

No. 26-164

In the Supreme Court of the United States

A.A., ET AL.,
Petitioners,

v.

JOSHUA MAST, ET AL.,
Respondents.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA*

**BRIEF *AMICI CURIAE* FOR INTERCOUNTRY
ADOPTEE VOICES AND ADOPTEE RIGHTS LAW
CENTER IN SUPPORT OF
PETITIONERS**

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INTEREST OF AMICI CURIAE¹

InterCountry Adoptee Voices (ICAV) is an international network whose mission is to “educate, support, connect, collaborate, galvanize, and give voice to intercountry adoptees from around the world.” ICAV has participated in the formulation of intercountry adoption policy, practice, and legislation as an Observer in the Hague Conference on Private International Law’s Working Group for Preventing and Addressing Illicit Practices in Intercountry Adoption and the Working Group on Financial Aspects of Intercountry Adoption. ICAV has an interest in ensuring that the principles of international law are recognized and respected to promote the best interests of children in intercountry adoption. ICAV’s membership includes a large number of U.S.-based intercountry adoptees.

The Adoptee Rights Law Center PLLC (ARLC) provides pro bono and reduced-fee representation to adopted people in the United States, including intercountry adoptees. Its founder, Gregory D. Luce—himself an adopted person—is a nationally recognized authority on the legal issues adopted people confront as adults, including United States citizenship, immigration status, and access to original birth and adoption records. ARLC has an interest in ensuring that the

¹ No counsel for any party authored this brief in whole or in part, and no party or counsel made a monetary contribution to the preparation or submission of this brief. No person other than amici, their members, or their counsel made a monetary contribution to the preparation or submission of this brief. Consistent with Rule 37.2, all counsel of record received timely notice of amici’s intent to file this brief.

legal frameworks governing intercountry adoption protect the identity, citizenship, and rights of adopted people, both at the time of adoption and throughout their adult lives.

INTRODUCTION AND SUMMARY OF ARGUMENT

The petition presents the question whether the non-parent caretakers of a child affected by adoption proceedings have a liberty interest protected by the Due Process Clause of the U.S. Constitution. In answering that question, *amici* urge the Court to consider the legal framework that applies to intercountry adoptions, which embodies the same core principles of due process and basic fairness as our own Constitution. That international framework affords considerable protections to a child's caretakers—particularly where, as here, those caretakers have been recognized as the child's lawful guardians. And importantly, that framework does not distinguish between a child's biological parents and other caretakers, including the petitioners in this case.

For decades, intercountry adoption has provided permanent and loving homes for children born abroad. At the same time, intercountry adoptions are susceptible to abuse—including the abduction and sale of children. *See* Fieweger, *Stolen Children and International Adoptions*, 70 Child Welfare 285 (1991). To address that concern, countries around the world established the Hague Adoption Convention, a groundbreaking international agreement that created robust procedures for intercountry adoptions. The United States was an original signatory of the Hague Convention in 1993. And shortly after the United States signed the treaty, Congress enacted the Convention's requirements into federal law through two statutes: the Intercountry Adoption Act of 2000 (IAA), 42 U.S.C. § 14901 *et seq.*, and the Intercountry Adoption Universal Accreditation Act of 2012 (UAA), 42 U.S.C. § 14925. Together, these laws establish crucial procedural safeguards that the United States observes in *all*

intercountry adoptions, including those where non-signatory countries (like Afghanistan) are involved.

The Convention establishes a comprehensive framework for intercountry adoptions, which protects the interests of a child's guardians or caretakers in various ways. First, the Convention requires formal government recognition of intercountry adoptions—as a result, a foreign government can block an adoption if it believes that it is in the child's best interests to remain with his or her existing guardians. Second, the Convention requires a robust exchange of information, which ensures that decision-makers and courts involved in intercountry adoptions have fulsome and accurate information concerning the child's circumstances. And third, the Convention promotes the principle of “subsidiarity,” which requires governments assessing an intercountry adoption to prioritize the views of a child's local community—including the views of the child's relatives and caregivers.

The Convention is the product of an international consensus recognizing that a child's caretakers—and her government—must be given notice and an opportunity to be heard before an intercountry adoption occurs. That consensus sheds valuable light on the procedural due process principles at issue in this case. The touchstone of the Due Process Clause is whether the government is seeking to deprive an individual of life, liberty, or property. *See Board of Regents of State Colls. v. Roth*, 408 U.S. 564, 569-70 (1972). Through the Convention and the laws that implement it, the United States has recognized that guardians or caretakers of children subject to intercountry adoption proceedings have an important interest in the outcome of those proceedings—in fact, it is hard to think of a more fundamental interest than a guardian's interest in being able

to raise their child. Accordingly, the U.S. Constitution prevents a court from severing that relationship through an adoption without first complying with the demands of procedural due process—including fair notice and an opportunity to be heard.

This case is a vivid and tragic illustration of what can happen when due process is not available. Petitioners were deprived of their interest in raising Baby Doe—a child they loved and cared for as her legal guardians for 18 months—without *any* notice of the adoption proceedings that led to her removal from their family. But petitioners’ story is far from the only example. Prior to the Convention, the intercountry adoption process was fraught with accounts of children being taken from their communities, sold to adoptive parents under false pretenses, and deprived of any connection to their kin. Although the Convention is now a bulwark against those abuses, its protections are meaningless if parties affected by intercountry adoptions lack notice of adoption proceedings and an opportunity to be heard. *Amici* therefore urge the Court to grant the petition and to reverse the decision below.

ARGUMENT

I. The United States Has Adopted Detailed Procedures Governing Intercountry Adoptions.

Widespread intercountry adoption is a relatively new phenomenon. First galvanized by humanitarian concern for children dislocated during the Second World War, the institution grew more common over the latter half of the twentieth century. Hundreds of thousands of children have now been adopted internationally, reaching peaks as high as 23,000 per year in recent decades. *See* U.S. Department of State Bureau of

Consular Affairs, *Adoption Statistics*, <https://perma.cc/9YAM-8ZZR>.

With the swift and largely unregulated growth of intercountry adoption in the mid-twentieth century, so came recognition that those adoptions are uniquely susceptible to abuse. As new research on children affected by intercountry adoption emerged, the international community also became increasingly concerned about the social and individual harms that can arise when intercountry adoptions lack sufficient safeguards. For instance, research showed that children who were unable to access accurate records about their own background experienced psychological harms associated with the loss of their identity. *See, e.g., Darnell et al., Adoption and Identity Experiences Among Adult Transnational Adoptees: A Qualitative Study*, 20 *Adoption Quarterly* 155, 160 (Aug. 5, 2016).

In 1993, the international community adopted the Hague Adoption Convention to address these concerns.² The Convention provides both substantive and procedural protections for adoptions between its more than 100 ratifying countries.³ And even with respect to adoptions involving non-signatory countries, where the Hague Adoption Convention is not binding, many signatories (including the United States) have affirmed an

² Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, T.I.A.S. No. 08-401 (Hague Adoption Convention). This is distinct from the 1980 Hague Convention on the Civil Aspects of International Child Abduction, T.I.A.S. No. 11670, another instrument of international law that governs cases of contested child custody.

³ “The Hague Adoption Convention entered into force for the United States on April 1, 2008.” U.S. Citizenship and Immigration Services, *Hague Process* (June 14, 2024), available at <https://tinyurl.com/324y6vvb>.

intention to apply it “as far as practicable.” Hague Conference on Private Int’l Law, *Conclusions and Recommendations and Report of the Special Commission on the Practical Operation of the 1993 Hague Inter-country Adoption Convention (17-25 June 2010)*, at ¶¶ 1(a), 36 (Mar. 2011), <https://perma.cc/29JT-QL77>.

Congress has enacted the requirements of the Convention into law through two federal statutes. The first is the Intercountry Adoption Act of 2000 (IAA), which codifies and implements the Convention for intercountry adoptions involving other signatories. *See* 42 U.S.C. § 14901 *et seq.* Like the Convention, the IAA’s statutory purpose is to “protect the rights of, and prevent abuses against, children, birth families, and adoptive parents involved in adoptions (or prospective adoptions)” and “to ensure that such adoptions are in the children’s best interests.” *Id.* § 14901(b)(2). As relevant here, Section 302 of the IAA created a new pathway to citizenship for adopted children, which is conditioned on the freely given, written, and irrevocable consent of the child’s natural parents or “other persons or institutions retaining legal custody” to the intercountry adoption. 8 U.S.C. § 1101(b)(1)(G)(i)(II).

The second is the Intercountry Adoption Universal Accreditation Act of 2012 (UAA). *See* 42 U.S.C. § 14925. The UAA requires all agencies and persons in the United States to comply with the IAA’s accreditation requirements, even where their country has not ratified the Convention. *See id.* As a result of these two statutes, the United States now extends Hague-compatible accreditation and adoption-service safeguards to *all* intercountry adoptions.

II. Those Procedures Confirm That Guardians And Caretakers Have A Constitutionally Protected Liberty Interest In Adoption Proceedings.

The legal framework for intercountry adoptions provides important context for the question presented by petitioners. This Court has repeatedly explained that the basic requirements of due process attach whenever the government takes action that implicates a liberty interest. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004). Both the Convention and the statutes that implement it demonstrate that caregivers have a fundamental interest in adoption proceedings that affect their children. And contrary to the reasoning of the Supreme Court of Virginia in this case, that constitutionally protected interest does not turn on whether the child’s caregivers are also her biological or adoptive parents.

A. Under the U.S. Constitution, individuals are entitled to due process of law whenever the government takes action that would deprive them of life, liberty, or property. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985). Although the demands of due process vary based on the context, the Constitution guarantees, at a minimum, fair notice of a potential deprivation and “the opportunity to be heard.” *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306, 314 (1950).

A threshold question in procedural-due-process cases is whether the plaintiff has a protected interest in the proceedings at issue. *See Smith v. Organization of Foster Families for Equality and Reform*, 431 U.S. 816, 845 (1977) (explaining that some liberty interests may arise from positive-law sources). When a statute, regulation or treaty “recognize[s] and protect[s]” a liberty interest,” any action to “remove[] the interest . . .

previously afforded” triggers due-process protection. *Paul v. Davis*, 424 U.S. 693, 710-711 (1976). This Court has identified protected interests in a variety of contexts, including prison regulations, *see Wolff v. McDonnell*, 418 U.S. 539, 557 (1974), statutes mandating school attendance, *see Goss v. Lopez*, 419 U.S. 565 (1975); and academic tenure practices, *see Perry v. Sindermann*, 408 U.S. 593 (1972).

Under that standard, caregivers have a constitutionally protected interest in the placement of their children through intercountry adoption proceedings. That conclusion follows directly from this Court’s precedent, as explained in the petition. *See* Pet. 3-4 (“Under this Court’s precedent, a teenager facing suspension from school or revocation of a driver’s license possesses a ‘liberty’ interest triggering procedural due process protections. Guardians and caretakers facing the permanent loss of a child they have raised since infancy—and intend to love and support for the rest of their lives—have a far stronger claim to protection.”). Indeed, this Court has long recognized that a “deeply loving and interdependent relationship” can arise between an adult and a child in their care “even in the absence of blood relationship.” *Smith*, 431 U.S. at 844 (acknowledging that foster parents may have a liberty interest arising from the “contractual relation” entered under the statutory schemes that regulate foster care).

The legal framework for intercountry adoptions reinforces that conclusion, affording a child’s caregivers—parent or otherwise—a series of protections throughout the adoption process:

First, the Convention empowers governmental authorities as the key decision-makers in intercountry adoptions, which ensures that a child’s caregivers are adequately consulted during the adoption process.

Under the Convention, each signatory is required to establish a “Central Authority,” which serves as the authoritative source of information and point of contact for international adoptions. *See* Convention, arts. 6, 7. Once that authority has been designated, any resident wishing to adopt internationally must apply with his or her nation’s Central Authority to start the process. And, as relevant here, the adoption can take place *only* if the Central Authority designated by the country where the child resides concludes that consent has been obtained from those “persons, institutions and authorities” from whom consent is necessary. *See id.* art. 4(a)–(c); *see also id.* art. 4(c)(2)–(3) (requiring the “State of origin” to ensure that those with the power to consent to an adoption have done so freely and were “not induced by payment or compensation of any kind”).

Second, the Convention requires the exchange of information between parties on both sides of the inter-country adoption process. Specifically, it requires the receiving State and the sending State to exchange accurate information, and prescribes procedures to manage communication between the prospective adoptive parents and “the child’s parents or *any other person who has care of the child.*” *Id.* art. 29 (emphasis added). Specifically, the sending State must prepare a report on the child and give “due consideration to the child’s upbringing and to his or her ethnic, religious and cultural background.” *See id.* art. 16. This report is transmitted to the receiving State along with proof that the necessary consents have been obtained. *Id.* These mandatory reporting and communication requirements prevent would-be adoptive parents or other private actors from manipulating the adoption process without public supervision. And they ensure

that any caregivers, parents or otherwise, are included in the flow of information.

Third, the Convention protects the rights of a child’s kin and local community to determine when an intercountry adoption is in the child’s best interests. This foundational concept—known as the principle of subsidiarity—is reflected in the Convention’s preamble, which states that “as a matter of priority,” children should remain in the care of their “family of origin.” *Id.* Pmbl., Recital 2. And it is based on decades of research documenting the harms that can arise when intercountry adoptions take place without regard to the views of a child’s community, including the views of his or her caregivers. See Saligman, *Subsidiarity and the Best Interests of the Child*, 25 Chi. J. Int’l L. 259, 279 (2024); Darnell et al., *supra*, at 160.

These procedural safeguards confirm that a child’s caregivers have a fundamental liberty interest in intercountry adoption proceedings that affect their children. By conditioning an intercountry adoption on the caregiver’s consent and by enacting substantive standards that prioritize the child’s local community, the Convention and its implementing statutes recognize that nonparent caregivers are uniquely positioned to determine whether an adoption is in a child’s best interest. And because there is “real substance” to caregivers’ interests in intercountry adoption proceedings, that interest cannot be deprived by the government without due process of law. *Wolff*, 418 U.S. 539, 557 (1974).

Contemporary international-law guidance reinforces that conclusion. In 2022, six United Nations human-rights bodies jointly issued a statement on illegal intercountry adoption, which identified governing principles for the intercountry adoption process.

Those principles included both the principle of subsidiarity and the importance of accurately determining a “child’s status concerning parents, relatives and legal guardians.” UN Joint Statement on Illegal Intercountry Adoption ¶ 5, U.N. Doc. CED/C/9 (Sept. 29, 2022) (the “UN Joint Statement”). That guidance directly parallels the Convention’s recognition that parents, relatives, and guardians are vital participants in the intercountry adoption process and entitled to procedural protections.

B. There can be no serious dispute that the petitioners in this case did not receive due process of law. But the Supreme Court of Virginia overlooked that failure on the ground that petitioners had no liberty interest in the first place. According to the decision below, a child’s caregivers have a protected liberty interest in an intercountry adoption only if they are the child’s “biological or adoptive parents.” App. 40a (citing *Troxel v. Granville*, 530 U.S. 57 (2000)). And because petitioners did not meet that test, the Supreme Court of Virginia never asked whether petitioners received any notice of or opportunity to contest Baby Doe’s removal from their family.

As petitioners explain, that decision ignores the fundamental distinction between substantive due process and procedural due process. Although this Court has suggested the former is limited to biological or adoptive parents, *see Troxel*, 530 U.S. at 57, it has not done the same for the latter, *see* Pet. 26-27. And without that misreading of this Court’s precedents, the decision below cannot stand.

Even on its own terms, however, the legal framework for intercountry adoptions provides no support for the Supreme Court of Virginia’s distinction between biological parents and other guardians and

caregivers. On the contrary, many provisions of the Convention protect the interests of a child’s caregivers—including guardians, legal custodians, and members of the child’s “family of origin”—without limiting that protection to biological or adoptive parents:

- Pmbl. Recital 2: recognizing that each State should “enable the child to remain in the care of his or her family of origin”;
- Art. 4(c)(1): requiring that “the persons, institutions and authorities whose consent is necessary for adoption”—including guardians, legal custodians, and other caregivers, not merely biological parents—have been counselled and duly informed of the effects of their consent;
- Art. 29: prohibiting any “contact between the prospective adoptive parents and the child’s parents or any other person who has care of the child” until the Convention’s consent requirements are met.

Notably, only one provision in the entire Convention, Article 4(c)(4), singles out a biological parent. And it does so for the narrow purpose of prohibiting pre-birth maternal consent to adoption: “the consent of the mother, where required, has been given only after the birth of the child.” That provision does not suggest that the views of birth parents, as opposed to other guardians like petitioners, are afforded more protection in the intercountry adoption process.

All told, the Convention recognizes that guardians of all types—including biological parents, legal guardians, and other relatives (like petitioners)—have important interests in the intercountry adoption process, and that respecting the views of those caregivers is

vital when deciding the best interests of the child. By nonetheless denying petitioners' claim simply because they are not Baby Doe's biological parents, the Supreme Court of Virginia created an artificial distinction at odds with federal law. And that error had serious consequences in this case, where petitioners were deprived of any opportunity to contest the adoption of their child to a family thousands of miles away.

III. Illegal Intercountry Adoptions Can Cause Serious Harms To Children And Communities.

The petition satisfies all the ordinary criteria for this Court's review. First, there is an entrenched split on an important question of federal law: whether non-parent caretakers have a constitutionally protected liberty interest in adoption proceedings. *See* Pet. 30-34. Second, this case implicates issues of national importance—namely, the obligations of the United States with respect to intercountry adoptions—that will have ramifications for the United States' ability to comply with its commitments under international law. *See McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10, 17 (1963) (explaining that disputes with “international [law] complexion” present a “uniquely compelling justification for prompt judicial resolution”); *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 702 (1945) (granting certiorari because lower courts “decided an important question of federal law which has not been, but should be, settled by this Court.”); *see also Jaffee v. Redmond*, 518 U.S. 1, 7 (1996) (granting certiorari because of the importance of the question presented); *United States v. Muniz*, 374 U.S. 150, 151 (1963) (same). And third, the Supreme Court of Virginia's decision departed from core constitutional principles and allowed a child to be adopted without the knowledge or consent of her caregivers—

an error that warrants this Court’s review in its own right. *Nguyen v. United States*, 539 U.S. 69, 74 (2003) (granting certiorari where the lower court had “so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court’s supervisory powers.”).

The severe harms that can arise from illegal adoptions make the question presented by this petition all the more important. The UN Joint Statement reflects a growing international consensus that credible allegations of illegal intercountry adoption must be “investigated in a complete, impartial, diligent and effective manner, even in the absence of a formal complaint.”⁴ UN Joint Statement, ¶ 13. It further recognizes that such adoptions must be accompanied by a “prompt and effective judicial remedy” and that “statutes of limitations” should “not [be] an obstacle for victims seeking access to judicial remedies.” *Id.* ¶ 12. And where an investigation confirms illegality, States are called on to establish procedures for “reviewing and, where appropriate, annulling adoption, placement or guardianship that originated in an enforced disappearance or any illegal acts.” *Id.* ¶ 16.

⁴ The 2025 Inter-Parliamentary Union Resolution— adopted by the Inter-Parliamentary Union, a global organization of national parliaments — calls upon parliaments to “conduct independent investigations” into illegal adoptions(¶ 8) and urges states to “support and, where necessary, establish mechanisms for the identification, tracing and return of unlawfully deported or adopted children,” “including family reunification or appropriate care in their country of origin” (¶ 16). That guidance is particularly important where, as here, the child is displaced from a conflict zone such as Afghanistan, where the risks of illegal intercountry adoptions are heightened (¶ 21). See Inter-Parliamentary Union, *Recognizing and Supporting the Victims of Illegal International Adoption and Taking Measures to Prevent This Practice*, 151st IPU Assembly (Oct. 23, 2025), <https://www.ipu.org/>.

Moreover, decades of scholarship have shown that, without meaningful oversight, the international-adoption process is susceptible to abuses, including child trafficking, coercion of families, and fraud. *See* Smolin, *Child Laundering: How the Intercountry Adoption System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children*, 52 Wayne L. Rev. 113, 115–16 (2006). In some instances, families have been offered cash, gifts, or false promises—for example, that the child will only be sent away temporarily or that the child will one day help his or her biological family immigrate—in exchange for handing their child over to an orphanage. *See id.* at 118–21 (surveying the different ways in which individuals “create a system for purchasing infants and children from birth families”); *see also* Wilken, *Controlling Improper Financial Gain in International Adoptions*, 2 Duke J. Gender L. & Pol’y 85, 86 (1995) (arguing for ratification of the Convention on the grounds that, in the absence of administrative oversight, the chance to “derive improper profits” from child trafficking leads to the exploitation of disadvantaged families). And the long-term effects of illegal intercountry adoptions can be severe. *UN Joint Statement*, ¶ 3 (recognizing that illegal intercountry adoptions infringe a child’s right to preserve their identity, including elements such as their name, their nationality and their family relations).⁵

The infamous case of the “Romanian Baby Bazaar” is just one striking example of the abuses that can arise when procedural safeguards are ignored. After the fall

⁵ Additional research on the effects of intercountry adoption can be found at Intercountry Adoptee Voices, *Research*, available at <https://intercountryadopteevoices.com/research/>.

of the Ceausescu regime in 1989, it came to the world's attention that "thousands of Romanian children had been relegated to squalid public institutions," and consequently many foreign parents were moved to adopt them. With intercountry adoption almost completely unregulated at this time, market forces produced extremely unsavory practices: "[s]ome prospective parents come on their own, referred to a lawyer who for a substantial fee may simply deliver a baby to their hotel." Hunt, *The Romanian Baby Bazaar*, *The New York Times Magazine* (Mar. 24, 1991), <https://perma.cc/AMD5-DMFD>.

But even when adoptions do not involve deliberate wrongdoing, a failure to abide by international law can have significant ramifications for children. Many intercountry adoptees who were adopted without regard to the procedures of the Hague Adoption Convention report feelings of identity loss and unease with being trapped between two worlds, never fully at home in either. See Long, *Lifelong Impacts of Identity Loss*, *InterCountry Adoptee Voices* (July 4, 2021), <https://perma.cc/8TMQ-TZQ3>. One of the Romanian men who had been illegally adopted during the 1990s, for instance, recounted feeling "like a stranger with his adoptive family." Ciobanu, *'I Was Definitely Trafficked': Romanians Adopted As Kids Now Seek Justice, Answers As Adults*, *RadioFreeEurope/RadioLiberty* (Jan. 7, 2023), <https://perma.cc/B2KQ-BMAE>.

* * *

Intercountry adoptions can help children in need find a loving home. But when those adoptions lack due process, they can harm communities and caregivers, adoptive parents, and, most importantly, children. The petition presents the Court with an opportunity to clarify the requirements of the intercountry adoption

process and to ensure that the injustice of this case is not repeated. *Amici* urge the Court to take that opportunity and to hold that petitioners were entitled to due process in this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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