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 FORMER SENIOR GOVERNMENT OFFICIALS, LAWYERS, AND DIPLOMATS 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	2
ARGUMENT	5
I. The U.N. Convention Against Torture and U.S. Law Require Individualized Assessments of Torture Risk	5
A. The United States Ratified and Implemented CAT with the Understanding that It Required Individualized Assessments	5
B. Officials Charged with Applying FARRA Have Long Understood It to Require Individualized Assessments	8
II. Officials Charged with Applying the Withholding Statute Have Long Understood that It Requires Individualized Assessments, Not Blanket Diplomatic Assurances	15
A. The Withholding Statute Focuses the Inquiry on Individual Noncitizens	16
B. The Statutory Withholding Scheme Makes No Provision for Diplomatic Assurances to Replace the Statutory Determination	18
III. The Court Can Decide Whether the Guidance Complies with the Law	20

TABLE OF CONTENTS—Continued

Page

IV. The Administration's Guidance Promotes Illegal Refoulement by Discarding the Statutory and Regulatory Safeguards that Have Historically Accompanied Assurances 24

CONCLUSION 30

TABLE OF AUTHORITIES

CASES Page(s)

A.A.R.P. v. Trump,
605 U.S. 91 (2025)..... 22

Bittner v. United States,
598 U.S. 85 (2023)..... 13

D.A. v. Noem,
800 F. Supp. 3d 43 (D.D.C. 2025)..... 27

D.V.D. v. DHS,
192 F.4th 74 (1st Cir. 2026)..... 26

D.V.D. v. DHS,
784 F. Supp. 3d 401 (D. Mass. 2025)..... 26

Doe v. Holder,
736 F.3d 871 (9th Cir. 2013)..... 20

Galeas Figueroa v. Att'y Gen.,
998 F.3d 77 (3d Cir. 2021) 20

In re Acosta,
19 I. & N. Dec. 211 (B.I.A. 1985)..... 20

INS v. Aguirre-Aguirre,
526 U.S. 415 (1999)..... 17, 18

INS v. Cardoza-Fonseca,
480 U.S. 421 (1987)..... 18, 19

INS v. Stevic,
467 U.S. 407 (1984)..... 17

Jama v. ICE,
543 U.S. 335 (2005)..... 18, 19

Japan Whaling Ass'n v.
Am. Cetacean Soc'y,
478 U.S. 221 (1986)..... 21

TABLE OF AUTHORITIES—Continued

Page(s)

Khouzam v. Attorney General,
549 F.3d 235 (3d Cir. 2008) 21

Kingdomware Techs., Inc. v. United States,
579 U.S. 162 (2016)..... 16

Kiyemba v. Obama,
561 F.3d 509 (D.C. Cir. 2009)..... 22-24

Loper Bright Enters. v. Raimondo,
603 U.S. 369 (2024)..... 13

Medellín v. Texas,
552 U.S. 491 (2008)..... 8, 13

Munaf v. Geren,
553 U.S. 674 (2008)..... 22, 23

NLRB v. Noel Canning,
573 U.S. 513 (2014)..... 13

Russello v. United States,
464 U.S. 16 (1983)..... 19

Singh v. Bondi,
130 F.4th 848 (10th Cir. 2025) 20

Trinidad y Garcia v. Thomas,
683 F.3d 952 (9th Cir. 2012)..... 21

Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.,
435 U.S. 519 (1978)..... 21, 22

STATUTES

8 U.S.C. § 1158(a)(2)(A)..... 18

8 U.S.C. § 1231(b)(3)..... 3, 15, 17-19

TABLE OF AUTHORITIES—Continued

	Page(s)
8 U.S.C. § 1231(b)(3)(A)	2, 16
8 U.S.C. § 1231(b)(3)(B)	19
8 U.S.C. § 1231(b)(3)(C)	16
8 U.S.C. § 1231, statutory note	2
8 U.S.C. § 1252(a)(4)	23
The Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105-277, Div. G, 112 Stat. 2681-761 (1998)	2
§ 2242(a), 112 Stat. 2681-822	2, 13
§ 2242(b), 112 Stat. 2681-822	13
§ 2242(f)(2), 112 Stat. 2681-823	13
RULES	
Sup. Ct. R. 37.6	1
REGULATIONS	
8 C.F.R. §§ 208.16-208.18	3
§ 208.16(b)	18
§ 208.16(c)(3)(i)	15
§ 208.16(c)(3)(ii)	15
§ 208.16(c)(3)(iii)	15
§ 208.16(c)(3)(iv)	15
§ 208.16(f)	15
§ 208.17(f)	18
§ 208.18(c)	18

TABLE OF AUTHORITIES—Continued

Page(s)

§ 208.18(c)(1) 14

§ 208.18(c)(2) 3, 14

§ 208.18(c)(3) 14

§ 208.30(e)(7) 19

§ 1208.16(b) 15, 17, 18

§ 1208.16(b)(1)(ii) 17

§ 1208.16(c) 15

§ 1240.11(h)(2)(iii) 19

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Page(s)

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Plaintiffs' Memorandum of Law in Support of Emergency Ex Parte Motion for Temporary Restraining Order, *D.A. v. Noem*, 800 F. Supp. 3d 43 (D.D.C. 2025) (No. 1:25-cv-03135) 27

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Convention Against Torture: Hearing Before the S. Comm. on Foreign Rels., 101st Cong. (1990) 7

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H.R. Rep. No. 105-432 (1998)..... 7, 8

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TABLE OF AUTHORITIES—Continued

Page(s)

Letter of Transmittal from President Ronald Reagan to the Senate (May 20, 1988), *in* Message from the President of the United States Transmitting the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, S. Treaty Doc. No. 100-20 (1988) 5

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Page(s)

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Page(s)

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INTEREST OF AMICI CURIAE[1]

Amici curiae are former government officials, lawyers, and diplomats who have held senior roles, in both Republican and Democratic administrations, at the White House, National Security Council, and the Departments of State, Defense, Justice, and Homeland Security. *Amici* have advised the Executive on, and have implemented, the government's core commitment under the Convention Against Torture and federal law: the United States will not send any person to be tortured, or to face persecution because of who they are or what they believe. Combined, *amici* have decades of experience in the Executive departments charged with administering these mandatory protections and fully appreciate the need for Executive discretion on many immigration and foreign-affairs matters. Several *amici* have negotiated diplomatic assurances with other countries. But all *amici* agree that Congress has required the Executive to make individualized determinations before removing noncitizens to countries where they may face torture or persecution. *Amici* reject the current Administration's sham process of using blanket diplomatic assurances—including from countries with well-established records of human

[1] No counsel for a party authored this brief in whole or in part and no such counsel or a party made a monetary contribution intended to fund the preparation or submission of this brief. *See* Sup. Ct. R. 37.6. *Amici* do not repeat Respondents' arguments on questions 1 and 2 presented to this Court and instead focus this brief on the Administration's unlawful use of blanket diplomatic assurances that violate this nation's commitments under the Convention Against Torture and federal law, commitments that *amici* collectively spent decades protecting. A full list of *amici* and their relevant experience is set forth in the Appendix to this brief.

rights violations—as a fundamental violation of this nation's laws and treaty obligations.

SUMMARY OF ARGUMENT

For decades, through administrations of both parties, the United States has honored a fundamental promise: it will not send any person to be tortured, or to face persecution because of who they are or what they believe. The Trump Administration has broken that promise.

Of course, it is immoral to send individuals to be tortured or persecuted. This commitment—known as non-refoulement—is a bedrock principle of law that binds all U.S. officials: it is enshrined in both domestic law and a decades-old treaty, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"), to which the United States is a party. The Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), which implements Article 3 of CAT, declares that it is "the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture[.]" FARRA, Pub. L. 105-277, Div. G, § 2242(a), 112 Stat. 2681–822 (1998) (codified as statutory note to 8 U.S.C. § 1231). The withholding statute repeats that directive: 8 U.S.C. § 1231(b)(3)(A) mandates that the government "may not remove an alien to a country if [it] decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion."

Amici have decades of experience in the Executive departments charged with administering these

mandatory protections. Based on that experience, *amici* fully appreciate the need for Executive discretion in immigration and foreign affairs. But they have always recognized the need to exercise this discretion within the bounds of the law—here, the statutory mandates to make individualized determinations based on objective factors, such as current country conditions and the applicant's specific circumstances.

The bar against refoulement contains no exception for convenience. The withholding statute does not mention assurances as a means to satisfy the prohibition on refoulement. *See* 8 U.S.C. § 1231(b)(3). FARRA's implementing regulations, 8 C.F.R. §§ 208.16-208.18, do not authorize blanket assurances to satisfy U.S. non-refoulement obligations under CAT, because they permit assurances only where the Attorney General, "in consultation with the Secretary of State," determines those assurances are "sufficiently reliable to allow *the* alien's removal to *that* country consistent with Article 3[.]" 8 C.F.R. § 208.18(c)(2) (emphasis added). *Amici* have always understood those provisions to mandate individualized determinations, not blanket decisions, as to whether a *particular* person can safely be sent to a *particular* country.

Amici do not ask this Court to second-guess the Executive's authority to conduct third-country removals or to rely on legally sufficient diplomatic assurances in individual cases. In *amici*'s experience, the Executive previously sought removals based on diplomatic assurances in only a small number of cases. Further, in such cases, it evaluated those assurances as just one factor in an individualized assessment, rather than as a substitute for it. The Executive then tested the validity of those assurances through post-removal monitoring. *Amici* include officials who, on behalf of

administrations of both parties, have represented that the United States adheres to these practices to the U.N. Committee Against Torture. Most fundamentally, by following these practices, *amici* have honored Congress's mandate that removal must turn on evidence-based assessments of risk to the individual.

The Administration has violated the law by dispensing with that individualized assessment altogether for any country that has given a blanket assurance to the United States—without regard to that country's record on human rights or review of any applicant's particular circumstances. And the Administration has abandoned the monitoring that historically ensured these assurances were not illusory. Moreover, the Administration has removed some individuals to third countries without any assurances whatsoever: it provides these noncitizens only six to twenty-four hours to raise a fear of persecution or torture and establish, before a DHS officer, that they meet the high standard for withholding or CAT protection—a sham process designed to feign compliance with the law.

The Administration's abandonment of individualized determinations violates the carefully constructed scheme Congress enacted and the Executive has implemented for decades. The law forbids U.S. officials from aiding and abetting torture and persecution abroad. Accepting the Administration's defective process would condone the United States defaulting on one of its most fundamental legal and moral responsibilities: to protect individuals, no matter who they are, from torture and persecution.

ARGUMENT

I. The U.N. Convention Against Torture and U.S. Law Require Individualized Assessments of Torture Risk.

A. The United States Ratified and Implemented CAT with the Understanding that It Required Individualized Assessments.

Successive administrations have committed to opposing torture, no matter where it occurs.[2] In particular, Article 3 of CAT, to which the United States is a party, mandates that "[n]o State Party shall expel, return (*refouler*) or extradite *a person* to another State where there are substantial grounds for believing that *he* would be in danger of being subjected to torture." CAT art. 3(1), Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85, 113 (emphasis added). The inquiry is individualized—it examines whether a

[2] *See, e.g.*, Letter of Transmittal from President Ronald Reagan to the Senate (May 20, 1988), *in* Message from the President of the United States Transmitting the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, S. Treaty Doc. No. 100-20, at iii (1988) ("Ratification of the Convention by the United States will clearly express United States opposition to torture, an abhorrent practice unfortunately still prevalent in the world today."); Statement on Signing the Torture Victim Protection Act of 1991, 28 Weekly Comp. Pres. Doc. 465 (Mar. 12, 1992) (George H.W. Bush: "The United States must continue its vigorous efforts to bring the practice of torture and other gross abuses of human rights to an end wherever they occur."); Statement on United Nations International Day in Support of Victims of Torture, 40 Weekly Comp. Pres. Doc. 1167 (June 26, 2004) (George W. Bush: "Freedom from torture is an inalienable human right, and we are committed to building a world where human rights are respected and protected by the rule of law.").

particular person would be in danger if sent to a *particular* country.

The Committee Against Torture ("the Committee"), CAT's expert monitoring body, explained in 1997 that states parties "are obliged to assess whether there are substantial grounds for believing that the author [of a communication alleging possible torture, *i.e.*, the potential victim] would be in danger of being subjected to torture were he/she to be expelled, returned or extradited[.]" U.N. Comm. Against Torture, General Comment on the Implementation of Article 3 of the Convention in the Context of Article 22 (1997), ¶ 6, U.N. Doc. A/53/44, annex IX, at 52 (1998). Two decades later, the Committee reaffirmed that "[e]ach case should be examined *individually*" and that "[c]ollective deportation, without an objective examination of the individual cases with regard to personal risk, should be considered as a violation of the principle of non-refoulement." U.N. Comm. Against Torture, General Comment No. 4 (2017) on the Implementation of Article 3 of the Convention in the Context of Article 22, ¶ 13, U.N. Doc. CAT/C/GC/4 (2018) (emphasis added). The Committee also cautioned that diplomatic assurances "should not be used as a loophole to undermine" the fundamental requirement of non-refoulement. *Id.* ¶ 20.

The United States understood Article 3 to require individualized assessments when it ratified CAT. The Senate's advice and consent resolution announced the United States's understanding that Article 3 prohibits refoulement of an individual "if it is more likely than not that *he* would be tortured." Text of Resolution of Ratification at II(2), *in* Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, S. Exec. Rep. 101-30, at 29-30 (1990)

(emphasis added). Demonstrating the same understanding, a senior Justice Department official testified to the Senate Foreign Relations Committee that "[t]here is no doubt that Article 3 places an obligation upon the . . . United States not to deliver an *individual* to a country where he would be tortured."[3]

The Senate Committee Report on the ratification resolution accordingly described CAT as imposing "an obligation not to expel . . . *a person* to another State where there are 'substantial grounds' for believing that the *individual* would be tortured." S. Exec. Rep. 101-30, at 7 (emphasis added). Indeed, the Senate Committee explained that Article 3 "specifies" a "determin[ation] whether grounds exist to believe that *an individual* would be in danger of being subjected to torture[.]" *Id.* at 17 (emphasis added). The ratification record repeatedly demonstrates that the United States understood Article 3 to require individual determinations, while nothing in the record suggests states parties can substitute blanket, country-level determinations for individual ones.

Finally, the Congress that implemented Article 3 through FARRA required individualized application of the United States's non-refoulement obligation. Every version of the bill spoke in individual terms. H.R. Rep. No. 105-432, at 150 (1998) (Conf. Rep.). The House version "prohibit[ed] the involuntary return of any *person* to [a] country in which *he or she* is in serious danger of being subjected to torture." *Id.* (emphasis added). The Senate version likewise prohibited

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[3] *Convention Against Torture: Hearing Before the S. Comm. on Foreign Rels.*, 101st Cong. 18 (1990) (statement of Mark Richard, Deputy Assistant Att'y Gen., U.S. Dep't of Just., Crim. Div.) (emphasis added).

"expelling . . . any person" and addressed the danger to "the person." *Id.* And the conference substitute, "similar to the House bill," sought to adopt CAT "subject to the conditions of ratification set by the Senate," none of which questioned Article 3's individualized approach. *Id.*; *see* Text of Resolution of Ratification, S. Exec. Rep. 101-30, at 29-30. All three versions made clear that torture determinations were not to be made wholesale, but only on an individualized basis.

B. Officials Charged with Applying FARRA Have Long Understood It to Require Individualized Assessments.

For more than a quarter century, across administrations of both parties, members of the Executive Branch—including many *amici*—have told the U.N. Committee Against Torture, Congress, and the public that the United States complies with its obligations under Article 3 of CAT by requiring an individualized assessment before removal or transfer. Until now, no administration—not even the first Trump Administration—has ever suggested it could dispense with the statutorily required individualized assessment. *See Medellín v. Texas*, 552 U.S. 491, 506–07 (2008) (treaty interpretation includes consideration of "the postratification understanding" of signatory nations).

The first U.S. report to the Committee described how the United States complied with CAT's prohibition against refoulement before and after the FARRA regulations. Even before promulgation of the FARRA regulations, the United States evaluated CAT claims under a comprehensive scheme in which "[a] specially trained administrative 'asylum officer'" interviewed each individual who raised a fear of torture; the State Department had the opportunity to comment; and the

agency then determined whether that person's removal would violate Article 3. Initial Report of the United States of America to the Committee Against Torture ¶¶ 162–64, U.N. Doc. CAT/C/28/Add.5 (2000).[4] After issuance of the FARRA regulations, immigration judges generally decided Article 3 claims in each individual's removal proceedings, subject to review by the Board of Immigration Appeals. *Id.* ¶¶ 169–70.

Seven years later, the next administration told the Committee the United States "undert[ook] a thorough, case-by-case analysis of each potential transfer where diplomatic assurances [we]re involved." United States Response to Specific Recommendations Identified by the Committee Against Torture 3 (2007) ("2007 Response").[5] That analysis "t[ook] into account all relevant factors, including all available information about the compliance of the potential receiving state with its international obligations . . . and the merits of *each individual case*." *Id*. (emphasis added). It applied across contexts, including "immigration removal." *Id*. at 4. Assurances were "only a factor that may be considered in appropriate cases," were "used sparingly," and were "not used as a substitute for a case-specific assessment" of whether a person would more likely than not suffer torture. *Id*. at 3–4.

From the very beginning, senior officials described the standard the same way. *Amicus* John Bellinger, then-State Department Legal Adviser, told Congress that assurances *had* to be individualized, including for immigration removal. "In all contexts," he explained,

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[4] Available at https://hrlibrary.umn.edu/cat/usa2000.html.

[5] Available at https://2001-2009.state.gov/documents/organization/100843.pdf.

"evaluations as to the likelihood of torture require a particularized determination *in each individual case*."[6] "Generalizations about the overall human rights situation in a country . . . do not necessarily provide a clear or obvious answer." *Id.* Accordingly, Executive Branch officials had to decide whether assurances were "sufficiently reliable" to permit removal consistent with CAT "on a case-by-case basis." *Id.* And in immigration removal specifically, assurances had been used in "less than a handful of cases" since 1999, while "approximately five thousand individuals" had been protected from removal to torture. *Id*. at 16.

The next administration reached the same conclusion. In 2009, an interagency task force reviewed every type of transfer the government conducts, including immigration removals, and concluded that "the facts point toward the need for careful case-by-case assessments of assurances[.]" Report of the Special Task Force on Interrogation and Transfer Policies 13 (2009) ("Task Force Report").[7] "The person to be transferred, the government entity to which he is to be transferred, the prevailing political circumstances, and other factors all play critical roles in determining likely treatment after transfer." *Id.* at 20. And where "an individual has raised a particularized, reasonable, and credible concern about torture," the "assurances should address that concern." *Id*. at 15; *see also id.* at 20 (explaining

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[6] *Diplomatic Assurances and Rendition to Torture: The Perspective of the State Department's Legal Adviser: Hearing Before the Subcomm. on Int'l Orgs., Hum. Rts. & Oversight of the H. Comm. on Foreign Aff.*, 110th Cong. 17 (2008) (statement of Hon. John B. Bellinger, III, Legal Adviser, U.S. Dep't of State) (emphasis added) ("Bellinger Statement").

[7] Available at https://www.justice.gov/oip/foia-library/2009_report_special_task_force_interrogation_and_transfer_policies.

that "the credibility and reliability of assurances is inherently context-specific").[8]

The first Trump Administration held to that view. In 2017, it joined Canada, Denmark, and the United Kingdom in telling the Committee that "the circumstances of every case must be assessed individually" and that "assurances must not be used as a loophole to undermine the principle of non-refoulement[.]"[9] The four governments grounded that position in Article 3's command to consider "all relevant considerations." *Id.* ¶ 7 (quoting CAT art. 3(2)). "[T]he essential question," they explained, is whether, "taking into account the content of the assurances, their credibility and reliability, and the totality of other relevant factors relating to the individual and the government in question, there are substantial grounds for believing

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[8] *See also* U.S. Dep't of State, Periodic Report of the United States of America to the United Nations Committee Against Torture (Third, Fourth, and Fifth Reports) ¶¶ 68–69 (Aug. 12, 2013), https://2009-2017.state.gov/j/drl/rls/213055.htm ("[T]he United States conducts a thorough, case-by-case analysis of each potential transfer to a foreign government of third country nationals . . . ."); *see also id.* ¶ 78 (declaring that the United States would not transfer a person to a foreign country if it believed the person would be subjected to torture, even given "any assurances received"); *id.* ¶ 85 ("In instances in which the United States transfers an individual subject to diplomatic assurances, it would pursue any credible report of conduct contrary to those assurances and take appropriate action if it had reason to believe that those assurances would not be, or had not been, honored.").

[9] Joint Observations of Canada, Denmark, the United Kingdom, and the United States of America on Paragraphs 19-20 of the Committee Against Torture's Draft General Comment No. 1 (2017) on Implementation of Article 3 in the Context of Article 22 ¶¶ 4–5 (Mar. 31, 2017) ("Joint Observations"), https://www.ohchr.org/sites/default/files/Documents/HRBodies/CAT/GCArticle3/JointSubmission.pdf.

that the individual would be in danger of being tortured." *Id.* ¶ 7.

Nor has the Executive treated mere assurances, without subsequent monitoring, as sufficient to meet its legal obligations. In *amici*'s experience, the Executive paired the rare removals that relied on assurances with additional safeguards, and declined transfers when those safeguards fell short. In 2007, the United States told the Committee that "follow-up following return is important" and that it had "requested and obtained information about the situation of individuals who have been transferred to other countries subject to assurances." 2007 Response at 4. It added that it "would pursue any credible report and take appropriate action if it had reason to believe that those assurances would not be, or had not been, honored." *Id*. The next year, *amicus* John Bellinger told Congress that whenever the United States "extradites, removes, returns, or transfers an individual to another country subject to assurances," it may arrange for "U.S. officials or an agreed upon third party" to "have physical access to the individual[.]" Bellinger Statement at 17. And in 2009, the Task Force recommended that "[i]n all [assurance] cases," the obtaining agency "should insist on the inclusion of a monitoring mechanism"—one that generally should "provide for consistent, private access to the individual who has been transferred, with minimal advance notice to the detaining government"—"unless there is a compelling reason not to do so." Task Force Report at 17. Thus, in *amici*'s experience, assurances have provided only one input, and their reliability had to be confirmed case-by-case, including through follow-on monitoring.

Petitioners claim FARRA merely sets a "general policy" the Executive may "operationalize" through

regulations as it sees fit. Pet'rs' Br. at 36. But that misreading cannot be squared with the statute's text. Through FARRA, Congress made the United States's non-refoulement obligation binding domestic law. FARRA adopts CAT's Article 3 non-refoulement obligation as the policy of the United States, directs the Executive Branch to implement that obligation through regulation, and gives its terms the meanings they have in the Convention.[10] FARRA § 2242(a), (b), (f)(2). Congress thus "elect[ed] to give" Article 3 of CAT "wholesale effect." *Medellín*, 552 U.S. at 520. Because Article 3 requires individualized determinations of torture risk, so too does FARRA, and its implementing regulations prescribe such individualized consideration. The Administration's Guidance wholly ignores these requirements.[11]

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[10] The text of FARRA unambiguously requires individualized determinations. The Executive's consistent, bipartisan understanding of FARRA confirms that reading. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024). "[T]he longstanding 'practice of the government' . . . can inform [a court's] determination of 'what the law is.'" *Id.* at 386 (quoting *NLRB v. Noel Canning*, 573 U.S. 513, 525 (2014)). Views "issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning." *Id.* at 394. The converse also holds: courts "may consider the consistency of an agency's views when [they] weigh the persuasiveness of any interpretation it proffers in court." *Bittner v. United States*, 598 U.S. 85, 97 (2023). After all, "when the government . . . speaks out of both sides of its mouth, no one should be surprised if its latest utterance isn't the most convincing one." *Id*. at 97 n.5. The Administration's Guidance is that latest utterance—and it is entirely unconvincing.

[11] *See* Memorandum from Kristi Noem, Sec'y of Homeland Sec., to Kika Scott, Senior Off. Performing the Duties of the Dir., U.S. Citizenship & Immigr. Servs., et al., Guidance Regarding Third Country Removals (Mar. 30, 2025), J.A. 306–309; Memorandum

The FARRA implementing regulations describe a three-step process for receiving and evaluating assurances. First, the Secretary of State may forward to the Attorney General assurances "the Secretary has obtained from the government of a specific country that *an* alien would not be tortured there if *the* alien were removed to that country." 8 C.F.R. § 208.18(c)(1) (emphasis added). Second, the Attorney General "shall determine, in consultation with the Secretary of State, whether the assurances are sufficiently reliable to allow *the alien's* removal to that country consistent with Article 3 of the Convention Against Torture." *Id*. § 208.18(c)(2) (emphasis added). Third, only "[o]nce assurances are provided under paragraph (c)(2)" shall an individual noncitizen's CAT claim "not be considered further by an immigration judge, the Board of Immigration Appeals, or an asylum officer." *Id*. § 208.18(c)(3). The regulations thus speak clearly and consistently about considering individual removals, not class removals.

The reliability determination is necessarily individualized. The Attorney General must decide whether assurances are reliable enough "to allow *the* alien's removal . . . consistent with Article 3[.]" *Id.* § 208.18(c)(2) (emphasis added). The regulations pose that same question in every CAT case, and specify how it must be answered: "[A]ll evidence relevant to the possibility of future torture shall be considered," including "[e]vidence of past torture inflicted upon *the* applicant" and evidence "that *the* applicant could relocate to a part of

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from Todd M. Lyons, Acting Dir., U.S. Immigr. & Customs Enf't, to All ICE Employees, Third Country Removals Following the Supreme Court's Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025) (July 9, 2025), J.A. 310–313 (together, "the Guidance").

the country of removal where *he or she* is not likely to be tortured." *Id*. § 208.16(c)(3)(i)–(ii) (emphasis added). Country conditions count too, *id.* § 208.16(c)(3)(iii)–(iv), but only to supplement the applicant's individualized history, not replace it. A promise that a country will not torture anybody provides, at most, general evidence about conditions in the country of removal, not the specific evidence § 208.16(c)(3)(i)–(ii) requires. And throughout their government service, *amici* recognized that, under FARRA and its implementing regulations, a generalized promise alone does not authorize removing a person to a country where they fear torture.[12]

II. Officials Charged with Applying the Withholding Statute Have Long Understood that It Requires Individualized Assessments, Not Blanket Diplomatic Assurances.

The text and structure of the withholding statute, 8 U.S.C. § 1231(b)(3),[13] reinforce what *amici* have always understood to be the law: withholding decisions must be individualized. Section 1231(b)(3) applies

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[12] 8 C.F.R. § 208.16(f), which provides that "[n]othing in this section or § 208.17 shall prevent the [United States] from removing an alien to a third country other than the country to which removal has been withheld or deferred," only addresses whether CAT protection against removal to one country bars removal to another. It does not address separate claims to CAT protection against removal to that third country.

[13] The term "withholding" can refer to both statutory withholding under 8 U.S.C. § 1231(b)(3), *see* 8 C.F.R. § 1208.16(b), and "withholding of removal under the Convention Against Torture," *id*. § 1208.16(c). In this Part, "withholding" refers to statutory withholding under 8 U.S.C. § 1231(b)(3); CAT protection is addressed in Part I.

"[n]otwithstanding" the provisions that authorize third-country removals. The provision frames each element of the withholding inquiry around *individual* noncitizens. Further, since the withholding statute makes no provision for diplomatic assurances, it certainly cannot be read to authorize blanket assurances.

A. The Withholding Statute Focuses the Inquiry on Individual Noncitizens.

The withholding statute prohibits removing a noncitizen "to a country if the Attorney General decides that *the* alien's life or freedom would be threatened in that country because of *the* alien's race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3)(A) (emphasis added). Each element turns on the individual: the determination is about whether a particular noncitizen faces a threat in a particular country of removal because of that person's protected characteristic. A threat "because of" a protected characteristic cannot be assessed without considering who the individual is, what they believe, and how the country of removal would perceive them.

Contrary to the government's claim that the statute remains "generally silent on the procedures" used to make withholding determinations, Pet'rs' Br. at 31, Congress unambiguously mandated that "[i]n determining whether an alien has demonstrated that the alien's life or freedom would be threatened," the "trier of fact *shall* determine whether the alien has sustained the alien's burden of proof, and *shall* make credibility determinations[.]" 8 U.S.C. § 1231(b)(3)(C) (emphasis added).[14] Consistent with this statutory

[14] *See Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 171 (2016) ("[T]he word 'shall' usually connotes a requirement.").

mandate, the regulations governing withholding applications under § 1231(b)(3) specify that the applicant has the opportunity to testify and to establish that "his or her life or freedom would be threatened in the proposed country of removal," including whether the applicant has been subjected to past persecution or will likely suffer future persecution based on membership in certain protected classes. 8 C.F.R. § 1208.16(b). Where the applicant has established past persecution, the government "shall bear the burden" of rebutting a presumption that he will be persecuted in the country of removal. *Id*. § 1208.16(b)(1)(ii). Neither the statute nor the regulations allow the Executive to make a categorical finding, in advance, that a particular country would not threaten any noncitizen's life or freedom—especially when that finding precedes any individualized inquiry.

This Court, too, has consistently understood withholding to turn on the risk to particular applicants. Construing § 243(h), the predecessor to the withholding statute, this Court held an applicant "must show that it is more likely than not that the alien would be subject to persecution" on a protected ground. *INS v. Stevic*, 467 U.S. 407, 429–30 (1984). And "[a]s a general rule," once "an alien" makes that showing, withholding becomes "mandatory." *INS v. Aguirre-Aguirre*, 526 U.S. 415, 419 (1999). The statute requires a finding about

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The government's claim that it is free to "sometimes choose[] to use a trier of fact," Pet'rs' Br. at 34, directly contravenes the text of the statute. The government's sole citation for this unprecedented claim—the House Report—notes that the clause "will allow *Immigration Judges* and the *BIA* to follow commonsense standards in assessing the credibility" and acknowledges that courts have "recognized the expertise that *Immigration Judges* bring to this task." *See* H.R. Rep. No. 109-72, at 167 (2005) (Conf. Rep.) (emphasis added).

"the risk of persecution facing *the* alien." *Id.* at 426 (emphasis added). "[E]ach case" requires "appl[ication]" of the withholding standard "to a particular set of facts." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 448 (1987). And in *Jama v. ICE*—which upheld removal to a country that had not agreed in advance to accept the noncitizen—this Court pointed to withholding of removal and relief under CAT, among other remedies, as "individualized determinations" that protect a noncitizen from mistreatment in the country of removal. 543 U.S. 335, 348 (2005). Text, structure, and precedent all point the same way: the withholding inquiry must be individualized.

B. The Statutory Withholding Scheme Makes No Provision for Diplomatic Assurances to Replace the Statutory Determination.

Neither the withholding statute nor its implementing regulations reference the use of diplomatic assurances in the statutory withholding context. *See* 8 U.S.C. § 1231(b)(3); 8 C.F.R. §§ 208.16(b), 1208.16(b). The only provisions regarding assurances appear in the CAT regulations, authorizing reliance on assurances in the context of CAT claims only. *See* 8 C.F.R. §§ 208.17(f), 208.18(c).

Where Congress permits arrangements with foreign governments to displace removal protections, it says so expressly, limits the arrangement, and attaches conditions. Under 8 U.S.C. § 1158(a)(2)(A), asylum is unavailable if the Attorney General determines the noncitizen "may be removed, pursuant to a bilateral or multilateral agreement," to a third country in which "the alien's life or freedom would not be threatened" and "where the alien would have access to a full and fair procedure for determining a claim to asylum or

equivalent temporary protection[.]" But this provision reaches only asylum claims, and Congress wrote nothing comparable into the withholding statute. *See* 8 U.S.C. § 1231(b)(3). That omission is presumptively intentional. *See Cardoza-Fonseca*, 480 U.S. at 432 ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally[.]") (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)); *see also Jama*, 543 U.S. at 341 (explaining that the Court's "reluctance" to assume Congress imposed a requirement by omission is "even greater when Congress has shown elsewhere in the same statute that it knows how to make such a requirement manifest"). [15]

Even under § 1158(a)(2)(A), the asylum statute, the Executive requires individualized findings. In 2019, the first Trump Administration issued a rule to implement asylum cooperative agreements. That rule required not only a "categorical determination" by the Attorney General and Secretary of Homeland Security that a receiving country offers a full and fair asylum procedure, but also a threat-to-life-or-freedom finding "via individualized threshold screening." Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act, 84 Fed. Reg. 63,994, 63,997 (Nov. 19, 2019). A noncitizen could prevent removal by showing a likelihood of persecution or torture in the receiving country, *id*. at 64,009 (codified at 8 C.F.R. § 208.30(e)(7)); *id*. at 64,010 (codified at 8 C.F.R. § 1240.11(h)(2)(iii)), even

[15] Furthermore, by explicitly including carveouts from eligibility for withholding, Congress demonstrated that it knew how to specify any intended exceptions. *See* 8 U.S.C. § 1231(b)(3)(B) (listing instances where withholding does not apply).

though receiving countries "would have pre-committed, per binding agreements with the United States," to provide general access to a "full and fair procedure," *id.* at 64,001.

Further, because withholding also protects against threats from nonstate actors, a receiving government's blanket assurances cannot answer the withholding inquiry. Persecution includes harm inflicted by private actors the government is "unwilling or unable to control."[16] In *amici*'s experience, a foreign government's promise about its own conduct does not establish whether a gang, militia, or rogue faction of state security forces will harm a particular applicant, or whether that government could or would stop that harm. Such an assurance speaks, at most, to half of the withholding inquiry.

III. The Court Can Decide Whether the Guidance Complies with the Law.

The Guidance clearly contradicts both domestic and international law since it allows removals without individualized determinations regarding torture or persecution. Petitioners thus fall back on the argument—relying on cases outside the immigration context—that courts cannot review the Guidance's abandonment of individualized determinations. *See* Pet'rs' Br. at 38–41. But even where foreign relations

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[16] *See, e.g.*, *Singh v. Bondi*, 130 F.4th 848, 858 (10th Cir. 2025) (persecution "may be inflicted by the government itself, or by a non-governmental group that the government is unwilling or unable to control" (internal quotation marks omitted)); *Galeas Figueroa v. Att'y Gen.*, 998 F.3d 77, 87 (3d Cir. 2021) (quoting *In re Acosta*, 19 I. & N. Dec. 211, 222 (B.I.A. 1985)); *Doe v. Holder*, 736 F.3d 871, 877–78 (9th Cir. 2013) (same requirement for asylum or withholding of removal).

are implicated, "one of the Judiciary's characteristic roles is to interpret statutes[.]" *Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 230 (1986). Whether the Executive may substitute blanket assurances for the individualized determinations that § 1231(b)(3), FARRA, and their implementing regulations require is a question of law for the courts.

Courts have repeatedly reviewed whether the Executive complied with FARRA and its implementing regulations, including whether it lawfully relied on diplomatic assurances. In *Khouzam v. Attorney General*, the government terminated a noncitizen's deferral of removal based on assurances that Egypt would not torture him. 549 F.3d 235, 240 (3d Cir. 2008). The Third Circuit explained "[t]he Government's decision to seek diplomatic assurances [wa]s not at issue, but rather whether the Government complied with constitutional, statutory, and regulatory constraints in employing diplomatic assurances." *Id.* at 252. And in *Trinidad y Garcia v. Thomas*, the en banc Ninth Circuit held that because "[t]he CAT and its implementing regulations are binding domestic law," the Secretary of State "*must* make a torture determination before surrendering an extraditee who makes a CAT claim" and remanded for confirmation that she had done so. 683 F.3d 952, 956–57 (9th Cir. 2012) (en banc) (per curiam) (emphasis in original). Neither court second-guessed the Executive's ultimate judgment about the reliability of assurances; rather, each asked whether the Executive made the determinations the law requires.

Petitioners' reliance on *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978), is misplaced. *See* Pet'rs' Br. at 31–32. *Vermont Yankee* bars courts from adding procedures the law does not require. It does not free an agency to

disregard determinations Congress has commanded, like those in FARRA and the withholding statute. And *Vermont Yankee* itself recognized that "a totally unjustified departure from well-settled agency procedures of long standing might require judicial correction." 435 U.S. at 542. The Guidance's use of blanket assurances marks such a departure.[17]

Nor do *Munaf v. Geren*, 553 U.S. 674 (2008), or *Kiyemba v. Obama*, 561 F.3d 509 (D.C. Cir. 2009), bar courts from reviewing whether the Executive made the required individualized determinations. To the contrary, the conclusions in both cases rested on such individualized determinations. Moreover, neither case involved the statutes at issue here. *Munaf* and *Kiyemba* concerned transfers of military detainees held overseas, not immigration removals governed by § 1231(b)(3), FARRA, and their implementing regulations.

In *Munaf*, the petitioners did not raise claims for withholding, and this Court declined to consider their FARRA claims.[18] 553 U.S. at 703. Instead, it deferred

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[17] The Administration acts no less unlawfully when it removes individuals without *any* assurances, after giving them only six to twenty-four hours in which to establish that they face a risk of torture or persecution. *See* J.A. 308, 311–12. Based on their government experience, *amici* submit that such an abbreviated period is entirely inadequate and creates only a sham process. *Cf. A.A.R.P. v. Trump*, 605 U.S. 91, 95 (2025) (per curiam) ("[N]otice roughly 24 hours before removal, devoid of information about how to exercise due process rights to contest that removal, surely does not pass muster.").

[18] In *Munaf,* Shawqi Omar was suspected of aiding al Qaeda in Iraq, and Mohammad Munaf was implicated in the kidnapping of Romanian journalists in Iraq. 553 U.S. at 681–84. Both were held by U.S.-led forces in Iraq and referred to Iraq's Central Criminal Court for prosecution. *Id*. at 681–82. Blocking their transfer, the Court explained, would interfere with Iraq's sovereign right to

to a State Department determination that the Iraqi ministry that would take custody of the petitioners, along with its prisons, "generally met internationally accepted standards for basic prisoner needs." *Id*. at 702 (internal quotation marks omitted). The Court thus credited a determination about the specific ministry and facilities that would hold particular people, which Justice Souter, concurring, described as one of the "circumstances essential to the Court's holding." *Id*. at 706 (Souter, J., concurring). That individualized determination bears no resemblance to a promise covering any person, of any nationality, whom the government may later send to a country.

In *Kiyemba,* the D.C. Circuit similarly relied on the government's sworn account that it made an individualized determination. Uighur detainees held at Guantánamo Bay sought advance notice of any transfer to a country where they might suffer torture. 561 F.3d at 511. The court did not analyze the withholding statute and held FARRA claims unavailable because "the detainees [we]re not challenging a final order of removal." *Id*. at 514–15 (citing 8 U.S.C. § 1252(a)(4)). The court deferred to the Executive because the record showed "the Government does everything in its power to determine whether a particular country is likely to torture a *particular* detainee," meaning "the detainees [we]re not liable to be cast abroad willy-nilly without regard to their likely treatment in any country that will take them." *Id*. at 514 (emphasis added). "[I]n the absence of contrary evidence," the court presumed officials properly

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"punish offenses against its laws committed within its borders." *Id*. at 692. Here, by contrast, members of the plaintiff class are not being transferred to face prosecution, and most have no connection to the countries to which they are sent.

discharged their duties. *Id*. at 515 n.7. No such presumption is available here: the Guidance disclaims the individualized assessment on which *Kiyemba* relied.[19]

Nor, contrary to Petitioners' claims, *see* Pet'rs' Br. at 11, do individualized assessments impede the conduct of diplomacy. For decades, *amici* made such assessments in statutory withholding and CAT cases, sought assurances only rarely, and still conducted foreign relations effectively. *Amici* knew how to conduct diplomacy without sending vulnerable detainees to torture, and they believe that compromising the bar on refoulement would be fundamentally un-American.

IV. The Administration's Guidance Promotes Illegal Refoulement by Discarding the Statutory and Regulatory Safeguards that Have Historically Accompanied Assurances.

Amici submit that this Court should not ignore reality. It is not simply that Petitioners have acted unlawfully by removing people without individualized determinations. Petitioners also have deliberately forgone monitoring the treatment of those individuals after removal. J.A. 306-13; Minority Staff of S. Comm.

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[19] In *Kiyemba*, then-Judge Kavanaugh agreed that Congress may impose "judicially enforceable restrictions" on Executive transfers. 561 F.3d at 517 (Kavanaugh, J., concurring). He found "no meaningful distinction" between an Executive declaration that "no Guantanamo detainees will be transferred to . . . a foreign country where the Executive believes they would likely be tortured" and "a similar Executive declaration with respect to a specific transfer," but only "in this case," *id.* at 517 n.2, because the government's single statement in *Kiyemba* encompassed specific determinations for each transferee that the government had assessed "whether a particular country is likely to torture a particular detainee." *Id*. at 514 (majority opinion).

on Foreign Rels., 119th Cong., *At What Cost? Inside the Trump Administration's Secret Deportation Deals* 20 (Feb. 13, 2026) ("SFRC Report"). Shockingly, court filings and public reporting both show the government has accepted categorical assurances from countries with long records of abuse—records this Administration has itself confirmed. No less shockingly, the Administration has continued to remove individuals to third countries knowing those third countries will return the individuals to their home countries in blatant violation of U.S. court orders prohibiting precisely that outcome.

Many of these third-country agreements contain only "blanket language" that supposedly commits the receiving state to observe its international human rights obligations. SFRC Report at 19. The Administration has accepted these boilerplate promises even from notorious governments with documented practices of torture, arbitrary detention, and other serious abuses. For example, DHS deported eight individuals to South Sudan, notwithstanding the State Department's 2024 human rights report—issued by this very Administration—which described South Sudan's "arbitrary or unlawful killings; disappearances; torture or cruel, inhuman, or degrading treatment or punishment [and] arbitrary arrest or detention." *Id.* at 19–20 (citing U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., *South Sudan 2024 Human Rights Report* 1 (2025)).[20] Further, after deporting individuals to

[20] Other State Department human rights reports make equally explicit the risk of torture in other countries to which the government has removed noncitizens. Its 2024 report for Eswatini found "[s]ignificant human rights issues[,] includ[ing] credible reports of: arbitrary or unlawful killings; torture and cruel, inhuman, or degrading treatment or punishment," and found that the government had not taken steps to "identify and

countries with glaring records of human rights violations, the government has made no serious effort to verify compliance with these sham "assurances" after removal. To the contrary, U.S. officials in one receiving country reported that the Administration instructed them *not* to follow up on the treatment of deportees. SFRC Report at 20.

The government's implementation of the Guidance has produced egregious examples of "chain refoulement" forbidden by law. The Administration has removed noncitizens with court-ordered protection to third countries that have, often within days, sent them onward to destinations forbidden under U.S. law. Despite widespread reports of chain refoulement, the government appears to have done nothing to monitor or prevent such violations, or to stop deporting individuals to human-rights-violating countries that engage in chain refoulement. When, for instance, an immigration judge granted Respondent O.C.G. withholding of removal to Guatemala, the government put him on a bus to Mexico, which then sent him to Guatemala. *D.V.D. v. DHS*, 784 F. Supp. 3d 401, 405–07 (D. Mass. 2025); *see also D.V.D. v. DHS*, 192 F.4th 74, 83 n.2 (1st Cir. 2026).

O.C.G.'s case is no aberration. Since September 2025, most noncitizens removed to third countries had U.S. court orders protecting them from deportation to

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punish officials who committed" abuses. U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., *Eswatini 2024 Human Rights Report* 1 (2025). Nevertheless, the government accepted a blanket assurance from Eswatini and sent at least 32 individuals there, where they were placed in indefinite detention in a maximum-security prison. Hum. Rts. Watch, "To Scare People": US Expulsions of Third-Country Nationals to Countries in Africa 57–60 (2026).

their home countries, but many were returned home anyway. SFRC Report at 27. Aboard the first flight to Ghana, an ICE official told noncitizens that Ghana would send them home—and Ghana did exactly that. *Id.* (citing Plaintiffs' Memorandum of Law in Support of Emergency Ex Parte Motion for Temporary Restraining Order at 6, *D.A. v. Noem*, 800 F. Supp. 3d 43 (D.D.C. 2025) (No. 1:25-cv-03135)). Of the more than thirty noncitizens the United States removed to Ghana in 2025, at least twenty-two were returned to their home countries where they faced persecution, despite holding U.S. court-ordered protection. Robbie Corey-Boulet & Emmanuel Bruce, *Ghana Took in Trump's Deported West Africans. Then It Forced Them Home*, Reuters (Jan. 16, 2026), https://www.reuters.com/world/africa/ghana-took-trumps-deported-west-africans-then-it-forced-them-home-2026-01-16. The New York Times reported that a Ghanaian government official even admitted that, despite assurances, Ghana was "only used as a transit point" to send people "deported from the United States to their home countries." Megha Rajagopalan et al., *Immigrants Are Being Systematically Returned Home Despite Court Orders*, N.Y. Times (Nov. 9, 2026), https://www.nytimes.com/2026/11/09/world/africa/trump-deportations-court-orders-refoulement.html.

The Administration cannot claim ignorance of the conditions to which it has condemned these individuals. Reporting suggests at least 110 people have experienced chain refoulement as of November 2026 and that State Department officials were aware that several third countries would refoul noncitizens. *Id.*[21] And "career

[21] *See also D.A. v. Noem*, 800 F. Supp. 3d 43, 46, 49–50 (D.D.C. 2025) (noting a government attorney agreed Ghana violated

State Department officials said in interviews that it was always clear that at least some at-risk deportees would ultimately be returned to their countries of origin[.]" *Id.* Indeed, the government has continued deporting noncitizens to Equatorial Guinea despite the African Commission on Human and Peoples' Rights "issu[ing] an urgent appeal to the government of Equatorial Guinea to stop forcibly repatriating people"—an appeal that, unfortunately, went unheeded. *Id.*

Removals to other countries have followed the same pattern. Cameroon received seventeen people sent by the government in early 2026, sixteen of whom held U.S. protection orders; at least five of them have since returned to their countries of origin in "circumstances that could violate Cameroon's international obligations." Hum. Rts. Watch, "To Scare People": US Expulsions of Third-Country Nationals to Countries in Africa 114 (2026). And of the fifteen people sent to the Democratic Republic of the Congo in April 2026, not one remained there by September 2026. *Id.* at 47. Eleven had been subsequently returned to their home countries under conditions that raised doubts about whether those returns were voluntary. *Id*. When deportees arrive in Sierra Leone, they reportedly often receive a pamphlet that reads: "Sierra Leone is serving as a temporary transit location while arrangements are made to return you to your country of origin." Gianna Toboni et al., *Texas Dad Deported by ICE to Ghana Was then Forced to Go to Mali, a Country That's Unsafe for Him, He Says*, CBS News (Oct. 25, 2026), https://www.cbsnews.com/news/moussa-diawara-third-country-deport

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assurances, yet the government continued to send noncitizens there anyway).

ation-ghana-mali-60-minutes.[22] The Guidance should be seen for what it is: the unlawful "loophole" to CAT and the withholding statute that U.S. officials—including officials from the first Trump Administration—declared assurances must never become. *See* Joint Observations ¶ 5.

[22] Similarly, officials in Jamaica recently announced that Jamaica's agreement with the United States served only as "a transit arrangement intended to facilitate the return of Third Country Nationals to their country of origin or other receiving countries." John Myers, Jr., *Jamaica Begins Receiving Third-Country Deportees Under Controversial U.S. Agreement*, AP News (Oct. 13, 2026), https://apnews.com/article/jamaica-third-country-deportations-us-trump-1c806592eee07260281c4fe907200126.

CONCLUSION

These examples of the Administration's lawlessness shock the conscience and stain America's global reputation, which *amici* have long sought to preserve. For decades under administrations of both parties, *amici* were devoted to ensuring the Executive honored the United States's non-refoulement obligations by determining, person-by-person, whether removal would expose an individual to persecution or torture. By systematically shirking those obligations, the Trump Administration has broken the law. Accordingly, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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November 23, 2026

[23] This brief sets forth the position of the signatories, as represented by counsel and law student members of the Peter Gruber Rule of Law Clinic, but does not purport to state the views of Yale Law School or Yale University.

APPENDIX

APPENDIX TABLE OF CONTENTS

Page

APPENDIX: List of *Amici Curiae* 1a

APPENDIX

Amici Curiae are:

The Hon. Donald Ayer
Deputy Attorney General (1989–1990)
Principal Deputy Solicitor General (1986–1988)
United States Attorney, Eastern District of California (1982–1986)

The Hon. John B. Bellinger III
Legal Adviser at the State Department (2005–2009)
Senior Associate Counsel to the President and Legal Adviser at the National Security Council (2001–2005)

Benedict S. Cohen
General Counsel at the Department of the Army (2006–2009)
Deputy General Counsel at the Department of Defense (2001–2005)
Associate Counsel to President Reagan (1986–1989)

The Hon. Ryan Crocker
Recipient of the Presidential Medal of Freedom (2009)
U.S. Ambassador to Afghanistan (2011–2012)
U.S. Ambassador to Iraq (2007–2009)
U.S. Ambassador to Pakistan (2004–2007)
U.S. Ambassador to Syria (1998–2001)
U.S. Ambassador to Kuwait (1994–1997)
U.S. Ambassador to Lebanon (1990–1993)

Daniel Feldman
Chief of Staff and Counselor to Special Presidential Envoy for Climate John Kerry (2021–2022)
U.S. Special Representative for Afghanistan and Pakistan (2014–2015)
Deputy U.S. Special Representative for Afghanistan and Pakistan (2009–2014)
Director for Multilateral and Humanitarian Affairs at the National Security Council (1999–2000)

The Hon. Jonathan Finer
Principal Deputy National Security Advisor (2021–2025)
Director of Policy Planning at the State Department (2016–2017)

The Hon. Stuart M. Gerson
Acting Attorney General (1993)
Assistant Attorney General (Civil) (1989–1993)
Assistant United States Attorney for the District of Columbia (1972–1975)

The Hon. Christopher R. Hill
U.S. Ambassador to Serbia (2022–2025)
U.S. Ambassador to Iraq (2009–2010)
Assistant Secretary of State for East Asian and Pacific Affairs (2005–2009)
U.S. Ambassador to the Republic of Korea (2004–2005)
U.S. Ambassador to Poland (2000–2004)
U.S. Ambassador to Macedonia (1996–1999)

The Hon. Peter Keisler
Acting Attorney General (2007)
Assistant Attorney General (Civil) (2003–2007)

The Hon. Harold Hongju Koh
Senior Adviser at the State Department (2021)
Legal Adviser at the State Department (2009–2013)
Assistant Secretary of State for Democracy, Human Rights, and Labor (1998–2001)

The Hon. J. Michael Luttig
U.S. Circuit Judge, Court of Appeals for the Fourth Circuit (nominated by George H.W. Bush) (1991–2006)
Assistant Attorney General, Office of Legal Counsel and Counselor to the Attorney General (1990–1991)
Assistant Counsel to the President (Reagan) (1981–1982)

Mary E. McLeod
Legal Adviser (Acting) at the State Department (2013–2016)
Principal Deputy Legal Adviser at the State Department (2010–2013)
Legal Adviser at the U.S. Mission to the U.N. (2009–2010)

The Hon. Tom Malinowski
Member of the U.S. House of Representatives (NJ-7) (2019–2023)
Assistant Secretary of State for Democracy, Human Rights, and Labor (2014–2017)

The Hon. Alejandro Mayorkas
Secretary of Homeland Security (2021–2025)
Deputy Secretary of Homeland Security (2013–2016)
Director of U.S. Citizenship and Immigration Services (2009–2013)
United States Attorney for the Central District of California (1998–2001)

The Hon. Janet Napolitano
Secretary of Homeland Security (2009–2013)

The Hon. James C. O'Brien
Assistant Secretary of State for European and Eurasian Affairs (2023–2025)
Ambassador-at-Large and Coordinator for Sanctions (2022–2023)
Special Envoy for Hostage Affairs (2015–2017)
Senior Adviser to Secretary of State Madeleine Albright
Principal Deputy Director of Policy Planning at the State Department

The Hon. Michael Posner
Assistant Secretary of State for Democracy, Human Rights, and Labor (2009–2013)

The Hon. Samantha J. Power
Administrator of the U.S. Agency for International Development (2021–2025)
U.S. Ambassador to the United Nations (2013–2017)
Senior Director for Multilateral Affairs and Human Rights at the National Security Council (2009–2013)

The Hon. Susan E. Rice
National Security Advisor (2013–2017)
U.S. Ambassador to the United Nations (2009–2013)

The Hon. Anne C. Richard
Assistant Secretary of State for Population, Refugees, and Migration (2012–2017)

Paul Rosenzweig
Deputy Assistant Secretary for Policy at the Department of Homeland Security (2005–2009)

The Hon. Nicholas Rostow
General Counsel and Senior Policy Adviser to the U.S. Permanent Representative to the United Nations (2001–2005)
Special Assistant to the President for National Security Affairs and Legal Adviser at the National Security Council (1987–1993)

The Hon. Eric P. Schwartz
Assistant Secretary of State for Population, Refugees, and Migration (2009–2011)
Senior Director for Multilateral and Humanitarian Affairs at the National Security Council (1998–2001)
Senior Director for Democracy, Human Rights, and Humanitarian Assistance at the National Security Council (1996–1998)
Director for Human Rights and Refugees at the National Security Council (1993–1996)

Robert B. Shanks
General Counsel at the Peace Corps (2017–2020)
General Counsel, Overseas Private Investment Corporation (1985–1987)
Deputy Assistant Attorney General at the Office of Legal Counsel (1981–1984)

The Hon. John Shattuck
U.S. Ambassador to the Czech Republic (1998–2000)
Assistant Secretary of State for Democracy, Human Rights, and Labor (1993–1998)

The Hon. Wendy Sherman
Deputy Secretary of State (2021–2023)
Under Secretary of State for Political Affairs (2011–2015)

The Hon. Jake Sullivan
National Security Advisor (2021–2025)
National Security Advisor to the Vice President (2013–2014)
Director of Policy Planning at the State Department (2011–2013)

Samuel Witten
Principal Deputy Assistant Secretary of State for Population, Refugees, and Migration (2007–2010)
Deputy Legal Adviser at the State Department (2001–2007)

The Hon. James W. Ziglar
Immigration and Naturalization Service Commissioner (2001–2002)