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 SENATORS SHAHEEN, DURBIN, PETERS, ET AL., AS *AMICI CURIAE* SUPPORTING RESPONDENTS

JENNIFER M. GREEN
HUMAN RIGHTS LITIGATION AND ADVOCACY CLINIC
UNIVERSITY OF MINNESOTA LAW SCHOOL
229-19th Ave. South
Minneapolis, MN 55455

AGNIESZKA M. FRYSZMAN
Counsel of Record
NICHOLAS J. JACQUES
COHEN MILSTEIN SELLERS & TOLL LLP
1100 New York Ave. NW
Eighth Floor
Washington, DC 20005
TEL: (202) 408-4600
afryszman@cohenmilstein.com
Counsel for Amici Curiae.

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTEREST OF *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 2

BACKGROUND AND CONGRESSIONAL FINDINGS 4
- I. The Diplomatic Assurances 4
- II. Findings on Third-Country Deportations 7
- III. Recent Reports of Planned Deportations of Iranians and Afghans 13

ARGUMENT 14
- I. Assurances Cannot Reliably Measure the Risk of Persecution Under § 1231(b)(3), and There is No Statutory or Regulatory Basis for Employing Them 17
- II. Neither FARRA nor the CAT Authorizes Reliance on Blanket Diplomatic Assurances, and the Implementing Regulation Permits Them Only as a Narrow Tool to be Weighed Alongside Other Evidence of Risk 20
- III. Before the Guidance, Assurances Were Rarely Employed 24
  - A. Assurances require monitoring, verification, and judicial review 26

B. As required by the text of § 208.18(c), only individualized assurances were considered. 30
IV. In Departing from a Quarter-Century of Practice, the Guidance Is Not Tailored to Fulfill the Government's Obligations Under the CAT and Federal Law..... 32
A. Federal law prohibits, in mandatory terms, removing a person to a country where there are substantial grounds for believing they would be tortured or where they would be subject to chain refoulement. 32
B. The assurance procedures under the Guidance are inadequate to ensure that third-country removals comply with these obligations. 34
C. If DHS relies on § 208.18, it must do so in a manner that complies with FARRA and the Convention. 37

CONCLUSION..... 38

TABLE OF AUTHORITIES

Page(s)

Cases

D.A. v. Noem,
No. 1:25-cv-03135 (D.D.C. Sep. 11, 2025) 9, 10

Gallina v. Wilkinson,
988 F.3d 137 (2d Cir. 2021) 33

INS v. Stevic,
467 U.S. 407 (1984) 23

Khouzam v. Att'y Gen.,
549 F.3d 235 (3d Cir. 2008) 21

Kporlor v. Holder,
597 F.3d 222 (4th Cir. 2010) 17

Medellín v. Texas,
552 U.S. 491 (2008) 21

Moncrieffe v. Holder,
569 U.S. 184 (2013) 32

Scarlett v. Barr,
957 F.3d 316 (2d Cir. 2020) 19

Statutes

8 U.S.C. § 1231(b)(3) ..... 16 - 20

The Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, div. G, 112 Stat. 2681, 2681-822 (codified at 8 U.S.C. § 1231 note) 21, 22, 32, 33, 37

Regulations

8 C.F.R. § 208.18(a)(1) 19, 31, 34

8 C.F.R. § 208.18(a)(7) 31, 34

8 C.F.R. § 208.18(c) ..... 16 - 18, 22 - 24, 30, 31, 35

8 C.F.R. § 208.18(c)(1)..... 22, 34

8 C.F.R. § 208.18(c)(2)..... 22, 27, 34, 37

8 C.F.R. § 1208.17(a)..... 32

8 C.F.R. § 1208.18(c) 16

Regulations Concerning the Convention Against Torture, 64 Fed. Reg. 8478 (Feb. 19, 1999) 16, 18, 23, 37

Legislative Materials

159 Cong. Rec. S2895 (daily ed. Apr. 23, 2013)..... 26

Conf. Rep., H.R. Rep. No. 109-72 (2005) 18

Convention Against Torture: Hearing Before the S. Comm. on Foreign Relations, 101st Cong. (1990) 23

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 Affs., 110th Cong. (2008) ..... 24, 25, 28 - 32, 35

Foreign Policy Reform Act, H.R. Rep. No. 105-94 (1997)..... 33

Oversight of the USA Patriot Act: Hearing Before the S. Comm. on the Judiciary, 109th Cong. (2005)..... 30

S. Comm. on Foreign Relations Minority, *At What Cost? Inside the Trump Administration's Secret Deportation Deals* (2026)..... 7 - 9, 11, 12

The Immigration and Naturalization Systems of the United States, S. Rep. No. 81-1515 (1950)..... 14

Other Authorities

Andrew Roth & Joseph Gedeon, *US has sent $7.5m to Equatorial Guinea to accept noncitizen deportees*, The Guardian (Nov. 10, 2025)..... 12

Central African Republic, Third Country Deportation Watch, https://www.thirdcountrydeportation watch.org/ central-african-republic (last visited Nov. 17, 2026) 7

Comm. Against Torture, General Comment No. 1, U.N. Doc. A/53/44, annex IX (1998) 33

Comm. Against Torture, General Comment No. 4, U.N. Doc. CAT/C/GC/4 (Sep. 4, 2018) 22

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 3, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 ..... 20, 21, 23, 35

David Nakamura & Adam Taylor, *How Trump turned a refugee bureau into a $410 million deportation operation*, Wash. Post (Sep. 21, 2026) 12

Dem. Rep. Congo, U.S. Dep't of State, https://travel.state.gov/en/ international-travel/travel-advisories/democratic-republic-of-the-congo.html (last visited Nov. 17, 2026) 6

Diplomatic Note from the Democratic Republic of the Congo to the United States of America (Dec. 18, 2025) 6

Ghana, Third Country Deportation Watch, https://www.thirdcountrydeportation watch.org/ghana (last visited Nov. 17, 2026) 10

Inspector Gen., U.S. Dep't of Homeland Sec., *DHS Detainee Removals and Reliance on Assurances* (2011) ..... 25 - 28, 30, 35

Letter from Jeanne Shaheen, U.S. Senator to Marco Rubio, Sec'y of State (Nov. 10, 2025) 13

Letter from Scott H. Peters, Member of Cong. & Jack Reed, U.S. Senator, et al. to Marco Rubio, Sec'y of State & Markwayne Mullin, Sec'y of Homeland Sec. (Nov. 2, 2026) 13, 14

Megha Rajagopalan et al., *Immigrants are Being Systematically Returned Home Despite Court Orders*, N.Y. Times (Nov. 9, 2026) 11

Mem. from Kristi Noem, Sec'y of Homeland Sec. to Kika Scott, USCIS Sr. Off. et al. (Mar. 30, 2025) 16

Mem. from Todd Lyons, U.S. ICE Acting Dir. to All ICE Employees (July 9, 2025) 16

Monika Pronczuk, *The US deported a gay asylum-seeker to a third country where homosexuality is illegal*, Associated Press (Feb. 22, 2026) 11

Second Periodic Report of the United States of America to the Committee Against Torture, U.N. Doc. CAT/C/48/Add.3 (May 6, 2005) 24

Tobi Raji, *She fled genital mutilation in Togo. The U.S. deported her*, Wash. Post (May 10, 2026) 11

U.S. Dep't of Justice, *Report of the Special Task Force on Interrogation and Transfer Policies* (2009) 25, 29, 30, 35

U.S. Dep't of State, *2024 Country Reports on Human Rights Practices: Central African Republic* (2025) 7

U.S. Dep't of State, *The United States' Oral Response to the Questions Asked by the Committee Against Torture* (2006) 25, 35

U.S. Dep't of State, *2024 Country Reports on Human Rights Practices: Dem. Rep. Congo* (2025) 6

Univ. of Cal., Berkeley, Sch. of L., *Architecture of Cruelty: Third Country Removal Agreements and the Second Trump Administration* (Sep. 2026) 10, 11

INTEREST OF *AMICI CURIAE*[*]

This brief is filed on behalf of the following U.S. Senators:

Senator Jeanne Shaheen is the Ranking Member of the Senate Committee on Foreign Relations.

Senator Richard J. Durbin is the Ranking Member of the Senate Judiciary Committee.

Senator Gary Peters is the Ranking Member of the Senate Homeland Security and Governmental Affairs Committee.

Senator Christopher A. Coons is a member of the Senate Committee on Foreign Relations and the Judiciary Committee, where he sits on the Subcommittee on Immigration, Citizenship, and Border Safety.

Senator Richard Blumenthal is a member of the Senate Judiciary Committee.

Senator Mazie K. Hirono is a member of the Senate Judiciary Committee and sits on the Subcommittee on Immigration, Citizenship, and Border Safety.

---

[*] No counsel for a party authored any part of this brief. No individual or entity except *Amici*'s counsel contributed any funding toward the preparation or submission of this brief.

Senator Tim Kaine is a member of the Senate Committee on Foreign Relations.

Senator Chris Van Hollen is a member of the Senate Committee on Foreign Relations.

Senator Jacky Rosen is a member of the Senate Committee on Foreign Relations.

Senator Alex Padilla is a member of the Senate Judiciary Committee and Ranking Member of the Subcommittee on Immigration, Citizenship, and Border Safety.

Senator Adam B. Schiff is a member of the Senate Judiciary Committee.

Amici have a constitutional oversight role in ensuring that the Executive faithfully executes federal law and complies with the United States' international obligations.

SUMMARY OF ARGUMENT

The Department of Homeland Security (DHS) guidance at issue in this case has transformed a narrow and rarely used practice into a standing system of unchecked global removals. The statutory and regulatory framework of the Immigration and Nationality Act ("INA") and Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA") does not

allow for blanket diplomatic assurances to serve as a green light for large-scale third-country deportations but instead contemplates an individualized, case-by-case analysis. This is evidenced by the plain language of the statutes, the legislative history, and longstanding practice. The general, blanket diplomatic assurances obtained by the Administration cannot serve as the sole evidence that an individual will not be persecuted or tortured in a third country. Reinforcing that conclusion, in the course of Congress's constitutionally mandated oversight role, Amici have found that the DHS policy has resulted in chain refoulement as well as the deportation of individuals to countries where they are at risk of or have been tortured and abused.

Congressional fact-finding has also revealed that the State Department is not meaningfully monitoring foreign government compliance with diplomatic assurances or enforcing agreement terms, even where evidence suggests foreign governments are violating their commitments. Indeed, during an investigation by the Senate Foreign Relations Committee Minority staff, staff learned that the Administration had instructed U.S. officials not to engage with deportees once they were handed over to a foreign government. The inescapable conclusion is that the DHS Guidance enables the Administration to use third countries to carry out removals that U.S. law would otherwise prohibit while turning a blind eye.

BACKGROUND AND CONGRESSIONAL FINDINGS

The following information describes the diplomatic assurances in some of the agreements that govern third-country removals and the findings of congressional staff, including through a published staff report that draws on travel to the relevant countries and meetings and communication with U.S. officials, foreign government officials, deportees and attorneys. Amici provide this information to the Court to assist in the Court's consideration of the questions presented.

I. The Diplomatic Assurances

The assurances exchanged with foreign states are short, general, and contemplate further transfers of deportees. For example, the assurance by the Democratic Republic of the Congo states:

> The Government of the Democratic Republic of the Congo assures the Government of the United States of America that it intends to treat any third country nationals transferred from the United States to the Democratic Republic of the Congo in a manner that is in accordance with its obligations under the Convention Relating to the Status of Refugees, done at Geneva on July 28, 1951; the Protocol Relating to the Status of Refugees, done at New York

on January 31, 1967; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on December 10, 1984; any other international legal obligations; and its national constitution, laws, regulations, and immigration and visa policies. Consistent with this intention, the Government of the Democratic Republic of the Congo assures the Government of the United States of America that it would treat any third-country nationals transferred from the United States to the Democratic Republic of the Congo in a manner that is in accordance with its international legal obligations and that the third-country nationals removed to the Democratic Republic of the Congo would not be subjected to persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or torture in the Democratic Republic of the Congo *or in any country to which the Democratic Republic of the Congo may further transfer them*.

Diplomatic Note from the Democratic Republic of the Congo to the United States of America 2-3 (Dec. 18, 2025) (emphasis added).

The U.S. Department of State currently has a Level 4: Do Not Travel advisory in effect for the DRC. The advisory cites health risks, crime, civil unrest, terrorism, and kidnapping. *Dem. Rep. Congo*, U.S. Dep't of State, https://travel.state.gov/en/international-travel/travel-advisories/democratic-republic-of-the-congo.html (last visited Nov. 17, 2026). Due to the Ebola outbreak, persons who have been in the DRC are barred from boarding commercial flights into the United States for 21 days. The State Department Country Report on Human Rights Practices recorded credible reports that the DRC government or its agents committed arbitrary or unlawful killings and subjected minority groups and journalists to cruel, inhuman and degrading treatment or punishment, among other abuses. U.S. Dep't of State, *2024 Country Reports on Human Rights Practices: Dem. Rep. Congo* 1 (2025). The Report notes "[t]he law prohibited such practices, but there were credible reports government officials employed them." *Id.; see also id.* at 17 ("The law prohibited arbitrary arrest or detention and provided for the right of any person to challenge the lawfulness of their arrest or detention in court. The government generally did not observe these requirements."). Nonetheless, the United States removed at least 15

people to the Democratic Republic of the Congo as of November 2026.

The assurances in the United States agreement with the Central African Republic are virtually identical. The United States has already sent 170 persons to the Central African Republic. *Central African Republic*, Third Country Deportation Watch, https://www.thirdcountrydeportationwatch.org/central-african-republic (last visited Nov. 17, 2026). As with the DRC, the State Department Country Report on Human Rights Practices records, among other concerns, that while Central African Republic law prohibited torture and cruel, inhuman or degrading treatment, "there were credible reports government officials employed them and impunity persisted" and that "there were no reports the government conducted any official investigations into accusations of torture." U.S. Dep't of State, *2024 Country Reports on Human Rights Practices: Central African Republic* 16-17 (2025).

II. Findings on Third-Country Deportations

Earlier this year, the Senate Foreign Relations Committee (SFRC) Minority investigated the Administration's practice of deporting migrants to third countries. *See generally* S. Comm. on Foreign Relations Minority, *At What Cost? Inside the Trump Administration's Secret Deportation Deals* (2026)

[hereinafter "*At What Cost?*"]. The SFRC Minority published a report which found, among other things, that the evidence suggests that the third countries are sending individuals onward to countries where they risk persecution or torture (a practice known as "refoulement"), even when that individual had received U.S. court-ordered protection from removal to that country. *Id*. at 5, 10. That report, which was based on congressional staff travel and meetings and engagement with U.S. officials, deportees, and attorneys, also noted that the State Department is not tracking foreign government compliance with diplomatic assurances or enforcing agreement terms, even where evidence suggests foreign governments are violating their commitments. *Id.* at 5. The SFRC report noted, "[t]he Trump Administration's lack of oversight on agreements, as well as documented non-compliance with agreements by foreign governments, calls into question the State Department's assessment of credible diplomatic assurances related to future third country deportation agreements." *Id*. at 21.

For example, SFRC Minority staff learned that the majority of deportees sent to Equatorial Guinea had U.S. court-ordered protections from being sent to their country of origin due to the likelihood they would be tortured or killed. *Id.* at 28. However, upon arriving in Equatorial Guinea, deportees had been discouraged by Equatorial Guinean officials from applying for asylum in the country and later were told they could

not apply and would instead be sent to their countries of origin. *Id*.

Court filings in recent cases have likewise documented human rights abuses occurring under third-country agreements and that detainees have been subjected to refoulement. In a recent court case, a declarant with a court order prohibiting her removal to The Gambia "due to the specific risks of torture and death" she faced because of her sexual orientation described how she was deported to Ghana. Decl. of K.S. ¶ 3, *D.A. v. Noem*, No. 1:25-cv-03135 (D.D.C. Sep. 11, 2025), Dkt. 1-1. Two of the detainees on her flight to Ghana were dropped off at the Nigerian border. After telling the Ghanaian officials that she wanted to stay in Ghana for her safety, she was sent to The Gambia: "[t]he official Ibrahim just told me that my final destination was The Gambia, based on orders from ICE officials and his Ghanaian superiors." *Id.* ¶ 9. She is now in hiding in The Gambia.

In that case, the Administration agreed that it appeared that Ghana was violating assurances it had provided to the United States. In response to the court's order, the United States stated:

> The U.S. government received diplomatic assurances from the Government of Ghana, communicated to the U.S. by diplomatic note. As of the time of this filing, I am not aware that the Department of State, including

> through the U.S. Embassy in Ghana, has made any additional efforts to keep Plaintiffs from being removed from Ghana to their country of origin or other countries where they fear persecution or torture.

Id., Decl. of Jonathan G. Pratt ¶ 5, Dkt. 40. As of Oct. 27, 2026, 135 individuals have been sent to Ghana on 9 flights. *Ghana*, Third Country Deportation Watch, https://www.thirdcountrydeportationwatch.org/ghana (last visited Nov. 17, 2026).

A recent report published by the University of California Berkeley School of Law Human Rights Center noted that the United States began transferring deportees to Ghana in September 2025, and that within two weeks of their arrival, Ghana had removed all but one of them. Univ. of Cal., Berkeley, Sch. of L., *Architecture of Cruelty: Third Country Removal Agreements and the Second Trump Administration* 43 (Sep. 2026). According to the report, among those sent onward were a Nigerian woman who had been granted protection against return to Nigeria, a woman sent to Sierra Leone who had been granted withholding of removal to that country, and a bisexual man sent to The Gambia, where same-sex conduct is criminalized. *Id.* The report points out that "the U.S. is continuing to transfer third-country nationals to Ghana after Ghana had already forcibly removed members of the

first group to countries where they had faced physical or psychological abuse." *Id.*

These findings are echoed in dozens of news reports that describe treatment inconsistent with the assurances provided by the third-country arrangements as well as examples of detainees transferred by the third country to their countries of origin where they have already established that they will face persecution, torture, and other abuses. *E.g.*, Megha Rajagopalan et al., *Immigrants are Being Systematically Returned Home Despite Court Orders*, N.Y. Times (Nov. 9, 2026) ("[T]he Times identified more than 110 people who had court-ordered protections and were handed over to foreign governments, only to then be passed on to home countries where they risked torture, sexual abuse or persecution – risks that have been validated by American courts."); Tobi Raji, *She fled genital mutilation in Togo. The U.S. deported her*, Wash. Post (May 10, 2026) ("A judge ruled that the woman should not be deported there, so the Trump administration sent her to Ghana – which returned her to Togo"); Monika Pronczuk, *The US deported a gay asylum-seeker to a third country where homosexuality is illegal*, Associated Press (Feb. 22, 2026).

The SFRC Minority Report also concluded that the State Department had failed to monitor and enforce agreements that the Administration had entered into with countries to take deportees. *At What Cost?* at 5,

19, 27. In at least one country, U.S. officials told SFRC Minority staff that Trump Administration officials had instructed them not to follow up on how deportees were being treated. *Id.* at 20. In South Sudan, SFRC Minority staff were the first individuals, other than South Sudanese officials, to visit deportees. *Id.*

The United States has pledged hundreds of millions of dollars to foreign governments to facilitate third-country deportations, including to countries with records of corruption, human rights abuses and human trafficking, without verifying how the money is used. The SFRC Minority report found that while the total costs of the Administration's third-country deportation program were unknown, the Administration had spent upwards of $40 million as of January 2026, including more than $32 million provided directly to countries in exchange for accepting deportees. *At What Cost?* at 6. A recent analysis by the Washington Post put the current cost at $410 million. David Nakamura & Adam Taylor, *How Trump turned a refugee bureau into a $410 million deportation operation*, Wash. Post (Sep. 21, 2026). The payments to Equatorial Guinea are just one example. The United States provided $7.5 million to Equatorial Guinea – one of the most corrupt governments in the world – which is more than the entire amount of U.S. foreign assistance provided to that country over the last eight years combined. *At What Cost?* at 17; Andrew Roth & Joseph Gedeon, *US has sent $7.5m to Equatorial Guinea to accept*

noncitizen deportees, The Guardian (Nov. 10, 2025). Further, unlike this direct government transfer, prior funds were provided to vetted partners, such as nongovernmental organizations, not to the government directly, given Equatorial Guinea's history of corruption and longstanding concerns about government officials' complicity in human trafficking. Letter from Jeanne Shaheen, U.S. Senator to Marco Rubio, Sec'y of State (Nov. 10, 2025).

III. Recent Reports of Planned Deportations of Iranians and Afghans

The DHS Guidance is part of a broader pattern by the Administration of disregard for domestic law and international obligations to refrain from sending vulnerable people who sought safety in the United States to places that will place them at risk of persecution, torture, or even death. Recent news reports highlighted now apparently abandoned plans to send Iranian Christian converts seeking religious freedom in the United States back to Iran and Afghans who served alongside the U.S. military to Pakistan for return to the Taliban. In response to these reports, over 60 Members of Congress wrote to Secretary Rubio and Secretary Mullin on November 2, 2026, to remind them that "[t]he United States is also bound not to return anyone to a country where they would face torture, and that obligation does not disappear because a flight makes a stop along the way." Letter from Scott H. Peters, Member of Cong. &

Jack Reed, U.S. Senator, et al. to Marco Rubio, Sec'y of State & Markwayne Mullin, Sec'y of Homeland Sec.

ARGUMENT

The DHS Guidance replaces due process in third-country removals with blanket diplomatic assurances that exceed what the INA and FARRA allow and contradict decades of settled practice. Congress has long been aware of the challenges presented by individuals who are subject to deportation, but cannot be removed to their countries of origin, and has nonetheless repeatedly reaffirmed prohibitions on deporting such people to places where they would be subject to persecution or torture.

In 1950, the Senate Judiciary Committee released a report noting that "[o]ne of the most serious problems with which the Immigration and Naturalization Service is faced is the disposition of aliens found deportable by the Service but who cannot be deported." *The Immigration and Naturalization Systems of the United States*, S. Rep. No. 81-1515, at 637 (1950). And yet, the report stated that the government's "general policy [was] that when there is reason to believe that political persecution will result if an alien is deported, deportation is withheld." *Id.* at 640. Congress has intentionally legislated protections through the INA and FARRA that would uphold these principles and prevent sending anyone to countries where they may be persecuted or tortured.

DHS's new practices have led to precisely the type of results that Congress has sought to avoid by enacting these laws. Citing only to patently unreliable blanket assurances, DHS has pursued a policy of removing individuals to countries where they are at a high risk of being persecuted, tortured, or even killed, or of being subsequently refouled to a country where such treatment is likely.

Congress never envisioned diplomatic assurances would be put to this sort of use. The INA and its implementing regulations do not contemplate any role for assurances in considering withholding of removal for risk of persecution. Federal law envisions a limited role for assurances in considering withholding of removal for risk of torture, but for more than a quarter century, the United States treated these diplomatic assurances against torture as what they are supposed to be: a rare, carefully scrutinized promise from a foreign government about the treatment of one person. The Executive sought them sparingly. It tested them against all other available information concerning the risk to that person. It gave the person a chance to contest them. And it insisted on a way to verify that the promise was kept.

The March and July 2025 Guidance discards every one of those features. Under it, if a receiving country has given the State Department a general assurance that no deportee will be tortured or persecuted, and the State Department deems that general assurance

credible, "the alien may be removed without the need for further procedures." Mem. from Kristi Noem, Sec'y of Homeland Sec. to Kika Scott, USCIS Sr. Off. et al. 1-2 (Mar. 30, 2025); Mem. from Todd Lyons, U.S. ICE Acting Dir. to All ICE Employees 1 (July 9, 2025).

Nothing in the INA, FARRA, or Article 3 of the Convention Against Torture ("CAT"), which FARRA incorporates into federal law, authorizes that result. The only authority for considering assurances at all is a single regulation, and that regulation contemplates individualized assurances against torture, individualized review, and rare use. *See* 8 C.F.R. §§ 208.18(c), 1208.18(c);[1] Regulations Concerning the Convention Against Torture, 64 Fed. Reg. 8478, 8484 (Feb. 19, 1999). There is no analogous provision that authorizes *any* use of diplomatic assurances in assessing the risk of persecution under the INA, 8 U.S.C. § 1231(b)(3), and its implementing regulations.

The Guidance converts what should be a narrow tool of last resort into a gaping loophole that swallows the careful procedures established to implement FARRA/CAT and fulfill the United States' Article 3 obligations. It cannot be squared with the text Congress enacted, with Congress's intent in

[1] Section 208.18(c) applies to DHS while 8 C.F.R. § 1208.18(c) is an identical provision that applies to the Executive Office for Immigration Review of the Department of Justice. For convenience, this brief hereinafter cites only to § 208.18(c).

incorporating Article 3 into domestic law, or with past practice.

I. Assurances Cannot Reliably Measure the Risk of Persecution Under § 1231(b)(3), and There is No Statutory or Regulatory Basis for Employing Them

As a threshold matter, the Guidance is unlawful because it substitutes diplomatic assurances for proper consideration of the risk of persecution under § 1231(b)(3). Whatever role § 208.18(c) may play in assessing the risk of torture pursuant to FARRA/CAT, discussed in Part II below, persecution and torture are distinct bases for withholding of removal. *See Kporlor v. Holder*, 597 F.3d 222, 227 (4th Cir. 2010). Section 208.18(c) by its terms applies only to FARRA/CAT withholding.

As to persecution, the Guidance has no legal foundation at all. Section 1231(b)(3)(C) assigns the persecution question to an adjudicator, mandating that the "trier of fact shall determine whether the alien has sustained the alien's burden" to demonstrate a likelihood of persecution. The Guidance takes that determination away from the trier of fact and gives it to the State Department's judgment about a foreign government's general assurance, made before anyone knows any specific information about who will be removed. As the district court put it, "there is no legal

basis whatsoever to pre-extinguish those claims with diplomatic assurances." Pet. App. 72a n.99.

Congress amended the INA in 2005 to provide detailed criteria for assessing credibility by the trier of fact. The Conference Report explained that

> Subsection 101(c) of Division B would amend paragraph 241(b)(3) of the INA by applying to and codifying for withholding of removal applications *the same standards for sustaining the applicable burden of proof and for assessing credibility* that would be used for asylum adjudications under clauses 208(b)(1)(B)(ii) and (iii) of the INA, as added by paragraph 101(a)(3) of Division B.

H.R. Rep. No. 109-72, at 169 (2005) (Conf. Rep.) (emphasis added). Subsections 208(b)(1)(B)(ii) and (iii) give detailed criteria for assessing credibility – on an individual basis.

In adopting § 208.18(c), the Department of Justice acknowledged the distinction between § 1231(b)(3) withholding and FARRA/CAT withholding, 64 Fed. Reg. at 8478-79, and yet it only created a mechanism for consideration of diplomatic assurances in assessing the latter. Nor did Congress envision any role for diplomatic assurances in passing § 1231(b)(3). There is good reason for this distinction: the nature of the persecution inquiry forecloses reliable assurances.

Torture, under the governing regulations, requires that pain or suffering be inflicted "by or at the instigation of or with the consent or acquiescence of a public official." 8 C.F.R. § 208.18(a)(1). Though often untrustworthy, an assurance against torture is thus at least a promise about the conduct of the government that gives it. Persecution under § 1231(b)(3) may be established with a weaker state-action nexus. Under § 1231(b), an alien may establish eligibility for withholding by showing that the receiving country is "unable" to protect the individual from persecution. *E.g.*, *Scarlett v. Barr*, 957 F.3d 316, 333 (2d Cir. 2020). Thus, a risk of persecution may be established under § 1231(b)(3) based on a risk of private violence when the receiving government "does not condone private violence—indeed, even when it condemns it." *Id.*

A receiving government can offer an assurance in all sincerity that it will not persecute a particular individual, but it means little without a full and independent assessment of the particular risk the individual faces and the receiving government's ability to protect against it. The problem is compounded when the assurance is generalized. A government cannot credibly make assurances that it will not persecute an individual for protected characteristics that are criminalized under that government's laws, such as engaging in certain religious practices, expressing a political opinion, or homosexuality. Without knowing about a person's

protected characteristics, a government cannot know whether the threat comes from a militia or a community hostile to the alien's religion, political opinion, or sexual orientation, and it cannot know whether its own police are willing or able to intervene. A country-wide assurance that no deportee will be persecuted is not evidence about the risk to any particular person. It is, at best, a statement of aspiration.

In sum, even the rare and limited role that diplomatic assurances may properly play in FARRA/CAT withholding cases, *see infra* Pts. II–III, assurances are not authorized in § 1231(b)(3) cases. The statutory and regulatory schemes reflect this distinction.

II. Neither FARRA nor the CAT Authorizes Reliance on Blanket Diplomatic Assurances, and the Implementing Regulation Permits Them Only as a Narrow Tool to be Weighed Alongside Other Evidence of Risk

The Guidance fares no better under FARRA/CAT. Article 3 of the Convention Against Torture states its signatories' obligation in categorical terms: "No 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." Convention Against

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 3(1), Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 [hereinafter "CAT"]. The Convention further requires signatories to "take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights." *Id.* art. 3(2).

Congress incorporated that obligation into domestic law through FARRA. Section 2242(a) declares that "[i]t shall be 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, regardless of whether the person is physically present in the United States." Pub. L. No. 105-277, div. G, § 2242(a), 112 Stat. 2681, 2681-822 (codified at 8 U.S.C. § 1231 note). As this Court has observed, this language gave "wholesale effect" to the United States' Article 3 obligations under federal law. *Medellín v. Texas*, 552 U.S. 491, 520 (2008); *see also Khouzam v. Att'y Gen.*, 549 F.3d 235, 241 (3d Cir. 2008).

Congress then directed the appropriate agencies to "prescribe regulations to implement the obligations of the United States under Article 3." § 2242(b). Even when Congress instructed those agencies to exclude terrorists, persecutors, and serious criminals from the regulations' protection, it limited that exclusion only

to the extent "consistent with the obligations of the United States under the Convention." § 2242(c). Congress thus left the Executive no room to trade away the Article 3 obligation itself. Neither the CAT nor FARRA says a word about diplomatic assurances.[2]

The only authority for bringing assurances into removal proceedings is in FARRA/CAT's implementing regulations, 8 C.F.R. § 208.18(c). Section 208.18(c) is narrow by its terms. It allows the Secretary of State to forward to the Attorney General "assurances that 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." § 208.18(c)(1). The Attorney General or their delegate must then decide, "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." § 208.18(c)(2). That authority may be exercised only at the most senior levels and "may not be further delegated." *Id.* Section 208.18(c) speaks explicitly in terms of individualized assurances, referring to the subject of the assurances in the

[2] The U.N. Committee Against Torture in subsequent commentary has suggested that assurances may be properly considered in some circumstances, but "should not be used as a loophole to undermine the principle of non-refoulement as set out in article 3 of the Convention, where there are substantial grounds for believing that the person would be in danger of being subjected to torture." Comm. Against Torture, General Comment No. 4, ¶ 20, U.N. Doc. CAT/C/GC/4 (Sep. 4, 2018).

singular ("an alien," "the alien," "the alien's removal"). The regulation also expressly limits reliance on assurances to cases in which doing so is "consistent with Article 3 of the Convention Against Torture," which in turn demands evaluation of "all relevant considerations." CAT art. 3(2). An assurance under § 208.18(c) is therefore evidence to be weighed in an individual case. It is not a substitute for the inquiry Article 3 requires.[3]

The Department of Justice said exactly that when it adopted § 208.18(c). It explained that "[t]he nature and reliability of such assurances, and any arrangements through which such assurances might be verified, would require careful evaluation before any decision could be reached about whether such assurances would allow an alien's removal to that country consistent with Article 3." Regulations Concerning the Convention Against Torture, 64 Fed. Reg. at 8484. It predicted that use of assurances "will be rare." *Id.* And it reserved them for "consideration at senior levels within the Department of Justice, which is appropriate to the delicate nature of a diplomatic undertaking to ensure that an alien is not tortured in another country." *Id.* Section 208.18(c) was

[3] CAT's ratification history includes an "understanding" to Article 3 that the standard for withholding deportation should be consistent with U.S. law, citing *INS v. Stevic*, 467 U.S. 407 (1984). *Convention Against Torture: Hearing Before the S. Comm. on Foreign Relations*, 101st Cong. 18 (1990). The U.S. standard is individual review, not blanket assurances.

written for the exceptional case and intended to be employed with utmost care. It was never meant to govern whole classes of removals through blanket administrative guidance.

III. Before the Guidance, Assurances Were Rarely Employed

The United States told the Committee Against Torture in 2005 that it would consider assurances under § 208.18(c) only "in a very small number of appropriate cases." Second Periodic Report of the United States of America to the Committee Against Torture ¶ 33, U.N. Doc. CAT/C/48/Add.3 (May 6, 2005). It added that it "reserves the use of diplomatic assurances for a very small number of cases where it believes it can reasonably rely on such assurances." *Id.*

Three years later, John B. Bellinger III, then the State Department's Legal Adviser, gave the House Foreign Affairs Committee the same account. He "emphasize[d]" for Congress that the Executive only "rel[ies] on diplomatic assurances in rare cases." *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 Affs.*, 110th Cong. 11 (2008) (statement of John B. Bellinger III, Legal Adviser, U.S. Dep't of State) [hereinafter *Hr'g on Diplomatic Assurances*]. Bellinger testified

that in immigration removals, "[t]here are only a handful of cases where diplomatic assurances have been sought." *Id.* at 12. As he put it, "in the vast majority of immigration cases where our obligations under Article 3 of the CAT are implicated, diplomatic assurances are never even considered, let alone pursued." *Id.* at 16.

Indeed, the interagency task force convened under Executive Order 13491 identified only three instances in the decade following § 208.18(c)'s promulgation in which the Immigration and Naturalization Service and its successor DHS relied on diplomatic assurances to effect removal. U.S. Dep't of Justice, *Report of the Special Task Force on Interrogation and Transfer Policies* 31 (2009) [hereinafter *Task Force Report*]. Two years later, ICE reported to the Inspector General that DHS had used assurances in only four removal cases. Inspector Gen., U.S. Dep't of Homeland Sec., *DHS Detainee Removals and Reliance on Assurances* 14 (2011) [hereinafter *OIG Report*].

The Executive repeatedly and expressly confirmed that, in line with congressional expectation, it used assurances only "as intended: as one piece of the risk factor analysis, at high levels insulated from review, and only in rare and important cases." *OIG Report* at 19; *see also, e.g.*, U.S. Dep't of State, *The United States' Oral Response to the Questions Asked by the Committee Against Torture* (2006) [hereinafter *2006 Oral Response*] ("Diplomatic assurances are simply a

tool that may be used in appropriate cases and are not a substitute for a case-specific assessment as to whether it is more likely than not that a person would be tortured if returned. In such cases, they are one factor in the analysis."); *OIG Report* at 4 (reporting on DHS practice by which "[a]ssurances 'are factored into the analysis of whether an alien is at substantial risk of torture,'" and "DHS may credit the assurances if they tip the balance of factors such that it is no longer 'more likely than not' that the alien will be tortured upon return.").

A. Assurances require monitoring, verification, and judicial review.

Congress has held longstanding skepticism of the reliability of diplomatic assurances—especially from countries known to practice torture. In commemoration of the 25th Anniversary of the CAT's signing, Senator Mark Udall highlighted areas for improvement in the United States' compliance with its obligations. As part of his remarks on the Senate floor, Senator Udall submitted an op-ed by Thomas R. Pickering, former Undersecretary of State for Political Affairs. In the op-ed introduced into the Congressional Record, Pickering opined that reliance on assurances "despite clear evidence that [they] were not credible" contributed to violations of Article 3. 159 Cong. Rec. S2895 (daily ed. Apr. 23, 2013) (statement of Sen. Mark Udall).

For 25 years, the Executive responded to this concern by employing procedures and criteria intended to test whether a given assurance deserved belief. The Inspector General described the former process DHS followed. Section 208.18(c)(2) itself requires consultation between DHS and the State Department. ICE "reviews the record in its entirety," and "[w]hile ICE considers whether to credit the assurances, the alien will have the opportunity to respond." *OIG Report* at 19. If ICE credits the assurances, "the alien will receive a copy of the decision and the record" and "a reasonable time to respond in a written submission to the Deputy Secretary of Homeland Security." *Id.* The Deputy Secretary then decides independently whether the assurances are sufficiently reliable. If the Deputy Secretary terminates protection, "the alien will be afforded a reasonable opportunity to seek judicial review (including a stay of removal) before the removal proceeds." *Id.*

The substantive criteria DHS reported were equally specific:

> [T]he risk analysis as to likelihood of torture in light of assurances depends on various factors: the specific government authority(ies) providing the assurances; the stability of that government; the reasons the particular alien would be at risk of torture; the relationship between

> the providing and detaining authorities; the ability to conduct effective post-removal monitoring; and the providing country's interest in warm relations with the United States.

Id. at 20.

According to John Bellinger, the former Legal Adviser, the State Department applied a parallel set of factors, including:

> the identity, position or other relevant information concerning the official relaying the assurances; information concerning the judicial and penal conditions and practices of the country providing assurances; political or legal developments in that country that would provide context for the assurances provided; that country's track record in complying with similar assurances previously provided to the U.S. or another country; and that country's capacity and incentives to fulfill its assurances to the United States.

Hr'g on Diplomatic Assurances at 17.

In addition, the Executive also understood that a promise without verification is no protection at all. As Bellinger told Congress:

> As part of an assurance we receive from a foreign government, the Department may obtain arrangements by which U.S. officials or an agreed upon third party will have physical access to the individual during any period in which he or she is in the custody of the foreign State for purposes of verifying the treatment he or she is receiving. In addition, in instances in which the United States extradites, removes, returns, or transfers an individual to another country subject to assurances, we have and will continue to pursue any credible report and take appropriate action if we have reason to believe that those assurances will not be, or have not been, honored.

Hr'g on Diplomatic Assurances at 17; *see also, e.g.*, Task Force Report at 31 ("[I]n general in the immigration context, [assurances] . . . include a monitoring mechanism.").

B. As required by the text of § 208.18(c), only individualized assurances were considered.

Fundamentally, on the rare occasion that DHS did rely on diplomatic assurances, those assurances were always specific to the person being removed, as § 208.18(c) requires. DHS reported a "consensus" that "assurances need to be and are case specific, not country specific. Each individual case is different, depending on the alien and the circumstances." *OIG Report* at 20. The Task Force found that in the immigration context "assurances are tailored to the specific case." *Task Force Report* at 31. In 2005, Attorney General Alberto R. Gonzales told the Senate Judiciary Committee that whether assurances from countries known to torture can be considered credible is "a difficult question that requires sort of a case-by-case analysis." *Oversight of the USA Patriot Act: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 19 (2005). Bellinger likewise later told Congress that "[t]he efficacy of assurances must be assessed on a case-by-case basis." *Hr'g on Diplomatic Assurances* at 15. He explained why: "[t]he legal standard . . . is not whether the country that we would like to turn someone back to has a questionable human rights record as a general matter but whether this particular individual is more likely than not to be tortured if we send them back." *Id.* at 11. "In all contexts," he said, "evaluations as to the likelihood of torture require a particularized determination in each individual case,"

and "[g]eneralizations about the overall human rights situation in a country or even a country's record with respect to torture do not necessarily provide a clear or obvious answer." *Id.* at 17.

That consensus reflects the nature of the inquiry, not a mere preference for caution. A country-level assurance cannot answer whether an individual is at risk of torture in the receiving country because the government giving it does not yet know whom it is promising to protect. It therefore cannot know which officials, security forces, or private actors may wish the person harm, or why. And because torture includes harm inflicted with the acquiescence of a public official, 8 C.F.R. § 208.18(a)(1), (7), a credible assurance must assure not only that the government will refrain from torture itself but that it will intervene to stop others.

In sum, from 1999 until 2025, § 208.18(c) was designed to ensure that the United States did not remove a person to another country where there were substantial grounds for believing that the person would be subjected to torture, as FARRA and the CAT require.

IV. In Departing from a Quarter-Century of Practice, the Guidance Is Not Tailored to Fulfill the Government's Obligations Under the CAT and Federal Law

A. Federal law prohibits, in mandatory terms, removing a person to a country where there are substantial grounds for believing they would be tortured or where they would be subject to chain refoulement.

DHS has no discretion to disregard the United States' Article 3 obligation. As discussed, FARRA in categorical terms prevents DHS from removing an individual to a country where there are substantial grounds to believe he would be in danger of torture. *Supra* Pt. II; *see also* § 2242(a). The implementing regulations are likewise mandatory. *See* 8 C.F.R. § 1208.17(a) (noncitizen found entitled to protection "shall be granted deferral of removal"). This Court has recognized that "the Attorney General has no discretion to deny relief to a noncitizen who establishes his eligibility" for protection under the Convention. *Moncrieffe v. Holder*, 569 U.S. 184, 187 n.1 (2013). Former Legal Adviser John Bellinger confirmed to Congress that the Executive has the same understanding. *See Hr'g on Diplomatic Assurances* at 15 ("[T]he Article 3 prohibition is categorical: no matter how dangerous the individual, he cannot be sent from the United States to any

country if it is more likely than not that the individual will face torture there." (statement of John Bellinger)).

That prohibition does not end at the first border. Congress did not limit FARRA to the act of placing a person on a plane. It barred any act that would "otherwise effect the involuntary return" of a person to a country where they face torture. FARRA § 2242(a). A removal to a country that will foreseeably remove the individual to a country where they face torture "effect[s]" the involuntary return the same as a direct removal. Indeed, Congress has explained that the language "effect the involuntary return" extends to "situations in which the United States contracts with, makes arrangements with, or funds another government or an organization to carry out a program on its behalf." *Foreign Policy Reform Act*, H.R. Rep. No. 105-94, at 147 (1997).

Congress understood and intended FARRA to prohibit such chain refoulement when it enacted FARRA. In November 1997, eleven months before FARRA became law, the U.N. Committee Against Torture stated its view that "the phrase 'another State' in article 3 refers to the State to which the individual concerned is being expelled, returned or extradited, as well as to any State to which the [individual] may subsequently be expelled, returned or extradited." Comm. Against Torture, General Comment No. 1, ¶ 2, U.N. Doc. A/53/44, annex IX (1998). *Cf. Gallina v. Wilkinson*, 988 F.3d 137, 146 (2d

Cir. 2021) (looking to Committee Against Torture interpretations of CAT to interpret implementing regulations).

B. The assurance procedures under the Guidance are inadequate to ensure that third-country removals comply with these obligations.

First, a country-wide assurance cannot do the work the regulation assigns to an assurance. The regulation contemplates an assurance "that *an alien* would not be tortured there if *the alien* were removed to that country," and a determination about "*the alien's* removal." 8 C.F.R. § 208.18(c)(1)-(2) (emphases added). It is unclear how a foreign government could credibly assure an individual would not be at risk of torture without knowing the identity and characteristics of the individual prior to making the assurance. Moreover, torture as defined by the FARRA/CAT implementing regulations can include torture conducted by nongovernmental actors under certain circumstances, such as where a public official breaches "his or her legal responsibility to intervene to prevent such activity." § 208.18(a)(1), (7). It is one thing for a government to promise not to torture anyone itself. But it cannot credibly promise to intervene to protect a person whose identity and history it does not know prior to making the assurance. That is why the Executive long insisted that assurances be "case specific, not country specific."

OIG Report at 20; *see Task Force Report* at 31; *Hr'g on Diplomatic Assurances* at 15, 17.

Second, the Executive has not meaningfully monitored compliance with the assurances or enforced agreement terms. An assurance is inherently unreliable if the issuing government knows the United States will not be meaningfully monitoring and will instead rely on the government's own assessment of its compliance. And in the case of the generalized assurances issued under the Guidance, a strong monitoring mechanism is essential for the Executive to make an informed determination as to whether the assurance remains credible for future removals. If the first group of individuals removed pursuant to a generalized assurance is subject to refoulement, the assurance cannot be relied upon to remove a subsequent group.

Third, the Guidance does not weigh assurances against any other evidence that the person faces torture. Article 3 requires the competent authorities to "take into account all relevant considerations." CAT art. 3(2). The Executive's past practice did that. It considered "all relevant information including any assurances received," *2006 Oral Response*, reviewed "the record in its entirety," *OIG Report* at 19, and credited assurances only if they "tip[ped] the balance of factors," *id.* at 4. The Guidance upends the intended application of § 208.18(c) by treating country-level assurances "as conclusive." Pet. Br. 2.

Fourth, the person facing removal has no opportunity to challenge the assurance or credibility finding. As discussed, this contravenes prior practice, under which the noncitizen could respond to the assurances, received a copy of DHS's decision and the record, could make a written submission to the Deputy Secretary, and had a reasonable opportunity to seek judicial review before removal. Without process, the person facing removal cannot present additional evidence and argument that may be relevant to the credibility determination, creating the risk that DHS makes a conclusive credibility determination on a woefully incomplete record. A process that starts and ends with DHS's decision to credit a country-wide assurance violates Article 3 (and thus FARRA) on its face.

Fifth, congressional fact-finding demonstrates that whatever process and criteria the Executive is using to make credibility determinations, they are woefully deficient. In particular, as discussed above, extensive evidence suggests that individuals removed pursuant to the Guidance are subject to chain refoulement to countries where they are at risk of torture or death, and where U.S. courts have held they cannot be transferred.

C. If DHS relies on § 208.18, it must do so in a manner that complies with FARRA and the Convention.

Congress instructed the Executive to implement Article 3 by regulation. FARRA § 2242(b). The Executive did so, and the regulation it adopted only permits reliance on individualized assurances and only when they are "sufficiently reliable to allow the alien's removal to that country consistent with Article 3." 8 C.F.R. § 208.18(c)(2); *see also* Regulations Concerning the Convention Against Torture, 64 Fed. Reg. at 8479 ("The primary goals of this rule are to establish procedures that ensure that no alien is removed from the United States under circumstances that would violate Article 3 without unduly disrupting the issuance and execution of removal orders consistent with Article 3."). The Guidance violated § 208.18(c)(2) by giving conclusive effect to generalized assurances without the necessary process to ensure that removal would be consistent with Article 3.

Even if the Guidance did not violate the letter of the regulation, § 208.18(c)(2) must be implemented in a manner consistent with Congress's directive that the United States shall not "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 § 2242(a). The Guidance fails Congress's mandate. It

categorically denies withholding or deferral of removal to individuals without allowing a sufficient assessment of whether they will be removed to a country where they will be in danger of being subjected to torture. Worse yet, it does so without affording the person subject to removal any process whatsoever, substituting due process with a secretive and patently deficient determination by DHS that a generalized assurance credibly ensures that a specific person will not be subject to torture, regardless of what the evidence to the contrary may suggest.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

AGNIESZKA M. FRYSZMAN
Counsel of Record
NICHOLAS J. JACQUES
COHEN MILSTEIN SELLERS
& TOLL LLP
1100 New York Ave. NW
Eighth Floor
Washington, DC 20005
TEL: (202) 408-4600
afryszman@cohenmilstein.com

JENNIFER M. GREEN
HUMAN RIGHTS LITIGATION AND ADVOCACY CLINIC
UNIVERSITY OF MINNESOTA LAW SCHOOL
229-19th Ave. South
Minneapolis, MN 55455

November 23, 2026 *Counsel for Amici Curiae.*