

No. 19-1212

IN THE
Supreme Court of the United States

CHAD F. WOLF, ACTING SECRETARY OF
HOMELAND SECURITY, ET AL.,

Petitioners,

v.

INNOVATION LAW LAB, ET AL.,

Respondents.

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

**BRIEF OF THE UNITED STATES CONFERENCE
OF CATHOLIC BISHOPS, CATHOLIC LEGAL
IMMIGRATION NETWORK, INC.,
AND CATHOLIC CHARITIES USA
AS *AMICI CURIAE* SUPPORTING RESPONDENTS**

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INTEREST OF *AMICI CURIAE*¹

Amici are motivated by the teachings of the Catholic Church, which stem from the central belief that every person is imbued with an inviolable dignity and all human life is sacred, as beings created in the image and likeness of God. It is through this lens that the Church stands “against every attempt to evaluate the person according to utilitarian and power-based criteria.” Pope Benedict XVI, *General Audience* (Feb. 6, 2013), <https://tinyurl.com/y4nw34u4>. These teachings extend to migrants seeking refuge in a foreign land. Since the beginning of his pontificate, Pope Francis has consistently spoken out on the issue of migration and condemned the growing “globalization of indifference” facing those who flee violence, persecution, and other life-threatening circumstances. Alessandro Speciale, *Pope Francis Decries ‘Globalization of Indifference,’* Wash. Post (July 8, 2013), <https://tinyurl.com/y4bu6wyg>.

It is these elements of persecution and physical danger that establish a legal right to seek asylum under domestic and international law. Perpetuating the Migrant Protection Protocols (“MPP”) is contrary to such law and the long-established teachings of the Church, as it subjects those fleeing violence and danger in their home country to similar—or greater—harm in Mexico. The policy has strained the already-limited resources of nonprofit organizations serving

¹ Pursuant to this Court’s Rule 37.6, *amici* state that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than *amici*, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

migrants in communities along the U.S.-Mexico border, many of which are Catholic and run by, or otherwise affiliated with, the various dioceses of the region. Given their strong presence along the border, Catholic entities consistently bear witness to the ongoing human suffering brought on by MPP. *Amici* object to the endangerment and arbitrary expulsion of individuals seeking asylum in the United States.

The United States Conference of Catholic Bishops. The United States Conference of Catholic Bishops (the “Conference” or “USCCB”) is a nonprofit corporation whose members are the 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 teachings 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, the Conference has filed *amicus curiae* briefs to assert its view, most often in this Court. In so doing, the Conference seeks to further the common good for the benefit of all.

The Catholic Legal Immigration Network, Inc. The Catholic Legal Immigration Network, Inc. (“CLINIC”) is the nation’s largest network of nonprofit immigration legal services providers, including more than 370 faith- and community-based programs in 49 states and the District of Columbia. CLINIC’s network employs roughly 2,300 attorneys and Department of Justice-accredited representatives who serve

hundreds of thousands of citizens and immigrants each year. CLINIC's promotion of the dignity and rights of immigrants is similarly informed by Catholic social teaching and rooted in the Gospel value of welcoming the stranger. In 2019, CLINIC established the *Estamos Unidos* Asylum Project in Ciudad Juárez, Mexico, in response to the crisis in legal counsel created by MPP. Through this project, CLINIC provides Know Your Rights sessions and, in limited situations, arranges *pro bono* counsel for asylum seekers awaiting U.S. court dates in Mexico.

Catholic Charities USA. Catholic Charities USA ("CCUSA") is a national membership organization representing more than 167 diocesan Catholic Charities member agencies, which operate more than 2,600 service locations across the country. Their diverse array of social services reached more than 13 million individuals in need last year and included immigration and refugee services. MPP caused CCUSA border agencies to engage with international Catholic partners as it sought to provide basic human-need services to migrants in Mexico. The organization's Catholic heritage includes the scriptural call to provide hospitality to newcomers as if welcoming Christ himself. CCUSA affirms the inherent dignity bestowed by God on every human person, including immigrants and refugees, no matter the circumstances that compel a person to begin a new life in one of the communities it serves.

SUMMARY OF ARGUMENT

On January 28, 2019, the U.S. Department of Homeland Security (“DHS”) initiated MPP, which forces asylum seekers entering the United States through its southern border to return to highly dangerous areas in Mexico pending adjudication of their asylum claims. *See* Pet. App. 166a–172a. MPP, as it exists, is both unlawful and immoral. Domestic and international law require the United States to comply with the *non-refoulement* principle, which prohibits sending refugees and asylum seekers to any territory—whether their home country or any other country—where they would face threats to their life or freedom based on certain characteristics. MPP blatantly violates these laws by returning tens of thousands of asylum seekers to Mexico where they face widespread persecution and violence.

The intended effects of MPP are also contrary to the Catholic Church’s fundamental beliefs and social teaching regarding the life and dignity of human persons. The Church teaches that asylum seekers and refugees, like all persons, have inviolable dignity and rights and should be welcomed and protected. As Pope Francis explained, “[w]e must . . . view [refugees] as persons, seeing their faces and listening to their stories, trying to respond as best we can to their situation. . . . Let us remember the Golden Rule: ‘Do unto others as you would have them do unto you.’” 161 Cong. Rec. H6193 (daily ed. Sept. 24, 2015) (address by Pope Francis of the Holy See).

Amici are compelled to speak out clearly against MPP. By forcing vulnerable asylum seekers to return to highly dangerous areas in Mexico pending adjudication of their asylum applications, MPP poses a grave threat to human life and dignity and abandons

our moral obligations to welcome and protect refugees. The harms inflicted by MPP are borne by the most vulnerable among us, who are already fleeing horrific persecution and violence in their home countries.

MPP is thus intolerable, unlawful, and contrary to the Catholic faith. *Amici* respectfully urge this Court to enjoin MPP and affirm the judgment below.

ARGUMENT

I. MPP Is a Plain Violation of the United States' Domestic and International *Non-Refoulement* Obligations.

The United States has a legal obligation not to return refugees to any country where they may face persecution. In the aftermath of World War II, in which the United States and other nations failed to aid many refugees fleeing Nazi Germany, the international community recognized the need to establish legal protections for refugees. See Esther Rosenfeld, *Fatal Lessons: United States Immigration Law During the Holocaust*, 1 U.C. Davis J. Int'l L. & Pol'y 249 (1995). The nations of the world agreed to mutual, legally binding obligations to protect refugees, adopting the 1951 United Nations Convention Relating to the Status of Refugees ("Refugee Convention") and later the 1967 United Nations Protocol Relating to the Status of Refugees ("1967 Protocol"). *Protocol Relating to the Status of Refugees*, Jan. 31, 1967, 606 U.N.T.S. 267; *Convention Relating to the Status of Refugees*, July 28, 1951, 189 U.N.T.S. 137. These treaties together establish the principle of *non-refoulement*, which requires that no member state may return, even temporarily, a refugee to a country where he or she would

be at risk of persecution. The United States bound itself to honor this principle by acceding to these treaties and subsequently codifying this *non-refoulement* obligation in its domestic asylum statutes.

MPP is a plain violation of these *non-refoulement* obligations. MPP requires asylum seekers arriving at the U.S.-Mexico border, with certain limited exceptions, to return to highly dangerous conditions in Mexico while their asylum claims are adjudicated in the United States. Pet. App. 155a–159a; J.A. 57–60. MPP also dispenses with critical procedural safeguards that ensure that asylum seekers are not returned to areas where they face a risk of persecution. Under MPP, asylum seekers can avoid return to Mexico only by satisfying the “more likely than not” standard in summary *non-refoulement* proceedings, which is a *higher* legal standard than an asylum seeker must meet to obtain asylum in full removal proceedings. Compare Pet. App. 157a, with *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987). However, the summary proceedings lack the procedural safeguards—such as a written notice and explanation of an asylum officer’s determination, judicial review, and, until very recently, access to counsel—that are available in full or even expedited removal proceedings. Compare Pet. App. 187a–190a, with 8 U.S.C. §§ 1225(b)(1)(B)(iv), 1252(a); 8 C.F.R. §§ 208.30, 208.31. Further, under MPP, immigration officers are instructed not to ask asylum seekers whether they fear persecution or torture in Mexico. Pet. App. 157a. Thus, only individuals who volunteer, without any invitation, a fear of return to Mexico are even referred to an asylum officer for a *non-refoulement* interview.

These procedures have proven inadequate to protect against *refoulement*. As *amici* have witnessed firsthand, under MPP, thousands of asylum seekers have been returned to Mexico where they face rampant violence, exploitation, and persecution, perpetrated by organized crime groups and government officials alike. As a result, MPP violates the United States' *non-refoulement* obligations under domestic and international law.

A. The United States Is Subject to *Non-Refoulement* Obligations Under Domestic and International Law.

In November 1968, the United States acceded to the 1967 Protocol, which bound it to comply with the Refugee Convention. *See 5. Protocol Relating to the Status of Refugees*, <https://tinyurl.com/y33m2q84> (noting accession to the 1967 Protocol). *Non-refoulement* is “[t]he core principle” of the Refugee Convention. *The 1951 Refugee Convention*, UNHCR, <https://tinyurl.com/yxwf5vf3>. Article 33 of the Refugee Convention establishes the *non-refoulement* principle and mandates: “No 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.” Art. 33(1), Refugee Convention, *supra*.

The *non-refoulement* principle applies to refugees and asylum seekers alike, regardless of whether an

individual has formally been recognized as a refugee.² See *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations Under the 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol*, UNHCR ¶ 6 (Jan. 26, 2007), <https://tinyurl.com/yy25y4sr>. Moreover, *refoulement* is prohibited not only “to the refugee or asylum seeker’s country of origin,” but also 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*, UNHCR ¶ 113 (2003), <https://tinyurl.com/y6cunlqe> (emphasis in original). Thus, where a nation is “not prepared to grant asylum to persons who have a well-founded fear of persecution,” the nation may remove those asylees “to a safe third country,” but still must “ensure that the individual in question is not exposed” to persecution in the “third country.” *Id.* ¶¶ 76, 117.

Twelve years later, Congress enacted the Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102, to “bring United States refugee law into conformance with the

² The Refugee Convention defines a “refugee” as a person who is “outside the country of his nationality,” has a “well-founded fear of being persecuted for reasons of race, religion, nationality, [or] membership of a particular social group or political opinion,” and is “unable or, owing to such fear, is unwilling” to return to his or her country of nationality. Art. I.A(2), Refugee Convention, *supra*. An asylum seeker, or asylee, “is a person who meets the definition of refugee and is already present in the United States or is seeking admission at a port of entry.” *Refugees and Asylees*, U.S. Dep’t of Homeland Sec. (Oct. 22, 2020), <https://tinyurl.com/yygfm7of>.

1967 [Protocol]” and, by extension, the Refugee Convention. *Cardoza-Fonseca*, 480 U.S. at 436–37 & n.19. The legislative history of the Act indicates that Congress intended to “insure a fair and workable asylum policy which is consistent with this country’s tradition of welcoming the oppressed of other nations and with our obligations under international law,” including the 1967 Protocol and the Refugee Convention. H.R. Rep. No. 96-608, at 17–18 (1979); see *Cardoza-Fonseca*, 480 U.S. at 436 (“If one thing is clear from the legislative history of [the Refugee Act of 1980], it is that one of Congress’ primary purposes was to bring United States refugee law into conformance with the [1967 Protocol].”).

Accordingly, the Refugee Act implements the *non-refoulement* provision of the Refugee Convention, codifying the United States’ obligation not to “expel or return” refugees to any place where they face a likelihood of persecution. *INS v. Aguirre-Aguirre*, 526 U.S. 415, 427 (1999). The Refugee Act amended Section 243(h)(1) of the Immigration and Nationality Act to provide that “[t]he Attorney General shall not deport or return any alien . . . to a country if the Attorney General determines that 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, § 202(e), 94 Stat. 102, 107; see *Cardoza-Fonseca*, 480 U.S. at 440–41 (noting that Section 243(h)(1) of the INA corresponds to Article 33 of the Refugee Convention); *INS v. Stevic*, 467 U.S. 407, 421 (1984). In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Congress amended this provision to substitute the term “remove” for “deport

or return.” Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, § 304(a)(3), 110 Stat. 3009-589. The current version of this provision provides that “the Attorney General *may not remove* an alien to a country if the Attorney General decides that the alien’s life or freedom would be threatened in that country because of the alien’s race, religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. § 1231(b)(3)(A) (emphasis added).

Petitioners contend that § 1231(b)(3)(A)’s *non-refoulement* obligation does not apply to MPP because it “pertains only to the *removal* of an alien, not to a temporary return” prior to a final adjudication on the merits of the alien’s asylum claim. Pet’r Br. at 32–34 (emphasis in original). However, Petitioners’ argument is contrary to the legislative intent as reflected in the statutory history. In the IIRIRA, Congress substituted the word “remove,” for “deport or return” as part of a general statutory revision. Under the IIRIRA, “removal” is an all-purpose term, which was intended to encompass both “deportation” and “return.” See *Salgado-Diaz v. Gonzales*, 395 F.3d 1158, 1162 (9th Cir. 2005) (“IIRIRA eliminated the distinction between deportation and exclusion proceedings, replacing them with a new, consolidated category—‘removal.’”); cf. *Judulang v. Holder*, 565 U.S. 42, 46 (2011).

Further, in enacting the Refugee Act, Congress intended to implement the Refugee Convention’s *non-refoulement* provision, which, on its face, applies whenever nations “expel or return” refugees. Art. 33(1), Refugee Convention, *supra*; cf. *The Principle of Non-Refoulement Under International Human Rights*

Law, UNHCR, <https://tinyurl.com/ya55wl3o> (opining that the *non-refoulement* principle “applies to *any form of removal or transfer of persons*, regardless of their status, where there are substantial grounds for believing that the returnee would be at risk of irreparable harm upon return on account of torture, ill-treatment or other serious breaches of human rights obligations” (emphasis added)). Petitioners do not—and cannot—cite any evidence that Congress intended the semantic change of substituting “remove” for “deport or return” in the IIRIRA to limit the scope of the United States’ *non-refoulement* obligation, as set forth in the Refugee Convention. Thus, the “temporary return” of asylum seekers to Mexico under MPP falls within the scope of the United States’ *non-refoulement* obligation, as codified in § 1231(b)(3)(1).

B. MPP Subjects Asylum Seekers to Danger and Persecution in Mexico.

1. MPP is irreconcilable with the United States’ *non-refoulement* obligations under domestic and international law. Petitioners assert, without evidence, that MPP is “fully consistent” with the United States’ *non-refoulement* commitments, as codified in 8 U.S.C. § 1231(b)(3)(A). Pet’r Br. at 34. However, extensive evidence—including the direct, first-hand experience of *amici*—belies this assertion and demonstrates that MPP sends asylum seekers directly into harm’s way in Mexico, in violation of the United States’ *non-refoulement* obligations.

In August 2019, in response to the urgent needs of asylum seekers returned to Mexico under MPP, CLINIC launched the *Estamos Unidos* Asylum Project in Ciudad Juárez, Mexico, which is along the United States’ southern border. *Estamos Unidos*,

CLINIC, <https://tinyurl.com/y84dno9j>. The *Estamos Unidos* project provides legal assistance for migrants who fled persecution and wait in Juárez while their asylum requests are processed in the United States. *Ibid.* Through CLINIC's work in Juárez, and the work of other Catholic entities along the United States' southern border, *amici* have witnessed the widespread violence and harm inflicted on asylum seekers returned to Mexico under MPP.

The story of Esperanza*,³ who fled El Salvador to seek asylum, exemplifies the persecution that those returned to Mexico under MPP face. Tania Guerrero, "*Out of Sight, Out of Mind*": *Six Stories of Asylum Seekers and Migrants Under MPP*, CLINIC (Jan. 28, 2020), <https://tinyurl.com/y92x3boj>. Esperanza was kidnapped in Mexico on her way to the United States' border, where she was beaten and locked away in a warehouse for a month until her father paid her captors the ransom they demanded. *Ibid.* Her captors eventually dumped her in a ditch near the border, where United States officials found her. *Ibid.* Despite hearing her harrowing story, immigration officials returned her to Juárez—after dark and with nowhere to go—where she was eventually abducted by kidnapers again. *Ibid.* Her captors this time tormented her with videos of women being tortured, causing her to fear for her life, as her family was unable to afford a second ransom payment. *Ibid.* Fortunately, she was able to escape, but she continues to live in daily fear that she could yet again be subject to this trauma as she awaits further asylum proceedings. *Ibid.*

Doña Alma* also fled persecution and gang violence in her home country to seek asylum. She too

³ Names marked with asterisks have been changed to protect the individuals' identities.

was kidnapped in Mexico on her way to the United States by a cartel, who beat and assaulted her until her family was able to make a ransom payment. Guerrero, *Out of Sight, supra*. Nonetheless, she was sent back to Mexico under MPP, and her same kidnapper then began calling her family to demand more money, cautioning them that he knew her precise location in Mexico and threatening to harm her if they did not comply. *Ibid.*

Esperanza’s and Doña Alma’s stories are not unique. Organized crime and violence, including kidnapping, extortion, sexual assault, and murder, are rampant in cities along the southern border, with the U.S. Department of State itself advising against travel along the border. *Mexico Travel Advisory*, U.S. Dep’t of State (Sept. 8, 2020), <https://tinyurl.com/yCHF6ya7>. Indeed, the U.S. Department of State has issued a “[r]econsider travel” advisory along almost the entire length of the southern border due to crime—the *same advisory* given to most of the Latin American states, like El Salvador, notorious for violence perpetrated by MS-13 and other gangs, that asylum seekers are fleeing. *Compare ibid., with El Salvador Travel Advisory*, U.S. Dep’t of State (Sept. 14, 2020), <https://tinyurl.com/yDxtz5fn>. Further, the U.S. Department of State has issued a “do not travel” advisory for a portion of the southern border, Tamaulipas state, due to crime and kidnapping—which is the same advisory given for war zones in Iraq and Syria. *Compare Mexico Travel Advisory, supra, with Iraq Travel Advisory*, U.S. Dep’t of State (Aug. 12, 2020), <https://tinyurl.com/veeg6hc>, and *Syria Travel Advisory*, U.S. Dep’t of State (Aug. 6, 2020), <https://tinyurl.com/y5eqlzqm>.

CLINIC's *Estamos Unidos* project has worked with many asylum seekers, like Esperanza and Doña Alma, who were kidnapped or attacked as they travelled through Mexico to the United States border. These asylum seekers have reported to CLINIC that they arrived at the border with bloody faces, torn clothes, or broken bones, and relayed their harrowing accounts of violence and fear to the immigration officials, only to be returned to Mexico under MPP on the belief that their suffering is due to generalized violence or "street crime."

Petitioners' attempts to defend the legality of MPP fall flat. Petitioners erroneously contend that MPP is consistent with the United States' *non-refoulement* obligations, as codified in § 1231(b)(3), because the violence asylum seekers face in Mexico does not amount to "severe mistreatment on account of a protected ground, inflicted by the government or private actors whom the government is unwilling or unable to control." Pet'r Br. at 37–38. The reality on the ground for those returned to Mexico under MPP demonstrates the terrible human cost of Petitioners' position.⁴

There is extensive, well-founded evidence demonstrating that migrants in Mexico face persecution based on protected grounds, including nationality.

⁴ Petitioners' contention that "[a]ll aliens subject to MPP have the opportunity (and incentive) to express any fear of return to Mexico" is equally flawed. Pet'r Br. at 36. Petitioners do not cite any evidence to support their speculative assertion and fail to acknowledge the extreme impracticality of requiring asylum seekers to volunteer, with no questioning from United States officials, the harm that they have suffered, or will suffer, in Mexico, the nexus between that harm and a protected ground, and the Mexican government's inability or unwillingness to control that harm.

Organized crime groups in Mexico specifically target migrants for profit based on their nationality and status as migrants. A recent study indicates that organized crime groups in Mexico earn approximately \$134 million in revenue annually from crimes against migrants. *See Organized Crime and Central American Migration in Mexico*, Robert Strauss Center, at 14 (June 2018), <https://tinyurl.com/yaclvugx>. And these groups have inflicted widespread violence against asylum seekers returned to Mexico under MPP. As of December 2020, there were at least 1,314 publicly reported cases of murder, rape, torture, kidnapping, and other violent crimes against asylum seekers forced to remain in Mexico under MPP. *Delivered to Danger*, Human Rights First (Dec. 15, 2020), <https://tinyurl.com/r3f4bjv>. At least 978 of these reports involve kidnapping, attempted kidnapping, and labor trafficking, often accompanied by rape and assault. *Ibid.* Organized crime groups in Mexico profit from kidnapping migrants both by extracting ransoms and by subjecting abducted migrants to forced labor, and are further abetted by the lack of a clear legal status for those migrants returned to Mexico. For example, CLINIC's *Estamos Unidos* project worked with a father and his son who sought asylum in the United States and were returned to Juárez under MPP. The father was kidnapped by a cartel and forced to work for twenty days—with a man next to him holding a gun. After his father disappeared, the son fled to the nearest port of entry and presented himself to immigration officials. When the father later returned to the shelter and found his son gone, he became despondent, refused to leave a room in the shelter, and stopped eating.

2. In the face of such violence, local law enforcement in Mexico provides little support for asylum seekers, as these officials are unable, or unwilling, to control the organized crime groups targeting migrants. *See Mexico 2019 Human Rights Report*, U.S. Dep't of State, at 3, <https://tinyurl.com/ybp9aznw> (noting that “[i]nvestigations, prosecutions, and convictions” for kidnappings and forced disappearances by organized crime groups are “rare”).

CLINIC's *Estamos Unidos* project worked with a young couple who fled Cuba to seek asylum and were returned to Juárez under MPP. The couple received threats from cartel members who had followed them constantly while they were in Juárez. CLINIC, Public Comment Opposing Proposed Rules on Asylum, at 77, EOIR Docket No. 18-0002 (July 15, 2020). The couple sought help from the police but were told that nothing could be done because there was no way to track the source of the threats. *Ibid.* As a result, the couple was forced to go into hiding to survive. *Ibid.*

Moreover, Mexican law enforcement officials at times themselves exploit asylum seekers' vulnerable status in much the same manner as the organized crime groups do and extort and inflict violence on asylum seekers. One woman, Virginia*, who fled violence in Venezuela to seek asylum, told CLINIC volunteers that she was targeted by police because of her foreign accent. Guerrero, *Out of Sight*, *supra*. After demanding her paperwork and insisting that the papers she produced were forgeries, the officers demanded a bribe in exchange for her release. *Ibid.* When she explained that she had no money to give them, the officers sexually assaulted her. *Ibid.*

This abuse is not an isolated incident. The U.S. Department of State’s Human Rights Report for Mexico indicates that “in 2018, federal, state, and municipal police, as well as military forces, committed at least 865 crimes against migrants.” *Mexico 2019 Human Rights Report, supra*, at 18. There have also been dozens of publicly reported incidents of Mexican police officers harassing, intimidating, assaulting, and extorting asylum seekers who were returned to Mexico under MPP. *See Publicly Reported Cases of Violent Attacks on Individuals Returned to Mexico Under the “Migrant Protection Protocols,”* Human Rights First, <https://tinyurl.com/y4urqahz>. In some instances, Mexican police officers have conspired with organized crime groups to abduct asylum seekers. *See ibid.* For example, CLINIC’s *Estamos Unidos* project has worked with women and girls who were kidnapped in Juárez and reported seeing uniformed police officers enter and exit the areas where they were held captive.

II. MPP Is Immoral and Contrary to the Catholic Church’s Teachings.

MPP is contrary not only to domestic and international law but also to the Church’s core beliefs and social teaching as they relate to promoting the life and dignity of every person. The Church teaches that all people, including refugees and asylum seekers, should be welcomed and protected in recognition of and respect for their inalienable human dignity. MPP is a direct affront to these teachings. As *amici* have witnessed, MPP has inflicted unconscionable human suffering on tens of thousands of asylum seekers by returning them to highly dangerous areas in Mexico, where they live in squalid conditions—lacking access to food, proper hygiene, and healthcare—and face direct threats to their lives and freedom on the basis of

protected characteristics. MPP is immoral, impermissible, and cannot stand.

A. The Church Teaches That Migrants Should Be Welcomed and Protected and That Governments Should Not Return Refugees to Where They May Face Persecution.

1. The Church teaches that assisting vulnerable migrants is a fundamental duty that is derived from the words and the life of Christ and calls upon the faithful to welcome and protect them. This affirmative moral obligation to welcome and protect migrants, especially the most vulnerable, is deeply rooted in Catholic social teaching.

Abundant biblical passages establish this core responsibility. In the Old Testament, God calls upon his people to care for the foreigner because of their own experience as foreigners: “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. Leviticus 19:34 similarly instructs, “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. I, the LORD, am your God.” In the New Testament, Jesus identifies himself with migrants and other marginalized persons, and reiterates the Old Testament command to welcome and care for the stranger: “For I was hungry and you gave me food, I was thirsty and you gave me drink, a stranger and you welcomed me.” Matthew 25:35.

The Catholic Church’s social teaching emphasizes these commands. *See generally Modern Catholic Social Teaching on Immigration: Notable Quotes,*

CLINIC (June 18, 2015), <https://tinyurl.com/yc2bax3u>. In 1952, during the post-World War II refugee crisis in Europe, Pope Pius XII promulgated the apostolic constitution *Exsul Familia*, reaffirming the Church's commitment to care for refugees. See Pope Pius XII, *Exsul Familia* (Sept. 1952). Pope Pius XII called upon the Church to "offer refugees and migrants a comfort in their trials" and to "look after them with special care and unremitting aid." *Ibid.* Four decades later, Pope John Paul II explained that undocumented migrants "come[] before us like that 'stranger' in whom Jesus asks to be recognized. To welcome him and to show him solidarity is a duty of hospitality and fidelity to Christian identity itself." Pope Saint John Paul II, *Undocumented Migrants, Message of Pope John Paul II for World Migration Day* (July 25, 1995), <https://tinyurl.com/ybyoseuo>. Pope John Paul II further affirmed the obligation to welcome and assist migrants "whatever their legal status with regard to State law." *Ibid.*

The fundamental duty to welcome and protect migrants arises from the Catholic Church's belief that every person is created in God's image and deserves dignity and respect. Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church*, ¶ 108 (2005); cf. Genesis 1:27. The Church thus teaches that migrants and refugees, like all persons, are imbued with inalienable dignity and natural rights that must be respected, irrespective of their citizenship status or national origin. See Pope Saint John Paul II, *Speech to the General Assembly of the International Catholic Migration Commission* (July 5, 1990) ("It is necessary to restate that, for migrants or refugees as for all other human beings, rights are not

based primarily on juridical membership in a determined community, but, prior to that, on the dignity of the person . . .”). It is based on this core principle that the Church leads the faithful and all people of good will to see every person, and especially the vulnerable migrant or refugee, as made in God’s image, and thus to welcome and care for them out of compassion and respect for their human dignity. See Pontifical Council “Cor Unum” & Pontifical Council for the Pastoral Care of Migrants and Itinerant People, *Refugees: A Challenge to Solidarity*, Vatican, <https://tinyurl.com/alygjkm>.

Most recently, Pope Francis has emphasized the “moral imperative” of welcoming and protecting migrants and refugees. Pope Francis, *Address to Participants in the 6th International Forum on Migration and Peace* (Feb. 21, 2017), <https://tinyurl.com/y95d7gu8>. From the beginning of his pontificate, Pope Francis has advocated for the rights of migrants and refugees and called for their protection. As Pope Francis has explained, “[e]very stranger who knocks at our door is an opportunity for an encounter with Jesus Christ, who identifies with the welcomed and rejected strangers of every age (Matthew 25:35–43).” Pope Francis, *Message of His Holiness Pope Francis for the 104th World Day of Migrants and Refugees* (Jan. 14, 2018), <https://tinyurl.com/yysawo95>. Accordingly, as Pope Francis explained in the encyclical *Fratelli Tutti*, “[o]ur response to the arrival of migrating persons can be summarized by four words: welcome, protect, promote and integrate.” Pope Francis, *Fratelli Tutti* ¶ 129 (Oct. 3, 2020), <https://tinyurl.com/y3u7z3cv>.

Pope Francis has called upon Catholics and all people of good will to “embrace all those fleeing from

war and hunger, or forced by discrimination, persecution, poverty and environmental degradation to leave their homelands.” Pope Francis, *Message of His Holiness Pope Francis for the Celebration of the 51st World Day of Peace* (Jan. 1, 2018), <https://tinyurl.com/ycv25ux8>. Under the Church’s teachings, “[d]efending the[] inalienable rights” of these vulnerable migrants, “ensuring their fundamental freedoms and respecting their dignity are duties from which no one can be exempted.” Pope Francis, *Address of His Holiness Pope Francis to Participants in the International Forum on “Migration and Peace”* (Feb. 21, 2017), <https://tinyurl.com/y95d7gu8>.

The Bishops of the United States, united with the Universal Church, have likewise emphasized the duty to welcome and protect migrants out of respect for their inalienable human dignity. As the Bishops of the United States and Mexico explained in their 2003 pastoral letter, *Strangers No Longer: Together on the Journey of Hope*, “[r]egardless of their legal status, migrants, like all persons, possess inherent human dignity that should be respected.” U.S. & Mexican Catholic Bishops, *Strangers No Longer: Together on the Journey of Hope*, USCCB ¶ 38 (Jan. 22, 2003), <https://tinyurl.com/ybx826bu> (hereinafter “*Strangers No Longer*”). Indeed, refugees “are all human persons—made in the image of God, bearing inherent dignity, and deserving our respect and care and protection by law from persecution.” *Archbishop Kurtz Calls for Welcoming of Refugees Fleeing Syria*, USCCB (Sept. 10, 2015), <https://tinyurl.com/y4rqd36l>.

2. The Church’s social teaching on welcoming and protecting migrants extends to the duties of governments. The Church recognizes that people “have the right to migrate to support themselves and their

families” and instructs that nations—particularly economically prosperous nations—must “accommodate this right.” *Strangers No Longer*, *supra*, ¶ 35.

This teaching stems from the Church’s fundamental belief that every person has inalienable dignity and rights, including a “right to receive from the earth what is necessary for life—food, clothing, shelter.” *Catholic Social Teaching on Immigration and the Movement of Peoples*, USCCB, <https://tinyurl.com/yxlerkxz>; see also *A Catholic Framework for Economic Life, a Statement of the U.S. Catholic Bishops*, USCCB, <https://tinyurl.com/y55hpeoa> (“All people have a right to life and to secure the basic necessities of life, such as food, clothing, shelter, education, health care, safe environment, and economic security.”). When individuals cannot find “the economic, political, and social opportunities to live in dignity” in their country of origin, they have the right to migrate to another country to support themselves and their families. *Strangers No Longer*, *supra*, ¶ 34; see also *Fratelli Tutti*, *supra*, ¶ 129 (“[W]e are obligated to respect the right of all individuals to find a place that meets their basic needs and those of their families, and where they can find personal fulfillment.”).

Further, the Church teaches that human life is sacred, and therefore anyone whose life is threatened has the right to protection. Those who “flee wars and persecution” have the right “to claim refugee status” and to seek asylum, rather than to migrate through ordinary channels. *Strangers No Longer*, *supra*, ¶ 37. The human rights and dignity of asylum seekers must be respected, irrespective of their citizenship, visa status, or mode of arrival. See *Responding to Refugees and Migrants: Twenty Action Points for the Global Compacts*, Vatican, at 3, <https://tinyurl.com/yxofpvcv>

(“Migrants, asylum seekers and refugees should be received as human beings, in dignity and full respect for their human rights, regardless of their migratory status.”).

The Church thus calls upon “public authorities” to “respect the fundamental and inalienable rights of the human person,” including in immigration and asylum policies. Catechism of the Catholic Church ¶ 1907. As Pope Saint John Paul II explained, governments must “regulate the migratory flows with full respect for the dignity of the persons and for their families’ needs.” Pope Saint John Paul II, *Message of the Holy Father John Paul II for the 90th World Day of Migrants and Refugees* (Dec. 15, 2003), <https://tinyurl.com/yy3nzphd>. The Church further teaches that “[m]ore powerful economic nations” have a particularly “strong obligation” to accept and assist migrants and refugees. *Strangers No Longer, supra*, ¶ 36. The Catechism of the Catholic Church instructs the faithful that “[t]he 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. Public authorities should see to it that the natural right is respected that places a guest under the protection of those who receive him.” Catechism of the Catholic Church, ¶ 2241 (emphasis in original).

To be sure, the Church recognizes the right of sovereign nations to regulate their borders and to control immigration in furtherance of the common good. However, the Church teaches that “[a] country’s regulation of borders and control of immigration must be governed by concern for all people and by mercy and justice.” *Catholic Social Teaching on Immigration and the Movement of Peoples, supra*. Accordingly, in

regulating immigration, nations must respect the human dignity and rights of migrants and protect those fleeing violence and persecution. As Pope Benedict XVI explained, although “every state has the right to regulate migration and to enact policies dictated by the general requirements of the common good,” states must always “safeguard[] respect for the dignity of each human person.” Pope Benedict XVI, *Message of His Holiness Pope Benedict XVI for the World Day of Migrants and Refugees* (Oct. 12, 2012), <https://tinyurl.com/y6jgu8un>.

3. The *non-refoulement* principle is integrally tied to these duties. By requiring nations not to return refugees and asylum seekers to any areas where they would face persecution, the *non-refoulement* principle protects the human dignity and right to life for those fleeing violence and persecution. The Gospel values and Church’s teachings on welcoming and protecting the inalienable human dignity of migrants require the consistent application of *non-refoulement*.

Accordingly, the Holy See has emphasized that the *non-refoulement* principle “should always be respected.” *Responding to Refugees and Migrants: Twenty Action Points for the Global Compacts*, Vatican, at 2, <https://tinyurl.com/yxofpvcp>. The Holy See has further asserted that the *non-refoulement* principle “is based on the individual situation of” each refugee and “not on how ‘safe’ a country is generally claimed to be,” and it has urged nations to “avoid using safe country lists, as such lists often fail to meet the refugee’s needs for protection.” *Ibid.* The Holy See has also called upon nations to “expand the number and range of alternative legal pathways for safe and voluntary migration and resettlement, in full respect of the principle of non-refoulement.” *Ibid.*

B. In Light of Catholic Social Teaching and the Well-Established Positions of the Church, MPP Is Immoral and Impermissible.

1. MPP, as it exists, is antithetical to the moral responsibility to welcome and help refugees, which is established in scripture and the Catholic Church's social teaching. Under MPP, at least 70,000 vulnerable asylum seekers fleeing extreme harm in their home countries have been turned away at the southern border and returned to highly dangerous conditions in Mexico, where they must remain pending the adjudication of their asylum claims. *See Details on MPP (Remain in Mexico) Deportation Proceedings*, TRAC Immigration (Dec. 2020), <https://tinyurl.com/rzef29p>.

The Church has taken a strong position against MPP as immoral and contrary to the Church's social doctrine. In March 2019, after DHS initiated MPP, the Catholic Bishops of the diocese along the Texas portion of the border and their Mexican counterparts issued a statement expressing their "total disagreement" with MPP. *Statement of the Bishops of the Border Between Texas and Northern Mexico*, Justice for Immigrants (Mar. 4, 2019), <https://tinyurl.com/y3uma5m8>. The Bishops explained that immigrants at our border are "brothers and sisters who are suffering, Christ in need," and emphasized that they should be given "the support they require, without assuming they are criminals, as they are sometimes perceived." *Ibid.*

Bishop Joe S. Vásquez, of Austin, Texas, then chairman of the Conference's Committee on Migration, and Sean Callahan, president and CEO of Catholic Relief Services, issued a statement joining the Texas and Mexico border Bishops in their opposition

to MPP. Bishop Joe S. Vásquez & Sean Callahan, *USCCB Migration Chairman and CRS President Issue Statement Supporting Texas-Mexico Border Bishops' Statement on Recent U.S. Government Asylum Policy*, USCCB (Mar. 13, 2019), <https://tinyurl.com/y39j7coq>. Bishop Vásquez and Mr. Callahan “urge[d] the Administration to reverse this policy, which needlessly increases the suffering of the most vulnerable and violates international protocols” and “affirm[ed] a person’s right to seek asylum.” *Ibid.* Bishop Vásquez and Mr. Callahan emphasized that “recent efforts to curtail and deter” the critical right to asylum, including MPP, were “deeply troubling.” *Ibid.*

2. As *amici* have witnessed, MPP’s abandonment of, and disregard for, the moral imperative to welcome and protect refugees has resulted in tremendous human suffering, including the loss of life and the separation of migrant families.

MPP provides no assistance to asylum seekers turned away at the border and returned to Mexico. Although the Mexican government has promised to provide those returned to Mexico access to education, healthcare, and employment, *Migrant Protection Protocols*, U.S. Dep’t of Homeland Sec. (Dec. 15, 2020), <https://tinyurl.com/y7ygheol>, that has been an empty promise, as Mexico’s support systems have been overwhelmed by MPP and cannot accommodate the influx of thousands of asylum seekers. Shelters in cities along the southern border are overcrowded, and many asylum seekers live in sordid and degrading conditions in makeshift tents or on the streets. See Nicole Narea, *The Abandoned Asylum Seekers on the US-Mexico Border*, Vox (Dec. 20, 2019), <https://tinyurl.com/t7auqx8>. These asylum seekers not only

face rampant violence and crime as a result of their identity, *see* Part I.B, *supra*, but also frequently lack access to food, proper hygiene, clothing, and healthcare. Narea, *supra*.

For instance, Cecilia*, who is a single mother, HIV positive, and a survivor of domestic violence, was returned to Mexico under MPP in September 2019. Guerrero, *Out of Sight, supra*. Cecilia and her two minor children have been staying in a shelter in Juárez. *Ibid.* Cecilia relied on a Mexican government program to provide her medication, but months after she was returned to Mexico, the government cancelled the program—leaving Cecilia without access to her medication. *Ibid.* Cecilia’s teenage daughter, who has a disability, has suffered psychological harm, as she is constantly fearful of “something bad happening” to her or her mother. *Ibid.*

Jessica*, who fled gang violence in Guatemala to seek asylum, was also returned to Mexico under MPP. Guerrero, *Out of Sight, supra*. Jessica is six months pregnant and has been staying at a shelter in Juárez. *Ibid.* Jessica saw a doctor at a family clinic, who told her that she has a high-risk pregnancy and that a miscarriage is probable. *Ibid.* As a result, the doctor instructed Jessica that she must stay on bed rest. *Ibid.* However, Jessica must undertake arduous efforts to complete even simple tasks: to take a shower, Jessica must fill a bucket or two of cold water and carry it to the bathroom, and Jessica must walk unpaved, uneven roads to the supermarket and carry groceries back to the shelter. *Ibid.*

The squalid conditions at migrant shelters in Mexico have caused, and exacerbated, health problems for asylum seekers. For example, CLINIC’s *Estamos Unidos* project worked with families staying at

a shelter in Juárez with a severe rat infestation. The children at the shelter must sleep with blankets completely covering their bodies to keep the rats from walking on them. The rat droppings and unsanitary conditions at the shelter have caused the children to contract diseases, and the children have experienced extreme levels of dehydration and malnutrition as they are unable to keep food down in their fragile state.

Outside the shelters, migrants fare no better. In response to MPP, Catholic Charities border agencies have sought out migrants in need of assistance across the border in Mexico, and have witnessed the unsafe and unsanitary conditions in migrant encampments along the border. Sister Norma Pimentel and Catholic Charities of the Rio Grande Valley ventured across the border to provide utensils, blankets, and other assistance to migrants. They found residents of “Dignity Village,” an encampment in Mexico populated by asylum seekers awaiting immigration court hearing dates, facing extreme weather exposure, vermin infestation, and gang activity. The encampment offers little protection, and those who are forced to live there because of MPP are desperate to seek asylum in the United States and protect their loved ones. MPP hinders Catholic Charities’ ability to accomplish their mission of serving these vulnerable populations, and the asylum seekers’ desperation has only increased as DHS has suspended MPP hearings for an indeterminate period during the COVID-19 pandemic, leaving migrants uncertain about how long they must endure these conditions. *See generally Department of Justice and Department of Homeland Security Announce Plan to Restart MPP Hearings*, U.S. Dep’t of Justice (July 17, 2020), <https://tinyurl.com/y7wackjk> (announcing

stringent requirements before hearings can be re-started that have not yet been satisfied).

MPP has also separated many migrant families returned to Mexico, causing further trauma and devastation for asylum seekers. CLINIC's *Estamos Unidos* project has worked with many asylum seekers who were separated from their family members by immigration officials at the border under MPP. For example, Juan* fled gang violence in El Salvador to seek asylum and was returned to Juárez under MPP. See *Seven Migrant Protection Protocols Stories from Estamos Unidos: Asylum Project*, CLINIC (Nov. 18, 2019), <https://tinyurl.com/y94koqvz>. Although Juan entered the United States with his wife, who was seven months pregnant at the time, Juan was returned to Juárez alone. *Ibid.* The ongoing separation from his wife and unborn child has placed Juan in shock, and he wanders around the shelter where he is staying, lost, confused, and in tears. *Ibid.*

Further, because migrant families returned to Mexico under MPP are uniquely vulnerable to violence or exploitation, many parents have been kidnapped or otherwise disappeared, leaving their children alone in an unfamiliar, foreign country without anyone to care for them. Sara*, Vanessa*, and Rosa*, ages 15, 12, and 9, provide one paradigmatic example. *Forced Apart: How the 'Remain in Mexico' Policy Places Children in Danger and Separates Families*, KIND (Feb. 24, 2020), <https://tinyurl.com/y5ap374e>. These three sisters and their mother fled threats from gangs in Honduras to seek asylum and were returned to Mexico under MPP. *Ibid.* While they were in Mexico, their mother went out to look for work to support the family, but never returned. *Ibid.* After their

mother disappeared, Sara, Vanessa, and Rosa presented themselves at the United States border and were placed in U.S. Office of Refugee Resettlement custody. *Ibid.* With the help of attorneys, the three sisters were able to contact their mother, who remains separated from them in Mexico waiting for her asylum hearing. *Ibid.*

CLINIC's *Estamos Unidos* project worked with a father and son who were returned to Mexico under MPP. The father and son lived in a shelter in Juárez, but the father was kidnapped when he left the shelter one day to buy food. After the father was kidnapped, the son fled Juárez and presented himself at the border. When the father returned to the shelter eight months later, he found that his son was gone. The father and son remain separated, and the trauma of the kidnapping and separation from his son left the father in a deteriorated state. The father is still unable to speak about what happened to him during his captivity.

Like the stories of violence, lack of healthcare, and lack of basic shelter, these stories of family separation are not isolated incidents. The U.S. Department of Health and Human Services reported that from October 1, 2019 to January 13, 2020, it received over 350 unaccompanied children now in the United States whose families remained in Mexico. See Priscilla Alvarez, *At Least 350 Children of Migrant Families Forced to Remain in Mexico Have Crossed Over Alone to US*, CNN (Jan. 24, 2020), <https://tinyurl.com/th97cv5>.

If allowed to stand, MPP will continue to inflict tremendous harm on the tens of thousands of vulnerable asylum seekers who remain in Mexico. This cruel

and inhumane policy undermines the dignity of asylum seekers, strikes at the heart of the Church's core beliefs, and violates the law. It is incumbent on this Court to uphold the rights of asylum seekers, enforce the United States' legal obligations, and enjoin MPP.

CONCLUSION

For the reasons stated above and in Respondents' brief, the judgment below should be affirmed.

Respectfully submitted.

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January 22, 2021