No. 22-58

In the Supreme Court of the United States

UNITED STATES OF AMERICA, ET AL.,

Petitioners,

v.

STATE OF TEXAS AND STATE OF LOUISIANA,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF AMICI CURIAE IMMIGRANT AND CIVIL RIGHTS ORGANIZATIONS, COMMUNITY GROUPS, LAW SCHOOL CLINICS AND CENTERS, LEGAL SERVICE PROVIDERS, AND LABOR UNIONS IN SUPPORT OF PETITIONERS

Alina Das
WASHINGTON SQUARE LEGAL SERVICES, INC.
Immigrant Rights Clinic
New York University School of Law
245 Sullivan St., 5th Fl.
New York, NY 10012
(212) 998-6467

Sirine Shebaya
Counsel of Record
Joseph Meyers
Amber Qureshi
NATIONAL IMMIGRATION PROJECT (NIPNLG)
2201 Wisconsin Ave. NW, Suite 200
Washington, DC 20007
(202) 656-4788
sirine@nipnlg.org

September 16, 2022 *Counsel for Amici Curiae*

SUPREME COURT PRESS ♦ (888) 958-5705 ♦ BOSTON, MASSACHUSETTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Page

STATUTES

JUDICIAL RULES

REGULATIONS

LEGISLATIVE MATERIALS

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Page

INTEREST OF *AMICI CURIAE*

Amici curiae are 48 immigrant and civil rights organizations, community groups, law school clinics and centers, legal service providers, and labor unions who work closely with immigrant communities to protect and advance their rights.[1] Our members and clients have experienced profound racism and xenophobia from both private and public actors as anti-immigrant sentiment has entered mainstream policy debates. Today, political leaders openly espouse the same "invasion" and "replacement" theories found in the manifestos of the people responsible for mass shootings of people of color in places like El Paso, Texas, and Buffalo, New York. They advocate for increasingly extreme policies that discriminate against Black, Latinx, and Asian immigrants and Indigenous migrants residing in their own communities. *Amici curiae* have defended immigrant communities from these discriminatory policies at the local, state, and federal level. We have a profound interest in exposing the racism and xenophobia underlying anti-immigrant policies.

---

[1] *Amici curiae* state that no counsel for a party authored any part of this brief, and no person or entity other than amici and their counsel made a monetary contribution to the preparation or submission of this brief. Both petitioners and respondents have consented to the filing of this brief pursuant to Rule 37.3(a). A full list of *amici curiae* organizations is appended to this brief.

SUMMARY OF ARGUMENT

This case is one of several in which Texas and Louisiana ("the Plaintiff States") have asked federal courts to enjoin or invalidate federal immigration policies they politically oppose. The Plaintiff States anchor standing on the same discriminatory animus that underlies their broader agenda: they claim injury based on public expenditures on education, health care, and criminal legal programs provided to all state residents—including immigrants of color whom they want the federal government to exclude, detain, or deport. States do not, however, have the right to discriminate against noncitizen residents for the purpose of lowering public expenditures. Nor is it appropriate for states to claim injury as *parens patriae* or receive "special solicitude" because they are prevented from denying benefits to those of their own residents who happen to be immigrants of color. Discriminatory animus should have no place in standing law.

ARGUMENT

The Plaintiff States' standing arguments are predicated on their objection to public expenditures—in the way of education, healthcare, and criminal detention and supervision—for noncitizen residents within their borders. The Plaintiff States claim they have suffered a cognizable legal injury because of the federal government's alleged failure to take certain noncitizen residents into custody. They make no claim

that the challenged federal action is requiring them to change their own state policies on public expenditures. Rather, their objection is to the presence of the noncitizens themselves—the overwhelming majority of whom are Latinx, Black, and Asian immigrants and Indigenous migrants.[2] The Plaintiff States' discriminatory motivations are laid bare by the fact that, while objecting to the burden created by increased numbers of noncitizens within their borders, the Plaintiff States are actively working to increase their states' overall populations, and extolling their success in doing so. That is, the Plaintiff States are encouraging the very sort of population growth, with its attendant cost to state coffers, that they claim as injury here. This fundamental policy contradiction can only be explained by the Plaintiff States' animus toward immigrants who are people of color. *See infra* Sec. I.

Such discrimination is impermissible. It would raise serious constitutional concerns if the Plaintiff States overtly discriminated against noncitizens—even the subset of noncitizen residents who have criminal records—by excluding them from educational,

---

[2] The vast majority of immigrants in Texas and Louisiana hail from Mexico, Central America, South America, Asia, and Africa. *See, e.g., Immigrants in Texas*, American Immigration Council (Aug. 6, 2020), https://www.americanimmigrationcouncil.org/research/immigrants-in-texas; *Profile of the Unauthorized Population: Texas*, Migration Policy Institute (2019), https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/TX; *Immigrants in Louisiana*, American Immigration Council (Aug. 6, 2020), https://www.americanimmigrationcouncil.org/research/immigrants-in-louisiana; *Profile of the Unauthorized Population: Louisiana*, Migration Policy Institute (2019), https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/LA.

health, and criminal justice programs available to similarly situated U.S. citizen residents in the name of conserving limited public resources or protecting residents from crime. *See infra* Sec. II. Yet the Plaintiff States ask this Court to endorse a concept of injury based on the same discriminatory logic: that the Plaintiff States are prejudiced by their unfulfilled desire to exclude noncitizens from public services. Such discriminatory animus has no place in standing law. The Plaintiff States' arguments also frame noncitizens only in terms of the costs they impose on broadly available social programs and the danger they potentially pose to the community. Framing noncitizens as such burdens on society echoes familiar xenophobic rhetoric that has been mobilized against immigrants in the past. *See infra* Sec. III.

I. TEXAS AND LOUISIANA ASSERT STANDING BASED ON A DISCRIMINATORY OBJECTION TO THE PRESENCE OF NONCITIZEN RESIDENTS.

By encouraging population growth and domestic migration, while simultaneously claiming they are harmed by increased numbers of noncitizens, the Plaintiff States reveal that the origin of their grievance is not pecuniary harm, but discriminatory animus against noncitizens. At the foundation of the Plaintiff States' assertion of injury is a series of state programs that reflect their interests in providing certain services to their residents. These programs include the Plaintiff States' public education systems;[3] healthcare

---

[3] *See* First Amended Complaint ¶¶ 87, 94, 97, *Texas v. United States*, No. 6:21-cv-0016 (S.D. Tex. Oct. 22, 2021) ("FAC"); Motion for Preliminary Injunction ¶¶ 24, 89, 124, 180, *Texas v. United States*, No. 6:21-cv-0016 (S.D. Tex. Apr. 27, 2021) ("Mot. for Preliminary Injunction"); Proposed Findings of Fact/Conclusions of

expenditures through state hospitals and programs like Texas Emergency Medicaid, the Texas Family Violence Program, and the Texas Children's Health Insurance Program;[4] and criminal legal programs run through departments like the Texas Department of Criminal Justice.[5] State law requires public spending on noncitizen residents in these programs, which accords with constitutional requirements. *See infra* Sec. II. The Plaintiff States' claims of injury are thus predicated not on a federal action directly regulating the Plaintiff States or their state programs, but on the alleged effect that the challenged federal action is having on the number of noncitizen residents who avail themselves of the Plaintiff States' programs.

Lest there be any doubt that the Plaintiff States' concern is solely with their residents' alienage classification, the Plaintiff States have repeatedly made clear that they generally believe population growth is a boon. For example, Texas Governor Greg Abbot has tweeted that "A growing population is a sign of a healthy economy!" and repeatedly boasted that Texas "has long led the nation in population growth, adding 5 million new Texans between 2010 and 2020."[6] In

---

Law by State of Louisiana, State of Texas at 29, *Texas v. United States*, No. 6:21-cv-0016 (S.D. Tex. Feb. 17, 2022) ("Plaintiff States' Proposed Findings of Fact").

[4] *See* FAC ¶¶ 88–92; Mot. for Preliminary Injunction at 29; Plaintiff States' Proposed Findings of Fact ¶ 180.

[5] *See* FAC ¶ 94; Mot. for Preliminary Injunction at 28, 29; Plaintiff States' Proposed Findings of Fact ¶¶ 43, 72–74, 180.

[6] Greg Abbott (@GovAbbott), Twitter (Aug. 8, 2022, 5:15 PM), https://twitter.com/GovAbbott/status/1556750876525707266. *See also* Greg Abbott (@GovAbbott), Twitter (Feb. 24, 2022, 11:26 AM) https://twitter.com/GovAbbott/status/1496884266650640386

2018, Abbott tweeted that "Texas leads America in population growth—adding more than 1,000 people a day."[7] These statements reflect an economic reality: while an increase in residents in a state requires an increase in public expenditures, those costs are offset by contributions that residents make to the state's economic growth. This reality is not limited to certain demographics, and residents contribute to economic growth regardless of immigration status.[8] The flagrant

("Texas is the top state for population grown & is younger & faster growing than the nation."); Greg Abbott (@GovAbbott), Twitter (Aug. 16, 2021, 2:31 PM) https://twitter.com/GovAbbott/status/1427337336426278917 (reporting that Texas added "nearly 4M new Texans since 2010 & growing at a far faster rate than CA & NY – combined!"); Greg Abbott (@GregAbbott_TX), Twitter (Jan. 6, 2022, 11:28 AM), https://twitter.com/GregAbbott_TX/status/1479127787076296733 ("Texas is growing faster than any other state in America. More people are choosing Texas because it is the best state to live, work, & raise a family."); Greg Abbott (@GregAbbott_TX), Twitter (Jan. 18, 2022, 7:02 PM); https://twitter.com/GregAbbott_TX/status/1483590678978482176 (thanking housing and building groups for "the invaluable work [they] do to keep the state growing"); Solange DeLisle, *'Texas is growing at a rate like California never did': Abbott boasts about population increase in Texas*, HOUSTON DAILY (Aug. 20, 2021), https://houstondaily.com/stories/606757887-texas-is-growing-at-a-rate-like-california-never-did-abbott-boasts-about-population-increase-in-texas .

[7] Greg Abbott (@GregAbbott_TX), Twitter (Dec. 26, 2018, 1:17 AM), https://twitter.com/GregAbbott_TX/status/1077810690063163392.

[8] Immigrants in Texas and Louisiana—including those with and without formal immigration status—collectively pay billions of dollars in state taxes and comprise a significant percentage of the labor force. *See, e.g., Immigrants in Texas*, American Immigration Council (Aug. 6, 2020), https://www.americanimmigrationcouncil.org/research/immigrants-in-texas; *Immigrants in Louisiana*, American Immigration Council (Aug. 6,

contradiction posed by the Plaintiff States' standing arguments—that population growth is a boon to the state on the one hand, but an injury to the state when it involves immigrants of color—cannot be explained without animus against this population. As Governor Abbot put it: "Newcomers are welcome. They just need to help keep TX an appealing state."[9]

Texas and Louisiana have had a long history of treating Latinx, Black, Asian, and Indigenous residents as "unappealing." Texas led the country in mob violence and lynchings of people of Mexican descent in the nineteenth century.[10] Throughout the nineteenth century, Texas mounted violent campaigns to forcibly remove Indigenous peoples from their land.[11] Systems of "Jim Crow" and what some scholars refer to as "Juan Crow" were prevalent in the South in the twentieth century.[12] Federal officials worked closely with local

---

2020), https://www.americanimmigrationcouncil.org/research/immigrants-in-louisiana.

[9] Greg Abbott (@GregAbbott_TX), Twitter (Dec. 26, 2018, 1:17 AM), https://twitter.com/GregAbbott_TX/status/1077810690063163392

[10] William D. Carrigan & Clive Webb, *Forgotten Dead Mob Violence against Mexicans in the United States, 1848-1928* 6, 17–18, 56, 61–63, 113 (2013).

[11] *See* Gary Clayton Anderson, *Conquest of Texas: Ethnic Cleansing in the Promised Land, 1820-1875* (2005)

[12] *See Hernandez v. State of Tex.*, 347 U.S. 475, 479–80 (1954) (describing the history of public and private segregation and disparate treatment of people of Mexican descent in Jackson County, Texas and concluding that the exclusion of people of Mexican descent from a grand jury violates the Equal Protection Clause); Timothy Bowman, *Blood Oranges: Colonialism and Agriculture in the South Texas Borderlands*, 111–21, 171–

officials in Texas to expel millions of Mexican immigrants and Mexican Americans through "Mexican repatriation" in the 1930s and Operation Wetback in the 1950s.[13] The Bracero Program, an agricultural guest worker program operational during the mid-twentieth century, was characterized by widespread abuse and exploitation of Mexican workers. Indigenous Mexicans often faced dual discrimination for being both Mexican and Indigenous.[14] The Ku Klux Klan targeted Vietnamese refugees in the Texas Gulf Coast in an attempt to drive them out of the region in the 1970s.[15] The mass detention of Cuban immigrants

---

72 (2016) (describing the development of "Juan Crow," a "system of Jim Crow-style segregation" and maltreatment of people of Mexican descent in South Texas).

[13] Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* 75, 155–56 (2004) (describing the "repatriation of Mexicans" during the Great Depression, resulting in the return of twenty percent of people of Mexican descent in the U.S. to Mexico as "a racial expulsion program exceeded in scale only by the Native American Indian removals of the nineteenth century" and describing the targeting of Mexican workers in "Operation Wetback" in the 1950s and their deportations through Port Isabel, Texas); Alina Das, *No Justice in the Shadows: How America Criminalizes Immigrants* 54–56, 65, 191 (2020) (discussing Mexican "repatriation" and Operation Wetback as targeting people of Mexican descent).

[14] *See* Mireya Loza, *Defiant Braceros: How Migrant Workers Fought for Racial, Sexual, and Political Freedom* 1 (2016) (examining the experiences of Mixtec, Zapotec, Purépecha, and Mayan workers in the Bracero Program). Indeed, Texas was at one point barred by the Mexican government from receiving any Mexican workers due to extreme discrimination against Mexican workers. *See* Otey M. Scruggs, *Texas and the Bracero Program, 1942-1947*, 32 Pac. Hist. Rev. 251 (1963).

in Louisiana led to uprisings in the late 1980s.[16] In recent years, anti-immigrant legislation has been repeatedly proposed and, at times, enacted in both Texas[17] and Louisiana.[18] The goal of these efforts

---

[15] Das, *supra* note 13, at 65–66; Laura Smith, *The War Between Vietnamese Fishermen and the KKK Signaled a New Type of White Supremacy*, Timeline (Nov. 6, 2017), www.timeline.com/kkk-vietnamese-fishermen-beam-43730353df06; *Vietnamese Fishermen's Ass'n v. Knights of the Ku Klux Klan*, 543 F.Supp. 198 (S.D. Tex. 1982).

[16] Das, *supra* note 13, at 66–67; Carl Lindskoog, *Detain and Punish: Haitian Refugees and the Rise of the World's Largest Immigration Detention System* 13–35 (2018); Alex Stepick III, "The Refugees Nobody Wants: Haitians in Miami," in *Miami Now!: Immigration, Ethnicity, and Social Change* 57, 58 (1992); *Two Decades Later, Mariel Boat Lift Refugees Still Feel Effects of Riot*, Los Angeles Times (May 5, 2001), articles.latimes.com/2001/may/05/news/mn-59567.

[17] *See, e.g.*, S.B. 4, 85th Leg., Reg. Sess. (Tex. 2017) (barring local policies prohibiting police from questioning immigration status and requiring Texas law enforcement agencies to comply with immigration detainers); H.B. 413, 86th Leg., Reg. Sess. (Tex. 2018) (prohibiting Texas public institutions of higher education from considering persons unlawfully present in United States to be residents of Texas); H.B. 815, 86th Leg., Reg. Sess. (Tex. 2019) (allowing county clerks to require photo identification to file real property records); H.B. 903, 86th Leg., Reg. Sess. (Tex. 2019) (expanding Texas's smuggling of persons offense to include assisting, guiding, or directing two or more persons to enter or remain on agricultural land without consent of the landowner); S.B. 1616, 86th Leg., Reg. Sess. (Tex. 2019) (designating English as the official language of Texas and restricting the translation of official state documents); S.B. 2127, 86th Leg., Reg. Sess. (Tex. 2019) (proposing a program to train local law enforcement volunteers to participate in border enforcement).

[18] *See, e.g.*, H.B. 61, 2021 Leg., Reg. Sess. (La. 2021) (requiring taxpayers who claim a dependent child to provide a statement

has been to rid the Plaintiff States of their undesired noncitizen populations.[19] Indeed, in recent months, Texas has spent more than $12 million busing migrants arriving from Mexico to New York and Washington, D.C.[20]

This underlying objection to the presence of noncitizen residents lies at the core of the Plaintiff States' standing arguments. The Plaintiff States and the lower courts fault the federal government for "increasing" the number of noncitizens in the Plaintiff

---

affirming the child met certain residency requirements in the United States); H.B. 676, 2017 Leg., Reg. Sess. (La. 2017) (allowing the state of Louisiana to withhold funding to local municipalities and law enforcement agencies that limit cooperation with U.S. Immigration and Customs Enforcement); H.B. 836, 2015 Leg., Reg. Sess. (La. 2015) (requiring foreign-born applicants for a Louisiana marriage license to submit documentation proving they are lawfully present in the United States); H.B. 411, 2011 Leg., Reg. Sess. (La. 2011) (imposing civil penalties for harboring, concealing, sheltering, or transporting persons without lawful immigration status in the state of Louisiana, requiring noncitizens present in the state to apply for and carry a registration document, and requiring law enforcement officers to verify the citizenship status of any person they lawfully stop, detain, or arrest whenever they reasonably suspect the person is unlawfully present in the United States).

[19] *See, e.g.,* K-Sue Park, *Self-Deportation Nation*, 132 Harv. L. Rev. 1878, 1881–82 (2019) (describing the role of anti-immigrant state legislation in encouraging self-deportation and escalating federal deportation policies).

[20] Polo Sandoval & Andy Rose, *Texas spends more than $12 million to bus migrants to Washington, DC, and New York,* CNN (Aug. 21, 2022, 5:01 PM), https://www.cnn.com/2022/08/30/politics/texas-migrant-busing-cost-abbott-washington-dc-new-york/index.html.

States.[21] They argue that the federal government is failing to take custody of certain noncitizens,[22] thus failing to reduce their noncitizen population and necessitating continuing expenditures on residents whom the Plaintiff States would prefer the federal government remove, however temporarily, through immigration detention.[23] The Plaintiff States do not

---

[21] *See Texas v. United States*, 40 F.4th 205, 217 (5th Cir. 2022) (citing *Texas v. Biden,* 10 F.4th 538, 547 (5th Cir. 2021) (holding that "an increase in the number of [noncitizens] in Texas, many of whom will create costs for the States, is sufficient to establish standing") (cleaned up); *Texas v. United States*, No. 6:21-CV-00016, 2022 WL 2109204, at *13 (S.D. Tex. June 10, 2022) (describing an increase in the number of "criminal [noncitizens]" and "[noncitizens] with final orders of removals" released into Texas and an associated increase in state incarceration costs).

[22] *See Texas v. United States*, 2022 WL 2109204, at *17.

[23] Immigrants, including those subject to mandatory detention pending removal proceedings, are eligible for various forms of relief from deportation. The majority of immigrants subject to deportation proceedings in Texas and Louisiana ultimately won their cases in Fiscal Years 2021 and 2022 and returned to their communities in the U.S. *See Outcomes of Deportation Proceedings in Immigration Court*, TRAC Immigration (July 2022), https://trac.syr.edu/phptools/immigration/court_backlog/deport_outcome_charge.php. Individuals with final orders of removal may also be released from immigration detention on supervision after the removal period has expired, and may ultimately prevail in federal appeals. *See Zadvydas v. Davis*, 533 U.S. 678 (2001); 8 U.S.C. § 1231(a)(6); 8 C.F.R. §§ 241(b)(4), 241.13(b)(2)(ii). While the Plaintiff States suggest those whom they label as "illegal [noncitizens]" or "criminal [noncitizens]" have no place in their states, their arguments ignore the various forms of statutory relief that protect noncitizens from deportation based on various humanitarian factors. *See The Removal System of the United States: An Overview*, American Immigration Council (Aug. 9, 2022), https://www.americanimmigrationcouncil.org/research/removal-system-united-states-overview (describing forms

argue that the federal government is forcing them to change their programs, only that the federal government's actions are impacting the overall noncitizen population they must expend resources on, as if the expenditure of resources on each undesired noncitizen is a cognizable injury. Their framing of injury relies largely on characterizing this group, as a whole, as burdensome and dangerous—a characterization that echoes the baseless and xenophobic invasion and replacement theories that have driven both historical and contemporary White supremacist rhetoric against Black, Latinx, Asian, and Indigenous people in the United States. *See infra* Sec. III.

The Plaintiff States' claims in litigation challenging various other immigration policies under the Biden administration share this same discriminatory theme. By repeatedly characterizing immigrants as drains on state coffers or threats to public safety, they clarify that their true motivation is animus against immigrants generally. In a challenge to the termination of the Migrant Protection Protocols ("MPP"), Texas asserted standing because "[t]he suspension of MPP will lead to additional [noncitizens] being present in the Plaintiff States," which they claimed would increase costs in education, healthcare, and law enforcement.[24] Similarly, in litigation challenging the Deferred Action for Childhood Arrivals ("DACA") program, Texas and Louisiana asserted that incent-

---

of relief available to noncitizens during removal proceedings and after the issuance of a final order of removal).

[24] Motion for Preliminary Injunction at 18–21, *State of Texas, et al. v. Joseph R. Biden, et al.*, No. 2:21-cv-00067 (N.D. Tex., May 14, 2021).

ivizing unlawfully present noncitizens to remain in the United States would increase costs spent on healthcare, education for children, and other social services.[25] In litigation challenging the termination of COVID-related immigration restrictions under 42 U.S.C. § 265 ("Title 42"), Texas and Louisiana explicitly attempted to link increased noncitizen migration—but not overall population growth or domestic migration—to increases in drug trafficking, sex trafficking, and general crime.[26] They claimed that an increase in noncitizens within their borders would lead to "[c]riminal activity by [noncitizens] that would not occur had they not been present in the State[s]"—with no evidence that noncitizens commit crimes at a greater rate than U.S. citizens or domestic migrants.[27]

That Plaintiff States have repeatedly characterized noncitizen residents as threats and burdens on their economies to attack a broad array of federal immigration policies affecting various classes of noncitizens, while simultaneously encouraging population growth, underscores the common thread of discrimination across their assertions of standing.

---

[25] *Texas v. United States*, 549 F.Supp.3d 572, 593 (S.D. Tex. 2021).

[26] Motion for Preliminary Injunction at 13–16, 18, *State of Louisiana, et al. v. Centers for Disease Control & Prevention, et al.*, No. 6:22-cv-00885 (W.D. La. Apr. 14, 2022).

[27] Motion for Preliminary Injunction at 22, *State of Texas, et al. v. Joseph R. Biden, et al.*, No. 2:21-cv-00067 (N.D. Tex., May 14, 2021).

II. STATE DISCRIMINATION AGAINST NONCITIZEN RESIDENTS IS NOT A LEGALLY COGNIZABLE BASIS FOR ALLEGING INJURY.

A state's discriminatory objection to the presence of noncitizen residents is not a legally cognizable basis for injury. Under longstanding Supreme Court precedent, state restrictions on public expenditures that are based on alienage are discriminatory and subject to heightened judicial scrutiny. This remains true even when the disfavored residents are noncitizens subject to potential deportation under federal law. Opening the door to state standing based on an objection to the presence of noncitizens not only exacerbates the well-documented inequities in standing doctrine,[28] it legitimizes the anti-immigrant agenda articulated by the Plaintiff States. Nor may states seek "special solicitude" to assert standing based on an interest in discriminating against their own residents, since that doctrine is premised on the states representing the best interests of their residents in general. To the contrary, standing analysis must be applied with heightened rigor in this context.

The Plaintiff States' framing of injury in this case amounts to backdoor discrimination, in tension with longstanding equal protection principles that prohibit states from directly discriminating against their noncitizen residents. As this Court has long held, discrimination on the basis of race, national origin, and alienage is inherently suspect. *See Graham v. Richardson*, 403 U.S. 365, 372 (1971) (citing *United States v. Carolene Products* Co., 304 U.S. 144, 152–53, n.4 (1938)); *see also Nyquist v. Mauclet*, 432 U.S.

---

[28] *See infra* note 30.

1, 7 (1977). While alienage classifications may be incorporated into federal law regulating immigration, state classifications based on alienage have long been subject to heightened scrutiny under the Equal Protection Clause. *Examining Bd. of Engineers, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572, 601–06 (1976); *Sugarman v. Dougall,* 413 U.S. 634, 642–43 (1973); *In re Griffiths*, 413 U.S. 717, 721–22, 729 (1973); *Nyquist*, 432 U.S. at 7; *Graham*, 403 U.S. at 372; *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 420 (1948); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886). This includes state discrimination against immigrants who are "subject to deportation." *Plyler v. Doe*, 457 U.S. 202, 210 n.9, 226 (1982). As this Court observed, noncitizens subject to deportation "might be granted federal permission to continue to reside in this country, or even to become a citizen," *id.* at 226, and evidence of their contributions to the economic well-being of their states are well-documented, *see id.* at 228. To target noncitizens, "[t]he State must do more than justify its classification with a concise expression of an intention to discriminate." *Id.* at 227 (citing *Flores de Otero*, 426 U.S. at 605); *see also Arizona Dream Act Coal. v. Brewer*, 818 F.3d 901, 913 (9th Cir. 2016) ("dogged animus" against a class of noncitizens "cannot constitute a legitimate state interest").

The Plaintiff States' standing arguments therefore amount to a complaint about the requirements of equal protection. Under the Equal Protection Clause, federal courts have repeatedly held that states may not use their interest in limiting public expenditures as a justification for discriminating against noncitizens. *See Graham*, 403 U.S. at 374–75; *Plyler*, 457 U.S. at 227–30. While a state "may legitimately attempt to

limit its expenditures, whether for public assistance, public education, or any other program," it "may not accomplish such a purpose by invidious distinctions" such as alienage. *Graham*, 403 U.S. at 374–75 (quoting *Shapiro v. Thompson*, 394 U.S. 618, 633 (1969)); *see also Plyler*, 457 U.S. at 227 ("[A] concern for the preservation of resources standing alone can hardly justify the [alienage] classification used in allocating those resources."). Nor may it cobble together various other state interests as cover for "dogged animus" against a "politically unpopular'" subset of noncitizens. *See Arizona Dream Act Coal.*, 818 F.3d at 913 (quoting *United States v. Windsor*, 570 U.S. 744, 746 (2013)); *see also U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973) (a "bare . . . desire to harm a politically unpopular group cannot constitute a legitimate governmental interest").

The Plaintiff States' attempt to narrow the targeted class to noncitizens who have been convicted of crimes does not erase their discriminatory animus against noncitizens generally, any more than an objection to "criminal Black people" or "criminal Muslims" would. Individuals of all races, religions, and citizenship status are charged with committing crimes. When alienage is used to define the targeted class, an underlying motivation remains to discriminate based on alienage. *See Exodus Refugee Immigr., Inc. v. Pence,* 838 F.3d 902, 904–05 (7th Cir. 2016) (rejecting argument that a policy excluding Syrian refugees was not discriminatory because it was "based solely on the threat . . . they pose to the safety of residents of Indiana" and holding that argument was "the equivalent of [defendant] saying . . . that he wants to forbid black people to settle in Indiana not because

they're black but because he's afraid of them, and since race is therefore not his motive he isn't discriminating. But that of course would be racial discrimination, just as his targeting Syrian refugees is discrimination on the basis of nationality."); *see also Nyquist*, 432 U.S. at 9 ("The important points are that [the challenged state policy] is directed at [noncitizens] and that only [noncitizens] are harmed by it. The fact that the statute is not an absolute bar does not mean that it does not discriminate against the class.").

A standing analysis in which the alleged injury is the presence of noncitizens—and the attendant public expenditures on education, health care, and criminal justice required under state law for any resident—should similarly be suspect. Scholars have long argued that, because of its malleability, standing doctrine has the potential to reinforce inequality, privilege, and politicization.[29] White and wealthy plain-

---

[29] *See, e.g.,* Elise C. Boddie, *The Sins of Innocence in Standing Doctrine*, 68 Vand. L. Rev. 297, 303 (2015) (arguing that "standing doctrine preserves existing systems of racial hierarchy and privilege"); Christian B. Sundquist, *The First Principles of Standing: Privilege, System Justification, and the Predictable Incoherence of Article III*, 1 Colum. J. Race & L. 119, 121 (2011) (arguing that "the inherent indeterminacy of standing law can be understood as reflecting an unstated desire to protect racial and class privilege"); Gene R. Nichol, Jr., *Standing for Privilege: The Failure of Injury Analysis*, 82 B.U. L. REV. 301, 304 (2002) (arguing that standing rulings "demonstrate that the injury standard is not only unstable and inconsistent, but that it also systematically favors the powerful over the powerless" and that "[t]he malleable, value-laden injury determination has operated to give greater credence to interests of privilege than to outsider claims of disadvantage"); Richard J. Pierce, Jr., *Is Standing Law or Politics?,* 77 N.C. L. REV. 1741, 1744 (1999) (using empirical studies of environmental law cases to demonstrate the "high degree of doctrinal malleability and result-oriented doctrinal

tiffs fare better in asserting standing than Black and indigent plaintiffs, scholars observe, based on skewed perceptions of the relative legitimacy of their injuries.[30] As outlined below, the Plaintiff States' characterization of noncitizens (as a class) as harmful to the state economy and public safety are based on longstanding racist and xenophobic tropes, which play off assumptions, rather than facts, about the harms that immigrants of color pose to U.S. citizens. Courts should rigorously scrutinize a state's standing arguments in this context.

This rigorous analysis should apply not only to the injuries a state asserts directly, but also to the injuries a state asserts as *parens patriae* for its residents. This is particularly important when a state seeks "special solicitude" in meeting standing requirements by arguing that it is protecting its "quasi-sovereign interests" as *parens patriae*. *See Massachusetts v. E.P.A.,* 549 U.S. 497, 520 (2007). While states may claim injuries as *parens patriae* for their residents, they may do so to protect their residents' well-being and to *prevent* discrimination against them. *See Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 609 (1982) (holding that Puerto

---

manipulation" of standing law); Girardeau A. Spann, *Color-Coded Standing,* 80 CORNELL L. REV. 1422, 1453 (1995) (describing the racially disparate outcomes in standing doctrine).

[30] Boddie, *supra* note 29, at 319 (describing how affirmative action jurisprudence has accepted a "conception of white racial harm . . . so broad that it nearly eviscerates the standing inquiry" because it accepts the premise that "the simple presence of race in a decisionmaking process that uses affirmative action confers an implied injury on all white candidates" without requiring a concrete, personal harm).

Rico had demonstrated sufficient state standing as *parens patriae* to sue private entities for economic discrimination against its residents). A state does not maintain a "quasi-sovereign interest" in discriminating against its own residents on the basis of alienage, and therefore should not be accorded "special solicitude" to seek standing on that basis. *See E.P.A.,* 549 U.S. at 520 (citing *Snapp*, 458 U.S. at 607). "Special solicitude" is premised on the idea that a state is representing the best interests of its residents in general. *See id.*; *Snapp*, 458 U.S at 607 (describing a state's "quasi-sovereign interest" in protecting the "health and well-being . . . of its residents in general"). Discriminatory animus against residents is not a legitimate state interest. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–66 (1977).

The looming specter of discrimination in this case supports a rigorous standing analysis—one that holds the Plaintiff States to the strict standards that apply when a plaintiff seeks to challenge the federal regulation of third parties, as is the case here. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561–62 (1992) (concluding that standing is "substantially more difficult to establish" when the plaintiffs in litigation are not the ones directly being regulated (internal quotations marks and citations omitted)). The elements of standing must be firmly established by a clean record, devoid of racist or xenophobic assertions and speculation. No such showing has been made here.

III. THE PLAINTIFF STATES' ASSERTIONS OF STANDING AMPLIFY LONGSTANDING RACIST AND XENOPHOBIC TROPES ABOUT IMMIGRANTS.

The Plaintiff States' standing assertions draw upon racist and xenophobic tropes describing immigrants as a class as inherently burdensome on public resources and safety, which sheds further light on their discriminatory motivations. These tropes—repeatedly disproven factually—have longevity because they are tools for advancing a White supremacist and xenophobic agenda. This has taken on grave salience today in light of the rise of anti-immigrant violence, "invasion" narratives, and "replacement theory" rhetoric targeting Black and Latinx people. By arguing in federal courts that noncitizens are inherently burdensome, Texas state and local government officials are mobilizing this racist rhetoric in support of a set of sweeping and punitive anti-immigrant policies. As this Court has observed, "[i]t is the mark of a maturing legal system that it seeks to understand and to implement the lessons of history." *Pena-Rodriguez v. Colorado*, 580 U.S. ___, 137 S.Ct. 855, 871 (2017). The arguments the Plaintiff States advance here must be scrutinized to ensure that "our Nation . . . rise[s] above racial classifications that are so inconsistent with our commitment to the equal dignity of all persons." *Id.* at 867.

From the origins of U.S. immigration law, tropes about the criminality and inferiority of immigrants have been used by xenophobic and racist elected officials to advance exclusionary policies. State and federal legislators used tropes about the inherent criminality of Chinese men and women to pass exclusionary state legislation and eventually the Page

Act of 1875, the first federal law authorizing the exclusion of immigrants and a pre-cursor to Chinese exclusion laws enacted in the late nineteenth and early twentieth centuries.[31] In the early 1900s, eugenicists also warned of a "flood" of racially inferior immigrants from southern and eastern Europe and emphasized the burdens that these immigrants would impose on public welfare and safety.[32] Eugenicist Prescott Hall wrote that "recent immigration . . . has imposed a heavier educational burden upon the country than would have been imposed by the immigration of kindred races" and argued that "our burdens are increased by the coming of criminally-inclined

---

[31] *See* Alina Das, *Inclusive Immigrant Justice: Racial Animus and the Origins of Crime-Based Deportation*, 52 U.C. Davis L. Rev. 171, 183–84 (2018); Lucy E. Salyer, *Laws Harsh As Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law* 8–17 (1995).

[32] *See* Robert De C. Ward, *National Eugenics in Relation to Immigration*, The North American Review, Vol. 192, No. 656, at 56, 57, 66 (July 1910) ("From a little trickling rivulet, forty years ago, when it furnished less than one per cent. of our [noncitizen] arrivals, southern and eastern European immigration has increased until it now numbers about seventy per cent. of the total. It has become a flood, and the flood is increasing . . . In addition to the steps which we should take at once to accomplish the more effective exclusion of the insane, imbecile, idiot, tuberculous, those afflicted with loathsome or dangerous contagious diseases, etc., we ought to amend our immigration laws so that it will be possible to exclude more [noncitizens] of such low vitality and poor physique that they are eugenically undesirable for parenthood."); Prescott F. Hall, *Immigration and Its Effects Upon the United States* 106, 321 (1906) (in order to "develop [in the United States] the finest race of men and the highest civilization," "it is quite unnecessary to subject the nation to the burden of delinquents, dependents and the unprogressive elements").

persons."[33] Hall pointed out the "larger cost for increased police and sanitary inspectors, for law courts and machinery of justice, for private charity, for public education, and for the effects of physical and moral contagion upon the rest of the population."[34]

A year after Hall's publication, Congress established the Dillingham Commission, which was tasked with studying and issuing reports on immigration in the United States. The Dillingham Commission's reports further legitimated racist stereotypes that new immigrants from eastern and southern Europe were undesirable and unassimilable. The Commission conducted lengthy examinations into topics such as "Immigrants as Charity Seekers" and "Immigration and Crime."[35] Based on its findings, the Commission recommended that Congress amend immigration laws to impose a literacy test and to allow for the deportation of immigrants who commit certain criminal offenses—which Congress ultimately enacted in 1917.[36]

---

[33] Hall, *supra* note 32, at 142, 149; *see also id.* at 150 ("In other words, the native-born children of immigrants are more criminal than immigrant children, and more than three times as criminal as the native children. When we already have the problem of the [Black person], who is six times as criminal as the native white of native parentage, if we consider adults, and twelve times as criminal if we consider juvenile offenders, it seems unsafe to allow the further introduction of disorderly elements into our population.")

[34] Hall, *supra* note 32, at 166.

[35] *See* Immigration Comm'n, *Immigrants as Charity Seekers* (1910); Immigration Comm'n, *Immigration and Crime* (1910).

[36] *See* Immigration Act of 1917, Pub. L. No. 64-301, ch. 29, § 3, 39 Stat. 874, 875–77 (repealed 1952).

These ideas continued to garner support in Congress through the 1920s. Harry Hamilton Laughlin, one of the most influential American eugenicists in the early 1900s, provided extensive testimony to Congress in support of the Johnson-Reed Immigration Act of 1924.[37] While most of Laughlin's testimony focused on what he considered "biological" characteristics of recent immigrants, Laughlin argued that the costs associated with imposing more immigration restrictions were justified, in part, due to the costs "which American taxpayers must pay out for the maintenance of [noncitizens] in our State institutions for dependents."[38]

Laughlin's testimony and the Dillingham Commission reports, as well as the continued rise in nativism and xenophobia, culminated in the passage of the Johnson-Reed Act. The Act imposed race-based National Origins Quotas and completely barred immigrants from Asia from entering the United States.[39] Upon signing the Act, President Calvin Coolidge commented, "America must remain American."[40] Eugenicists like Laughlin continued to advocate for

---

[37] *See Europe as an Emigrant-Exporting Continent and the United States as an Immigrant-Receiving Nation: Hearings Before the H. Comm. on Immigration and Naturalization*, 68th Cong. 1231–1340 (1924) (statement of Dr. Harry H. Laughlin), *available at* https://curiosity.lib.harvard.edu/immigration-to-the-united-states-1789-1930/catalog/39-990056942180203941.

[38] *Id.* at 1276.

[39] Ngai, *supra* note 13, at 21–27.

[40] *See* Thomas C. Leonard, *Protecting Family and Race: the Progressive Case for Regulating Women's Work*, AM. J. ECON. & SOC. at 761 (July 2005).

more aggressive laws targeting racially disfavored immigrants in the United States, leading to the first law criminalizing unauthorized border crossings in 1929.[41]

There is a direct throughline from the explicitly racist rhetoric and policies of the early twentieth century to the anti-immigrant policies of the modern era. The National Origins Quotas were repealed in 1965, contributing to major demographic shifts in immigration.[42] In the 1970s and 80s, eugenicist John Tanton founded the Federation for American Immigration Reform (FAIR) and began to describe an immigrant "invasion" and the threat immigrants of color posed to White America.[43] The rhetoric of "invasion" was soon mobilized against Haitian refugees fleeing the Duvalier regimes: some Florida residents, perceiving arriving Haitian refugees as "disease ridden . . . uneducated, unskilled peasants," persuaded local elected officials to pressure the legacy Immigration and Naturalization Service ("INS") to take harsher action against them.[44] The INS responded with aggressive action, which included directing the immediate detention of Haitian asylum seekers in local

---

41 *See United States v. Carrillo-Lopez*, 555 F.Supp.3d 996, 1007–09 (D. Nev. 2021) (describing the impact of eugenics and racial animus towards Mexican immigrants on the enactment of a statute criminalizing unauthorized border entry and reentry).

42 Das, *supra* note 13, at 56–57, 64–67.

43 Das, *supra* note 13, at 66. Tanton viewed immigration as a threat to White America, writing "As Whites see their power and control over their lives declining, will they simply go quietly into the night? Or will there be an explosion?" *Id.*

44 Das, *supra* note 13, at 66–67; Stepick, *supra* note 16, at 57, 58.

jails and prisons.[45] Similar tensions flared during the 1980 Mariel Boatlift: arriving Cubans were stigmatized as dangerous, angry White mobs patrolled the streets, and rioting broke out, prompting the Ku Klux Klan to converge on the town where several thousand Cuban refugees were being detained.[46] Again, the INS responded with mass detention, including in Louisiana where Cubans were held in overcrowded conditions.[47] In 1993, Tanton and fellow White nationalist Wayne Lutton published an essay tying particular ethnic groups to drug activity and suggesting that the United States was experiencing a crime wave traceable to the Immigration Act of 1965, which eliminated the race-based National Origins Quotas.[48] This narrative set the stage for the increasingly punitive immigration policies of the 1990s.[49]

Over the last several decades, xenophobic "invasion" rhetoric has spread, espoused in both political debates and the manifestos of the perpetrators of mass shootings.[50] Today, in word and deed, Texas is

---

[45] Das, *supra* note 13, at 67; Lindskoog, *supra* note 16, at 106–07.

[46] Das, *supra* note 13, at 67; Marshall Ingwerson, *Pressure Boils in Cuban Camps. Afraid to Return Home but Unwanted in US, Cuban Detainees Are Stuck in a Frustrating Legal Limbo*, CHRISTIAN SCIENCE MONITOR (Nov. 24, 1987), https://www.csmonitor.com/1987/1124/acuba.html.

[47] Das, *supra* note 13, at 67; Ingwerson, *supra* note 46.

[48] John Tanton & Wayne Lutton, *Immigration and Crime*, The SOCIAL CONTRACT, Spring 1993; Das, *supra* note 13, at 74.

[49] Das, *supra* note 13, at 74–75.

[50] Martha Pskowski, *As El Paso struggles to heal, Walmart shooter's rhetoric builds in GOP*, EL PASO TIMES (Aug. 4, 2022, 6:01 AM), https://www.elpasotimes.com/story/news/2022/

giving new life to this familiar, dangerous rhetoric. In spring 2021, Governor Abbott launched "Operation Lone Star" ("OLS") and deployed thousands of Texas Department of Public Safety troopers and Texas National Guard members to communities along the border with Mexico.[51] Shortly after, Governor Abbott

---

08/04/el-paso-walmart-shooting-patrick-crusius-gop-rhetoric-invasion/7585100001/; Benjamin Wermund, *Ted Cruz doubles down on 'invasion' rhetoric espoused by accused Buffalo shooter*, HOUSTON CHRONICLE (May 18, 2022, 5:06 PM), https://www.houstonchronicle.com/politics/texas/article/Ted-Cruz-doubles-down-on-invasion-rhetoric-17181675.php; Jo Becker, *The New Nativists: The Global Machine Behind the Rise of Far-Right Nationalism*, N.Y. TIMES (Aug. 10, 2019), https://www.nytimes.com/2019/08/10/world/europe/sweden-immigration-nationalism.html ("That nativist rhetoric — that immigrants are invading the homeland — has gained ever-greater traction, and political acceptance, across the West amid dislocations wrought by vast waves of migration from the Middle East, Africa and Latin America. In its most extreme form, it is echoed in the online manifesto of the man accused of gunning down 22 people . . . in El Paso."); Dara Lind, *The conspiracy theory that led to the Pittsburgh synagogue shooting, explained*, VOX (Oct. 29, 2018, 3:20 PM), https://www.vox.com/2018/10/29/18037580/pittsburgh-shooter-anti-semitism-racist-jewish-caravan (describing the xenophobic "invader" ideology espoused by the perpetrator of the mass shooting at the Tree of Life Synagogue); Adam Sewer, *Trump's Caravan Hysteria Led to This,* THE ATLANTIC (Oct. 28, 2018), https://www.theatlantic.com/ideas/archive/2018/10/caravan-lie-sparked-massacre-american-jews/574213/ (tracing a throughline between the "invader" rhetoric by President Trump, other elected officials, and political commentators and the Tree of Life shooting).

[51] *See* Press Release, Office of the Texas Governor, *Governor Abbott, DPS Launch "Operation Lone Star" To Address Crisis At Southern Border* (Mar. 6, 2021), https://gov.texas.gov/news/post/governor-abbott-dps-launch-operation-lone-star-to-address-crisis-at-southern-border.

declared a state of disaster in Texas, asserting that federal government inaction on immigration had led to a "dramatic increase in the number of individuals unlawfully crossing the international border."[52] OLS became a campaign of mass immigrant criminalization and detention. Under the OLS trespass arrest program, state and local law enforcement have collaborated to target individuals they believe to be adult male migrants for arrest and prosecution under state criminal trespass laws. To date, thousands of people have been arrested on such charges under OLS.[53]

OLS has been accompanied by racist and xenophobic statements by government officials. Texas state and local officials have repeatedly warned of an "invasion" of immigrants.[54] Some have conjured the specter of White replacement: Texas Lieutenant Governor Dan Patrick claimed that "in 18 years if every one of them has two or three children, you're talking about millions and millions and millions of new voters" and that this is part of a purported "silent revolution" by Democrats to "take over our country

---

[52] Gov. Greg Abbott, *Proclamation by the Governor of the State of Texas* 1-2 (May 31, 2021), https://gov.texas.gov/uploads/files/press/DISASTER_border_security_IMAGE_05-31-2021.pdf.

[53] Operation Lone Star Briefing at 2:40 (December 9, 2021) https://www.facebook.com/watch/live/?ref=watch_permalink&v=277771827651145&t=0 (reporting and showing corresponding data for December 2, 2021).

[54] *See* Vanessa Croix, *Kinney Co. officials issue disaster declaration, calling on state leaders for help,* CBS Kens*5* (April 21, 2021), https://www.kens5.com/article/news/special-reports/at-the-border/kinney-coofficials-issue-disaster-declaration-calling-on-state-leaders-for-help/273-1ac31fd5-c37d-4221-8675-d201ab40f6d3.

without firing a shot."[55] Kinney County, Texas Judge Tully Shahan worried that "Biden is diffusing all of these people in our country to change our culture."[56] Officials have made thinly-veiled threats of vigilante violence against immigrants: Texas law enforcement have posted to social media about capturing or "hunting" migrants,[57] and the Sheriff of Val Verde County, Texas, noted that residents of his county have asked him "When can I shoot?"[58] Other officials have expressed support for militia involvement,[59]

---

[55] James Barragán, *Dan Patrick warns democrats are allowing in immigrants for "silent revolution," mirroring language of far-right extremists*, THE TEXAS TRIBUNE (Sept. 17, 2021), https://www.texastribune.org/2021/09/17/texas-dan-patrick-immigrants-democrats-haitians.

[56] Aaron Nelsen, *Kinney County Has Embraced Greg Abbott's Operation Lone Star Like Nowhere Else. It's Fueling the Hysteria of Some Locals*, TEXAS MONTHLY (Oct. 29, 2021), https://www.texasmonthly.com/news-politics/operation-lone-star-kinney-county/.

[57] *See* Kinney County Sheriff's Office, FACEBOOK (Nov. 17, 2021, 1:10 pm), https://m.facebook.com/story.php?story_fbid=1054471385310603&id=159181914839559 (sharing a video depicting a group of brown-skinned people walking through brushland with the caption, "Gotta love deer hunting in South Texas . . . Age and score please.").

[58] Uriel J. García, *Texas House committee approves bill to spend an extra $2 billion on border enforcement*, THE TEXAS TRIBUNE (Aug. 24, 2021), https://www.texastribune.org/2021/08/24/texas-house-committee-border-enforcement/.

[59] Charlotte Cuthbertson, *The New Wild West: Texas Border County's Desperate Bid to Curb Illegal Immigration*, The Epoch Times (Aug. 21, 2021) https://www.theepochtimes.com/the-new-wild westtexas-border-countys-desperate-bid-to-curb-illegal-immigration_3955137.html.

and the Kinney County Sheriff's Office has actively collaborated with Patriots for America,[60] an armed militia group whose members endorse White supremacist ideology and have arrested migrants to turn them over to law enforcement.[61]

Against this background, the Plaintiff States' assertion that they are sufficiently harmed by the presence of noncitizens within their borders for Article III standing can be seen to be closely tied to a long history of xenophobic, racist thought. The Court should view such claims with the highest degree of skepticism. To accept the Plaintiff States' claim that they suffer a legally cognizable injury based on the presence of noncitizen residents and their attendant costs is to condone the Plaintiff States' discriminatory motivations.

---

60 *See* Elizabeth Findell, *In a Texas Border Town, Armed Groups Arrive to Look for Migrants*, WALL STREET JOURNAL (Dec. 16, 2021), https://www.wsj.com/articles/in-a-texas-border-town-armed-groups-arrive-to-look-for-migrants-11639668989; Rodney Elijah, *My experience at the Texas Border with Patriots for America militia*, FACEBOOK at–9:15 (Dec. 30, 2021), https://www.facebook.com/rodney.perez.96/videos/5078830938817149.

61 Rgvtruth, *Answering the call*, RUMBLE at 47:30 (Dec. 26, 2021), https://rumble.com/vrgfqh-answering-thecall.html.

CONCLUSION

For these reasons, the decision below should be reversed.

Respectfully submitted,

Sirine Shebaya
Counsel of Record
Joseph Meyers
Amber Qureshi
NATIONAL IMMIGRATION PROJECT (NIPNLG)
2201 Wisconsin Ave NW, Suite 200
Washington, DC 20007
(202) 656-4788
sirine@nipnlg.org
joseph@nipnlg.org
amber@nipnlg.org

Alina Das
WASHINGTON SQUARE LEGAL SERVICES, INC.
Immigrant Rights Clinic
New York University School of Law
245 Sullivan St., 5th Fl.
New York, NY 10012
(212) 998-6467
alina.das@nyu.edu

Counsel for Amici Curiae

September 16, 2022

APPENDIX
LIST OF AMICI CURIAE

- The Advocates for Human Rights
- American Immigration Council
- Asian Americans Advancing Justice-Atlanta
- ASISTA Immigration Assistance
- Bend the Arc: A Jewish Partnership for Justice
- The Bronx Defenders
- Center for Immigration Law and Policy, UCLA School of Law
- Civil Rights Education and Enforcement Center
- Columbia Law School Immigrants' Rights Clinic
- Comunidad Maya Pixan Ixim
- Families for Freedom
- Freedom Network USA
- Haitian Bridge Alliance
- Hispanic Federation
- Illinois Coalition for Immigrant and Refugee Rights
- Immigrant Defenders Law Center
- Immigrant Legal Resource Center
- International Refugee Assistance Center
- Japanese American Citizens League
- Justice Action Center
- Kathryn O. Greenberg Immigration Justice Clinic, Benjamin N. Cardozo School of Law

- La Resistencia
- Legal Aid at Work
- Legal Aid Justice Center
- Make the Road New York
- Mariposa Legal, a program of COMMON Foundation
- Migrant Center for Human Rights
- Minnesota Freedom Fund
- National Employment Law Project
- National Immigration Project (NIPNLG)
- National Organization for Women Foundation
- New York Law School Asylum Clinic
- North Carolina Justice Center
- NYU Immigrant Rights Clinic, Washington Square Legal Services, Inc.
- The Refugee and Immigrant Center for Education and Legal Services (RAICES)
- Refugees International
- The Right to Immigration Institute
- Robert F. Kennedy Human Rights
- Rocky Mountain Immigrant Advocacy Network
- Safe Harbor Clinic, Brooklyn Law School
- Safe Passage Project
- Service Employees International Union (SEIU)
- Still Waters Anti-Trafficking Program, RCHP-AHC

- University of Miami School of Law Immigration Clinic
- University of Minnesota Law School Detainee Rights Clinic
- University of Tulsa College of Law Legal Clinic
- Washington and Lee University School of Law Immigrant Rights Clinic,
- The Young Center for Immigrant Children's Rights