

No. 25-5

In The
Supreme Court of the United States

KRISTI NOEM, SECRETARY OF HOMELAND SECURITY,
et al.,
Petitioners,
v.
AL OTRO LADO, A CALIFORNIA CORPORATION, *et al.*,
Respondents.

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

**BRIEF OF HIAS, INC. AS *AMICI CURIAE* IN
SUPPORT OF RESPONDENTS**

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INTEREST OF *AMICUS CURIAE*¹

HIAS was founded more than one hundred years ago as the Hebrew Immigrants Aid Society to support Jews fleeing persecution and poverty in Eastern Europe. Today, drawing on its Jewish values and history, HIAS works with people of diverse faiths, ethnicities, and backgrounds to provide vital services to refugees, asylum seekers, and other forcibly displaced and stateless persons around the world. HIAS advocates for their fundamental rights so they can rebuild their lives.

HIAS has firsthand experience with both the World War II-era refugee tragedies that informed current asylum law and the turnback policy at issue in this case. In 1939, HIAS was involved with extensive efforts to bring refugees to safety, including negotiations with Cuban and European authorities to try to find a place for the *M.S. St. Louis*—a ship carrying over 900 Jewish refugees fleeing Nazi persecution—to safely land. Consistent with its bedrock commitment to welcome the stranger, HIAS has helped refugees and asylum seekers worldwide to find safety, both through its presence in Mexico and its immigration-related legal services program in the United States.

As part of its work supporting asylum seekers' efforts to present their claims during the period when the turnback policy was in effect, HIAS was one of

¹ No counsel for any party authored this brief in whole or in part, and no person other than *amicus curiae*, its members, or its counsel made a monetary contribution intended to fund the brief's preparation or submission.

several organizations that stepped in, on its own initiative, to fill the governmental void by maintaining a list of asylum seekers turned back from ports of entry. In addition, HIAS provided paperwork assistance, mental health and psychosocial support, and services to prevent and respond to gender-based violence. In six years of operations in Mexico, HIAS has provided services to over 220,000 people. Through this work, HIAS well understands the risks and unsafe conditions facing asylum seekers trapped in Mexico and lacking any orderly process to seek asylum.

Drawing on these experiences, HIAS submits this brief to illuminate the history that guided Congress to adopt a structured process for people who present themselves at a port of entry seeking asylum. The lessons of the *St. Louis*, and its influence on the development of asylum law, caution against permitting an agency to subvert Congress's command that noncitizens arriving at a United States port of entry must be allowed to seek asylum.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

In 1939, fleeing Nazi persecution, more than 900 Jewish refugees purchased passage on the German ship *St. Louis*, bound for Cuba. Mid-journey, Cuban officials revoked their landing permits and, "in an episode of bureaucratic indifference that history would judge as complicity," the United States likewise refused to allow them to land. Ann Gerhart, *Journey from Hell and Back*, WASH. POST (Apr. 30, 1999). With no safe haven, the ship was forced to go back to Europe. Facing certain death if returned to Germany,

the passengers were accepted into four European countries after extensive bureaucratic wrangling. “There, terror overtook them again only a few months later as war swept through Europe. Over a third of the passengers, who had been close enough to swim toward the shimmering hotels fringing Miami Beach, died in the Holocaust.” *Id.*

Described as “the saddest ship afloat,” *Refugee Ship*, N.Y. TIMES, June 8, 1939, at 24, and remembered as “the voyage of the damned,” the *St. Louis* stands as a stark reminder of the consequences when a nation closes its borders to people fleeing persecution without any assessment of the dangers they face. The passengers who survived the Holocaust did so only because refugee aid organizations mounted herculean efforts to secure a safe harbor during the narrow window in which the ship was steaming back toward Europe. In the absence of an orderly asylum system in 1939, HIAS, other relief organizations, and the governments of several countries could protect only some of the lives at risk, and only through frantic, ad hoc intervention and extraordinary effort.

In the aftermath of World War II, the chaos and tragedy of the *St. Louis* and the struggles of other refugees crystallized a simple principle: a refugee who reaches a nation’s port of entry or other designated places should be allowed to seek asylum. This principle animated the 1951 Refugee Convention and its 1967 Protocol, which the United States ratified in 1968. The principle of access to asylum was later codified in the U.S. Refugee Act of 1980. One aim of these frameworks is to ensure that no one who reaches

a designated place to seek admission becomes trapped in a legal void, with nowhere to turn and no process to request asylum.

Congress did not, of course, extend mandatory processing to everyone, everywhere. If interdicted at sea, the passengers on the *St. Louis* could still be refused processing today because noncitizens “interdicted in international or United States waters” lack the right to “apply for asylum” unless “brought to the United States.” 8 U.S.C. § 1158(a)(1); *cf. Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155 (1993). But Congress did ensure that if a noncitizen “arrives in the United States . . . at a designated port of arrival,” 8 U.S.C. § 1158(a)(1), she could seek safety through an orderly, mandatory process, rather than being turned back on bureaucratic whim or through arbitrary, ad hoc decisions.

The government’s challenged turnback policy inverts that foundational principle. Blocking access to U.S. ports of entry and barring refugees from requesting asylum if they do not physically step foot onto U.S. soil creates a legal no man’s land. People are left in limbo in dangerous border towns, unable to access the process our laws guarantee to those who arrive at a port of entry and present themselves to U.S. officials standing on U.S. soil. It is the kind of purgatory experienced by the *St. Louis* passengers and that Congress eradicated for those who reach a port of entry: safety visible but unreachable.

The human cost of turning back people fleeing persecution without even a process to consider their claims is incalculable. Writing from the *St. Louis* while it was anchored in Havana harbor during furious

negotiations with the Cuban government, Julius Hermanns, a German textile merchant, described the “tension” on board. An attorney from Breslau traveling with his wife and two teenage children attempted suicide. A man with a megaphone pulled up alongside the *St. Louis* and urged that “everyone should remain calm, as soon as it is possible we will be able to enter Havana.” But they were refused.

Julius had attempted to flee on the *St. Louis* after his imprisonment at Dachau and Buchenwald in 1938. After the *St. Louis* was forced back to Europe, Julius was selected to go to France, but was soon interned there as an “enemy alien” because of his German origins. Sent to an internment camp near the Spanish border alongside about 50 other *St. Louis* passengers, he had to throw away his few remaining belongings on a 100-kilometer march. Writing his relatives with “no hope for any passage,” Julius described the “almost unbearable” conditions in the camp. After the Nazis invaded France, Julius was ultimately deported to Auschwitz, where he was murdered.²

In one of his final letters from the French internment camp, Julius asked his family a question that echoes today: “Now when one has to experience this oneself, the question needs to be posed, how can this happen in the 20th century?” In the wake of the great tragedies of that century, the United States came together with other nations to create a system intended to save people from again having to ask that question. The system is far from perfect. And it isn’t

² See U.S. Holocaust Mem'l Museum, *The Hermanns Family*, <https://tinyurl.com/2e3wcw86>.

all-encompassing; Congress has made hard choices. But for the people who meet Congress's requirements—who make the treacherous journey and reach a port of entry—it guarantees a process for them to seek asylum. The turnback policy flouts that law and turns a blind eye to one of history's hardest-learned lessons.

ARGUMENT

I. The Tragedy and Chaos of the *St. Louis* Inspired the Modern Asylum System.

A. The Path to Safety for the *St. Louis* Refugees Was Blocked by Bureaucratic Reversals and Interminable Wrangling.

The saga of the *St. Louis* reveals what happens when people fleeing persecution confront a world lacking an orderly asylum process: a vacuum filled by bureaucratic reversals, conflicting political interests, and frantic last-minute negotiations. With no legal pathway to request asylum and no system empowering nations or relief organizations to respond coherently, the fate of more than 900 lives turned on improvised diplomacy, individual discretion, and the vagaries of circumstance. The ensuing ordeal, and the passengers' return to danger, underscores the perils of a system in which access to asylum procedures depends on ad hoc snap judgments rather than a predictable, lawful process.

1. *Cuba's sudden reversal stranded passengers in limbo.*

In May 1939, a German ship set sail for Havana with 937 passengers on board, almost all of whom were German Jews fleeing the Nazis. Erin Blakemore, A

Ship of Jewish Refugees Was Refused U.S. Landing in 1939. This Was Their Fate, HISTORY (June 4, 2019), <https://tinyurl.com/55d8y49j>. Many of the passengers, including Julius Hermanns, had been imprisoned in concentration camps and released on the sole condition that they never return to Germany, on pain of death. Sarah A. Ogilvie & Scott Miller, *Refuge Denied: The St. Louis Passengers and the Holocaust* 21 (2006). Most passengers had been granted a “quota” number, or a right to immigrate to the U.S., but had to wait until their quota number was called, a process that could take years. Susan F. Martin, *A Nation of Immigrants* 163 (2011); Paul R. Bartrop, *The Holocaust in 100 Histories* 82 (2024); Holocaust Mem'l Day Trust, *The SS St. Louis* (2011), <https://tinyurl.com/4k6umabm>. As staying in Germany meant imprisonment in concentration camps, the refugees needed somewhere safe to wait. Cuba was ideal since it was so close to the U.S. and so far from Hitler. Gordon Thomas & Max Morgan Witts, *Voyage of the Damned* 18 (1974).

Capitalizing on this situation, Cuba’s Director of Immigration had been selling tourist “landing permits” to desperate refugees for huge sums of money. Holocaust Mem'l Day Trust, *supra*; Ogilvie & Miller, *supra*, at 19. The permits were “made to look as official as possible” and resembled “authentic immigration documents rather than tourist papers.” Holocaust Mem'l Day Trust, *supra*; *see also Voyage of the Damned*, *supra*, at 88. The passengers on the *St. Louis* “paid in advance for their papers.” Holocaust Mem'l Day Trust, *supra*.

But other members of the Cuban government, especially the Cuban President, felt they were owed a cut of the profits. Martin, *supra*, at 162; *Voyage of the Damned*, *supra*, at 18, 88. A few days before the *St. Louis* set sail for Havana, the Cuban government issued a decree closing the loophole that the Director of Immigration had been exploiting, effectively revoking the permits of all but 28 of the passengers. Blakemore, *supra*; Martin, *supra*, at 162; Ogilvie & Miller, *supra*, at 19.

Caught in the political infighting, the *St. Louis* was refused permission to dock when it reached Cuba two weeks later; instead, it anchored in the middle of Havana's harbor. Holocaust Mem'l Day Trust, *supra*. The passengers waited aboard for an entire week. As time passed, they became increasingly desperate. The decks of the *St. Louis* "became a stage for human misery. Relatives and friends clamored to get aboard but were held back. Weeping refugees clamoring to get ashore were halted at guarded gangways." *Refugee Ship*, *supra*. In a letter written from the "Middle of the Harbor" in Havana, Julius Hermanns described the incredible difficulties endured by the passengers and expressed his fervent hope that "a solution will be found soon, where we can land, it doesn't matter in which country." *The Hermanns Family*, *supra* note 2.

Meanwhile, the American Jewish Joint Distribution Committee (JDC)—the organized relief arm of the Jewish community—flew a representative down to negotiate with the Cuban President, who had suggested that he would honor the passengers' visas for a hefty price. Martin, *supra*, at 162. But negotiations broke down, and a week after arrival,

Cuban police boats escorted the *St. Louis* out of Cuban waters. Holocaust Mem'l Day Trust, *supra*; Martin, *supra*, at 162; *Voyage of the Damned*, *supra*, at 227-28.

The ship sailed round in circles, keeping close to Cuba, in the vain hope of a change of heart. Holocaust Mem'l Day Trust, *supra*. The JDC and other organizations, including HIAS, were in “constant touch” with their partners and representatives in Cuba, and with “J.D.C. European officers, with the U.S. State Department, the Hamburg-American line[,] with leaders, organizations, and officials all over the world.” Am. Jewish Joint Distrib. Comm., *The Voyage of the St. Louis*, at 2 (June 15, 1939), <https://tinyurl.com/3vjdy3sj> [hereinafter JDC Report]; Mark Wischnitzer, *Visas to Freedom: The History of HIAS* 149-50 (1956).

On June 2, with nowhere else to turn, the ship sailed toward the United States. Ogilvie & Miller, *supra*, at 22-23; Bartrop, *supra*, at 82; Facing Hist. & Ourselves, *The Voyage of the St. Louis* (2016), <https://tinyurl.com/4esuywhw>. “The lights of Miami winked in the distance as beacons of hope. The passengers were close enough to see hotels and automobiles along the beach.” Ogilvie & Miller, *supra*, at 23. To a passenger who peered through binoculars, America looked like an oasis. “The shoreline was a couple miles away. I’d never seen coconut trees in my life. I was very impressed.” *Id.*

Despite pleas from passengers, public figures, Jewish groups, and some diplomats, Ogilvie & Miller, *supra*, at 23-24; Facing Hist., *supra*; Alice Taylor, *Seeking Refuge from Nazi Persecution, the MS St. Louis Was Turned Away at Every Port*, UNIV. TORONTO

MAG. (Dec. 15, 2015), <https://tinyurl.com/yc4chjmz>, the State Department refused, telegraphing the passengers to explain that they “must await their turns on the waiting list and qualify for and obtain immigration visas before they may be admissible into the United States.” Blakemore, *supra*; *see also* Ogilvie & Miller, *supra*, at 25. “So near, and yet so far,” remarked one of the passengers as she gazed out at the Florida coastline. Taylor, *supra*; *see also* *Voyage of the Damned*, *supra*, at 246.

In June 1939, 24 days after it had left Germany, the *St. Louis* had to return. Ogilvie & Miller, *supra*, at 25; Bartrop, *supra*, at 83. Panic, despair, and desperation “permeated the vessel,” since all aboard knew that being sent back to Germany meant certain death. Ogilvie & Miller, *supra*, at 25. The passengers organized suicide watch patrols. *Id.*; *Voyage of the Damned*, *supra*, at 197-98.

2. *Multiple governments and refugee relief organizations desperately tried to find a safe location for the St. Louis to land.*

The captain of the ship wanted to save his passengers from the fate that awaited them in Germany, so he did his best to stall on the return voyage, hoping for rescue, or at least time for the JDC to find an alternative port. Ogilvie & Miller, *supra*, at 25. At one point, the captain considered a plan to beach the *St. Louis* off the coast of England, light it on fire, and evacuate passengers to safety onshore. *Id.*; Holocaust Mem'l Day Trust, *supra*.

This was only one of many desperate plans. Jewish organizations, including HIAS, had already

“appealed in vain to the governments of Argentina, Uruguay, Paraguay and Panama to grant the refugees asylum.” Taylor, *supra*; Facing Hist., *supra*. Venezuela, Ecuador, Chile, and Colombia also would not open their ports to the *St. Louis*. *Voyage of the Damned*, *supra*, at 249. In fact, “every country in Latin America [] refused to do so.” Facing Hist., *supra*.

While the ship stalled, the JDC and its partners, including HIAS, engaged in non-stop “intense telephoning” and “feverish work.” Bartrop, *supra*, at 82; *see also* JDC Report, *supra*, at 1. Because Cuba, the U.S., and Latin American nations would not accept the refugees’ bid for safety, the question was “where on earth could they go?” *Voyage of the Damned*, *supra*, at 117. Groups attempting to assist the *St. Louis* started a flurry of complex and frantic negotiations with countries in Western Europe.

Representatives of the JDC in London worked with the American ambassador and the British Home Office. JDC Report, *supra*, at 4; *Voyage of the Damned*, *supra*, at 269, 279. The *St. Louis* passengers sent a message to the Prime Minister of the UK, begging to “be saved by being granted asylum in England or at least disembarkation at Southampton as return to Hamburg [was] impossible and acts of desperation would be unavoidable.” Holocaust Mem’l Day Trust, *supra*. Meanwhile, the JDC’s director in Europe set to work on the problem on the Continent. JDC Report, *supra*, at 4.

Finally, after appeals to the Belgian minister of Justice by HIAS staff in Brussels, Belgium agreed to accept 250 of the refugees. *Id.* at 4, 5. Representatives in the Netherlands obtained an emergency audience

with the Queen; she offered to accept 194 of the passengers, as long as they had U.S. registration cards. *Id.* at 5; *Voyage of the Damned, supra*, at 284-86.

Still more passengers needed to be resettled. JDC coordinated a meeting of all French refugee committees, including HIAS, and called consulates throughout the region, including in Tangiers, Luxembourg, and Portugal, attempting to find an open door. JDC Report, *supra*, at 5. After discussion with French officials and influential private citizens, the JDC and HIAS convinced France to accept some passengers as well. *Id.*; Wischnitzer, *supra*, at 149-50.

Ultimately, Belgium, France, the Netherlands, and the United Kingdom each agreed to take some of the refugees, in return for a cash guarantee of \$500,000 (~\$8 million today) by the JDC. JDC Archives, *The Story of the S.S. St. Louis (1939)*, <https://tinyurl.com/yz53u4m6>; Mike Lanchin, *SS St Louis: The Ship of Jewish Refugees Nobody Wanted*, BBC NEWS (May 13, 2014), <https://tinyurl.com/378k3xhn>.

With no pre-existing rules in place, deciding which refugees would go to which country was a complicated process. Passengers on the ship prepared lists itemizing which countries they preferred. *Voyage of the Damned, supra*, at 284. The JDC and relief workers from each country “began sorting out which of the passengers were to go where.” *Id.* Once the ship had docked in Antwerp, a group of 26 officials negotiated amongst themselves to assign each passenger to a country of refuge. *Id.* at 285. “In front of each table was a long line of anxious passengers, all talking at once and hoping to influence the

representatives of the country of their choice.” *Id.* Each of the countries competed for the passengers who “had the lowest numbers on the U.S. quota list and could therefore be expected to leave after minimum of delay.” *Id.* No country wanted to accept any “stateless” refugees or other “undesirables.” Gerd Korman, *Nightmare’s Fairy Tale* 54 (2005). Although the workers did not know it at the time, “they were, in effect, sitting in judgment on who would live and who would die.” *Voyage of the Damned, supra*, at 284.

Because the Belgian authorities had decreed that only those destined for Belgium could land at Antwerp, *id.* at 289, refugees destined for other countries were not permitted to travel there by land. Special tenders provided by the Belgian Red Cross met the boat to take passengers to England, the Netherlands, and France. JDC Report, *supra*, at 6.

3. For most passengers, the refuge was all too brief.

Most of the *St. Louis* passengers who were forced back to Europe found only a brief refuge; only about half of those returned to continental Europe survived the Holocaust. *Martin, supra*, at 163.

England granted 288 passengers temporary asylum. Of the remaining 619 *St. Louis* passengers who were assigned to western Europe, a few managed to emigrate to the U.S. before the Nazi invasion in 1940, but 532 were trapped. Bartrop, *supra*, at 83; U.S. Holocaust Mem’l Museum, *Voyage of the St. Louis*, <https://tinyurl.com/ymfns6z2>. In the Netherlands, France, and Belgium, Nazis rounded up Jews for deportation to concentration camps. U.S. Holocaust

Mem'l Museum, *St. Louis Exhibition: Supplementary Reading Materials*, <https://tinyurl.com/62kz38xa>.

Even those families who escaped from Nazi-occupied countries often endured “arrests, deportations, terror, and malnourishment” before they eventually found safety, their lives changed forever. Gerhart, *supra*. And not all escaped. While he was held in the French internment camp, Julius Hermanns wrote “hundreds of letters to all possible places” begging fruitlessly for help. *The Hermanns Family*, *supra* note 2. Like all prisoners, his money and personal possessions had been confiscated or abandoned on a forced march, and he was therefore unable to obtain the “visa, passage, and transit visas for Spain and Portugal” needed to escape the camp. *Id.* With nowhere to go, he was deported to Auschwitz, where he was killed. *Id.*

All the *St. Louis* passengers were traumatized. And, ultimately, 254 of the *St. Louis* passengers—almost half of those forcibly returned to Western Europe, and more than a quarter of the original 937 passengers—were murdered in the Holocaust. U.S. Holocaust Mem'l Museum, *Voyage of the St. Louis*, *supra*. They could have escaped this fate had “the gates of the refuge they had sought not been barred.” Bartrop, *supra*, at 83.

B. The Modern Asylum System Was Designed to Avoid Tragedies Like the *St. Louis*.

The preventable tragedy of the *St. Louis* is the cautionary tale that helped propel the modern architecture of asylum, both internationally and in

U.S. law. *See, e.g.*, U.S. Dep’t of State, *The Legacy of the M.S. Saint Louis*, <https://tinyurl.com/n5mmj6cm>; Blakemore, *supra*. In fact, “[a] photo of the M.S. Saint Louis hangs in the front office of the State Department’s refugee bureau as a powerful reminder and source of motivation.” *Id.* Because of the *St. Louis*, and other similar tragedies, the Refugee Act of 1980 codifies U.S. obligations under international law, as embodied by the 1951 Refugee Convention and its 1967 Protocol, acceded to by the United States after Senate ratification in 1968. Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267. These obligations include the principle of “nonrefoulement,” to prevent refugees from being returned to a country where they would be persecuted. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 436-37, 440 (1987).

One fundamental lesson learned from the *St. Louis* was that people fleeing persecution and embarking on long, arduous journeys to seek protection must be able to count on established rules and orderly processes. The *St. Louis* passengers could not postpone their departure until their U.S. quota numbers were called; waiting risked death. So they began their journeys with valid landing permits offering them a secure place to wait. And had the permits not been revoked, the passengers would have secured a path to safety. The tragedy began with an abrupt bureaucratic reversal and only compounded from there because asylum had to be attempted or negotiated country by country through ad hoc efforts that did not ultimately secure safety.

A key aspect of our Nation’s asylum laws developed in the wake of the *St. Louis* is thus a statutory and regulatory process for receiving and vetting claims from those seeking protection. *See Cardoza-Fonseca*, 480 U.S. at 427-28. This process is spelled out in statutory detail. For noncitizens who “arrive[] in the United States . . . at a designated port of arrival,” the process requires border officials to conduct an “inspection” of each such “arriving” noncitizen and refer for further processing those who express an intent to seek asylum or “a fear of persecution.” 8 U.S.C. § 1225(a)(1), (a)(3), (b)(1)(A)(i). This further processing typically involves placement into removal proceedings where the noncitizen can present an asylum claim, sometimes after an interview with an asylum officer, to determine whether the applicant has a credible fear of persecution. *Id.* §§ 1225(b), 1229(a).

In designing this process, Congress had to balance the interests of those seeking protection with efficiency and practicality. For example, any noncitizen “who is arriving in the United States” without valid entry documents is subject to expedited removal without judicial review and cannot submit an asylum application unless she passes the credible fear interview. 8 U.S.C. § 1225(b)(1)(A)-(B).

Congress also made tough choices in deciding when and where this process applies. Some noncitizens “who might be sent back to potential oppressors,” such as those interdicted on the high seas, do not have a statutory right to apply for asylum. *Sale*, 509 U.S. at 174. Today’s law would thus not require that the *St. Louis* passengers be inspected and

permitted to seek asylum, unless they first were “brought to the United States” after being interdicted at sea, or otherwise arrived “in the United States,” including “at a designated port of arrival.” 8 U.S.C. § 1225(a)(1).

The asylum laws do not provide a comprehensive solution to the risks facing all asylum seekers, nor protect all refugees from tragic outcomes. But Congress did guarantee that noncitizens who reach a U.S. port of entry (among other places) can access a predictable process governed by a fixed set of rules. This orderly process for inspection and asylum processing at ports of entry helps avoid arbitrary life-and-death decisions and the type of chaotic and ad hoc negotiations that had to be conducted with great urgency while the *St. Louis* was at sea, searching for safe harbor.

II. The Turnback Policy Flouts the Asylum Procedures that Congress Enacted to Prevent Tragedies Like the *St. Louis*.

By physically blocking asylum seekers from entering ports of entry, the challenged turnback policy violated the statute. See Resp. Br. 20-39. It also turned back the clock to a dark time of arbitrary results, chaotic processes, and legal limbo for asylum seekers, ignoring lessons learned from tragedies like the *St. Louis*. Asylum seekers were again consigned to danger and unrelenting uncertainty. And refugee organizations, including HIAS, were forced once again to scramble to build some kind of workable substitute for the process that the law should guarantee.

For example, HIAS and other organizations tried to maintain lists of names of asylum seekers and the dates when they arrived at a port of entry. The lists were near-impossible to maintain. Each port of entry had a different list, and each list was independently managed by different organizations or local government entities, and sometimes by the asylum seekers themselves. This meant there was no standard way to be added to the lists. The system was far from fail-safe. In Ciudad Juárez, when the metering system began, the number assigned on the waiting list was written with permanent marker on people's wrists, including on babies and children. Caitlin Dickson, *Take a Number: Migrants, Blocked at the Border, Wait Their Turn to Apply for Asylum*, YAHOO!NEWS (Dec. 1, 2018), <https://tinyurl.com/mucdswdh>. If the number faded or was erased, individuals lost their place on the list. *Id.*³ Moreover, there was no guarantee that anyone on the list would be inspected and processed, nor that the lists would be honored by the U.S. government. There was therefore no guaranteed timeframe or any other indicia of predictability.

The process was also subject to abuse. For example, sometimes asylum seekers were forced to pay to be added to the list. HIAS, *Roadmap to Recovery: A Path Forward After the Remain in Mexico Program*, at 6 (Mar. 2021), <https://tinyurl.com/mrv2un2f>. Sometimes asylum seekers were compelled to perform

³ Although the markings were unreliable and not permanent, observers noted how the practice evoked the forced tattoos imposed on prisoners in concentration camps. One volunteer at a soup kitchen assisting asylum seekers commented that the numbers were "how you would mark an animal." *Id.*

unpaid labor under the threat of exclusion from the list. In Ciudad Juárez, a pastor in charge of a shelter was arrested after several migrants accused her of forcing them to carry out construction work at the shelter under threat of removal from the list, even though the list was not managed by the shelter. *See* Daniel Borunda, *Juárez Pastor Who Ran Aposento Alto Migrant Shelter Gets Prison in Forced Labor Case*, EL PASO TIMES (June 13, 2024), <https://tinyurl.com/3cun3f3p>.

The wholly haphazard non-process for seeking asylum and the resulting uncertainty was crushing for the asylum seekers left waiting in limbo, significantly impacting their mental health. Prolonged waiting periods, constant uncertainty, and stress stemming from material deprivation and continuous exposure to dangerous situations caused severe psychological harm. Effects included anxiety and depression, sleep disorders, panic attacks, persistent feelings of hopelessness and helplessness, and, in the most serious cases, suicidal ideation.

HIAS and other organizations worked hard to mitigate these effects when the turnback policy was in effect. HIAS provided community-based mental health and psychosocial support to asylum seekers who were turned back from ports of entry, including psychological first aid, other interventions, and referrals for psychiatric care in complex cases. But these services could not solve the root of the problem. The chaotic and arbitrary system under the turnback policy, against the ticking clock of imminent danger, is what the asylum system was supposed to prevent.

Effectively closing the ports of entry to asylum seekers and consigning them to limbo in Mexico also exposed people fleeing persecution to kidnapping, sexual violence, assault, and death.⁴ Areas where asylum seekers waited for lengthy and indefinite periods were especially dangerous. Some ports of entry are in a Mexican state with the same Tier 4 “Do Not Travel” State Department travel advisory level as Syria and Afghanistan. HIAS, *supra*, at 13. Ever-growing waiting lists made things worse, because overcrowded shelters prompted the formation of improvised camps. The camps lacked basic services and asylum seekers were exposed to constant risk—particularly women and girls, who frequently experienced gender-based violence.

HIAS legal staff serving asylum seekers at the U.S-Mexico border noted that it would be difficult to identify a client who had not experienced something traumatic while waiting in Mexico under the turnback policy. HIAS, *supra*. A tally from Human Rights First documented over 1,300 examples of murder, rape, torture, and other violence against asylum seekers. *Id.*

One asylum seeker was kidnapped and forcibly taken to a city over a thousand miles away. By the time she escaped days later, her young daughter—whom she had left in the care of a friend for a few hours while she looked for work—had been placed in the custody of Mexican Child Protective Services. HIAS accompanied the mother throughout the legal

⁴ Indeed, the official State Department travel page lists violent crimes such as “homicide, kidnapping, carjacking, and robbery” as being widespread in Mexico. U.S. Dep’t of State, *Travel Advisories: Mexico* (Aug. 12, 2025), <https://tinyurl.com/4xxn8tj3>.

process to recover custody and reunite the family, but the trauma inflicted on the family could not be undone. In another example, HIAS provided services to a family fleeing political persecution in Cuba who were robbed by a group of armed men while staying at a shelter, leaving them in unrelenting psychological distress because they feared the shelter but lacked the resources to stay anywhere else. The violence wasn't confined to local perpetrators, either. Some asylum seekers reported that the persecutors they fled in their home countries tracked them down in Mexico and began harassing and threatening them there. HIAS, *supra*

This is not how Congress designed the system to work. Informed by the suffering of the *St. Louis* passengers, Congress codified asylum protections at U.S. borders and created orderly procedures to assess asylum claims from people who reach a port of entry and to grant refuge to those who risk persecution if turned away. The policy here flouts the law Congress enacted and wrongly turns back the clock to a period when people fleeing persecution were forced to face arbitrary procedures, crushing uncertainty, and prolonged sojourns in dangerous conditions in a legal no man's land.

CONCLUSION

For the foregoing reasons, the judgment of the Ninth Circuit should be affirmed.

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