

No. 25-5

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IN THE  
**Supreme Court of the United States**

KRISTI NOEM,  
SECRETARY OF HOMELAND SECURITY, *et al.*,  
*Petitioners,*

v.  
AL OTRO LADO, *et al.*

*Respondents.*

On Writ of Certiorari to the United States Court of  
Appeals for the Ninth Circuit

**BRIEF FOR THE UNITED STATES CONFERENCE  
OF CATHOLIC BISHOPS AS  
AMICUS CURIAE SUPPORTING RESPONDENTS**

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## **INTEREST OF AMICUS CURIAE<sup>1</sup>**

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

## **SUMMARY OF ARGUMENT**

The turnback policy at issue in this case was an attempt by the government to shirk its legal duty to inspect and process vulnerable asylum seekers at the Nation's borders. As respondents have ably demonstrated, that maneuver does not succeed in avoiding the plain terms of the Immigration and Nationality Act's (INA) inspection and processing provisions. USCCB writes to underscore that the flaws in the turnback policy run much deeper than plain text. The policy violates the obligation to care for

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<sup>1</sup> No counsel for any party authored this brief in whole or in part, and no entity or person, other than amicus, its members, or its counsel, made any monetary contributions intended to fund the preparation or submission of this brief.

refugees—a fundamental legal and moral principle that runs through nearly two millennia of Catholic faith, an international humanitarian consensus, and this Nation’s history.

Starting with faith, the Judeo-Christian tradition is a story of refugees, a people persecuted for their beliefs seeking a place of safety and tolerance. So it is unsurprising that care for refugees has been a cornerstone of the Church’s teachings since its founding: Catholics believe refugees reflect the image of Christ and deserve the utmost charity. Even a sovereign state’s power over its borders cannot abridge this fundamental duty of care—which, at the very minimum, requires that nations not put asylum seekers at even *more* risk of harm when they arrive at the border asking for relief.

What faith teaches, law commands, at least in this instance. After the horrors of the Second World War, the international community embraced the obligation to care for refugees under the banner of non-refoulement, which forbids countries from returning refugees to places where they would face persecution. Scores of states have ratified or acceded to the terms of the 1951 Refugee Convention and 1967 Protocol that enshrine the non-refoulement principle, including the Holy See and the United States.

America’s commitment to non-refoulement is consistent with its best traditions. The founding generation envisioned this country as a haven that, in George Washington’s words, would welcome not just “the opulent & respectable Stranger,” but also “the oppressed & persecuted of all Nations & Religions.” *Letter from George Washington to Joshua Holmes*, 2

*December 1783*, Founders Early Access, <https://tinyurl.com/bddnnvaf> (hereinafter *Letter from Washington*). And for much of its history, this Nation has lived up to that vision: It has offered millions of Catholic immigrants, among countless others, a new home where they can worship safely and build a better life. Our immigration laws—including the INA provisions at issue here—were written to make this vision a reality, not thwart it.

Seen against the backdrop of these traditions, the turnback policy is not just a flawed piece of statutory interpretation, but an historical aberration—one that, during the period it was enforced, left vulnerable asylum seekers stranded in encampments on the border while lawfully trying to seek asylum at a port of entry. As a direct result, many of these asylum seekers suffered predation from gangs, malnutrition, and inadequate shelter, and some lost their lives. Blessing the government’s reading of the INA—and thereby opening the door to reinstatement of the turnback policy—would therefore be a moral disaster, not just a legal error.

## ARGUMENT

### **I. The turnback policy is contrary to Catholic tradition, international norms, and this Nation’s laws.**

#### **A. Care for refugees is a fundamental Catholic principle.**

For seventeen centuries, Catholics have professed faith in “one, holy, catholic, and apostolic church.” *Catechism of the Catholic Church* ¶ 811, <https://tinyurl.com/2dszd6w3> (hereinafter *Catechism*).

Central to that faith is the conviction that all people are made in God's image and worthy of love. *E.g., id.* ¶ 831 (“[T]he Church is catholic because she has been sent out by Christ on a mission to the whole of the human race.”). Refugees fleeing potentially life-threatening persecution are no exception—if anything, the Church's tradition teaches that these vulnerable persons are *especially* deserving of care and welcome. *See, e.g.,* Pope John Paul II, *Sollicitudo Rei Socialis*, Vatican (Dec. 30, 1987), <https://tinyurl.com/3c7ruxyc> (“[T]his love of preference for the poor, and the decisions which it inspires in us, cannot but embrace the immense multitudes of the hungry, the needy, the homeless, those without medical care and, above all, those without hope of a better future.”).

1. The principle of care for refugees is rooted in scripture. Beginning in the Old Testament, God's law enjoined: “You shall not oppress a resident alien; you well know how it feels to be an alien, since you were once aliens yourselves in the land of Egypt.” *Exodus* 23:9. The Jewish people's experience of slavery in Egypt represented a profound injustice, but God demanded that His people not inflict that same harm on others. *See Leviticus* 19:33-34 (“When an alien resides with you in your land, do not mistreat such a one. You shall treat the alien who resides with you no differently than the natives born among you; you shall love the alien as yourself; for you too were once aliens in the land of Egypt.”).

The teachings of the New Testament reinforce and expand on this command. In his parables, Jesus made clear that blessed are those who met Christ as a powerless stranger but welcomed him nonetheless: “For I was hungry and you gave me something to eat,

I was thirsty and you gave me something to drink, I was a stranger and you invited me in, I needed clothes and you clothed me, I was sick and you looked after me, I was in prison and you came to visit me.” *Matthew* 25:35-36. The same principle requires treating the most vulnerable among us with charity: “[W]hatever you did for one of the least of these brothers and sisters of mine, you did for me.” *Id.* at 25:40. And to those who would turn away the stranger as less worthy than their countrymen, the words of St. Peter, the first pope, offer correction: “God shows no partiality. Rather, in every nation whoever fears him and acts uprightly is acceptable to him.” *Acts* 10:34-35.

2. Reflecting these scriptural lessons, the Church has recognized care for refugees as an important aspect of Christian life mandated by the Gospel.

In doing so, the Church has never lost sight of the fact that Christ, who in his infancy fled to Egypt with Joseph and Mary seeking shelter from persecution, was himself a refugee. Pope Leo XIV, Apostolic Exhortation *Dilexi Te* ¶ 73, Vatican (Oct. 4, 2025), <https://tinyurl.com/2f2nh5dy>. Accordingly, the Church teaches that “in every rejected migrant, it is Christ himself who knocks at the door of the community.” *Id.* ¶ 75. And “God, who walked with the refugees of the Exodus in search of a land free of any slavery is still walking with today’s refugees in order to accomplish his loving plan together with them.” Pontifical Council “Cor Unum” & Pontifical Council for the Pastoral Care of Migrants & Itinerant People, *Refugees: A Challenge to Solidarity* ¶ 25, Vatican, <https://tinyurl.com/alygjkm> (hereinafter *Refugees: A Challenge to Solidarity*). This belief in the



dignity of refugees has universal application, without respect to creed or origin. Though many of today's refugees are indeed Catholic, the Church affirms the dignity of *all* refugees. *Id.* ¶¶ 10, 34.

Few principles have been as settled in the Church's teachings or so steadily maintained across its long history. Indeed, as Pope Pius XII reminded Catholics nearly seventy-five years ago, "there never has been a period during which the Church has not been active in behalf of migrants, exiles and refugees." Pope Pius XII, *Exsul Familia Nazarethana Apostolic Constitution* (Aug. 1, 1952), <https://tinyurl.com/4zdwa2ch> (hereinafter *Exsul Familia*). All four of this century's Popes have emphasized that the presence of refugees "should be recognized and appreciated as a true divine blessing, an opportunity to open oneself to the grace of God, who gives new energy and hope to his Church: 'Do not neglect to show hospitality to strangers, for by doing that some have entertained angels without knowing it' (*Heb* 13:2)." Pope Leo XIV, *Message of Pope Leo XIV for the 111th World Day of Migrants and Refugees 2025*, Vatican (Oct. 4-5, 2025), <https://tinyurl.com/rbddas6k>.<sup>1</sup>

Because the Church's commitment to care for refugees is centuries old, it does not ebb and flow with public opinion. If anything, as migration has

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<sup>1</sup> See also, e.g., Pope Francis, *Address of His Holiness Pope Francis to Participants in the International Forum on "Migration and Peace,"* Vatican (Feb. 21, 2017), <https://tinyurl.com/y95d7gu8>; Pope Benedict XVI, *Message of His Holiness Pope Benedict XVI for the World Day of Migrants and Refugees (2013)*, Vatican (Oct. 12, 2012), <https://tinyurl.com/y6jgu8un>; Pope John Paul II, *Message of the Holy Father for the 87th World Day of Migration 2001*, Vatican (Feb. 2, 2001), <https://tinyurl.com/ycyzca53>.

increasingly become a flashpoint of political controversy, the Church's exhortation to welcome refugees has only grown stronger. As an example, USCCB recently issued its first "Special Message" in over a decade, calling for the Nation to stay true to its history of supporting immigration:

Despite obstacles and prejudices, generations of immigrants have made enormous contributions to the well-being of our nation. We as Catholic bishops love our country and pray for its peace and prosperity. For this very reason, we feel compelled now in this environment to raise our voices in defense of God-given human dignity.

USCCB, *U.S. Bishops Issue a "Special Message" on Immigration from Plenary Assembly in Baltimore*, (Nov. 12, 2025), <https://tinyurl.com/38puzw66>. Even as migration has come to be a fiercely debated issue in American life, the Church has steadfastly pursued the same goals: care for refugees and protection of the dignity of all humans, especially the most vulnerable among us.

3. The Church has also long taught that a sovereign state's power to regulate immigration must be exercised in a manner consistent with these basic moral obligations. As the Catechism puts it: "The more prosperous nations are obliged, to the extent they are able, to welcome the foreigner in search of the security and the means of livelihood which he cannot find in his country of origin." *Catechism, supra*, ¶ 2241.

Thus, “the right of the sovereign state to control its borders ... is not absolute.” USCCB, *Strangers No Longer: Together on the Journey of Hope* ¶ 30 (Jan. 22, 2003), <https://tinyurl.com/8p4z2mbx> (hereinafter *Strangers No Longer*). Instead, “the needs of immigrants must be measured against the needs of the receiving countries.” *Id.*; see also Pope John XXIII, *Pacem In Terris* ¶¶ 103-04, Vatican (Apr. 11, 1963), <https://tinyurl.com/3zc3kzn4> (hereinafter *Pacem In Terris*) (noting the “great numbers” of refugees “surely is our proof that, in defining the scope of a just freedom within which individual citizens may live lives worthy of their human dignity, the rulers of some nations have been far too restrictive”). And in striking that balance, first principles cannot be sacrificed: “While moments of economic recession can make the imposition of certain limits on reception understandable, respect for the fundamental right of asylum can *never* be denied when life is seriously threatened in one’s homeland.” *Refugees: A Challenge to Solidarity*, *supra*, ¶ 6 (emphasis added). The inherent human dignity of refugees “requires, at a minimum, that [they] have a right to claim refugee status without incarceration and to have their claims fully considered by a competent authority.” *Strangers No Longer*, *supra*, ¶ 37; see also *Pacem In Terris*, *supra*, ¶ 106 (“[A]mong man’s personal rights we must include his right to enter a country in which he hopes to be able to provide more fittingly for himself and his dependents. It is therefore the duty of State officials to accept such immigrants....”).

Centuries of Catholic tradition, then, teach this basic moral lesson: Whatever measures a state might take to secure its borders, it cannot simply ignore the

need of vulnerable refugees, nor place them in danger of yet more harm.

**B. International law similarly requires care for refugees.**

Care for refugees is not just a technical point of Catholic doctrine. It is a broadly accepted tenet of international law (and U.S. law, *see* pp. 14-17, *infra*), set forth in the principle of non-refoulement, which forbids states from turning refugees back to places where they face serious risk of harm.

1. Non-refoulement has deep roots in international law. It took its present form following the Second World War, when states confronted their failure to give sufficient aid to refugees fleeing the Nazi regime. *See* Esther Rosenfeld, *Fatal Lessons: United States Immigration Law During the Holocaust*, 1 U.C. Davis J. Int'l L. & Pol'y 249, 250 (1995) (hereinafter Rosenfeld, *Fatal Lessons*). Relying on the international law of the time, under which states were not obligated to accept refugees for resettlement, many nations—including the United States—forced thousands of refugees to return to Nazi territory during the war. *See id.* at 255-56 & n.36; Detlev F. Vagts, *Switzerland, International Law and World War II*, 91 Am. J. Int'l L. 466, 472 (1997) (hereinafter Vagts, *Switzerland*). Most of those refugees were killed. *See* Rosenfeld, *Fatal Lessons*, *supra*, at 255 n.36 (describing the voyage of the S.S. *St. Louis*, a ship carrying refugees that was forced to return to Belgium after being denied entry by both Cuba and the United States); *see also* Vagts, *Switzerland*, *supra*, at 472 (describing Swiss policy of denying entry to refugees).

In the aftermath of these horrors, many leading

nations ratified the 1951 United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150, 1954 U.K.T.S. 39 (Refugee Convention), of which non-refoulement is “[t]he core principle,” United Nations Refugee Agency (UNHCR), *The 1951 Refugee Convention*, <https://tinyurl.com/4kbd9d8v> (hereinafter *The 1951 Refugee Convention*). The Convention’s non-refoulement principle, enshrined in Article 33, requires that “[n]o Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” Refugee Convention, art. 33.1, 189 U.N.T.S. at 176.

The protection guaranteed by Article 33’s non-refoulement principle is broad. It extends to all vulnerable migrants, regardless of whether they have been formally recognized as refugees. UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations Under the 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol* ¶ 6 (Jan. 26, 2007), <https://tinyurl.com/2s37txy9>. And it categorically forbids states from returning victims of persecution to their country of origin, or to “*any* territory in which the person concerned will be at risk—regardless of whether those territories are the country of origin of the person concerned.” Sir Elihu Lauterpacht & Daniel Bethlehem, *The Scope and Content of the Principle of Non-Refoulement: Opinion* ¶ 113, UNHCR (2003), <https://tinyurl.com/5yku5uxv>. Where a nation is “not prepared to grant asylum,” the nation may remove asylum seekers only “to a safe third country,”

where they can “*ensure* that the individual in question is not exposed” to persecution. *Id.* ¶¶ 76, 117 (emphasis added).

2. The 1951 Refugee Convention, and non-refoulement with it, has been broadly adopted. All told, some 149 states have adopted the Convention or its follow-on Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (1967 Protocol). *See The 1951 Refugee Convention, supra.*

The Holy See is among the ratifying states—it adopted the Convention in 1956. *See* United Nations, *Convention Relating to the Status of Refugees*, <https://tinyurl.com/ye23h6z4>. Since then, the Church has recognized non-refoulement as a key legal limitation on a state’s power to regulate its borders. *E.g.*, Archbishop Gabriele Caccia, *Statement by H.E. Archbishop Gabriele Caccia Apostolic Nuncio and Permanent Observer of the Holy See at the United Nation’s Special Meeting of the Economic and Social Council on Forced Displacement and Refugee Protection* (Apr. 24, 2025), <https://tinyurl.com/y8rad3rc> (highlighting the necessity of “protect[ing] the right of refugees to non-refoulement” in balancing national interests with refugee protections).

The United States, for its part, adopted the core provisions of the Convention in 1968, when it acceded to the 1967 Protocol. *See* 1967 Protocol, art. 1, 19 U.N.T.S. at 268 (acceding to Articles 2 through 34 of the 1951 Refugee Convention); United Nations, *Protocol Relating to the Status of Refugees*, <https://tinyurl.com/mr2r2hrz> (noting accession to the 1967 Protocol). In urging the Senate to ratify the

Protocol, President Lyndon B. Johnson underlined that “[f]oremost among the humanitarian rights which the Protocol provides is the prohibition against expulsion or return of refugees to *any* country in which they would face persecution.” Lyndon B. Johnson, *Special Message to the Senate Transmitting the Protocol Relating to the Status of Refugees*, UC Santa Barbara: Am. Presidency Project (Aug. 1, 1968) (emphasis added), <https://tinyurl.com/msfmw4dh>. Thus, adherence to the principle of non-refoulement flows directly from this Nation’s treaty obligations.

**C. This Nation’s values and laws also require care for refugees.**

While this Nation’s acceptance of non-refoulement dates from the post-war period, its commitment to care for refugees is much older. The United States was founded on a tradition of welcoming immigrants, especially those fleeing persecution and seeking a better life.

1. Even before the Revolution, Thomas Paine described America as an “asylum for the persecuted lovers of civil and religious liberty.” Thomas Paine, *Common Sense* (1776), <https://tinyurl.com/5xwwsf84>. Five months later, the Declaration of Independence charged King George III with “endeavour[ing] to prevent the population of these States,” “for that purpose obstructing the Laws for Naturalization of Foreigners,” and “refusing to pass others to encourage their migrations hither.” *The Declaration of Independence* (U.S. 1776). And during the ensuing War of Independence, George Washington spoke of America as “an Asylum for the poor and oppressed of all nations of religions.” George Washington, *General*

*Orders, 18 April 1783*, Founders Online (Apr. 18, 1783), <https://tinyurl.com/2re8djr7>.

As the newly independent Nation took shape, the Founders continued to affirm that welcoming migrants and refugees was a paramount American value. This solicitude was not limited to “the opulent & respectable Stranger,” but extended as well to “the oppressed & persecuted of all Nations & Religions; whom we shall wellcome to a participation of all our rights & privileges, if by decency & propriety of conduct they appear to merit the enjoyment.” *Letter from Washington, supra*. Attempts to make it more difficult for migrants to make a new life here were met with hostility and alarm. In 1801, for example, during his first annual message to Congress as President, Thomas Jefferson decried a naturalization law requiring fourteen years of residence (a law which Congress repealed the following year), asking: “shall oppressed humanity find no asylum on this globe?” Thomas Jefferson, *First Annual Message to Congress, 8 December 1801*, Founders Online (Dec. 8, 1801), <https://tinyurl.com/24s8ux7e>; see also Naturalization Law of 1802, ch. 28, § 1, Pub. L. No. 7-28, 2 Stat. 153, 153-54 (1802) (repealing this law).

2. The Founders’ vision for their new country came true. People from around the world immigrated to the United States, seeking the freedom that this Nation has always promised.

That includes Catholics, over a million of whom immigrated to the United States from Ireland in the 1840s and 1850s following economic hardship and, later, devastating famine. See Jay P. Dolan, *The Irish Americans: A History* 74 (2008),



<https://tinyurl.com/mr6awhms>. Then, from the 1880s through the 1920s, Catholics from Italy and eastern Europe immigrated to the United States on a similarly large scale. See Rachel Rossoni Munafo, *National Origin Discrimination Against Americans of Southern and Eastern European Ancestry: A Review of the Legal History and Judicial Interpretations*, 25 Cath. Law. 50, 51-52 (1979). The number of Catholics in the United States swelled from 30,000 at the time of the Founding (less than 1% of the population) to 600,000 by 1830, 1.6 million by 1850, and 12 million by 1900—primarily due to immigration. See John C. Jeffries, Jr. & James E. Ryan, *A Political History of the Establishment Clause*, 100 Mich. L. Rev. 279, 299-300 (2001); *Zelman v. Simmons-Harris*, 536 U.S. 639, 720 (2002) (Breyer, J., dissenting). While Catholics—and other immigrant groups—were not always treated in a manner consistent with the noble ideals on which this Nation was founded, immigration is and has always been part of America’s lifeblood.

3. The Nation’s immigration laws—developed, at crucial moments,<sup>2</sup> with the Church’s encouragement—reflect this traditional commitment to immigration.

Twelve years after it acceded to the principle under international law, see pp. 11-12, *supra*, the United States codified non-refoulement domestically in the

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<sup>2</sup> See *Exsul Familia*, *supra* (memorializing 1948 letter from Pope Pius XII commending American bishops for supporting “legislation to allow many refugees to enter your land,” which resulted in “a provident law ... that we hope will be followed by others of broader scope”); Displaced Persons Act of 1948, Pub. L. No. 80-774, ch. 647, 62 Stat. 1009 (1948) (the referenced legislation, allowing admission of European refugees displaced by World War II).

Refugee Act of 1980, *see* Pub. L. No. 96-212, § 203(e), 94 Stat. 102, 107 (1980), which added one of the statutory provisions at issue in this case, *see* 8 U.S.C. § 1158(a)(1). The Act was intended to bring asylum law into conformance with the “tradition of welcoming the oppressed of other nations and with our obligations under international law.” H.R. Rep. No. 96-608, at 17-18 (1979); *see also* *INS v. Cardoza-Fonseca*, 480 U.S. 421, 436 (1987) (“If one thing is clear from the legislative history of [the Refugee Act], one of Congress’ primary purposes [in passing the Act] was to bring United States refugee law into conformance with the [1967 Protocol].”). It did so by “provid[ing] a permanent and systematic procedure for the admission to this country of refugees of special humanitarian concern” and creating procedures for noncitizens seeking asylum at a land border or port of entry, in keeping with the “historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands.” Pub. L. No. 96-212, § 101, 94 Stat. at 102.

The text of the Refugee Act underscores its reliance on the 1951 Refugee Convention and non-refoulement. It speaks in unqualified terms, guaranteeing that the United States “shall not deport or return any alien ... to a country if ... such alien’s life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion.” Pub. L. No. 96-212, § 203(e), 94 Stat. at 107 (codified as amended at 8 U.S.C. § 1231(b)(3)); *see also* *INS v. Stevic*, 467 U.S. 407, 421 (1984) (noting the Act’s language “conform[s] to the language of Article 33” of the 1951 Convention). The Court has recognized that this mandatory guarantee

of “withholding of deportation, or *nonrefoulement* ... corresponds” directly to the 1951 Refugee Convention. *Cardoza-Fonseca*, 480 U.S. at 440; *see also id.* at 437 (noting the Act adopted a “virtually identical” definition of “refugee” relative to the 1951 Convention and that the legislative history “indicat[ed] Congress’ intent that the new statutory definition of ‘refugee’ be interpreted in conformance with” the Convention); Petitioners’ Br. 32 (acknowledging that “asylum and withholding are closely related; under longstanding agency practice, every application for asylum is deemed to include a request for withholding”). As President Jimmy Carter noted when signing it into law, the Refugee Act codified the Nation’s “long tradition as a haven for people uprooted by persecution and political turmoil.” Jimmy Carter, *Refugee Act of 1980 Statement on Signing S. 643 Into Law*, UC Santa Barbara: Am. Presidency Project (Mar. 18, 1980), <https://tinyurl.com/y4hn6m22>.

Other legislation reflects this tradition as well. For example, the preamble to the 1998 Foreign Affairs Reform and Restructuring Act, which codified the United States’ ratification of the 1984 United Nations Convention Against Torture, announced it to 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. 105-227, § 2242, 112 Stat. 2681, 2681-822 (1998); *see also* 8 U.S.C. § 1231 Note; 8 C.F.R. § 208.18. Similarly, the preamble to the Victims of Trafficking and Violence Protection Act of 2000 emphasizes that “the

Declaration of Independence ... recognizes the inherent dignity and worth of all people,” and the Act therefore extends certain protections to noncitizens subject to international human trafficking. Pub. L. No. 106-386, § 102(b)(22), 114 Stat. 1464, 1468 (2000). Even enactments that have sought to ensure the immigration laws are “enforced vigorously,” like the Immigration Reform and Control Act of 1986, also instruct that such “enforcement” be with “due and deliberate actions necessary to safeguard the constitutional rights, personal safety, and human dignity of United States citizens and aliens.” Pub. L. No. 99-603, § 115, 100 Stat. 3359, 3384 (1986).

The INA provisions at issue here belong to the same tradition of welcoming vulnerable asylum seekers. *See* 8 U.S.C. § 1225(a)(1), (a)(3), (b); *id.* § 1158(a)(1). The asylum provision, *id.* § 1158(a)(1)—enacted in the Refugee Act itself—provides that *all* noncitizens, including undocumented ones, who are present in the United States or arrive at a port of entry may apply for asylum. The inspection provisions, *see id.* § 1225(a)(1), (a)(3), (b), as relevant here, similarly provide that *all* noncitizens who arrive at a port of entry are deemed applicants for admission, must be inspected by immigration officers, and may apply for asylum.

The Nation’s current laws thus reflect the core command of non-refoulement, consistent with the most basic obligation of the care for refugees recognized by the Church.

**D. The turnback policy is contrary to these traditions and authorities.**

The turnback policy cannot be reconciled with any

of this.

The entire purpose of the policy was to sidestep the government's statutory obligation to "inspect" any asylum seeker who is "present in the United States ... or who arrives in the United States ... at a designated port of arrival." 8 U.S.C. § 1225(a)(1), (a)(3), (b); *see also id.* § 1158(a)(1); Respondents' Br. 11-12, 32-34. Rather than heed that statutory command, the policy directed U.S. Customs and Border Protection officers to intercept asylum seekers just as they reach the U.S. border and physically stop them from proceeding into the port of entry, and enjoined those officials from "provid[ing] tickets or appointments or otherwise schedul[ing] any person for entry." Pet. App. 5a, 365a-67a. In other words, the government manufactured a loophole to nullify its statutory obligations. As a result, asylum seekers fleeing life-threatening persecution were simply left to their own devices on the other side of the border, waiting for months or longer just for an opportunity to request asylum.

Respondents are right that the turnback policy is not a permissible reading of the plain text of the relevant INA inspection-and-processing provisions. Respondents' Br. 20-28. And that is reason enough to reject the policy. But this case is about much more than statutory construction. Deliberately blocking asylum seekers steps from the U.S. border, in a cynical attempt to avoid obligations triggered when a noncitizen "arrives in the United States," is repugnant to the basic obligation of care for refugees—a principle central to the Catholic faith, international norms, and the American way of life. As a matter of both law and morality, the government cannot prioritize administrative convenience over a statutory structure

that plainly mandates prompt access to inspection—or over the fundamental right of asylum seekers “to have their claims fully considered by a competent authority.” *Strangers No Longer, supra*, ¶ 37 (“Those who flee wars and persecution should be protected by the global community. This requires, at a minimum, that migrants have a right to claim refugee status without incarceration and to have their claims fully considered by a competent authority.”).

To be sure, a sensible border policy should include “addressing the root causes of migration, and reforming our bogged down immigration system.” USCCB, *U.S. Bishops’ Migration Chairman Responds to Outcome of Supreme Court Case on Migrant Protection Protocols* (June 24, 2021), <https://tinyurl.com/4feh7869> (hereinafter *U.S. Bishops Respond*). But that “cannot” mean “accept[ing] unjust conditions on the right to migrate for those fleeing life-threatening situations,” especially when such conditions force asylum seekers “to traverse more treacherous terrain, further endangering their lives.” USCCB, *Approach to U.S.-Mexico Border Reflects a Crisis of Conscience, Says Bishop Seitz* (June 4, 2024), <https://tinyurl.com/5696sz7t>. Rather than “turn away vulnerable asylum seekers” at the last step of a perilous journey, the proper course is to embrace more sensible reforms, while “work[ing] as a nation to welcome the newcomer and respond to those in need with Christ-like compassion.” *U.S. Bishops Respond, supra*.

## **II. Reversal would inflict life-threatening harm on vulnerable asylum seekers fleeing persecution.**

Although the government has rescinded the turnback policy for now, the stakes of this case remain high. The policy was devastating to asylum seekers while it was in place, and giving the government free rein to implement it again would be catastrophic.

1. There is no need to speculate about the effects of the turnback policy—it caused widespread suffering for already vulnerable asylum seekers. Take the example, reported by Human Rights First, of an unaccompanied seventeen-year-old boy who fled to the United States from Honduras seeking safety, only to be stranded at the border by the turnback policy. *See Barred at the Border: Wait “Lists” Leave Asylum Seekers in Peril at Texas Ports of Entry*, 6-7, Human Rights First (Apr. 2019), <https://tinyurl.com/2ntaf5nu> (hereinafter *Barred at the Border*). He was “robbed of his phone, money and identity documents at knifepoint” only blocks from the makeshift church shelter where he was forced to stay. *Id.* Or consider the story of two men in a relationship, also from Honduras, who were “kidnapped,” “separated, beaten, threatened, and extorted” near the border after being “marooned in Mexico” by the turnback policy. *Id.* at 2. Many asylum seekers have similarly reported being “kidnapped by criminal organizations that target migrants in local hotels, bus stations, and on the streets” near the border during the period the policy was in place. *Id.* at 9.

Other narratives that have been provided to the USCCB are just as harrowing. For example, one

involves a 15-year-old girl, Brenda, who saw organized criminals murder an aunt and uncle she was living with in rural Mexico. Alone and terrified, Brenda fled to the border, hoping to find refuge with family in the United States. When she arrived at the San Ysidro port of entry, she was told she needed to place her name in a notebook in order to seek protection; but because she is a minor, she was not allowed to add her name herself. With no safe alternatives, Brenda was taken in by an overcrowded shelter for unaccompanied minors in Tijuana, where she remained for several months—waiting, in limbo, for a chance to be safe again. The story of Victoria, an indigenous woman from El Salvador, is similar. After traveling to the U.S.-Mexico border to escape domestic and gang-related violence, she was left to fend by herself for six months on the streets of Tijuana waiting to be processed.

Unsurprisingly, some asylum seekers did not survive this ordeal. Jamillah Nabunjo, for example, fled to the U.S.-Mexico border all the way from Kampala, Uganda, where she had been “[t]argeted for her political beliefs and because she owned a small business.” Edith Tapia, *A Migrant’s Tale: Ugandan Woman Waited for the System, Then Died Just as It Became Her Chance to Ask For Asylum*, CLINIC (Oct. 24, 2019), <https://tinyurl.com/mu4ac7xu>. She too was subjected to the turnback policy, under which “her number was 12,636” in the queue to present herself at the port of entry. *Id.* She was ultimately stranded at the border for five months waiting for a chance to present herself to U.S. officials. *Id.* By the time her “turn to walk up to the port of entry finally came,” Jamillah “lay in a coma in a Mexican hospital.” *Id.*



She “died soon thereafter.” *Id.*

2. Even setting aside the horrific suffering it has caused, the turnback policy made little sense on its own terms.

In 2020, the U.S. Department of Homeland Security’s Office of the Inspector General (OIG) issued a report concluding that Customs and Border Protection “routinely” told asylum seekers that the port lacked capacity or capability to allow entry “regardless of the port’s actual capacity and capability.” *CBP Has Taken Steps to Limit Processing of Undocumented Aliens at Ports of Entry* 7, 12, 20, OIG (Oct. 27, 2020), <https://tinyurl.com/42bd4kh2>; see also Respondents’ Br. 11-12. According to human-rights observers, this simply encouraged the illegal crossings the turnback policy was supposed to curb. As the United Nations Refugee Agency explained in November 2018, “[l]ong-standing insufficient reception capacity at official U.S. southern border ports of entry ... is forcing many vulnerable asylum-seekers to turn in desperation to smugglers and cross the border irregularly.” UNHCR, *UNHCR Statement on New US Regulation on Asylum* (Nov. 9, 2018), <https://tinyurl.com/48evbuhu>; see also, e.g., *Barred at the Border*, *supra*, at 6-7 (providing examples of asylum seekers who chose to cross irregularly after being denied access at a port of entry, including a Honduran woman who feared her ten-month-old baby would not otherwise survive). So the policy was a practical as well as a moral failure.

3. The Court should not let this calamity repeat itself. Simply put, “it is not a crime to seek asylum and this right to seek refuge is codified in our laws and in

our values.” USCCB, *Statement Regarding Their Deep Concern About Restricting Access to Asylum* (Nov. 14, 2018), <https://tinyurl.com/mr2t4pve>. The government can and should “seek other solutions that will strengthen the integrity of the existing immigration system, while assuring access to protection for vulnerable children and families.” *Id.* This Nation’s laws, international norms, and the Catholic commitment to the inviolable dignity of every human being all require at least that much.

### CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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