli v SSHD*, [2016] 1 WLR 1565. The Supreme Court held that a third country national exercising no EU law rights is not a permissible comparator for a person exercising free movement rights; so that secondary

legislation can lawfully treat immigrants exercising EU free movement rights in the UK less favourably than third country nationals who are not.

Civil Liberties

Please see '**Public Law**', '**Immigration and Asylum**' and '**Actions Against the Police**' pages for details of Laura's work in prison law cases, public law and EU law challenges to immigration detention, to bail restrictions and employment prohibitions; and civil actions against public authorities for damages.