No. 23-334

In the Supreme Court of the 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

Amicus Curiae Brief of HIAS Inc. in Support of Respondents and Affirmance

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BRIEF OF AMICUS CURIAE

Amicus HIAS Inc. submits this brief supporting Respondents Sandra Muñoz et al.[1]

INTEREST OF AMICUS CURIAE

Amicus HIAS Inc. was founded in 1902 to support Jews fleeing pogroms in Central and Eastern Europe and is the oldest refugee-serving organization in the United States. After 100 years of protecting Jewish refugees, HIAS began assisting and advocating for refugees of all backgrounds in the 1980s. Although most of the people HIAS serves today are not Jewish, serving them is an expression of Jewish values such as *tikkun olam* (repairing the world) and welcoming and protecting the stranger. Today, HIAS provides services to refugees, asylum seekers, and other forcibly displaced populations regardless of their national, ethnic, or religious background in more than 20 countries, including the United States. In the U.S., HIAS provides legal services to those who have fled violence, persecution, and torture, helping them secure humanitarian legal status and keep their families united through reunification.

SUMMARY OF ARGUMENT

The "strong tradition" of marriage and family is founded on "the history and culture of 'Western civilization'" that "is now established beyond debate

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[1] No counsel for a party authored this brief in whole or in part. No person or entity other than Amici, their members, or counsel made a monetary contribution for preparation or submission of this brief.

as an enduring American tradition." *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972). This is evident when examining 150 years of this Court's jurisprudence and by examining the intent of Congress over the last 140 years as it crafted what would become modern immigration law.

Congress crafted laws such as the Immigration and Naturalization Act (the "INA") with an eye toward prioritizing family unity. Congress did not leave us to guess at their intentions; rather, Congress told us so in the clearest language possible: "American immigration law should be based upon a desire for pursuing the time-honored American tradition of encouraging family unity." 136 Cong. Rec. 36,838 (1990). To that end, the INA provides avenues for foreign-born families to immigrate together, and mixed immigration-status families to reunite and live in the United States together.

However, when the spouse of a U.S. citizen is denied a visa, without any reasoned explanation or the ability to correct an erroneous determination, the United States has not only turned its back on the core value of family unity, but has also denied that U.S. citizen her fundamental right to due process. And the results of that denial are heartbreaking: the U.S. citizen faces the impossible choice of either moving to another country to live with their spouse, thereby forfeiting their right to live in the country of their citizenship, or remaining in the United States and giving up their right to live in unity with their family. This choice is especially acute for U.S. citizens who are former refugees or asylees because they may not be able to return to their home country and live with their spouse due to the risk of harm,

persecution, or torture that forced them out of their home country.

We therefore urge this Court to recognize the fundamental constitutional values at the heart of this case and to continue in its tradition of issuing decisions that uphold the sanctity of marriage and family unity by recognizing that a U.S. citizen spouse has a due process right to notice regarding a consular decision to deny a non-citizen spouse a visa, so that they are meaningfully able to seek review.

ARGUMENT

I.
U.S. Citizens Have a Due Process Right to Family Unity, and Must Be Afforded an Opportunity to Challenge a Spouse's Immigrant Visa Denial.

The core values of marriage and family unity are threads that weave throughout the laws of the United States, including immigration law. The United States provides opportunities for couples and families to remain unified as they immigrate to the United States, giving families the chance not just to live in safety, but to live in safety *together*. But when only one spouse holds U.S. citizenship and the other is denied a rational justification for their denied entry into the U.S., due process dictates that the U.S. citizen have notice of the reasons for such denial and the opportunity to challenge the denial.

A. The Right to Maintain Family Unity Is Deeply Rooted in the History and Tradition of the United States.

This Court has reiterated, over at least 150 years, that marriage is "more than a routine classification for purposes of certain statutory benefits." *United States v. Windsor*, 570 U.S. 744, 769 (2013). It is "the most important relation in life," "ha[s] more to do with the morals and civilization of a people than any other institution," *Maynard v. Hill*, 125 U.S. 190, 205 (1888), and is "fundamental to the very existence and survival" of the human race, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942). "This Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause." *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639-40 (1974).

In fact, this Court has repeatedly affirmed that "[m]arriage is one of the 'basic civil rights of man'" and that marriage is a fundamental right guaranteed by due process. *Loving v. Virginia*, 388 U.S. 1, 12 (1967) (quoting *Skinner*, 316 U.S. at 541); *cf. Lawrence v. Texas*, 539 U.S. 558, 574 (2003); *M.L.B. v. S.L.J.*, 519 U.S. 102, 116 (1996); *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992); *Zablocki v. Redhail*, 434 U.S. 374, 384 (1978); *Yoder*, 406 U.S. at 232; *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965); *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534-35 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923). Marriage is a fundamental right in part because it is "intimate to the degree of being sacred." *Griswold*, 381 U.S. at 486. The right reflects a "strong tradition" founded on "[t]he history and culture of Western civilization" that "is now

established beyond debate as an enduring American tradition." *Yoder*, 406 U.S. at 232.

A natural corollary to the value placed on marriage is that family unity is also a fundamental value, and is protected by the Constitution. In *Stanley v. Illinois*, 405 U.S. 645, 651 (1972), this Court recognized the right to unity within families headed by unmarried fathers, observing that "[t]he integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment." And in *Moore v. City of East Cleveland*, 431 U.S. 494, 495-96, 498 (1977), this Court struck down an ordinance that "limit[ed] occupancy of a dwelling unit to members of a single family," defined as people "related by 'blood, adoption, or marriage,'" which consequently prohibited a grandson from living with his grandmother. This Court stated:

> Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural.

Id. at 503-04.

This Court's caselaw makes clear that the sanctity of family unity, in addition to the fundamental human right to marriage, serves as a foundational constitutional principle.

B. Congress Intended for Family Unity to Be a Cornerstone of U.S. Immigration Law.

Although the history of immigration to the United States predates the country's founding, our federal immigration policies have historically prioritized family unity. In 1889, the Supreme Court declared that Congress had plenary power over immigration. *Chae Chan Ping v. United States*, 130 U.S. 581, 609 (1889). As soon as Congress began to exercise this power, family unity underscored its debates and its eventual enactment in immigration policies.

For example, early immigration regulations enacted between 1875 and 1917 prohibited "convicts, prostitutes, persons with contagious diseases, and persons who were illiterate."[2] However, "male citizens and male resident aliens were given the right to have exemptions from some of these exclusion grounds made for their alien wives."[3] A 1903 statute provided that certain residents could have their immigrant wives admitted to the United States even if they had a contagious disease, as long as it was curable or non-dangerous.[4] In designing

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[2] Janet M. Calvo, *Spouse-Based Immigration Laws: The Legacies of Coverture*, 28 San Diego L. Rev. 593, 601 (1991), available at https://niwaplibrary.wcl.american.edu/wp-content/uploads/Spouse-Based-Immmigration-Coverture.pdf.

[3] *Id.*

[4] *Id.*; Act of March 3, 1903, Pub. L. No. 162, § 37, 32 Stat. 1213, 1221 (1903), available at https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/32/STATUTE-32-Pg1213.pdf.

federal immigration policies, Congress clearly expressed its view that family togetherness superseded other legitimate concerns relating to immigration (such as public health and safety) and that preserving family unity was of the utmost importance.

Beginning with the Emergency Quota Act of 1921, Congress exempted immediate relatives from quota admissions and passed the "first American immigration law that substantially emphasized family-based migration over economic immigrants."[5] The Immigration Act of 1924, also known as the National Origin Act, refined the system that was established with the Emergency Quota Act and formally categorized wives and children as non-quota admissions, effectively exempting them from various caps on quota.[6] Under the 1924 Act, non-quota immigrants entering as spouses and unmarried children of quota immigrants were one of the three major groups eligible to immigrate to the United States.[7]

Notably, the 1924 Immigration Act was the first time that Congress required the prescreening of immigrants at embassies and consulates abroad and implemented a visa system, an antecedent to today's

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[5] Andrew M. Baxter & Alex Nowrasteh, *Policy Analysis No. 919: A Brief History of U.S. Immigration Policy from the Colonial Period to the Present Day*, CATO Institute (Aug. 3, 2021), available at https://www.cato.org/policy-analysis/brief-history-us-immigration-policy-colonial-period-present-day.

[6] *Id.*

[7] *Id.*

modern policies.[8] Even with the highly restrictive quota system based on national origin, introduction of consular review outside of the United States, and a visa system, Congress still exempted wives and children from these admission policies, signaling just how important family unity was considered to be, regardless of mixed-immigration status.[9]

Indeed, the legislative history of the INA reveals that Congress unequivocally intended for "family reunification [to be] the cornerstone of U.S. immigration policy."[10] Moreover, the current structure of the INA prioritizes family unity. Specific provisions allow U.S. citizens and Lawful Permanent Residents to file petitions to afford their foreign-born family members the opportunity to immigrate to the United States. *See* 8 U.S.C. §§ 1151(b)(2)(A)(i) ("children, spouses, and parents of a citizen of the United States" are "not subject to the worldwide levels or numerical limitations" of the INA), 1153(a)(1)–(4) (outlining "preference" for allocating visas to more distant, yet still related, family members of U.S. citizens and Lawful Permanent Residents, including married and unmarried children over the age of 21, and brothers and sisters). The Refugee Act of 1980 similarly provides a pathway for refugees and asylees to petition for their spouses and unmarried minor children to join them in the United States and allow the family to rebuild their lives in safety and

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[8] Baxter & Nowrasteh, *supra* note 5.

[9] Immigration Act of 1924, Pub. L. 68-139, 43 Stat. 153, (1924).

[10] 136 Cong. Rec. 36,840 (1990).

security, together. Pub. L. No. 96-212, 94 Stat. 102 (1980).

In addition, the INA offers a significant number of immigrant benefits that are dependent upon marital status, and judges the veracity of that relationship in part by whether the family members reside together. A U.S. citizen or a Lawful Permanent Resident who is seeking to petition for an immigration benefit for their spouse must first prove that their marriage is bona fide by "clear and convincing evidence." 8 C.F.R. § 204.2(a)(i)(A)(1). To that end, USCIS provides examples of documentation that can be submitted to prove the existence of a "good faith" marriage by "clear and convincing evidence," including documentation showing "*joint* ownership of property," a "lease showing *joint* tenancy," and "combined [] financial resources."[11] Thus, the government itself recognizes that living together is a crucial element of a familial or marital relationship, so much so that it requires proof that a couple cohabitates before finding that the relationship is bona fide.

Some immigration benefits related to spousal naturalization are not even available to immigrants unless the immigrant proves that they "liv[e] in marital union" with their citizen spouse. 8 C.F.R. § 319.1(a)(1)(3). Marital union exists "if the applicant *actually resides* with his or her current spouse." 8 C.F.R. § 319.1(b) (emphasis added).

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[11] United States Citizenship and Immigration Services, *Instructions for Form I-130* (2021), available at https://www.uscis.gov/sites/default/files/document/forms/i-130instr.pdf.

Thus, maintaining "family unity … represent[s a] well-known goal[] of the INA." *Sook Young Hong v. Napolitano*, 772 F.Supp.2d 1270, 1278 (D. Haw. 2011). The legislative history of the INA shows that Congress "was concerned with the problem of keeping families of United States citizens and immigrants united." *Id.* (*citing* H.R. Rep. No. 1199, 85th Cong., 1st Sess., 7 (1957), *reprinted in* 1957 U.S.C.C.A.N. 2016, 2020).[12]

C. Courts Employ Due Process Principles to Achieve the Goal of Unified Families.

In order to support family unity, courts have applied due process principles to ensure constitutional protections afforded to marriage and

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[12] Further, "[t]he intent of the Act is plainly to grant exceptions to the rigorous provisions of the 1952 Act for the purpose of keeping family units together. Congress felt that, in many circumstances, it was more important to unite families and preserve family ties than it was to enforce strictly the quota limitations or even the many restrictive sections that are designed to keep undesirable or harmful aliens out of the country." *INS v. Errico*, 385 U.S. 214, 220 (1966) (interpreting Section 241(f) of the 1957 INA, 75 Stat. 655 (1961), 8 U.S.C. § 1251(f), addressing the deportation of non-citizens who are the spouse, parent, or child of a U.S. citizen).

Moreover, multiple Circuits have recognized that the right to immigration benefits based on marriage can flow to an immigrant spouse even when their U.S. citizen spouse dies. *See e.g., Neang Chea Taing v. Napolitano*, 567 F.3d 19, 31 (1st Cir. 2009) (holding that a surviving immigrant spouse qualifies as an "immediate relative" if deceased U.S. citizen spouse files an I-130 and dies before the interview); *Lockhart v. Napolitano*, 573 F.3d 251, 255 (6th Cir. 2009); *Freeman v. Gonzales*, 444 F.3d 1031, 1043 (9th Cir. 2006).

family in cases involving mixed-immigration-status families. In *Hernandez Castro v. Mayorkas*, for example, the Eastern District of Washington found that the plaintiff, a U.S. citizen spouse, had a procedural due process claim to challenge the consular officers' denial of her immigrant husband's visa. No. 2:21-CV-00315-SAB, 2022 WL 1085682, at *11 (E.D. Wash. Apr. 11, 2022). The court concluded that the agency's "plainly [] facially legitimate reason" for the denial was not, in fact, "bona fide" because the agency "failed to consider a key factor that may have affected th[e] ground of inadmissibility" in adjudicating the claim. *Id.* Unlike the Respondents here, the plaintiffs in *Hernandez-Castro* had received a factual basis for the written denial, which enabled them to meaningfully challenge the denial. Here, Respondents' written notice included no specific facts underlying the denial, so they were wholly deprived of the ability to meaningfully challenge the denial of the visa because the consular office's decision did not sufficiently provide a "legitimate and bona fide reason." *See* Resp't's Br. 6-7.

The protections of the Due Process Clause do not disappear merely because the family unit includes someone who is not a U.S. citizen. *See, e.g.*, *Duarte-Ceri v. Holder*, 630 F.3d 83, 90 (2d Cir. 2010) ("It is consistent with Congress's remedial purposes … to interpret the statute's ambiguity … in a manner that will keep families intact."); *Bustamante v. Mukasey*, 531 F.3d 1059, 1062 (9th Cir. 2008) (U.S. citizen married to non-citizen had "protected liberty interest in her marriage that g[ave] rise to a right to constitutionally adequate procedures in the

adjudication of her husband's visa application," in part, because "[f]reedom of personal choice in matters of marriage and family life is, of course, one of the liberties protected by the Due Process Clause"); *Mufti v. Gonzales*, 174 F. App'x 303, 306 (6th Cir. 2006) ("Congress's intent is clear: family unification is one of the highest goals of our immigration law."); *Solis-Espinoza v. Gonzales*, 401 F.3d 1090, 1094 (9th Cir. 2005) ("The [INA] was intended to keep families together" and "should be construed in favor of family units."); *Ms. L. v. U.S. Immigr. & Customs Enf't*, 302 F. Supp. 3d 1149, 1167 (S.D. Cal. 2018) (recognizing "constitutional right to family integrity"); *Myres v. Rask*, 602 F. Supp. 210, 213 (D. Colo. 1985) (acknowledging this Court's "consistent recognition of a constitutionally protected right to family association"). As the District Court recognized, the fundamental right of the U.S. citizen spouse indeed extends to a process that involves her non-citizen spouse.

Because the fundamental right to family unity is implicated, and given Congress's intent to prioritize immigration pathways for families to reunify or stay together, the process by which U.S. agencies adjudicate requests for immigration benefits must comport with the Fourteenth Amendment, and provide relevant parties sufficient notice regarding the basis of any denial.

II.
Given the Fundamental Rights at Stake and Other Harms that a U.S. Citizen May Face, Due Process Requires a Meaningful Chance to Engage in Review of an Unfavorable Decision.

Immigration policies that frustrate family unity and do not allow for meaningful understanding regarding the basis for a foreign national family member's immigrant visa denial cause serious harm, not only to the foreign national family member who is prevented from entering the United States, but also to the U.S. citizen family members who are then forced to choose between their life in the United States or the preservation of their family unit. Given the fundamental rights at stake, as well as other serious harms that a U.S. citizen family member may face if they had to relocate outside of the U.S., due process requires that the family be provided with notice of the basis for the denial and an opportunity to respond and attempt to overcome it.

A. The Marriage and Liberty Interests of U.S. Citizens are Harmed When They Are Forced to Choose Between Family Unity and Their Country.

A denial of a foreign national spouse's pathway to family reunification in the United States, without sufficient notice or an opportunity to respond to the basis of the denial, frustrates the citizen-spouse's right to procedural Due Process. The Due Process Clause "shelters" "[c]hoices about marriage, family life, and the upbringing of children" from the

Government's unwarranted usurpation, disregard, or disrespect." *M.L.B.*, 519 U.S. at 116. "The right to live with and not be separated by one's immediate family is 'a right that ranks high among the interests of the individual' and that cannot be taken away without procedural due process." *Ching v. Mayorkas,* 725 F.3d 1149, 1157 (9th Cir. 2013) (quoting *Landon v. Plasencia,* 459 U.S. 21, 34-35 (1982)). Common law also recognizes that individuals suffer a unique harm when they lose their connections to their family members. *See, e.g.*, Restatement (Second) of Torts § 693 cmt. f (1977) ("loss or impairment of the other spouse's society, companionship, affection and sexual relations" is a cognizable harm).

The precise contours of due process are not "fixed" or "unrelated to time, place and circumstances," but rather are "flexible" and "call[] for such procedural protections as the particular situation demands." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (internal quotation marks omitted). When considering what level of process is due in a specific situation, this Court "requires consideration of three distinct factors": (1) "the private interest that will be affected by the official action," (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards," and (3) "the Government's interest, including" the "burdens that the additional or substitute procedural requirement would entail." *Id.* at 334-35. The private interest here—the right to preserve one's marriage by residing together—and

the harm that would flow from an erroneous deprivation are both of profound importance.

Denying a visa to a U.S. citizen's spouse without recourse for review necessarily infringes upon the citizens' liberty interest in marriage because it prevents them from establishing a family life *together* in the United States. In denying a married couple the right to be together, the government "fail[s] to appreciate the extent of the liberty at stake." *Lawrence*, 539 U.S. at 567. Cohabitation forms an essential part of the marital relationship, and married couples should be able to build their lives together in the same home, even when one spouse is a foreign national.

Moreover, married couples have a constitutionally protected liberty interest that "gives substantial protection to adult persons in deciding how to conduct their private lives in matters pertaining to sex." *Id.* at 572.

U.S. citizens also possess a liberty interest in residing in their country of citizenship. *See, e.g., Agosto v. INS*, 436 U.S. 748, 753 (1978); *Ng Fung Ho v. White*, 259 U.S. 276, 284-85 (1922). Respondents correctly point out that the right of citizenship cannot be restricted or diluted at the will of the Government. *See* Resp't's Br. 35. Although the denial of a visa to an immigrant-spouse of a U.S. citizen does not represent the government's denial of the existence of their marriage, it does represent an extremely difficult choice for the U.S. citizen-spouse as to whether they choose to live in the United States with all of the benefits, rights, and privileges that citizenship affords, or leave those comforts to move

to another country where "both individuals are permitted to reside." *Kerry v. Din*, 576 U.S. 86, 101 (2015). This is not a theoretical concern for the Respondents—the Government has already determined in approving Respondents' provisional waiver of inadmissibility, that requiring Muñoz to choose between living with her husband or leaving the United States would result in "extreme hardship" to her. Resp't's Br. 36.

Again, when State Department consular officers deny an immigrant visa without adequate notice of the basis of the denial, and therefore without meaningful opportunity to overcome that denial, U.S. citizens are forced to choose between *either* preserving their right to family unity (by leaving the United States and relocating abroad with their foreign national spouse) or their right to enjoy the "privileges and immunities" of citizenship (by staying in the United States without their spouse). *See* U.S. Const. art. IV, § 2. Being forced to give up one fundamental right to protect another violates the Constitution: this Court has found it "intolerable that one constitutional right should have to be surrendered in order to assert another." *Simmons v. United States*, 390 U.S. 377, 394 (1968). The experiences of mixed immigration-status couples separated by harsh immigration restrictions "are characterized by trauma and hardship."[13] Although it is unclear how many Americans have moved

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[13] Beth Caldwell, *Deported by Marriage: Americans Forced to Choose Between Love and Country*, 82 Brook. L. Rev. 1, 33 (2016), available at https://brooklynworks.brooklaw.edu/blr/vol82/iss1/1.

abroad to follow their immigrant-spouses, the 2010 Mexican Census found that over 500,000 U.S.-born children were living with their parents in Mexico.[14] Once outside of the United States, the citizen-spouse loses much: proximity to friends and family, access to their professional career path, and perhaps "more profoundly, they miss being 'home.'"[15]

Thus, denying U.S. citizens the ability to meaningfully challenge a decision denying their spouse's petition to live with them in the United States undermines their fundamental liberty interests.

B. The Mental Health of the Separated Family Member in the United States is Harmed.

A U.S. citizen who is forced to sacrifice their right to a marital union to preserve their right to live in the United States faces substantial mental health burdens. Mental health, at its core, is "a state of well-being in which every individual realizes his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to her or his community."[16] Furthermore, there is a "relative consensus in the health sciences that social networks, links of social interactions, are generally associated with flourishing mental health"

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[14] *Id.* at 36.

[15] *Id.*

[16] Lea-Marie Löbel, *Family Separation and Refugee Mental Health—A Network Perspective*, 61 Soc. Networks 20, 20 (2020), available at https://doi.org/10.1016/j.socnet.2019.08.004.

outcomes.[17] Countries with "supportive integration policies are more likely to have [family] populations with better overall health and mental health indicators than those with less supportive approaches."[18]

A growing area of research on the effects of family separation on refugees separated from their families finds that "a refugee whose entire nuclear family lives abroad is more likely to experience languishing mental health than a refugee who is living with all members of his or her nuclear family."[19] This is consistent with other studies showing that "fear of family being harmed in the country of origin and family separation are significantly related to increases in PTSD symptoms."[20] In addition, "fears of family being harmed abroad is a particular source of stress" as well as "mental illness."[21] Studies into the impact of border family separations specifically on U.S. citizens have found that parental separation "increases the risk for U.S. children's mental health problems such as anxiety, depression, behavior

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[17] *Id.*

[18] Johayra Bouza et al., The Science is Clear: Separating Families has Long-term Damaging Psychological and Health Consequences for Children, Families, and Communities, Soc'y for Rsch. in Child Dev. (2018), available at https://www.srcd.org/briefs-fact-sheets/the-science-is-clear.

[19] Löbel, *supra* note 16, at 28.

[20] *Id.*

[21] Angela Nickerson et al., *The Impact of Fear for Family on Mental Health in a Resettled Iraqi Refugee Community*, J. Psychiatric Rsch., March 2010, at 229, available at https://doi.org/10.1016/j.jpsychires.2009.08.006.

problems, and symptoms of post-traumatic stress disorder."[22]

There are no current statistics on how many spouses of U.S. citizens are or have been refused entry into the United States. According to the American Psychological Association, an estimated 10% of U.S. families with children have at least one member without citizenship.[23] In 2021, the American Immigration Council estimated that *17.8 million children* in the United States had at least one foreign-born parent, including parents who were naturalized citizens, lawfully present immigrants, or undocumented immigrants.[24]

The psychological toll on a U.S. citizen when they are denied a legitimate reason why their spouse's visa was denied cannot be overlooked and this Court should find that they have a right to a meaningful review process.

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[22] Bouza et. al., *supra* note 18.

[23] Regina Day Langhout et al., *The Effects of Deportation on Families and Communities*, Am. J. Cmty. Psych., July 31, 2018, at 3, available at https://onlinelibrary.wiley.com/doi/10.1002/ajcp.12256.

[24] *U.S.-Citizen Children Impacted By Immigration Enforcement*, Am. Immigr. Council, June 2021, available at https://www.americanimmigrationcouncil.org/sites/default/files/research/us_citizen_children_impacted_by_immigration_enforcement_0.pdf.

C. For Former Asylees or Refugees, Having No Ability to Seek Review of a Consular Officer's Decision Could Mean They Can Never Reunite With a Spouse.

For many couples seeking reunification, the problem at hand is not solved by merely having the mixed-immigration status couple "voluntarily" live elsewhere. For some U.S. citizens, this is simply an *impossible* choice. Nearly 15% of the 878,500 naturalized citizens in 2023 alone entered the United States as refugees or were subsequently granted asylum protection.[25] By definition, the U.S. government has already found that these groups have a credible fear of harm, persecution, or torture if they were to return to their home countries. And they have already been forced to leave their home countries to seek the protections of this country, and the United States has already found them eligible and deserving of the privileges and benefits of citizenship. If they later marry a non-citizen who is denied a visa to immigrate to the United States, like Respondents, without a meaningful opportunity to seek review of that denial, the United States is effectively exiling the former refugee/asylee again, as there is likely no other safe country where the couple can reside together safely.

Here, the Government has already found that Ms. Muñoz will suffer "extreme hardship" if she

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[25] *Fiscal Year 2023 Naturalization Statistics*, U.S. Citizenship & Immigr. Servs. (last updated Jan. 12, 2024), available at https://www.uscis.gov/citizenship-resource-center/naturalization-statistics.

were forced to live in El Salvador. Resp't's Br. 36. For U.S. citizens who are former refugees or asylees, the question is not whether they would face extreme hardship if they relocated to their home countries to reside with their spouse. Rather, the Government has already found that they should not return to their home countries because they would be subjected to harm, including persecution, torture, and possibly death. For U.S. citizens who first obtained their legal status as refugees or asylees, living together in the U.S. may be their only realistic option, because living abroad together may entail the U.S. citizen facing life-threatening peril. In situations such as theirs, if their spouse's visa is denied without sufficient explanation or opportunity for review (as it was for Respondents), they face a choice with no positive outcome: preserve their family and abandon the refuge they have found in the U.S., or give up their hope at a unified family entirely to ensure their safety. Denying a non-citizen spouse the pathway to immigrate to the United States, without a meaningful basis to challenge that denial, would cause unconscionable, life-altering hardship for former refugee and asylee families, in addition to violating their right to due process.

D. The Government Proposes to Leave Separated Spouses With Impossible Choices.

Consider a refugee or asylee who leaves her home country to escape war, poverty, famine, torture, or persecution. She builds a life in the United States and later becomes a U.S. citizen. She applies for her husband, perhaps still living in their home country or temporarily in another country as a refugee, to

join her in the United States so their family can be whole again. Her husband starts the consular interview process in support of that application at the U.S. consulate abroad. And the consular officer denies the application, but gives no explanation. There's nothing to fix, no inadvertent errors she can correct, no way to challenge the decision.

In the Government's view, she has a simple choice: either stay in the United States or leave to join her husband abroad. Her "choice" boils down to leaving behind her citizenship, her refuge and respite—something so precious that people have fought and died for it—or never reuniting with her family, something we know and, as discussed above, that this Court has confirmed is equally precious. Moreover, this "choice" assumes that there is a safe country where their family can be whole—but that is not the case for many, including naturalized citizens who originally arrived in this country as refugees or seeking asylum. This position runs contrary to the intent of Congress and to our longstanding history and tradition, memorialized by this Court's jurisprudence, that says family unity is a fundamental constitutional value that is part of the fabric of our society.

The consequences of a negative decision in this case reach far beyond Respondents and other U.S. citizens seeing the same immigration benefit. Allowing consular officers to deny applications, without notice and opportunity to address the questions can be dire for refugees and asylees seeking to unify their families.

CONCLUSION

Depriving a U.S. citizen of the factual basis behind the denial of an immigrant visa for their spouse and frustrating their ability to appeal or otherwise overcome the denial violates their procedural due process rights. Moreover, for many families of mixed immigration-status, especially those who came to the United States to live in safety after fleeing persecution, they may be forced to choose between their life and the safety or their family. This court should affirm the judgment of the court of appeals.

Respectfully submitted,

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