

No. 22-592

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In the  
**Supreme Court of the United States**

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STATE OF ARIZONA, ET AL.,  
*Petitioners,*

v.

ALEJANDRO MAYORKAS, SECRETARY OF  
HOMELAND SECURITY, ET AL.,  
*Respondents.*

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ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**BRIEF OF THE UNITED STATES  
CONFERENCE OF CATHOLIC BISHOPS  
AND CATHOLIC LEGAL IMMIGRATION  
NETWORK, INC., AS *AMICI CURIAE*  
SUPPORTING RESPONDENTS**

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**INTEREST OF *AMICI CURIAE***<sup>1</sup>

*Amici* are motivated by the teachings of the Catholic Church, which include a central belief that every person is imbued with an inviolable dignity, and that all human life, created in the image and likeness of God, is sacred. It is through this lens that the Church stands “against every attempt to evaluate the person according to utilitarian and power-based criteria.” Pope Benedict XVI, *General Audience*, Vatican (Feb. 6, 2013), <https://tinyurl.com/y4nw34u4>. These teachings extend to migrants seeking refuge in a foreign land. Since the beginning of his pontificate, Pope Francis has consistently reaffirmed the Church’s perennial concern for migrants and condemned the growing “globalization of indifference” facing those who flee violence, persecution, and other life-threatening circumstances. Alessandro Speciale, *Pope Francis Decries “Globalization of Indifference,”* <https://tinyurl.com/yeyt762v>.

*Amici* urge a comprehensive plan for migration that ensures the humane treatment of all persons and respects their God-given dignity. Many of the most vulnerable migrants have been forced to languish in Mexico, unable to avail themselves of the opportunity to seek protection in accordance with U.S. and international law, as a result of the Title 42 Policy (defined below) at issue here. For these reasons, *amici*

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<sup>1</sup> No party’s counsel authored this brief in whole or in part; no party or party’s counsel contributed money intended to fund this brief; and no person other than *amici* and its counsel contributed money to fund this brief.

oppose the continuation of this Policy on moral and legal grounds.

**The United States Conference of Catholic Bishops.** The United States Conference of Catholic Bishops (the “Conference” or “USCCB”) is a nonprofit corporation whose members are the active Cardinals, Archbishops, and Bishops of the United States and the U.S. Virgin Islands. On behalf of the Christian faithful, the USCCB advocates and promotes the pastoral teachings of the Church in a broad range of areas, from the free expression of ideas and the rights of religious organizations and their adherents, to fair employment and equal opportunity for the underprivileged, protection of the rights of parents and children, the value of human life from conception to natural death, and care for immigrants and refugees. When lawsuits touch upon important tenets of Catholic teaching, the Conference has filed *amicus curiae* briefs to assert its view, most often in this Court. In so doing, the Conference seeks to further the common good for the benefit of all.

**The Catholic Legal Immigration Network, Inc.** The Catholic Legal Immigration Network, Inc. (“CLINIC”), is the nation’s largest network of non-profit immigration legal service providers, with nearly 450 affiliates in 49 states. Through its Estamos Unidos project, CLINIC previously served asylum seekers in Ciudad Juárez, Mexico, who were expelled in the early days of the Title 42 Policy. CLINIC continues to conduct systemic advocacy related to access to due process and asylum based on information gathered from its network and partners

and provides legal training and support on issues related to asylum.

### **INTRODUCTION AND SUMMARY OF ARGUMENT**

Nearly three years since its temporary adoption at the beginning of the COVID-19 pandemic, the federal government's policy of prohibiting entry of certain noncitizens into the United States, and even expelling those with bona fide asylum claims, continues today (the "Title 42 Policy" or "Policy"). The Policy, which overrides normal immigration proceedings and skirts due process protections, has suspended the entry and authorized the expulsion of thousands of vulnerable migrants, including many asylum-seeking families with children. Since the spring of 2022, however, the government has sought to end this Policy, finding that its original, purported public health justification no longer exists. But at present, the government has been prohibited from lifting the Policy due to ongoing litigation.

Petitioners, nonparties that desire to maintain the Title 42 Policy as a preferred response to increased migration, seek to press those arguments here and intervene in this case. If Petitioners prevail, the delay in adjudicating the individual Respondents' claims and the harm inflicted on them and those similarly situated will be as inevitable as it will be severe.

*Amici* write both to provide illustrations of the type of prejudice endured by these individuals and families *since the CDC sought to end the Policy*, and to urge the Court not to exercise its discretion to grant intervention.



Safeguarding and welcoming migrants, especially refugees and asylum seekers who flee from life-threatening conditions in their countries of origin, is a moral imperative with strong grounding in federal immigration law. Permitting the Title 42 Policy to continue unabated today, when the public health rationale that served as its purported justification has lapsed, turns a blind eye to the need to protect human life and dignity.

Indeed, a result of the Title 42 Policy's continued effect is that thousands of asylum seekers and their families have been denied entry into the United States and forced to live in unsafe conditions—without regard for their rights under U.S. immigration law. Their fundamental interests in life, health, and welfare are being unduly prejudiced. *Amici* in this brief relate four stories from those who attempted to seek protection in the United States in late 2022, more than two years after the adoption of the Policy and months after the government sought to terminate it because any underlying emergent circumstances had lapsed. What they have faced is a moral affront and is directly attributable to the continuation of the Title 42 Policy.

*Amici* have long advocated for comprehensive reform of federal immigration law that preserves access to humanitarian protection and ensures due process for newcomers, while accounting for the right of sovereign nations to maintain their borders and to regulate immigration in furtherance of the common good. But relying on an emergency policy to punish those seeking relief when the underlying authority no longer exists is no substitute for legislative action. The

Court should heed the wisdom of Justice Gorsuch’s dissent from the grant of certiorari in this case, that “the current border crisis is not a COVID crisis. And courts should not be in the business of perpetuating administrative edicts designed for one emergency only because elected officials have failed to address a different emergency.” *Arizona v. Mayorkas*, 143 S. Ct. 478, 479 (2022) (Gorsuch, J., dissenting from grant of stay and writ of certiorari).

The Court should affirm the Court of Appeals’ decision upholding the District Court’s denial of intervention.

## ARGUMENT

### I. THE COURT SHOULD NOT GRANT PERMISSIVE INTERVENTION

In assessing whether an intervention request is timely under Rule 24(a), courts must take account of whether intervention would prejudice the existing parties. And to allow permissive intervention, courts must assess, among other things, “whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3). The Court should not exercise its discretion to grant permissive intervention on these facts because doing so would work undue prejudice to the individual Respondents—people fleeing persecution and legally seeking protection in the United States. *Amici* firmly believe there is a moral imperative to safeguard these individuals and their families, and any countervailing justification for the Title 42 Policy grounded in the COVID-19 pandemic has lapsed. The record before the courts below is

replete with evidence of the unthinkable harms being inflicted on these migrants, and *amici* in this brief relate several specific stories from their experience to further illustrate the real-world effects of this Policy since the CDC tried to end it. Permitting its continuation in the absence of an emergency is no substitute for a comprehensive plan for the border that ensures the humane treatment of all persons, respecting their God-given dignity and providing due process. The Court should not prolong this litigation, and the Title 42 Policy itself, at the expense of the vulnerable.

#### **A. Safeguarding Migrants and Asylum Seekers Is a Moral Imperative**

*Amici* have a strong interest in ensuring that courts adhere to an important goal of federal immigration law: the protection of human life and dignity. All people, especially refugees and asylum seekers, should be welcomed and protected in recognition of and respect for their inalienable human dignity. Continuation of the Title 42 Policy has the opposite effect.

Pope Francis has spoken of the “moral imperative” of welcoming and protecting migrants and refugees. Pope Francis, *Address of His Holiness Pope Francis to Participants in the International Forum on “Migration and Peace,”* Vatican (Feb. 21, 2017), <https://tinyurl.com/y95d7gu8>. “Every stranger who knocks at our door is an opportunity for an encounter with Jesus Christ, who identifies with the welcomed and rejected strangers of every age (Matthew 25:35–43).” Pope Francis, *Message of His Holiness Pope Francis for the 104th World Day of Migrants and*

*Refugees 2018*, Vatican (Jan. 14, 2018), <https://tinyurl.com/ycsawo95>. And he has called upon Catholics and all people of good will to “embrace all those fleeing from war and hunger, or forced by discrimination, persecution, poverty and environmental degradation to leave their homelands.” Pope Francis, *Message of His Holiness Pope Francis for the Celebration of the 51st World Day of Peace*, Vatican (Jan. 1, 2018), <https://tinyurl.com/ycv25ux8>.

This commitment to protecting migrants flows from the Catholic Church’s longstanding tradition of defending the fundamental and inalienable rights of every human being. *See generally Modern Catholic Social Teaching on Immigration: Notable Quotes*, CLINIC (June 18, 2015), <https://tinyurl.com/yc2bax3u> (highlighting teachings from as early as 1891). Every person is created in God’s image and deserves dignity and respect. Pontifical Council for Justice & Peace, *Compendium of the Social Doctrine of the Church* ¶ 108 (2005). Thus, migrants and asylum seekers, like all persons, are imbued with inherent dignity and natural rights that must be respected, without regard to their citizenship status or national origin. *See Modern Catholic Social Teaching on Immigration: Notable Quotes* 14, CLINIC (June 18, 2015), <https://tinyurl.com/32pke4v6> (quoting Pope John Paul II, *Speech of Pope John Paul II to the General Assembly of the International Catholic Migration Commission* (July 5, 1990) (“It is necessary to restate that, for migrants or refugees as for all other human beings, rights are not based primarily on juridical membership in a determined community, but, prior to that, on the dignity of the person. . . .”)).

This core principle drives the Church to lead the faithful and all people of good will to see every person, and especially the vulnerable migrant or asylum seeker, as made in God’s image, and thus to welcome and care for him or her out of compassion and respect for his or her human dignity. *See* Pontifical Council “Cor Unum” & Pontifical Council for the Pastoral Care of Migrants & Itinerant People, *Refugees: A Challenge to Solidarity*, Vatican, <https://tinyurl.com/alygjkkm>.

Those who “flee wars and persecution” have the right “to claim refugee status” and to seek asylum, rather than to migrate through other channels. U.S. & Mexican Catholic Bishops, *Strangers No Longer: Together on the Journey of Hope*, USCCB ¶ 37 (Jan. 22, 2003), <https://tinyurl.com/3ca3v3ta>. The human rights and dignity of asylum seekers must be respected, regardless of their citizenship, visa status, or mode of arrival. *See Responding to Refugees and Migrants: Twenty Action Points for the Global Compacts 3*, Vatican, <https://tinyurl.com/yxofpvcp> (“Migrants, asylum seekers and refugees should be received as human beings, in dignity and full respect for their human rights, regardless of their migratory status.”).

Finally, the Church teaches that all people “have the right to migrate to support themselves and their families” and instructs that nations—particularly economically prosperous nations—should “provide ways to accommodate this right.” *Strangers No Longer, supra*, at ¶ 35; *Catechism of the Catholic Church*, USCCB ¶ 2241 (2019), <https://tinyurl.com/mr288mys>. All people have the “right to receive from the earth what is necessary for

life—food, clothing, shelter.” Fr. Thomas Betz, *Catholic Social Teaching on Immigration and the Movement of Peoples*, USCCB, <https://tinyurl.com/yxlerkxz>; see also *A Catholic Framework for Economic Life, a Statement of the U.S. Catholic Bishops*, USCCB (1996), <https://tinyurl.com/y55hpeoa> (“All people have a right to life and to secure the basic necessities of life, such as food, clothing, shelter, education, health care, safe environment, and economic security.”). At the same time, the Church affirms that “[p]olitical authorities, for the sake of the common good for which they are responsible, may make the exercise of the right to immigrate subject to various juridical conditions.” *Catechism of the Catholic Church, supra*, at ¶ 2241. The balancing of these rights is ultimately subject to the right to life, “upon which all the other inalienable rights of individuals are founded and from which they develop.” Pope John Paul II, *Evangelium Vitae*, Vatican ¶ 101 (Mar. 25, 1995), <https://tinyurl.com/ymry9tr8>. As Pope John Paul II taught:

A society lacks solid foundations when, on the one hand, it asserts values such as the dignity of the person, justice and peace, but then, on the other hand, radically acts to the contrary by allowing or tolerating a variety of ways in which human life is devalued and violated, especially where it is weak or marginalized. Only respect for life can be the foundation and guarantee of the

most precious and essential goods of society, such as democracy and peace.

*Id.*

These fundamental concepts underlie the Church's commitment to care for migrants, asylum seekers, and other newcomers and to call upon public authorities to do the same.

### **B. The Temporary Authority Undergirding the Title 42 Policy Has Lapsed**

The Title 42 Policy, enacted by the Centers for Disease Control and Prevention ("CDC") in a series of orders under authority granted by 42 U.S.C. § 265, was an emergency measure to address the COVID-19 pandemic. *See* 85 Fed. Reg. 16,559-01 (Mar. 24, 2020); 85 Fed. Reg. 17,060-02 (Mar. 26, 2020). By its own terms, Section 265 provides a temporary grant of authority to prevent the spread of disease by suspending "the introduction of persons" into the United States and is expressly limited to "such period of time as [the CDC] may deem necessary" to protect "the public health." 42 U.S.C. § 265. The CDC's Title 42 Policy suspended the entry and authorized the expulsion of certain noncitizens who would otherwise have been held within the United States while being processed under the immigration provisions in Title 8 of the U.S. Code. *E.g.*, 8 U.S.C. § 1158.

*Amici* are conscious of the importance of protecting public health and safety and acknowledge that, in emergencies, it could be that temporary modifications of normal immigration procedures may be warranted, so long as they are grounded in sound scientific

rationales. *See Situation at the U.S.-Mexico Border*, USCCB (Apr. 1, 2021), <https://tinyurl.com/4tt737a2>. Even in such cases, however, any modifications must be consistent with the moral requirement to safeguard human life and dignity.

While *amici* take no position here on whether the Title 42 Policy was ever supported by a sound scientific rationale, the CDC properly revisited the issue when it concluded in April 2022 that the Policy is “no longer required in the interest of public health.” 87 Fed. Reg. 19,941-01, 19,942 (Apr. 6, 2022). But the Policy nevertheless persists on account of this and related ongoing litigation. Absent the emergency, temporary justification for the departure from the regular course of accepting and processing refugees and asylum seekers, the Court should not exercise its discretion to grant intervention when doing so would prolong the litigation and, thus, the Policy. *See* Fed. R. Civ. P. 24(b)(3) (“In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.”). Delaying the resolution of this case will result in continued harms to the most vulnerable, examples of which *amici* provide below.

### **C. The Title 42 Policy Continues to Inflict Significant Harm on Vulnerable Persons**

As a result of the Title 42 Policy, thousands of asylum seekers and their families have been denied entry into the United States and forced to live in unsafe conditions without regard for their rights under U.S. immigration law. Their fundamental interests in life, health, and welfare are being unduly prejudiced by the continuation of the Title 42 Policy.



The Policy has already inflicted significant harm on the most vulnerable of asylum seekers. It is undisputed that asylum-seeking migrants have lost their lives in Mexico when, but for Title 42, they could have otherwise pursued their legal claims in the United States. In addition to the harms already in the record before the lower courts, *e.g.*, Joint App. at 347, 357, 358, 366, *Huisha-Huisha v. Mayorkas*, No. 21-5200 (D.C. Cir. Oct. 21, 2021), *amici* wish to direct the Court to specific stories of harm to vulnerable migrants that have been brought to *amici*'s attention.

Take, for instance, Maria<sup>2</sup> and her two minor children, who arrived in Ciudad Juárez, Mexico, in September 2022. The family had left their home in Central Mexico, fleeing domestic abuse. Maria's children are survivors of sexual violence committed by their father. Before they arrived in Ciudad Juárez, Maria and her young children had been hiding within a shelter network in Mexico for a year in a failed attempt to protect themselves from their abuser. This single mother and her two children presented themselves to U.S. immigration officers, who informed them that the border was closed and expelled the family back into Mexico, leaving them vulnerable to the dangers they were fleeing. A local Mexican government agency then refused to help Maria and her children. Maria tried her best to hide their identity and whereabouts and provide for her children by working informal jobs. But the abusive

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<sup>2</sup> *Amici* have used pseudonyms for all individuals whose stories are shared in this brief. These stories were provided to CLINIC directly by those who survived the experiences described, or by trusted colleagues in Ciudad Juárez, Mexico, who interviewed the individuals.

father of her children kept looking. He found them, falsely accused Maria of kidnapping the children, local authorities detained Maria. He, the abuser, took the children. As of today, no one knows if Maria ever recovered her children or if she is even still alive.

Those who have survived continue facing horrid conditions. Mayra and her 12-year-old U.S.-born son, José, fled gang violence in Guatemala in December 2022. When they arrived at the U.S.-Mexico border, they presented themselves to U.S. immigration officers and were put on a bus along with others. Once the bus stopped, they were told that people from Guatemala, Honduras, and El Salvador had to get off the bus as they were going to be immediately removed from the United States. Mayra gave the officers her Guatemalan identification card and her son's U.S. birth certificate, which she thought would help them gain entry to the United States. Nevertheless, Mayra and José were expelled to Ciudad Juárez on December 23. Mayra was desperate. She did not know where to go. She and José wandered the streets of Ciudad Juárez until they found the local cathedral. They entered and joined in praying the Rosary. A nun spotted them, gave them sweaters and jackets, and led them to the cathedral's offices, where they received a temporary reprieve. But the offices are not a shelter, and Mayra and José could not remain there, so they returned to sleeping on the street, as they did Christmas night.

Since the Policy generally applies to all asylum-seeking migrants, even families with disabled children have been exposed to horrors following their expulsion from the United States. Moises and his 14-

year-old daughter, Estrella, left Venezuela in fall 2022. They are in Ciudad Juárez, Mexico, after being expelled under Title 42. Moises is a single father and the sole caretaker of his disabled daughter. Estrella has not attended school in three years due to the dangers faced in their home country and the gradual deterioration of her eyesight. Moises left home seeking asylum in the United States so Estrella would not have to endure the dangers he has. During their journey, Moises and Estrella had already survived several murder attempts and extreme hardship before turning themselves in to U.S. immigration officers. The officers told Moises and Estrella they had no right to seek protection. Since their expulsion, they have survived beatings, assault, and extortion from Mexican military personnel and cartels. They have been forced to sleep on the streets of Juárez during this freezing winter.

Finally, Title 42 has resulted in the expulsion of asylum seekers with emergent medical needs. Jesús arrived in Ciudad Juárez, Mexico, in the fall of 2022 after fleeing from the organized crime network that had murdered his spouse, children, and mother by burning them alive. He presented himself before U.S. immigration officers but was informed that the border was closed due to Title 42. The same night he was expelled back to Mexico, he was rushed to the emergency room and operated on immediately due to the injuries he sustained during his persecution by the organized crime network.

In each of these examples, individuals or families fled to the United States seeking shelter, safety, and security from persecution in their home countries.

Each of these individuals reached the border of the United States more than two years after the enactment of the temporary, emergency Title 42 Policy and several months after the CDC determined that no public health emergency justified its continuation. Instead of protection, these vulnerable migrants have been discarded without regard for their circumstances or their right to pursue asylum. Prolonging this litigation by granting intervention will unduly prejudice these and the thousands of other asylum seekers awaiting their chance to make their case for protection in the United States.

#### **D. Title 42 Is No Substitute for Comprehensive Immigration Reform**

As discussed above, the Title 42 Policy has outlived its originally stated public health justification and is inflicting unthinkable harms on vulnerable migrants. The Court should not exercise its discretion to allow intervention, which would result in the continued, unjustified application of the Policy. Importantly, *amici* stress that Title 42, with its lack of regard for the dignity of migrant lives, has functioned as a counterproductive crutch, further forestalling the comprehensive reform that is needed. *Amici* have consistently urged legislative measures that respect migrants' intrinsic dignity, preserve human life, and provide for safe, orderly, and humane immigration, all while acknowledging the right of nations to maintain their borders.

To be sure, the Church recognizes the right of sovereign nations to regulate their borders and to control immigration in furtherance of the common good. However, “[a] country’s regulation of borders

and control of immigration must be governed by concern for all people and by mercy and justice.” *Catholic Social Teaching on Immigration and the Movement of Peoples, supra*. Accordingly, in regulating immigration, nations must respect the human dignity and rights of migrants and protect those fleeing violence and persecution. As Pope Benedict XVI explained, although “every state has the right to regulate migration and to enact policies dictated by the general requirements of the common good,” states must always “safeguard[] respect for the dignity of each human person.” Pope Benedict XVI, *Message of His Holiness Pope Benedict XVI for the World Day of Migrants and Refugees*, Vatican (Oct. 12, 2012), <https://tinyurl.com/y6jgu8un>.

Persecution, violence, natural disasters, and other root causes of migration will continue to force people to seek protection in the United States until more robust efforts are undertaken to address them. Relying on an emergency policy to punish those seeking aid (or attempt to dissuade others from doing so) when that emergency no longer exists is no substitute for comprehensive action. Indeed, as Justice Gorsuch already explained in this case, “the current border crisis is not a COVID crisis. And courts should not be in the business of perpetuating administrative edicts designed for one emergency only because elected officials have failed to address a different emergency.” *Arizona v. Mayorkas*, 143 S. Ct. at 479.

The Court should take account of the prejudice to these vulnerable asylum seekers in resolving the intervention question. And to avoid further,

preventable suffering by the most vulnerable of migrants, Petitioners' request for permissive intervention should be denied.

**CONCLUSION**

The Court should affirm the Court of Appeals' decision upholding the District Court's denial of intervention.

Respectfully submitted,

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