

No. 23-334

---

---

**In the Supreme Court of the United States**

---

UNITED STATES DEPARTMENT OF STATE,  
*et al.*,  
*Petitioners*,

v.

SANDRA MUÑOZ, *et al.*,  
*Respondents*.

---

---

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

**BRIEF OF INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT AND AMERICAN  
FAMILIES UNITED AS *AMICI CURIAE* IN  
SUPPORT OF RESPONDENTS**

---

---

Melissa S. Keaney  
*Counsel of Record*  
Mariko Hirose  
Melissa Fich  
INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT  
One Battery Park Plaza,  
33<sup>rd</sup> Fl.  
New York, NY 10004  
(916) 546-6125  
mkeaney@refugeerights.org

*Counsel for Amici Curiae*

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

INTEREST OF *AMICI CURIAE*.....1

SUMMARY OF THE ARGUMENT.....2

ARGUMENT .....3

    I. Consular Officer Visa Denials Interfere with a U.S. Citizen’s Right to Cohabitate with Their Spouse in Safety .....4

        A. U.S. Citizens Cannot Live with Their Spouse in Countries Where They Face Persecution .....5

        B. U.S. Citizens Risk Their Lives and U.S. National Security When Forced to Live in Countries Designated as Unsafe.....7

        C. U.S. Citizens Married to a Spouse Whose Home Country Criminalizes or Restricts the Marriage Face Permanent Separation When a Visa Is Denied Live with Their Spouse in Countries Where They Face Persecution.....10

    II. Consular Officer Visa Denials Interfere with U.S. Citizens’ Decisions Over Childbearing .....11

    III. Consular Officer Visa Denials Interfere with a U.S. Citizen’s Right to Make Childrearing Decisions and Harm U.S. Citizen Children....15

CONCLUSION .....28

## TABLE OF AUTHORITIES

### Cases

<i>Cleveland Bd. of Educ. v. LaFleur</i> , 414 U.S. 632 (1974) .....	2
<i>Eisenstadt v. Baird</i> , 405 U.S. 438 (1972) .....	11
<i>Loving v. Virginia</i> , 388 U.S. 1 (1967) .....	3
<i>Meyer v. Nebraska</i> , 262 U.S. 390 (1923) .....	15
<i>Pak v. Biden</i> , No. 22-CV-250-SLC, 2023 WL 22077, at *4–5 (W.D. Wis. Jan. 3, 2023), <i>aff'd</i> , 91 F.4th (7th Cir. 2024).....	10
<i>Prince v. Massachusetts</i> , 321 U.S. 158 (1944) .....	15
<i>Skinner v. Oklahoma</i> , 316 U.S. 535 (1942) .....	3, 11

### Statutes

8 U.S.C. § 1101(a)(42)(A) .....	5
8 U.S.C. § 1154(b).....	3
8 U.S.C. § 1157(c).....	5
8 U.S.C. § 1158(b)(1)(A) .....	5
8 U.S.C. § 1201(a)(1)(A) .....	3
22 U.S.C. § 1731.....	7
22 U.S.C. § 1732.....	7

22 U.S.C. § 1741 .....	7
<b>Regulations</b>	
8 C.F.R. § 212.7(e) .....	3
<b>Other Authorities</b>	
9 FAM § 103.4-1 .....	3
Central Intelligence Agency, <i>World Factbook: Maternal Mortality Ratio</i> , <a href="https://www.cia.gov/the-world-factbook/field/maternal-mortality-ratio/country-comparison/">https://www.cia.gov/the-world-factbook/field/maternal-mortality-ratio/country-comparison/</a> .....	12
Executive Office for Immigration Review Adjudication Statistics, Asylum Decision Rates by Nationality (Oct. 23, 2023), <a href="https://www.justice.gov/eoir/page/file/1107366/dl">https://www.justice.gov/eoir/page/file/1107366/dl</a> .	5
<i>FINRA, Series 6 – Investment Company and Variable Contracts Products Representative Exam</i> , <a href="https://www.finra.org/registration-exams-ce/qualification-exams/series6">https://www.finra.org/registration-exams-ce/qualification-exams/series6</a> .....	8
Human Rights Watch, <i>#Outlawed “The Love That Dare Not Speak Its Name,”</i> <a href="https://features.hrw.org/features/features/lgbt_laws/#_ftn1">https://features.hrw.org/features/features/lgbt_laws/#_ftn1</a> .....	10
Human Rights Watch, <i>Iran: Events of 2023</i> , <a href="https://www.hrw.org/world-report/2024/country-chapters/iran">https://www.hrw.org/world-report/2024/country-chapters/iran</a> .....	9
Randy Capps et al., <i>Implications of Immigration Enforcement for the Well-Being of Children in Immigrant Families: A Review of the Literature</i> , Urban Institute & Migration Policy Institute (Sept. 2015), <a href="https://www.migrationpolicy.org/research/implicati">https://www.migrationpolicy.org/research/implicati</a>	

ons-immigration-enforcement-activities-well-being-children-immigrant-families.....	16
Refugee Processing Center, <i>Refugee Admissions Report as of Feb. 29, 2024</i> , Admissions and Arrivals, <a href="https://www.wrapsnet.org/admissions-and-arrivals/">https://www.wrapsnet.org/admissions-and-arrivals/</a> .....	5
Sue Coyle, MSW, <i>Children and Families Forum: The Impact of Immigrant Family Separation</i> , 18 SOCIAL WORK TODAY, no. 5, Sept./Oct. 2018 at 8, <a href="https://www.socialworktoday.com/archive/SO18p8.shtml">https://www.socialworktoday.com/archive/SO18p8.shtml</a> .....	16
The World Bank, <i>Mortality Rate, Infant</i> , <a href="https://data.worldbank.org/indicator/SP.DYN.IMR.T.IN">https://data.worldbank.org/indicator/SP.DYN.IMR.T.IN</a> .....	11
U.N. Doc A/HRC/53/23 (June 21, 2023), <a href="https://www.ohchr.org/en/statements/2023/06/iran-update-human-rights">https://www.ohchr.org/en/statements/2023/06/iran-update-human-rights</a> .....	9
U.S. Comm'n on Int'l Religious Freedom, <i>2023 Anti-Conversion Laws Compendium</i> , at 5, <a href="https://www.uscirf.gov/sites/default/files/2023-11/2023%20Anti-Conversion%20Laws%20Compendium.pdf">https://www.uscirf.gov/sites/default/files/2023-11/2023%20Anti-Conversion%20Laws%20Compendium.pdf</a> .....	11
U.S. Dep't of State, <i>El Salvador Travel Advisory</i> (July 17, 2023), <a href="https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/ElSalvador.html">https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/ElSalvador.html</a> .....	13
U.S. Dep't of State, <i>El Salvador Travel Advisory</i> , (July 17, 2023), <a href="https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/el-salvador-travel-advisory.html">https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/el-salvador-travel-advisory.html</a> .....	26

- U.S. Dep’t of State, *Iran Travel Advisory* (Jan. 11, 2023),  
<https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/iran-travel-advisory.html>. 9
- U.S. Dep’t of State, *Mexico Travel Advisory*, (Aug. 22, 2023),  
<https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>..... 22
- U.S. Dep’t of State, *Pakistan Travel Advisory* (June 23, 2023),  
<https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/pakistan-travel-advisory.html>..... 18
- U.S. Dep’t of State, “Travel Advisories,”  
<https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html/> ..... 7
- World Health Organization, *Maternal Mortality*, (Feb. 22, 2023), <https://www.who.int/news-room/fact-sheets/detail/maternal-mortality> ..... 12

**INTEREST OF *AMICI CURIAE*<sup>1</sup>**

*Amici curiae* are two non-profit organizations that advocate to improve family reunification pathways to the United States. Recognizing that family unity is a basic human right, the *amici* organizations support fair and equitable processes that keep families together.

The International Refugee Assistance Project (“IRAP”) is dedicated to advancing and defending the rights of refugees, asylum seekers, and other displaced people. In light of obstacles to traditional resettlement around the world, IRAP has increased its focus on family reunification as a primary pathway to safety for refugees and other forced migrants. IRAP works to protect the right to family unity through direct legal services, policy advocacy, and litigation.

American Families United (“AFU”) represents U.S. citizens in advancing solutions to overcome immigration issues for their spouses and children, which AFU considers to be the highest priority for legal immigration. AFU has a particular focus on spouses and children of Americans who have been denied a visa by a consular officer. Through its advocacy and public education work, AFU’s goal is to improve immigration pathways so American families can stay together and live in safety in the United States without the fear of separation.

---

<sup>1</sup> Under Rule 37.6 of the Rules of this Court, *amici curiae* certify that no counsel for a party authored this brief, in whole or in part, and no person or entity other than *amici* and their counsel made a monetary contribution to the preparation or submission of this brief.

## SUMMARY OF THE ARGUMENT

“Personal choice in matters of marriage and family life is one of the liberties” fundamental to the rights protected by the Due Process Clause. *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639 (1974) (citing cases). Yet for the many U.S. citizens married to a noncitizen, the enjoyment of this right depends on the largely unreviewable decision-making of a U.S. State Department consular officer.

Petitioners are wrong that a consular visa denial does not implicate a U.S. citizen’s marriage rights because the couple can live elsewhere. As the stories in this brief illustrate, many couples cannot live elsewhere. Even if they can, being forced to make this choice interferes with the free exercise of other rights U.S. citizens enjoy, including the right to make decisions over childbearing and childrearing.

The court below rightly upheld the principle that a visa denial for a U.S. citizen spouse implicates a U.S. citizen’s due process rights and affirmed a limited judicial role in reviewing such decisions. Were this Court to foreclose all judicial review, the fate of thousands of American families would lie in the hands of a single consular officer. The tribulations of several such families are profiled here, illustrating the fallacy of Petitioners’ callous argument and the importance of this case to these families and the many others who have experienced a spousal visa denial.



## ARGUMENT

As this Court has recognized, “[m]arriage is one of the ‘basic civil rights of man’, ‘fundamental to our very existence and survival.’” *Loving v. Virginia*, 388 U.S. 1, 12 (1967) (quoting *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942)). For many American families, however, the ability to partake in this basic civil right is rendered impossible by a U.S. Department of State consular officer decision.

To obtain a visa for a noncitizen spouse, a U.S. citizen first files an I-130 petition with U.S. Citizenship and Immigration Services. See 8 U.S.C. § 1154(b). Once approved, the spouse abroad submits a visa application to the U.S. Department of State. 8 U.S.C. § 1201(a)(1)(A). A State Department consular officer adjudicates the visa application, 8 U.S.C. § 1201(a), (d), and (g), and there is no formal process to appeal the consular officer’s decision, see U.S. Dep’t of State, 9 Foreign Affairs Manual (FAM) § 103.4-1. If the noncitizen spouse has been present in the United States without legal authorization, they may apply for a provisional waiver of unlawful presence before departing the United States for a visa interview. See 8 C.F.R. § 212.7(e). A noncitizen is only eligible for the provisional waiver if they are not inadmissible on any other grounds. 8 C.F.R. § 212.7(e)(14).

As the stories in this brief reflect, many American families traverse this lengthy process only to receive a boilerplate visa denial at the last step. A visa denial has profound ramifications for U.S. citizen spouses and their families. A U.S. citizen spouse may be forced to consider moving to a country where they face risk of violence or kidnapping, or where they lose access to

necessary medical care or educational support. If instead they decide to remain in the United States, the couple's children may be forced to grow up without one of their parents. Despite the gravity of these consequences, families facing a visa denial are left with few, if any, avenues for recourse. The following are stories of individuals<sup>2</sup> who, with their families, have been devastated by a consular visa denial.<sup>3</sup>

**I. Consular Officer Visa Denials Interfere with a U.S. Citizen's Right to Cohabitate with Their Spouse in Safety.**

Families with one U.S. citizen spouse and one noncitizen spouse often have only two options for where they can live permanently and stably as a family unit: the United States or the noncitizen spouse's home country. Petitioners are thus wrong in claiming that a consular visa denial does not implicate a U.S. citizen's right to live with their spouse, see Pet. Br. 28—when living in the noncitizen spouse's country of origin is not an option, a consular officer's denial of a spousal visa application effectively forecloses the couple's ability to live together.<sup>4</sup>

---

<sup>2</sup> Where noted by an asterisk, the individual's name has been changed or abbreviated to protect privacy.

<sup>3</sup> Information for all the stories is on file with Melissa Keaney at the International Refugee Assistance Project.

<sup>4</sup> For the same reason, *Amicus Curiae* Immigration Reform Law Institute's ("IRLI") argument that a consular visa denial does not "prevent[] the couple from residing together," ignores the reality faced by many American families. IRLI Amicus Br. 5-6.

### A. U.S. Citizens Cannot Live with Their Spouse in Countries Where They Face Persecution.

U.S. citizens who come to the United States as a refugee or asylee and marry a national from their country of origin by definition cannot live in their spouse's home country.<sup>5</sup> In such cases, the United States may be the only country where the couple can live together as a family. Thousands of people arrive to the United States as refugees from more than seventy-four countries each year.<sup>6</sup> Individuals granted asylum similarly come from more than one hundred countries around the world.<sup>7</sup>

*Ms. F.*<sup>8</sup> Ms. F, a naturalized American citizen, fled Taliban-controlled Afghanistan with her family when she was a child and grew up in California. In

---

<sup>5</sup> In granting an individual admission as a refugee or asylee, the U.S. government has found that the individual has faced and/or will face persecution in their home country on account of one of several enumerated grounds. See 8 U.S.C. § 1157(c) (providing for admission of refugees); 8 U.S.C. § 1158(b)(1)(A) (providing for admission of asylees who meet the refugee definition); see also 8 U.S.C. § 1101(a)(42)(A) (defining “refugee”).

<sup>6</sup> Refugee Processing Center, *Refugee Admissions Report as of Feb. 29, 2024, Admissions and Arrivals*, <https://www.wrapsnet.org/admissions-and-arrivals/>.

<sup>7</sup> See Executive Office for Immigration Review Adjudication Statistics, *Asylum Decision Rates by Nationality* (Oct. 23, 2023), <https://www.justice.gov/eoir/page/file/1107366/dl>.

<sup>8</sup> Ms. F. is a client of *amici* International Refugee Assistance Project in a case challenging the consular officer's denial of a spousal visa for Mr. R.

2010, when traveling to Afghanistan to visit her extended family because the Taliban was no longer in power, she met her future husband, Mr. R,\* an Afghan national, with whom she fell in love because of his patience, honesty, and kindness. As their relationship deepened, they talked about their hope of living together and starting a family in the United States.

But after they were married, State Department consular officers repeatedly denied the couple's attempts to live together in the United States. Throughout the early years of their marriage, Ms. F visited Mr. R and then returned to the United States to give birth to their children, without Mr. R by her side.

Ms. F was in Afghanistan with the couple's three children and Mr. R when the Taliban retook control of the country in the Fall of 2021. U.S. government evacuated the family but detained them at a U.S. military base in Kosovo for nearly twelve months while refusing to allow Mr. R into the United States. Then, a consular officer denied Mr. R's visa based on "Security and Related Grounds," without any explanation or even a cite to the applicable subsection of the general inadmissibility provision. In September 2022, Ms. F left the base with their three children, because she was due to give birth to their fourth child.

For years now, Ms. F and her children have not had a place in the world where they can count on living permanently with Mr. R as a family. Mr. R has never met his youngest child. Despite having her degree in biochemistry, Ms. F has had to give up on her dream of becoming a doctor while she raises four children on her own. Mr. R grew up without knowing

his father and lives in anguish about his inability to be present in the daily lives of his children.

**B. U.S. Citizens Risk Their Lives and U.S. National Security When Forced to Live in Countries Designated as Unsafe.**

Some U.S. citizens are married to someone from a country that the U.S. Department of State has designated as a “Do Not Travel” country, meaning the U.S. government advises U.S. citizens not to travel there because of safety concerns. Currently nineteen countries have such a designation, with additional political subdivisions within certain countries also so designated.<sup>9</sup>

A U.S. citizen whose spouse is from one of those countries and is denied a visa may be forced to choose between family unity and putting their life at risk by moving to such a country. And when a U.S. citizen is forced to live in a country that the U.S. government advises its citizens not to travel to, this raises not only safety and security concerns for the U.S. citizen, but also national security and foreign relations concerns for the United States. See, *e.g.*, 22 U.S.C. § 1732 (requiring the President to use “such means, not amounting to acts of war \* \* \* necessary” to obtain the release of U.S. citizens detained abroad); 22 U.S.C. § 1731 (providing the same protection to naturalized citizens); 22 U.S.C. § 1741 (outlining duties of the Secretary of State in cases of U.S. citizens unlawfully or wrongfully detained abroad).

---

<sup>9</sup> See U.S. Dep’t of State, “Travel Advisories,” <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html/>.

*Iris.\** Iris is a U.S. citizen who grew up in Cary, North Carolina, as part of a large, close-knit Persian-American extended family. Iris was working in San Francisco after college when a relative introduced her to Mohammad,\* an Iranian physician. They dated long distance for a while, and soon knew that they wanted to be together. They married in 2016 and applied for a visa for Mohammad to join Iris in the United States.

Looking forward to a life together with Mohammad, Iris moved back to North Carolina, bought a house, and furnished it. Iris thrived at her new job at Wells Fargo and obtained a Series 6 license<sup>10</sup> with her employer's support. Mohammad also began studying so that he could continue his medical practice in the United States. The future looked bright.

But Mohammad's visa application remained on hold through multiple rounds of former President Trump's executive orders and proclamations banning Iranians from immigrating to the United States. After years of waiting, the couple's dreams were dashed when Mohammad received a denial in November 2019 citing Immigration and Nationality Act (INA) § 212(a)(3)(B). During the wait, the Trump Administration had made the controversial decision

---

<sup>10</sup> A Series 6 license is a certification issued by the Financial Industry Regulatory Authority (FINRA), which allows its recipient to sell certain investment products. See *FINRA, Series 6 – Investment Company and Variable Contracts Products Representative Exam*, <https://www.finra.org/registration-exams-ce/qualification-exams/series6>.

to designate Iran's National Revolutionary Guard Corps, an arm of Iran's government, as a terrorist organization; Mohammad had, years ago, served his mandatory military service in that division in a medical capacity.

Iris now lives in Iran so that she can be with her husband, but life is unstable and uncertain. Iris is easily identifiable as American because of her accent and mannerisms; she does not feel secure in a country that the State Department warns U.S. citizens not to travel to "for any reason" due to "the risk of terrorism, civil unrest, kidnapping and the arbitrary arrest of U.S. citizens."<sup>11</sup> During the women's rights protests beginning in 2022 that resulted in the government killing hundreds and arresting thousands of protestors,<sup>12</sup> Iris was afraid to leave the house for fear of being inadvertently targeted by the state-led violence.

The most heartbreaking part of this nightmare for Iris and Mohammad is that they may not be able to have children because of the consular officer's denial of a visa. Years ago, Iris had a surgery in the United States to treat an ovarian cyst, but it led to severe

---

<sup>11</sup> U.S. Dep't of State, *Iran Travel Advisory* (Jan. 11, 2023), <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/iran-travel-advisory.html>.

<sup>12</sup> Human Rights Watch, *Iran: Events of 2023*, <https://www.hrw.org/world-report/2024/country-chapters/iran>; see also U.N. Office of the High Commissioner for Human Rights, Presentation of the Secretary-General's report on the situation of human rights in the Islamic Republic of Iran, U.N. Doc A/HRC/53/23 (June 21, 2023), <https://www.ohchr.org/en/statements/2023/06/iran-update-human-rights>.

complications and a month-long hospitalization. The doctors told her that she could still have children, but it would be difficult. Iris needs American medical care for a chance to have a child, and she does not want to undergo childbirth by herself, away from her husband. The consular officer's denial has thus prevented Iris and Mohammad from building their family.

**C. U.S. Citizens Married to a Spouse Whose Home Country Criminalizes or Restricts the Marriage Face Permanent Separation When a Visa Is Denied.**

For still others, laws in the noncitizen spouse's country of origin may make living there as a couple an impossibility. For example, same-sex couples with a noncitizen spouse from a country that criminalizes same-sex relationships may face indefinite separation if a spousal visa is denied. See, *e.g.*, *Pak v. Biden*, No. 22-CV-250-SLC, 2023 WL 22077, at \*4–5 (W.D. Wis. Jan. 3, 2023), *aff'd*, 91 F.4th 896 (7th Cir. 2024) (describing a U.S. citizen who is in a same-sex relationship with a gay man in Iran, a country that considers his sexuality punishable by death). Seven countries maintain the death penalty as punishment for same-sex conduct and a further fifty-six countries criminalize same-sex conduct.<sup>13</sup>

As another example, the U.S. Commission on International Religious Freedom reports that twenty-

---

<sup>13</sup> See Human Rights Watch, *#Outlawed “The Love That Dare Not Speak Its Name,”* [https://features.hrw.org/features/features/lgbt\\_laws/#\\_ftn1](https://features.hrw.org/features/features/lgbt_laws/#_ftn1).



six countries restrict interfaith marriages.<sup>14</sup> For any U.S. citizen whose marriage is criminalized or restricted by their spouse's country of origin, a spousal visa is a necessity for the relationship.

## II. Consular Officer Visa Denials Interfere with U.S. Citizens' Decisions Over Childbearing.

This Court has recognized that the “right to have offspring” is a “sensitive and important area of human rights.” *Skinner*, 316 U.S. at 536; see also *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972) (recognizing the right “to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.”). Yet, a consular visa denial, which may operate to effectively prevent a U.S. citizen from cohabitating with a noncitizen spouse, can essentially foreclose the U.S. citizen's ability to have children.

Moreover, U.S. citizens forced to move from the United States to be with a noncitizen spouse forego their access to the American medical system, which could put their lives and the lives of their future children at risk. The United States has a lower infant mortality rate than over seventy percent of the world's countries.<sup>15</sup> More than 120 countries have a higher maternal mortality rate than the United

---

<sup>14</sup> U.S. Comm'n on Int'l Religious Freedom, *2023 Anti-Conversion Laws Compendium*, at 5, <https://www.uscirf.gov/sites/default/files/2023-11/2023%20%20Anti-Conversion%20Laws%20Compendium.pdf>.

<sup>15</sup> See The World Bank, *Mortality Rate, Infant*, <https://data.worldbank.org/indicator/SP.DYN.IMRT.IN>.

States.<sup>16</sup> The World Health Organization reports that every day in 2020, almost 800 women died from preventable causes related to pregnancy and childbirth worldwide.<sup>17</sup> As discussed *supra*, the consular visa denial in Iris' case may interfere with her ability to have children, but this is not an isolated story.

*Sloane Arias.* Sloane Arias was born in Los Angeles, California and moved with her family to Arkansas as a child. She met her now-husband, Otto, at a music festival, and they immediately connected because both of their families are originally from El Salvador. Sloane's father took to Otto because of their shared love of agriculture.

When Sloane faced health challenges, eventually requiring removal of her gallbladder, Otto was by her side, nursing her back to health. They decided they wanted to start a family, but facing difficulties conceiving, they turned to help from a local fertility clinic. They were still trying to conceive when they decided to get married in 2017 and pursue securing Otto's immigration status.

After USCIS approved Sloane's petition and a waiver of unlawful presence, the couple traveled together to El Salvador for Otto's visa interview. Sloane took vacation time from her position as a preschool teacher to accompany Otto, assuming,

---

<sup>16</sup> See Central Intelligence Agency, *World Factbook: Maternal Mortality Ratio*, <https://www.cia.gov/the-world-factbook/field/maternal-mortality-ratio/country-comparison/>.

<sup>17</sup> See World Health Organization, *Maternal Mortality*, (Feb. 22, 2023), <https://www.who.int/news-room/factsheets/detail/maternal-mortality>.

based on Otto's clean record in the U.S. and El Salvador, that they would soon return with a visa for Otto in hand. She never imagined she would be gone for several months, during which Otto was interviewed twice and questioned extensively about whether he had any gang affiliations. Still, the couple assumed there must be some mistake and thought it would all be worked out in time and Otto would be granted a visa. They were devastated when, instead, Otto received a denial notice, which cited only the general "Security and Related Grounds" of inadmissibility without any further details.

As her bills started to mount up and her position at the preschool was at risk because of her extended leave, Sloane made the difficult decision to return to the United States without Otto. The resulting financial strain forced Sloane to give up the couple's apartment and move in with her parents, and to give up on her dream of becoming a licensed preschool teacher in favor of a job with better benefits and pay.

The couple now see each other only occasionally when Sloane can save enough money and take time off work to visit Otto in El Salvador, a country that the State Department warns Americans to reconsider visiting due to crime.<sup>18</sup> Sloane fears that they will never be able to start their family and she suffers from severe Major Depressive Disorder due to the stress her separation from Otto has caused.

---

<sup>18</sup> U.S. Dep't of State, *El Salvador Travel Advisory* (July 17, 2023), <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/ElSalvador.html>.

*Iman Achkar.* Iman Achkar is a U.S. citizen born in Madison, Wisconsin, and a Ph.D student with the dream of one day being an oncology researcher at one of the well-known medical institutions in Boston. While she was working as a cancer research specialist with Weill Cornell Medical College in Qatar, she met Walid Ajaj, a graduate of the Lebanese American University and a bank worker who, like her, had traveled extensively around Europe. Iman and Walid got along well, and they were soon engaged. Although COVID delayed their wedding plans, they were married in September 2020.

Iman planned to return to the United States as soon as her Ph.D was complete, and Walid agreed it would be best to raise their future children there. The couple started the visa process. At the consular interview in October 2021, soon after the birth of the couple's first daughter, the officer requested that Iman submit a letter of resignation from her position as evidence of the couple's "intent to immigrate." Iman submitted a resignation letter to her employer the following month as instructed. Although Walid's visa had not issued yet, Iman booked a flight to return to the United States in June 2022.

But shortly before the planned trip, Walid received an email from the consular officer, denying his visa citing INA § 212(a)(3)(B), with no other explanation. Neither Iman nor Walid had employment at this point, and they had an infant daughter to support. Unsure of how to proceed, Iman took the scheduled flight with her daughter but without Walid. Iman and her daughter moved into her grandmother's home in Madison, and Iman sought out work. The

separation was difficult for the family, even with occasional visits to Qatar.

In March 2023, Iman found out that she was pregnant with the couple's second child. Iman was excited about their growing family, but the strain of being a single parent in a long-distance relationship was wearing on her. After she and her daughter traveled to Qatar to spend time with Walid prior to the delivery, Iman suffered a second trimester miscarriage that required her to receive a medical abortion. The couple arranged a funeral for their second child – a loss that they trace back to the distress and grief that the consular officer's denial imposed on the family.

Iman is now pregnant again and planning to return to the United States with the couple's now two-and-a-half-year-old to give birth. But without her husband by her side, she worries about who will care for their daughter and support her during and after the delivery. The couple remains confused about the visa denial given Walid's ability to secure visas to other countries, including European destinations.

### **III. Consular Officer Visa Denials Interfere with a U.S. Citizen's Right to Make Childrearing Decisions and Harm U.S. Citizen Children.**

The Due Process Clause protects the sacrosanct right of parents to “establish a home and bring up children” without undue interference from the state. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *see also Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (“It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary

function and freedom include preparation for obligations the state can neither supply nor hinder.”). U.S. citizens prevented from cohabitating with a noncitizen spouse by a consular visa denial experience interference in virtually every aspect of family life.

A consular officer’s denial of a visa to a noncitizen spouse impacts the entire family. The resulting family separation can impact a family’s financial situation as well as the health and emotional well-being of all family members. The financial hardship imposed by maintaining two households and the lost income of the noncitizen spouse can lead to housing instability and shortages of basic necessities.<sup>19</sup>

Impact of family separation is particularly acute for children.<sup>20</sup> Separation from a parent can result in “toxic stress,” the “long-term effects of [which] \* \* \* can include anxiety, PTSD, and depression.”<sup>21</sup> Young children who are separated from a parent can develop an insecure attachment with the missing parent, “[t]he ramifications of [which] are typically long term”

---

<sup>19</sup> See Randy Capps et al., *Implications of Immigration Enforcement for the Well-Being of Children in Immigrant Families: A Review of the Literature*, Urban Institute & Migration Policy Institute (Sept. 2015), <https://www.migrationpolicy.org/research/implications-immigration-enforcement-activities-well-being-children-immigrant-families>.

<sup>20</sup> See, e.g., *id.* at 9 (“Children separated from their parents are more likely to report depressive symptoms than children who have not experienced separation.”).

<sup>21</sup> See Sue Coyle, MSW, *Children and Families Forum: The Impact of Immigrant Family Separation*, 18 SOCIAL WORK TODAY, no. 5, Sept./Oct. 2018 at 8, <https://www.socialworktoday.com/archive/SO18p8.shtml>.

and may include “difficulty tolerating stress, poor control of anger, [and] difficulty maintaining stable relationships.”<sup>22</sup>

As the stories below illustrate, a visa denial can result in traumatic separations, causing fear, anxiety, and sadness. When families make frequent trips abroad or relocate permanently to be reunited, family members may experience harm from inadequate medical care, and children endure disruptions that affect their education.

*Sara.\** When Sara was a child, she and her parents fled persecution in Afghanistan and came to the United States as refugees. Sara became a U.S. citizen and grew up in Tucson, Arizona. She trained as a phlebotomist and began working in a local hospital. Sara met her now-husband, *Ali,\** at a family wedding in Pakistan and the two fell in love and were married in 2014. Ali is a well-respected doctor in Lahore, Pakistan, where he has been practicing medicine for over ten years. Desiring to start a family together in the United States, Sara quickly applied for an immigrant visa for Ali, who was interviewed at the U.S. Embassy Islamabad in 2015.

After three years awaiting a decision, the couple received notice that Ali’s visa was denied. The denial notice cited only the broad “Security and Related Grounds” inadmissibility provision without any additional detail. The couple believes the denial may be due to misidentification: when Ali’s family members return to the United States after travel abroad, they have been questioned about someone

---

<sup>22</sup> See *id.*

they do not know who shares the same name as Ali and purportedly resides in Tucson, Arizona. Ali has never been to the United States.

As a result of the visa denial, Sara has spent their almost ten-year marriage split between two homes: her home in Arizona where she prefers to raise their four children, and Pakistan, the only place the family can currently be together. After the birth of each of their first three children, Sara packed up the family's belongings in Arizona and returned to Pakistan so the children could meet their father.

The decision to continue traveling back to Pakistan—a country that the State Department warns American citizens to reconsider visiting due to terrorism and kidnapping<sup>23</sup>—is difficult each time, and the couple's children fear living there. Their eldest child hates attending school in Pakistan, where she has been bullied because she is an American. The couple decided to send their daughter to private school because incidents of children being kidnapped from school for ransom are common in Pakistan and they feel it is unsafe for their children to attend public school.

The couple's third daughter was born with a serious medical condition requiring frequent hospitalizations. In one scary incident, she developed pneumonia and febrile seizures in Pakistan. They immediately brought her to the hospital, but they were turned away because there were no available beds in the ICU. Instead, Sara and her husband cared

---

<sup>23</sup> See U.S. Dep't of State, *Pakistan Travel Advisory* (June 23, 2023),

<https://travel.state.gov/content/travel/en/traveladvisories/travel-advisories/pakistan-travel-advisory.html>.



for their daughter at home, relying on his medical knowledge and access to medical equipment.

Despite all the challenges of living in Pakistan, Sara is still considering moving her family there again because the prospect of permanent separation from Ali is far worse. When the couple's third child was again hospitalized for two weeks in Arizona last fall, Sara faced the heart-wrenching decision to leave her then-two-year-old in the hospital without a parent because she did not have anyone who could care for her then-infant son. Incidents like these have taken a toll on Sara and she suffers from depression, which at its lowest point caused her to consider taking her own life. Ali and Sara hate the idea of uprooting their children from their lives in the United States and subjecting them to the difficulties and dangers of life in Pakistan, but if Ali is unable to secure a visa to the United States, they fear they will have no choice.

*Mark Stancil.* Mark is a U.S. citizen and an army veteran who met his current wife, Deborah, on a dating site for Christians over a decade after his first wife passed away. Deborah is a Kenyan citizen and a fellow committed Christian who had previously been to the United States on a State Department organized trip for Kenyan entrepreneurs. After corresponding online for months, they decided that they wanted to build a life together. Mark traveled to Kenya where they celebrated a church wedding in 2018 and began the visa process for Deborah and her daughter (now Mark's stepchild).

As Mark did not have a way to support their family if he left his job at a Ford factory in Missouri, he remained separated from Deborah and her daughter

while they waited for visa processing. He traveled to Kenya twice a year to see them, and in March 2020, Mark and Deborah welcomed their own daughter.

They did not expect what happened next: after years of waiting, in 2023 the State Department issued a visa to Mark's 10-year-old stepdaughter but not to Deborah. A congressional inquiry on Mark's behalf revealed that the consular officer was accusing Deborah of misrepresenting her marital status in an earlier visa application to the United States.

Faced with an expiring visa for Mark's stepdaughter, the couple made the heart wrenching decision to have her move to Missouri without her mother. The couple decided that their four-year old child, though a U.S. citizen through her father, should remain with Deborah in Kenya given her young age. The four-year old now asks why her father has left her in Kenya while taking her sister.

Mark cannot move to Kenya as he would have no way to support his family financially or pay off outstanding loans. He also wants to continue living near his other children and grandchildren in the United States. The family has been financially and emotionally strained because of the separation, and all they want is to be allowed to live together.

*Ana.\** Ana is a U.S. citizen who grew up in the Los Angeles area. She met her future husband, *Alberto,\** in 2003 at a local fundraiser for a community in Michoacan, Mexico, where both of their families are from. She noticed that Alberto was charismatic and kind. As they began to spend time together, she fell in love with the way Alberto always made her laugh.

Ana and Alberto started dating and got married in 2007. A few years later, they had their first son. They did not have a lot of money back then, but they were happy: they lived close to Ana's family and participated actively in their church community. Alberto supported Ana so that she could obtain a degree in speech therapy and disability. They looked forward to having more children.

In 2014, once Ana and Alberto achieved more financial stability, they decided to try to regularize Alberto's status in the United States through the I-130 petition process. After receiving a waiver of unlawful presence from USCIS, the couple traveled to Ciudad Juarez with their four-year-old son for the consular interview. They expected to be home in a few days.

Ana was devastated when Alberto walked out of the consular interview with a notice of denial. With nowhere else to go together, the family flew to Michoacan to consider their next steps. But within a week, Ana had to return to work in the United States with their son, leaving Alberto behind.

Back in the United States without Alberto, Ana could no longer afford the family's apartment, so she and their son had to move in with her family. Ana's son, who had never been away from his dad until then, was inconsolable: he held a picture of his dad and cried for days, developing acute separation anxiety.

Eventually, Alberto decided to cross the border again to be with his family as it would not be safe for Ana and their son to move to Michoacan where violence and kidnappings are rampant and the State Department warns Americans not to travel due to

crime and kidnappings.<sup>24</sup> In fact, a few years ago, Alberto's father disappeared, and the family still does not know where he is.

Because of the consular officer's decision to deny Alberto a visa, Ana and their children live every day scared for the future. The couple's eldest child, now a teenager, is constantly afraid that his father could be deported at any time, but the family feels they do not have another option. In Mexico, Ana would not have the support of her family, would not be able to continue her career, and – most importantly – would not be able to secure health care for the couple's youngest son, who has a critical heart condition.

*Sam.\** Sam is a U.S. veteran who served in Kuwait and Iraq and is currently in federal service with the U.S. Customs and Border Protection. He has been married for almost a decade to a Mexican woman who was denied a visa to live with him in the United States because she had once entered unlawfully at a port of entry as a juvenile. They have a U.S. citizen child together who has autism.

Sam cannot live with his family in Mexico due to the requirements of his federal service, so his wife and child live across the border in Mexicali where he tries to visit them twice a week – not at all the same as leading a life together. He is not able to be there for his wife to help take care of their child and he misses

---

<sup>24</sup> See U.S. Dep't of State, *Mexico Travel Advisory*, (Aug. 22, 2023), <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>.

many special occasions. Sam's wife struggles to meet their child's needs within the Mexican education system, which does not offer the same support for autistic children that would be available in the United States.

*Celenia Gutierrez.* U.S. citizen Celenia Gutierrez met her future husband Isaias Sanchez Gonzalez when they were both teenagers, at a quinceañera party in the Los Angeles neighborhood where their families lived. Soon, they were inseparable. Celenia moved in with Isaias and they had their first child. Isaias supported Celenia while she finished high school and college and studied to become a nurse, and they eventually had two more children. Over the years, Isaias spent his time with the kids, planned family camping trips, and coached his sons' soccer teams.

After almost 15 years of raising a family together, Celenia and Isaias decided that it was time to marry and to formalize Isaias's status in the United States. Isaias obtained a waiver of unlawful presence and traveled to Ciudad Juarez, Mexico for an interview in January 2016 for what the family thought would be a short trip. Isaias had no criminal record and no reason to believe that he would have a problem obtaining a visa. Yet when the consular officer saw his tattoos – tattoos personal to him like the Virgin Mary and Aztec symbols for his Mexican heritage – the officer denied his visa based on INA § 212(a)(3)(A)(ii).

The family has not lived together since January 2016. When Celenia realized that Isaias would not return home, she was distraught. She struggled to support the family financially while being present for

her three children. She often worked night shifts until 11pm or even 4am, missing parent-teacher conferences and the kids' sports games. Her second son quit playing soccer, shut down, and began having behavioral problems at school. Her oldest son remained stoic but broke down before his graduation from high school, crying to Celenia that he felt like he has had to be the man of the household. Celenia and Isaias's family has been destroyed by a single consular officer's erroneous decision that Isaias's tattoos indicated criminal activity.

*Karina Rivera.* Karina Rivera and Jimmy are high school sweethearts. After they had their first son in 2003, they decided to get married. They wanted to provide a better life for their son and buy a home, but Jimmy's lack of immigration status made it difficult for him to obtain a well-paying job. In 2011, they started the process to secure Jimmy's immigration status.

After USCIS approved Karina's petition and a waiver of unlawful presence, Jimmy traveled to El Salvador for his visa interview. During the interview, the consular officer brought him to a room, told him to undress, and examined his tattoos—which include drawings of his family members, fish, and the phrase that appears on the Salvadoran flag, “God, union, liberty.” Jimmy has always liked tattoos and considers them a form of expression. He never dreamed that his tattoos would prevent him from obtaining a visa to be reunited with his family in the United States, but that seems to be what happened. A consular officer denied Jimmy's visa application citing only INA § 212(a)(3)(A)(ii) without further

explanation. The couple believe the tattoos were the reason, given the consular officer's extensive questioning about them. Attempts to have this decision reviewed were unsuccessful, leaving Jimmy stranded in El Salvador, and Karina alone to parent their son in the United States.

The family endured almost four years of separation because of the visa denial. With Jimmy no longer able to contribute to the family's finances, Karina and their son had to move in with Karina's mother, which forced her son to change schools three times. This compounded the trauma their son experienced after suddenly losing his father, with whom he was very close. During the years he lived in El Salvador, Jimmy was repeatedly targeted by Salvadoran gangs and the Salvadoran police, beaten severely, and robbed. Fearing for his life, he made the difficult decision to return to the United States. At the border, he received a positive credible fear determination and was released on bond to pursue his asylum claim.

Since that time, Karina and Jimmy have welcomed two more sons to their family and they have done their best to build a secure future for their children. But Karina lives in constant fear that someday Jimmy could be forced to return to El Salvador, leaving her sons, once again, fatherless. She feels this is something no child should have to experience, but should Jimmy be forced to leave the United States, Karina fears they would be unable to join him because it is not safe to raise their sons in El

Salvador, where Jimmy has already faced targeting by criminal gangs.<sup>25</sup>

*Anna Kathleen Alberto.* Anna was born in Norristown, Pennsylvania. She met her now-husband, Noe, while salsa dancing with her friends. The couple was married at Anna's grandparents' house and soon welcomed their son. The delivery was difficult and when Anna had to deliver via emergency cesarean, Noe was by her side, whispering wonderful, uplifting things in her ear the entire time. Due to complications of the surgery, Anna faced a long recovery and Noe was the primary caretaker of their newborn son, forever cementing the strong bond that they share.

Tiring of the constant fear over whether Noe might be deported, the couple elected to try to regularize his status. Anna's I-130 petition and a waiver for unlawful presence were both approved and Noe appeared for his visa interview in Honduras. But much to their dismay, Noe's visa was denied due to a 5-year immigration bar, requiring him to wait that period outside of the United States before his visa application can be reconsidered.

Anna took a leave of absence from her job as a kindergarten teacher and traveled to Honduras with their son. She hoped to be able to stay with Noe for as long as possible, but the hardships they faced living in Honduras, including health issues and persistent

---

<sup>25</sup> See also U.S. Dep't of State, *El Salvador Travel Advisory*, (July 17, 2023), <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/el-salvador-travel-advisory.html> (advising U.S. citizens to reconsider travel to El Salvador due to crime).



worry over the security situation, forced them to leave after about one year.

Even though Noe has passed the 5-year waiting period, the couple has been unable to get the U.S. Embassy in Honduras to reconsider the prior visa denial. Though separated by thousands of miles, Noe does his best to continue to be involved in his family's life, such as by joining parent-teacher conferences virtually. Anna and their son try to visit Noe for short periods during the summer, in between summer school sessions that Anna teaches to increase the family's income. It has been difficult for her to support the family and send money to Noe, who can only find work in Honduras infrequently, particularly as she faces mounting debt including student loans from her master's studies. Their continued separation has not only imposed financial strain on the family but also takes an emotional toll—their son, now in fourth grade, still wakes during the night crying for his father.

*Matthew Bryan.* A proud fifth generation Kansan, Matthew Bryan grew up on the farm where his family has lived since the 1880s. He is a chemical engineer and has been employed with the same oil and gas company since 1997. His work has taken him around the world, including to Mexico, where he met his wife, Minerva. The couple married in 2010.

In 2011, Matthew's company offered him the role of V.P. of Personnel for North America. Matthew could not imagine taking the position without his wife by his side, so he applied for an immigrant visa for Minerva to join him in the United States. Unfortunately, Minerva's visa was denied because as

a juvenile she had once mistakenly identified herself as a U.S. citizen to a border official—an error she corrected when the officer began asking her questions in her native Spanish language.

Matthew declined the North America position and instead took a role in the Caribbean so he and Minerva could remain together. As a result of the visa denial, he has missed out on job opportunities and career advancement. Houston is the hub of the oil and gas industry, but Matthew cannot work there without being separated from Minerva.

The couple now live in Canada and are parents to two U.S. citizen children (ages 7 and 5). Their son is autistic, non-verbal, and requires constant care, but Matthew and Minerva have no extended family in Canada to support them in caring for him. Matthew wishes they could all live in the country his family has called home for generations. Instead, they are forced to live abroad.

## CONCLUSION

For the reasons provided by Respondents and the reasons given above, this Court should affirm the decision below and find that a consular officer's visa denial implicates a U.S. citizen's due process rights, giving rise to certain minimum procedural protections.

29

Respectfully submitted,

Melissa S. Keaney

*Counsel of Record*

Mariko Hirose

Melissa Fich

INTERNATIONAL REFUGEE

ASSISTANCE PROJECT

One Battery Park Plaza,

33<sup>rd</sup> Fl.

New York, NY 10004

(916) 546-6125

mkeaney@refugeerights.org

*Counsel for Amici Curiae*