No. 26-426

IN THE

Supreme Court of the United States

DEPARTMENT OF HOMELAND SECURITY, ET AL.,
Petitioners,

v.

D.V.D., ET AL.,
Respondents.

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

BRIEF OF UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, ET AL., AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

INTEREST OF AMICI CURIAE 1

SUMMARY OF ARGUMENT 5

ARGUMENT 7

I. THIRD-COUNTRY REMOVAL WITHOUT DUE PROCESS IS CONTRARY TO U.S. LAW, U.S. TREATY OBLIGATIONS, AND CHRISTIAN FAITH TRADITIONS 7

A. Christian Faith Teachings Promote Protection For The Persecuted And Call For Fair Judgment Of Each Individual Person 7

B. The Founders' Vision Parallels These Teachings 13

C. The United States Has Assumed International Obligations That Prohibit Sending Noncitizens To Persecution Or Torture And Require Fair Procedures Before Removal 14

II. THE GUIDANCE IS CONTRARY TO FAITH TEACHINGS AND OUR NATION'S TRADITIONS AND LEGAL OBLIGATIONS WITH RESPECT TO INDIVIDUAL PERSONS 18

A. The Guidance Improperly Replaces Individualized Review With Generalized Diplomatic Assurances 19

TABLE OF CONTENTS—Continued

Page

B. Each Person Deserves A Meaningful Opportunity To Challenge Third-Country Removal 22

III. THIRD-COUNTRY REMOVAL WITHOUT DUE PROCESS IMPROPERLY DENIES THE INNATE DIGNITY AND FREEDOM OF THE PERSON 25

CONCLUSION 28

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INTEREST OF AMICI CURIAE[1]

The United States Conference of Catholic Bishops ("USCCB") is a nonprofit corporation whose members are the active Catholic Bishops in the United States in communion with Pope Leo XIV, the Bishop of Rome. The USCCB provides a framework and a forum for the Bishops to teach Catholic doctrine, set pastoral directions, and develop policy positions on contemporary

[1] No counsel for a party authored this brief in whole or in part, and no person, other than amici or their counsel, made any monetary contribution to the preparation or submission of this brief.

social issues. The USCCB advocates and promotes the pastoral teaching of the Bishops in diverse areas of the Nation's life. Values of particular importance to the USCCB include respecting the dignity and wellbeing of vulnerable people who live under threat of violence.

The Most Reverend Sean W. Rowe is the 28th Presiding Bishop of The Episcopal Church, a hierarchical religious denomination in the United States and 17 other countries. Under the Church's polity, the Presiding Bishop is charged with "[s]peak[ing] God's words to the Church and to the world, as the representative of [the] Church." The Episcopal Church, *Constitution & Canons*, Canon I.2.4(a)(2) (2024), https://tinyurl.com/ytfn3utb.

Ms. Julia Ayala Harris is the President of the House of Deputies of The Episcopal Church. President Ayala Harris presides over a legislative chamber consisting of more than 800 elected clergy and lay leaders representing all dioceses of The Episcopal Church as part of its bicameral governing body, the General Convention.

The Church of the Brethren is headquartered in Elgin, Illinois. It was formed over 300 years ago in Germany, when individuals influenced by Pietism and Anabaptism separated from state churches in order to form a religious group focused on peace and compassion. Members of the Church of the Brethren migrated to North America in the early 1700s to escape persecution and economic hardship. The Church of the Brethren's core beliefs include loving enemies, welcoming the stranger, and promoting the well-being of marginalized individuals and those in need.

The General Synod of the United Church of Christ is the representative body of the national denomination of the United Church of Christ ("UCC"). The UCC was formed in 1957, by the union of the Evangelical and Reformed Church and The General Council of the Congregational Christian Churches of the United States, in order to express more fully the oneness in Christ of the churches composing it. The UCC has approximately 4,600 churches in the United States, with a membership of approximately 715,000. The United Church of Christ has a long history of advocating for and standing with migrants and asylum-seekers.

The Bruderhof is a Christian community stemming from the Anabaptist tradition. It was founded in 1920 in Germany in the aftermath of World War I. During Hitler's reign, the community was targeted for its conscientious refusal to support Hitler's militaristic and genocidal policies. The Bruderhof was forced to flee to England before immigrating to Paraguay and later to the United States, attracted by this nation's founding principles of tolerance and liberty.

The Evangelical Lutheran Church in America ("ELCA") is one of the largest Christian denominations in the United States, with nearly three million members in more than 8,000 worshiping communities across the 50 states and in the Caribbean region. As members of a church with immigrants and with roots in immigrant churches in a nation of immigrants, the ELCA believes that hospitality for the uprooted is a way to live out the biblical call to love the neighbor in response to God's love in Jesus Christ, which leads it both to minister with the most vulnerable of the newcomers and to advocate for immigration, refugee, and asylum laws that are fair and generous.

The General Board of Church and Society of The United Methodist Church ("UMC") is the denominational agency charged with seeking to implement the Social Principles and other policy statements adopted by the General Conference of the UMC concerning Christian social concerns, and with providing forthright witness. The UMC is a global denomination comprising more than 39,000 local churches and over nine million members in the United States, Africa, Asia, and Europe. The General Conference, as the highest legislative body of the UMC, establishes the denomination's policies and is the only body authorized to speak on behalf of the denomination. Consistent with its mandate and the denomination's Social Principles, the General Board of Church and Society is committed to advocating for the dignity, human rights, and protection of immigrants, refugees, asylum seekers, and their families.

The Cooperative Baptist Fellowship ("CBF") is led by the love of Christ and invites churches and individuals to partner in transforming God's world, working together as a global community to spread good news, justice, and hope through impactful ministries, missions and resources. CBF has nearly 1,500 partner congregations across 37 states, D.C., and Puerto Rico and is headquartered in Decatur, Georgia. CBF's ministries with immigrants and refugees are a matter of deep faith that flow from the commands of Jesus and the teachings of Scripture, and our partner congregations who engage in these ministries range from our most theologically conservative to our most theologically progressive and everyone in between.

The National Apostolic Christian Leadership Conference ("NACLC") is an organization advocating for issues of public concern to Apostolic Pentecostal Christians ("Apostolics"). There are an estimated

three to four million Apostolics in the United States who share certain theological commitments and who congregate together through many denominations and independent churches. A reasonable estimate is that there are 15,000 Apostolic Pentecostal congregations in the United States. As an independent organization, the NACLC seeks to represent the views of Apostolics in the public square especially on issues of human life and religious freedom. Pentecostal outpouring blossomed in Los Angeles during the Azusa Street Revival in 1906. From that time to the present, Pentecostalism has been enriched by immigrants to the United States.

SUMMARY OF ARGUMENT

The United States has long committed itself to protecting people from expulsion to countries where they risk persecution or torture. This principle is reflected in federal law, the Nation's treaty commitments, and the fundamental guarantee of due process. Consistent with those protections, Congress and the courts have ensured that no person may be removed to a country without notice and a meaningful opportunity to explain why removal would place them in danger. This accords with Christian teachings, which recognize the need to respect the inherent dignity of every human person and affirm the sanctity of every human life.

On March 30, 2025, the United States Department of Homeland Security ("DHS") issued "Guidance Regarding Third Country Removals" (the "Guidance"). Pet. App. 84a-85a. The Guidance authorizes DHS to send individuals with final removal orders to a third country without notice or an opportunity to be heard if DHS has received "credible" "diplomatic assurances" that those removed "will not be persecuted or tortured" in the destination country. Pet. App. 84a. The Guidance does not

envision any opportunity for the individual to challenge third-country removal on the basis that the third country will not abide by its "assurances" or may in turn expel them to another country where they would face persecution or torture—including potentially their country of citizenship, even if their removal there would violate U.S. law. Amici's opposition to the Guidance is motivated by their firmly held belief that each person possesses a God-given dignity and that society bears a duty to protect the vulnerable, welcome the stranger, and care for those threatened with harm.

As Christians from different denominations, amici are united by the compassion of our Lord Jesus Christ and His command to love and care for our neighbors. The Guidance is fundamentally at odds with these teachings. It replaces care for the individual with a categorical presumption of safety and leaves the vulnerable to bear the irreversible consequences if that presumption proves wrong. To protect human life and promote the rule of law, this Court should hold that the Guidance is unconstitutional and violative of at least the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1231(b), which codifies Article 33 of the 1951 United Nations Refugee Convention, as well as the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Pub. L. No. 105-277, § 2242, 112 Stat. 2681, 2681-822 (codified at 8 U.S.C. § 1231 note), and implementing regulations, which implement Article 3 of the Convention Against Torture ("CAT").

ARGUMENT

I. THIRD-COUNTRY REMOVAL WITHOUT DUE PROCESS IS CONTRARY TO U.S. LAW, U.S. TREATY OBLIGATIONS, AND CHRISTIAN FAITH TRADITIONS

For millennia, Christian faith traditions—which recognize that each person is made in God's image—have held the central tenets of welcoming the stranger and protecting the vulnerable. The Founders also had a vision of the Nation as a refuge for those who fled persecution. Today, the United States has ratified international agreements that prohibit "refoulement"—the expulsion or return of migrants to countries that may persecute or torture them—and require fair procedures before removal. *See INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 440 (1987) (describing "refoulement" under Article 33 of the Refugee Convention). These international agreements based on the principle of non-refoulement embody Christian faith traditions and the Founders' vision and have been codified in U.S. law.

A. Christian Faith Teachings Promote Protection For The Persecuted And Call For Fair Judgment Of Each Individual Person

Protecting the persecuted and providing fair judgment for each individual person is a fundamental part of Christian traditions, which recognize that every person is made in God's image and therefore has God-given dignity. Israelites and Christians—including Jesus himself—were welcomed as migrants and have long welcomed the stranger and the persecuted. This longstanding practice of providing refuge to those who need it most is reflected in Christian doctrine today, and requires that each individual receive fair process before judgment.

Genesis 1:27 states that "God created mankind in his image; in the image of God he created them."[2] The Catholic Church recognizes that every person bears the image of God, and the Catholic Church's social doctrine develops from "the inviolable dignity of the human person." Pontifical Council for Just. & Peace, *Compendium of the Social Teaching of the Church* ¶¶105, 107 (Libreria Editrice Vaticana 2d ed., 2005), https://tinyurl.com/298mh6et. The Episcopal Church's Baptismal Covenant likewise requires "respect[ing] the dignity of every human being" because each person is made in the image of God. *The Book of Common Prayer* 304-305 (1979), https://tinyurl.com/mz6m5n7z. Numerous other Christian statements of faith are to the same effect. *See, e.g.*, Church of the Brethren, *Undocumented Persons and Refugees in the United States* (1982) ("The primary truth of faith as we consider immigrants and refugees today is that Christ has made another appearance among us, as Himself an immigrant and refugee."), https://tinyurl.com/38tj9aye.

Migration is woven into the history of Christian traditions. The Israelites were once migrants in Egypt. *See* Deuteronomy 10:19; *see also* The Episcopal Church, *Letter from Episcopal Church Leaders on Trump Administration Immigration Executive Orders* (Jan. 21, 2025) ("Exodus tells us the story of ancient Israelites escaping slavery in the land of Egypt and wandering in the wilderness without a home."), https://tinyurl.com/4w8knwhz; *id.* (noting that "God commands that we remember this sojourn as part of our own story of faith: 'When an alien resides with you in your land, you shall not oppress the alien.'" (quoting Leviticus 19:33-34)).

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[2] Scripture citations are to the New American Bible (Revised Edition).

Christ himself also fled to Egypt to seek refuge from persecution, and "in every rejected migrant, it is Christ himself who knocks at the door of community." Pope Leo XIV, *Dilexi Te* ¶¶73, 75 (Oct. 4, 2025), https://tinyurl.com/2k3brdpx.

Indeed, many Christian populations themselves fled religious persecution and found sanctuary in the United States. *See, e.g.*, Church of the Brethren, *History* (explaining how migrants from Germany organized the first congregation of the Church of the Brethren in 1723 in Germantown, Pennsylvania), https://tinyurl.com/6fhkh7ca (last visited Nov. 20, 2026).

Christianity thus teaches that vulnerable persons facing persecution are uniquely deserving of protection and hospitality. *E.g.*, Pope John Paul II, *Sollicitudo Rei Socialis* ¶42 (Dec. 30, 1987) ("[T]his love of preference for the poor, and the decisions which it inspires in us, cannot but embrace the immense multitudes of the hungry, the needy, the homeless, those without medical care and, above all, those without hope of a better future."), https://tinyurl.com/3c7ruxyc. All four Popes during this century have recognized the importance of welcoming refugees. As Pope Leo XIV stated, refugees are "a true divine blessing, an opportunity to open oneself to the grace of God, who gives new energy and hope to his Church: 'Do not neglect to show hospitality to strangers, for by doing that some have entertained angels without knowing it.'" *Message of Pope Leo XIV for the 111th World Day of Migrants and Refugees 2025*, Vatican (July 25, 2025) (quoting Hebrews 13:2), https://tinyurl.com/rbddas6k; *see also, e.g.*, Pope Francis, *Address of His Holiness Pope Francis to Participants in the International Forum on "Migration and Peace,"* Vatican (Feb. 21, 2017) ("Our shared response" to migratory movements "may be articulated by four verbs: *to*

welcome, to protect, to promote and *to integrate*." (emphasis in original)), https://tinyurl.com/y95d7gu8; Pope Benedict XVI, *Message of His Holiness Pope Benedict XVI for the World Day of Migrants and Refugees (2013)*, Vatican (Oct. 12, 2012) ("In the vast sector of migration, the Church shows her maternal concern in a variety of ways," including, for example, "the creation of programmes aimed at meeting emergencies."), https://tinyurl.com/y6jgu8un; Pope John Paul II, *Message of the Holy Father for the 87th World Day of Migration 2001*, Vatican (Feb. 2, 2001) (urging the Christian community "to welcome, to dialogue, to help and towards fraternity" including with non-Christian migrants), https://tinyurl.com/4seupxej. Amici have accordingly reinforced the focus on protecting and welcoming vulnerable migrants, by, for example, issuing a special message calling for a "just and orderly immigration system" and "urg[ing] all people of good will to continue and expand … efforts" to "accompany and assist immigrants in meeting their basic human needs." USCCB, *U.S. Bishops Issue a "Special Message" on Immigration from Plenary Assembly in Baltimore* (Nov. 12, 2025), https://tinyurl.com/38puzw66; *see also The Acts of Convention: Support Migration with Dignity*, Resolution 2024-C031, 81st Gen. Convention of The Episcopal Church (2024) (the Episcopal Church "declare[s] itself to be in support of Migration with Dignity for all migrants, including refugees, asylum seekers, displaced persons, and those who cross borders in search of opportunity."), https://tinyurl.com/3zr7ppue; The Episcopal Church, *Policy for Action: An Index of Episcopal Church Public Policy Resolutions* 54 (2024) ("Call[ing] … for due process and humanitarian treatment in all immigration proceedings and detention."), https://tinyurl.com/yrwwvvzr; *The Acts of Convention: Set Forth Christian Principles to Guide Responses to Human Migration* ¶8, Resolution

2018-D009, 79th Gen. Convention of The Episcopal Church (2018) ("We insist that the United States of America and other powerful, wealthy nations, and all nations to the best of their ability, contribute to resettlement, establish and maintain safe and orderly humanitarian protection for refugees, internally displaced persons, and other migrants seeking long-term solutions and safety."), https://tinyurl.com/y5afhmew; Church of the Brethren, *2026 Resolution, Walking Together: Immigration, Peacemaking, Conscience, and Supporting Our Neighbors* (2026) ("[S]ervice to immigrants and refugees has been a consistent and long-term position of the Church of the Brethren," which "has treated immigrants who migrate" due to war, violence, civil conflicts, economic issues, and climate changes "as deserving of support."), https://tinyurl.com/f7kjufh3.

This emphasis on welcoming the stranger and the persecuted has strong scriptural support. As the Gospel According to Matthew teaches, "the king will say to those on his right, 'Come, you who are blessed by my Father[,] … For I was hungry and you gave me food, I was thirsty and you gave me drink, a stranger and you welcomed me, naked and you clothed me, ill and you cared for me, in prison and you visited me.'" Matthew 25:34-36. "[W]hatever you did for one of these least brothers of mine, you did for me." Matthew 25:40. The Book of Job likewise teaches that "[n]o stranger lodged in the street, for I opened my door to wayfarers." Job 31:32. And Deuteronomy recites that God "[l]oves the resident alien, giving them food and clothing." Deuteronomy 10:18.

Christianity thus holds that sovereign nations have a legitimate authority to regulate migration but a corresponding obligation to respect each person's God-given dignity through humane and proportional immigration

policies. *See, e.g.*, The Episcopal Church, *Summary of Episcopal Church Policy on Immigration and Refugee Issues* 1 (updated 2024) ("Urg[ing] all governments to keep their commitments and legal obligations to respect the rights and dignity of all people, including access to justice and social services, while recognizing the complexity of developing just immigration policies in any country, and the legitimate need to protect borders and address security threats to sovereign nations"), https://tinyurl.com/5953r9u2; USCCB, *Strangers No Longer: Together on the Journey of Hope* ¶¶38-39 (Jan. 22, 2003) ("Regardless of their legal status, migrants, like all persons, possess inherent human dignity that should be respected. … While the sovereign state may impose reasonable limits on immigration, the common good is not served when the basic human rights of the individual are violated."), https://tinyurl.com/yxd4x8ws; Church of the Brethren, *Undocumented Persons and Refugees in the United States* (1982) ("call[ing] upon the United States government: …To support and harbor refugees from war, oppression, famine, and natural disasters.").

Recognizing God-given dignity requires due process before judgment. Scripture rejects sacrificing individuals for collective convenience. Genesis recounts God's agreement to spare the wicked city of Sodom for the sake of as few as ten righteous people. Abraham asked, "[w]ill you really sweep away the righteous with the wicked?" Genesis 18:23. The Lord responded that even "[f]or the sake of ten [righteous people], … I will not destroy it." Genesis 18:32. When the Lord destroyed Sodom, he first ensured that the righteous left the city. Genesis 19:12-25. Other biblical passages likewise recognize the importance of individualized investigation before imposing punishment. *E.g.*, Deuteronomy 13:14-15

(when there are rumors that scoundrels have led a town astray, "you must inquire carefully into the matter and investigate it thoroughly" to confirm that "it is true and an established fact that this abomination has been committed"); 1 Timothy 5:19 ("Do not accept an accusation against a presbyter unless it is supported by two or three witnesses."); 2 Corinthians 13:1 ("On the testimony of two or three witnesses a fact shall be established.").

Christianity also recognizes that personal rights—including due process—must be guaranteed by civil authority. Pope John XXIII proclaimed in his landmark encyclical, *Pacem in Terris*, that "the common good is best safeguarded when personal rights and duties are guaranteed." *Pacem in Terris* ¶60 (Apr. 11, 1963), https://tinyurl.com/42bsjnn3. The Holy See recently reaffirmed the principle that "due process ... must always be observed." Archbishop Gallagher, *Statement at the 80th Session of the United Nations General Assembly* (Sept. 29, 2025), https://tinyurl.com/yyzfrfsa. The Episcopal Church's policy on immigration and refugee issues recognizes that "[f]undamental U.S. principles of legal due process should be granted all persons." The Episcopal Church, *Summary of Episcopal Church Policy on Immigration and Refugee Issues* 3.

B. The Founders' Vision Parallels These Teachings

The Founders' vision for the Nation also embraced immigration and viewed America as a refuge for those fleeing persecution. The Declaration of Independence's tally of George III's "history of repeated injuries and usurpations" included that "[h]e has endeavored to prevent the population of these States; for that purpose obstructing the laws for Naturalization of Foreigners [and] refusing to pass others to encourage their migrations

hither." The Declaration of Independence para. 9 (U.S. 1776). That same year, Thomas Paine proclaimed in *Common Sense* "O ye that love mankind; ye that dare oppose not only the tyranny but the tyrant, stand forth; every spot of the old world is overrun with oppression. … O receive the fugitive! and prepare in time an asylum for mankind." Paine, *Common Sense* 29 (J. Watson ed., 1850), https://tinyurl.com/mrynypjw. Washington's letters envisioned the country as welcoming not only "the opulent & respectable Stranger," but also "the oppressed & persecuted." Letter from George Washington to Joshua Holmes (Dec. 2, 1783), in *Founders Online*, https://tinyurl.com/bddnnvaf. This vision of the Nation as a refuge aligns with the fact that many early immigrants to America—including many of amici's first adherents in America—sought refuge from persecution, including religious persecution. *See, e.g.*, *America as a Religious Refuge: The Seventeenth Century, Part 1,* in *Religion and the Founding of the American Republic*, https://tinyurl.com/2yjy7nzs (last visited Nov. 20, 2026).

C. The United States Has Assumed International Obligations That Prohibit Sending Noncitizens To Persecution Or Torture And Require Fair Procedures Before Removal

Today, the United States has adopted international obligations that reflect both Christian tradition and the Founders' vision of immigration. The Universal Declaration of Human Rights, which the United States helped shape under Eleanor Roosevelt's leadership, recognizes the inherent dignity of every person and, consistent with that principle, the right to seek refuge from persecution. *See* G.A. Res. 217A (III), *Universal Declaration of Human Rights*, arts. 1, 14 (Dec. 10, 1948), https://tinyurl.com/yw6ffdcc; United Nations, *Universal Declaration of Human Rights History of the Declaration*,

https://tinyurl.com/mwjcmwy9 (last visited Nov. 20, 2026). The United States voted in favor of the resolution adopting the Universal Declaration of Human Rights. United Nations Digital Library, *International Bill of Human Rights: Universal Declaration of Human Rights: Resolution/Adopted by the General Assembly*, https://tinyurl.com/mvu7dyau (last visited Nov. 20, 2026). The 1967 Protocol to the Refugee Convention and the Convention Against Torture, to which the United States is a party by accession and ratification, respectively, prohibit sending migrants to countries that would persecute or torture them and require fair procedures before removal.

These international agreements enshrine the international legal principle of non-refoulement, which prohibits sending individuals to a country or territory where they face persecution. The clear need for a non-refoulement policy arose after the World Wars. After World War I, the United States became fearful of an influx of European immigrants, and adopted a quota system for European countries. Rosenfeld, *Fatal Lessons: United States Immigration Law During the Holocaust*, 1 U.C. Davis J. Int'l L. & Pol'y 249, 252 (1995). But the quota system fell tragically short in accommodating the Jewish refugees fleeing Nazism. *Id.* at 252-264. The 1951 Refugee Convention was designed to prevent similar tragedies. *Id.* at 264. Article 33 of the Refugee Convention broadly prohibits "expel[ling] or return[ing] (refouler) a refugee in any manner whatsoever to the frontiers or territories where his life or freedom would be threatened on account of his race, religion, nationality, membership [of] a particular social group or political opinion." *Cardoza-Fonseca*, 480 U.S. at 440-441 (discussing Article 33.1 of the Refugee Convention, 189 U.N.T.S. 137 (1951) (quotation marks and emphasis

omitted)). The non-refoulement principle in Article 33 broadly covers at-risk migrants, regardless of their formal refugee status. United Nations High Comm'r for Refugees, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations Under the 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol* ¶6 (Jan. 26, 2007), https://tinyurl.com/2s37txy9.

The United States and the Holy See acceded to the Refugee Convention's 1967 Protocol that includes the non-refoulement principle. *See Protocol Relating to Refugees Convention*, art. 1, 606 U.N.T.S. 267 (Jan. 31, 1967) (United States acceded to certain articles of the Refugee Convention, including Articles 32-33), https://tinyurl.com/3xjtw5n5; *Convention Relating to the Status of Refugees*, Ratification by the Holy See, 230 U.N.T.S. 440 (Mar. 15, 1956) (Holy See adopted Refugee Convention in 1956), https://tinyurl.com/ye23h6z4. Both are also parties to CAT, which guards against removal to a state that could result in torture. U.S. Dep't of State, *Initial Report of the United States of America to the UN Committee Against Torture* (Oct. 15, 1999), https://tinyurl.com/fw2extuw; Holy See, *Holy See Signs Convention Against Torture* (July 31, 2002), https://tinyurl.com/ywmvx76x; *see also* The Episcopal Church, *Advocate for Compassionate Immigration Policies on International Migrants Day* (Dec. 18, 2024) ("The principles of non-refoulement must be adhered to; countries should not return individuals to unsafe conditions in their home countries."), https://tinyurl.com/4c8n8xem. This commitment to non-refoulement is broadly recognized: more than 150 faith organizations and 660 faith leaders signed a 2024 letter urging Congress not to pass legislation that risked "returning asylum seekers to the very harm they fled in violation of non-refoulement."

Church of the Brethren Newsline, *Office of Peacebuilding and Policy Among More than 150 Faith-Based Groups Signing Letter to Congress on Immigration* (Feb. 15, 2024), https://tinyurl.com/5xhxm87n.

Both the Refugee Convention and the Convention Against Torture provide for individualized due process. For example, Article 32(2) of the Refugee Convention requires "due process of law," including the right of a refugee to submit evidence, appeal, and be represented. 189 U.N.T.S. at 176. Regulations implementing the CAT and FARRA similarly require that "[i]n assessing whether it is more likely than not that an applicant would be tortured in the proposed country of removal, all evidence relevant to the possibility of future torture shall be considered." *See* 8 C.F.R. §§ 208.16(c)(3), 208.17, 1208.16(c)(3), 1208.17; *see also* Pet. App. 113a n.3 (noting DHS does not dispute that all class members may assert FARRA/CAT claims).

Congress has codified the non-refoulement principle in our immigration laws, notably through the Refugee Act of 1980. *See* Pub. L. No. 96-212, § 203(e), 94 Stat. 102, 107 (1980). Congress also conformed the INA to Article 33 of the Refugee Convention in 8 U.S.C. § 1231(b)(3). In addition, Congress codified the United States' obligations under CAT by enacting FARRA. Pub. L. No. 105-277, § 2242(b), 112 Stat. at 2681-822 (directing Executive to implement CAT by regulation); 8 C.F.R. §§ 208.16-208.18, 1208.16-1208.18. And the Due Process Clause of the Fifth Amendment also applies to noncitizens within the United States. U.S. Const. amend. V; *Zadvydas* v. *Davis*, 533 U.S. 678, 693 (2001) ("[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.").

Like the treaties they implement, the statutes and regulations at issue here require individualized review. The INA obligates the government to assess, prior to removing a person to a third country, whether that person's "life or freedom would be threatened" in the country—not whether the country poses a risk to removed persons generally. 8 U.S.C. § 1231(b)(3)(A). FARRA asks in § 2242(a) whether "the person would be in danger of being subjected to torture" upon removal. 112 Stat. at 2681-822. Regulations implementing the CAT likewise focus on danger confronting the particular applicant. *See*, *e.g.*, 8 C.F.R. §§ 1208.16(b), 208.16(c) (withholding of removal is available if the applicant establishes "that his or her life or freedom would be threatened in the proposed country" and "all evidence relevant … shall be considered"). These statutes and regulations codifying non-refoulement reflect more than the Nation's current international obligations—they also embody Christian tradition and the Founders' embrace of immigration.

II. THE GUIDANCE IS CONTRARY TO FAITH TEACHINGS AND OUR NATION'S TRADITIONS AND LEGAL OBLIGATIONS WITH RESPECT TO INDIVIDUAL PERSONS

By resting on generalized diplomatic assurances instead of individualized review, the Guidance is contrary to the recognition in Scripture and U.S. law that each person—regardless of their status—has inherent dignity and deserves protection from refoulement. Each person deserves a meaningful opportunity to challenge third-country removal.

A. The Guidance Improperly Replaces Individualized Review With Generalized Diplomatic Assurances

Scripture and our Nation's laws share a common premise: the right to protection is personal and must be assessed according to each person's circumstances. The Guidance improperly abandons that approach.

The Guidance does not ask, as statute and regulation require, whether *an individual* faces persecution or torture in the country of removal. *See, e.g.*, 8 U.S.C. § 1231(b)(3)(A); FARRA § 2242(a), 112 Stat. at 2681-822; 8 C.F.R. § 1208.16(b)-(c). Instead, it considers only whether the receiving country has given undefined "diplomatic assurances" that it will not persecute or torture people removed there generally. Pet. App. 84a. If the government "believes" those broad assurances "to be credible," then any individual subject to a removal order may be removed to that country "without the need for further procedures," regardless of their personal circumstances. Pet. App. 84a-85a. Even when the country of planned removal has *not* provided "assurances," the Guidance provides little more: individuals have only 24 hours, and in some circumstances as few as six, to identify and affirmatively raise fears of danger. *Id.*; *see also* Pet. App. 86a (follow-up Guidance permitting removal after six hours in "exigent circumstances").

The Guidance does not define what a "credible" assurance is or what it must contain. Nor has the government shed any light on how it assesses the credibility of a foreign country's "assurances" that it will not persecute or torture people our government sends there. Indeed, the government has not even publicly disclosed which countries have purportedly provided assurances or what those assurances say. *See* Pet. App. 136a n.15.

Thus, whether a person ever has an opportunity to explain his or her fear of persecution or torture turns entirely on a black-box credibility determination untethered to the particular dangers that person may face.

Such determinations are not an adequate safeguard against persecution or torture. Diplomatic assurances are nonbinding promises from one government to another. Assurances cannot be verified—persecution and torture happen out of sight, in detention cells and interrogation rooms away from outside observers, and are usually denied by the perpetrating government. Moreover, history has shown that similar assurances fail. In 2002, the United States removed Maher Arar, a Canadian citizen, to Syria after receiving assurances from the Syrian government that he would not be tortured. *See* Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar: Analysis and Recommendations* 156 (2006), https://tinyurl.com/3sc24f6w. Yet those assurances did not protect him. After extensive investigation, an official inquiry concluded that Arar was tortured while detained in Syria: he was held in "atrocious" conditions and "subjected to great physical and psychological abuse," including repeated beatings with a thick electrical cable. *Id.* at 55-56.

More recently in September 2025, the United States removed individuals to Ghana based on Ghana's assurances that it would not send them to countries where they were likely to be tortured (often referred to as "chain refoulement"). *D.A.* v. *Noem*, 800 F. Supp. 3d 43, 46-47 (D.D.C. 2025). Yet Ghana "almost immediately" returned an individual to his home country, forcing him into hiding. *Id.* at 46. The government admitted in court that Ghana violated the assurances and conceded that

the United States "does not have the power to tell Ghana what to do." *Id.*

The United Nations Committee Against Torture likewise found that diplomatic assurances failed to protect Ahmed Agiza, who was tortured after Sweden removed him to Egypt despite Egypt's assurances that he would be treated humanely. Decision ¶¶13.3-13.4, *Agiza* v. *Sweden*, U.N. Doc. CAT/C/34/D/233/2003 (May 20, 2005) ("*Agiza* Decision"), https://tinyurl.com/mr326mfc. The Committee held that Sweden violated the Convention Against Torture by relying on assurances that "provided no mechanism for their enforcement" and "did not suffice to protect against" the risk of torture. *Id.* ¶13.4.

As part of that same decision, the Committee emphasized the need for countries to consider "whether the individual concerned was personally at risk of being subjected to torture in the country to which he was returned." *Agiza* Decision ¶13.3. That individualized inquiry remains necessary even if the country of removal has no pattern of human rights violations, because a person may be "considered to be in danger of being subjected to torture in his or her specific circumstances." *Id.*

If individualized inquiry is necessary even when the country of removal does not have a record of human rights violations, it is all the more necessary where serious abuses are well-documented. Many, if not all, of the countries to which the government has removed individuals based on diplomatic assurances have recent, documented records of persecution, torture, and other human rights violations. *See, e.g.*, U.S. Dep't of State, *2024 Country Reports on Human Rights Practices: Mexico* (2025) (reporting that "torture was a generalized practice" in Mexico), https://tinyurl.com/2j72m3bb; U.S. Dep't of State, *2024 Country Reports on Human Rights*

Practices: South Sudan (2025) (documenting widespread extrajudicial killings, torture, arbitrary detention, child labor and use of children in armed conflict, forced labor, repression, human trafficking, and other violations in South Sudan), https://tinyurl.com/3z23xmbr; U.S. Dep't of State, *2024 Country Reports on Human Rights Practices: Libya* (2025) (reporting "widespread [and systematic]" torture in Libya, including against detained migrants), https://tinyurl.com/ycx49mkf. Several of these countries have undertaken an international commitment to prohibit torture. *See* United Nations Treaty Collection, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (listing Mexico, Libya, South Sudan, El Salvador, Eswatini, and others as CAT parties), https://tinyurl.com/5t43afha (last visited Nov. 20, 2026). But the State Department reports cited above show that those commitments have not prevented these countries from engaging in torture and other abuses. Against that record, a bare "assurance" not to repeat the same abuses, whether or not "credibly" conveyed by a skilled diplomat, does not satisfy our national commitment to protect people from persecution and torture.

B. Each Person Deserves A Meaningful Opportunity To Challenge Third-Country Removal

Individualized protection respecting God-given dignity cannot be ensured if the person facing removal is never heard. The person facing removal possesses information critical to assessing whether the receiving country will be safe for him or her. A generalized diplomatic assurance cannot reveal whether and where a person was previously tortured, or whether a person has received specific threats, belongs to a protected group currently being persecuted, or is targeted by a government official or nonstate actor. *See, e.g.*, Ngo, *Judge Orders*

U.S. to Return Deported Man at Risk of Torture, N.Y. Times (Aug. 24, 2026) (man who testified against cartels on behalf of U.S. law enforcement was removed to Mexico based on assurance of safety, despite individualized risk of retaliation), https://tinyurl.com/4asuxvpz. Nor can the government account for facts it never hears. An opportunity to be heard allows the person whose safety is at stake to identify the real, individualized dangers that may exist and that no generalized diplomatic promise can address, and requires that the government take account of those dangers before making its removal decision.

Yet the Guidance excludes individuals from participating in the very determination on which their safety depends. The person facing the risk has no voice in the government's evaluation of a diplomatic assurance's credibility and no opportunity to challenge it. Even when no such assurances exist, the Guidance offers an impossibly narrow window of six to 24 hours in which the noncitizen must identify and affirmatively raise fears about a country he or she may have never visited or even heard of. This stands in sharp contrast to the procedural protections Congress provides when the government initially seeks to remove a person. In those proceedings, Congress expressly affords the individual an opportunity to present evidence and challenge the government's evidence. *See* 8 U.S.C. § 1229a(b)(4)(B) ("[T]he [noncitizen] shall have a reasonable opportunity to examine the evidence against the [noncitizen], to present evidence on the [noncitizen]'s own behalf, and to cross-examine witnesses."). But those initial removal proceedings, and the due process protections they provide, concern only the country then at issue. After an individual successfully invokes those protections to establish a risk of persecution or torture in that country, the Guidance

changes the destination and strips away his or her chance to show that the new country may be just as dangerous. The Guidance thus decides that a foreign country's generalized promise is sufficient to protect a particular person without hearing the very information that might show otherwise.

And when that judgment is wrong, it is the individual who bears the consequences. A person removed in reliance on an insincere assurance cannot enforce the foreign government's promise, and the United States has no remedy that can undo persecution, torture, or death already inflicted. The risk of error falls entirely on the person who was denied an opportunity to explain the danger he or she faced in the first place. With such grave and irreversible consequences, administrative convenience cannot justify denying the person at risk a meaningful opportunity to be heard before removal. *See Stanley* v. *Illinois*, 405 U.S. 645, 656-657 (1972) ("Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues … , when it explicitly disdains present realities in deference to past formalities, it needlessly risks running roughshod over the important interests of [those affected]."); *see also* Genesis 18:32, 19:12-16 (the Lord telling Abraham that "[f]or the sake of the ten [righteous people], … I will not destroy" Sodom, and then allowing Lot and his family to escape before the destruction of Sodom).

Individualized hearings following fair notice would impose little burden and minimal delay in most cases. If the government is correct that a receiving country's assurance reliably protects an individual from persecution and torture (Pet. Br. 41-42), the hearing will be brief. More substantial proceedings would be necessary only when the individual makes a credible showing that the

assurance does not protect him or her, which is precisely when more careful review matters most.

III. Third-Country Removal Without Due Process Improperly Denies The Innate Dignity And Freedom Of The Person

The Guidance dismisses the innate dignity that God has given to all human beings and endangers individuals for collective expediency. It also has the potential to subject the most vulnerable among us to life-threatening harm. Christian faith traditions broadly teach that human dignity is God-given because "God created mankind in his image." Genesis 1:27. Yet by refusing migrants the opportunity to raise concerns about persecution and torture, the Guidance undermines this dignity and ignores what God has given.

The Guidance also replaces individualized notice and a meaningful opportunity to be heard with blanket assurances divorced from the individuals they most affect. Scripture repeatedly rejects the notion that the least among us is expendable. *See* Matthew 10:29-31 ("Are not two sparrows sold for a small coin? Yet not one of them falls to the ground without your Father's knowledge. Even all the hairs of your head are counted. So do not be afraid; you are worth more than many sparrows."); Psalms 27:10 ("Even if my father and mother forsake me, the Lord will take me in."); John 6:37 ("Everything that the Father gives me will come to me, and I will not reject anyone who comes to me."). Accepting that some people may be sent into danger for the sake of faster, cheaper removals treats those people as expendable in a manner that is both unlawful and immoral.

Through Christ, we are "no longer strangers and sojourners" but "members of the household of God." Ephesians 2:19. That shared belonging carries with it a

responsibility to care for one another, especially those most vulnerable. *See* Isaiah 1:17 ("[L]earn to do good. Make justice your aim: redress the wronged, hear the orphan's plea, defend the widow."); Galatians 5:14 ("For the whole law is fulfilled in one statement, namely, 'You shall love your neighbor as yourself.'"); 1 Corinthians 12:26 ("If [one] part suffers, all the parts suffer with it; if one part is honored, all the parts share its joy."). Migrants are no exception to that responsibility. *See* Leviticus 19:34 ("You shall treat the alien who resides with you no differently than the natives born among you; you shall love the alien as yourself; for you too were once aliens in the land of Egypt.").

Human dignity does not turn on nationality or immigration status, and those who are displaced, threatened, or otherwise vulnerable should be treated with particular care. A policy affecting migrants should therefore be judged by whether it recognizes the humanity of the person and protects those whose lives and safety depend on it. The Guidance shows indifference toward this shared humanity and casts aside the vulnerable among us.

The government portrays those subject to third-country removal as "criminals" who "have ravaged American communities." Pet. Br. 3. That rhetoric is as cruel as it is broadly untrue. Many of those targeted for third-country removal have already established that returning to their countries of origin would expose them to persecution or torture. They sought refuge here because remaining in their home country, or being forced to return there, threatened their freedom, safety, or lives. *See* Loveluck & Speri, *What is Trump's Third-Country Deportation Policy and Whom Does It Target?*, The Guardian (Sept. 21, 2026) (those removed include "a nurse, originally from Sierra Leone, who was her parents' main carer in the US; an anti-government

protestor who fled the Iranian regime; and a gay man who fled Ghana after he was outed, then hunted, by members of his family"), https://tinyurl.com/2zz5rxxr. These are precisely the vulnerable strangers whom Scripture calls upon us to protect.

Sister Leticia "Letty" Ugboaja's experience illustrates this. Sister Letty is a 56-year-old Catholic religious sister from Nigeria who works as a registered nurse. Every Sunday for the past decade, Sister Letty has walked to Mass at Our Lady of Sorrows Catholic Church in McAllen, Texas. Brandi, *Valley Nun Speaks Out Following ICE Detainment, Fights Removal to Third Country*, KRGV (July 23, 2026), https://tinyurl.com/4vcmndmp. Since arriving in the United States, Sister Letty has complied with all conditions governing her presence here and has never missed an immigration appointment. And in 2019, an immigration judge granted her protection from removal to Nigeria after finding it probable that she would be tortured if returned. Yet on June 28, 2026, government agents stopped her on her way to worship, refused to allow her to attend Mass or receive Holy Communion, and took her into custody. Although she was later released from detention, she still faces the prospect of removal to a country other than Nigeria at the government's whim based on vague "assurances" and with no meaningful opportunity to show a significant risk of persecution or torture.

Sister Letty's experience illustrates the broad reach of the Guidance: even a religious sister and nurse who has worked in good faith to navigate the immigration system and received protection from removal to her home country may be sent elsewhere without an opportunity to challenge that removal. And Sister Letty's story is but one of many. Others with longstanding

families, careers, and communities have similarly been sent to unfamiliar third countries, including a nursing-home caretaker and a Texas pastor. *See, e.g.*, Reznick, *'Hyper-Speed': Tucson Mom with No Criminal Record Deported to Cameroon in Less than 7 Days*, KJZZ (Nov. 3, 2026) (nursing home worker with no criminal record removed to Cameroon, a country where she had no ties, in less than seven days without an opportunity to meet with counsel), https://tinyurl.com/2tb54ydz; *MS NOW Talks to Nigerian Immigrant Pastor from Texas Deported to 'Third Country'*, Morning Joe Show (Oct. 6, 2026) (Texas pastor and father of five removed without proper notice to Ghana, separating him from his family), https://tinyurl.com/2s4kdtv7. The Guidance is not limited to those who have run afoul of the law; it threatens those who have done everything the law has asked of them. The Court should not permit the government to remove noncitizens who have sought refuge here without allowing them to show that the planned removal will cause the very persecution or torture they fled.

CONCLUSION

The Court should affirm the judgment of the court of appeals.

Respectfully submitted.

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