

No. 23-334

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

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DEPARTMENT OF STATE, ET AL.,

*Petitioners,*

v.

SANDRA MUÑOZ, ET AL.,

*Respondents.*

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**On Writ Of Certiorari To The United States  
Court Of Appeals For The Ninth Circuit**

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**BRIEF FOR THE UNITED STATES CONFERENCE  
OF CATHOLIC BISHOPS AND THE CATHOLIC  
LEGAL IMMIGRATION NETWORK, INC.  
*AS AMICI CURIAE*  
IN SUPPORT OF RESPONDENTS**

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

*Amici* are motivated by the teaching of the Catholic Church, which include a strong interest in ensuring that federal immigration laws are interpreted and implemented in a manner that preserves and promotes marital and family unity, to the benefit of American families, communities, and society at large.

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

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<sup>1</sup> *Amici* state that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than *amici*, their members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for the parties received timely notice of *amici*’s intent to file this brief.



**The Catholic Legal Immigration Network, Inc.** The Catholic Legal Immigration Network, Inc. (“CLINIC”), is the Nation’s largest network of nonprofit immigration legal services providers, with nearly 450 affiliates in 49 states. CLINIC conducts systemic advocacy related to due process and family unity based on information gathered from its network and partners, and provides legal training and support on issues related to immigration.

### SUMMARY OF ARGUMENT

Since our Nation’s founding, the right to marry and to form a family have been fundamental to American society. These rights—which include the right of individuals to cohabit, procreate, raise children, and decide their place of residence with their immediate family—predate and are encompassed by the Fifth and Fourteenth Amendments’ Due Process Clauses.

These liberty interests are woven throughout Catholic teaching. “[T]he marriage covenant . . . is found throughout salvation history.” Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church* ¶ 219 (2005) (“Compendium”). As the Bible teaches, “Therefore, what God has joined together, no human being must separate.” *Matthew* 19:6 (New American Bible). The importance of marital and familial unity, as emphasized by the Church, means that all people have “the right to live in a united family,” *Compendium* ¶ 155 (emphasis omitted), and “the right to migrate to support themselves and their

families.”<sup>2</sup>

A U.S. citizen’s right to marital and familial unity does *not* depend on whether that citizen has a domestic family or an immigrant family. For a U.S. citizen like Mrs. Muñoz—who has lived apart from her spouse for over eight years of marriage—the adjudication of a spousal visa implicates the fundamental liberty interest in marriage and family, and is sufficient to trigger procedural due process. In particular, a visa denial compels couples to make difficult decisions about their marital and familial home—decisions that may fracture the most intimate parts of their lives. For many, the enjoyment of a fundamental right (marriage and raising a family) relies on the sacrifice of another fundamental right (residing in one’s country of citizenship). For these reasons, Pope Francis beseeches nations “to respect the right of all individuals to find a place that meets their basic needs and those of their families, and where they can find personal fulfillment.”<sup>3</sup>

Any meaningful protection of marriage must therefore encompass a U.S. citizen’s right to seek to establish a home with their noncitizen spouse and raise children in the United States. To protect marital and familial rights that are central to the Church’s teaching and this Nation’s history and tradition, ordered liberty requires that this Court recognize a U.S. citizen’s liberty interest in the adjudication of a

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<sup>2</sup> Catholic Bishops of Mex. & the U.S., *Strangers No Longer: Together on the Journey of Hope*, USCCB ¶ 35 (Jan. 22, 2003) (“Strangers No Longer”), <https://tinyurl.com/3ca3v3ta>.

<sup>3</sup> Pope Francis, *Fratelli Tutti*, Vatican ¶ 129 (Oct. 3, 2020), <https://tinyurl.com/36zdptzj>.

spousal visa.

## ARGUMENT

### I. THE ADJUDICATION OF A SPOUSAL VISA APPLICATION IMPLICATES A U.S. CITIZEN-SPOUSE'S PROTECTED LIBERTY INTEREST IN MARRIAGE AND FAMILY UNITY.

A U.S. citizen's liberty interest in marriage and family is grounded in America's history and tradition. That liberty interest, which is emphasized in the Church's teaching, is implicated when the Government denies a spousal visa application.

#### A. The Sanctity Of Marriage And Family Is A Core Feature Of This Nation's History And Tradition, And Reiterated In Catholic Teaching.

Anglo-American law has long considered marriage as a union of identities, whereby married couples become "one person in law." 1 William Blackstone, Commentaries 430. For "Revolutionary-era Americans," marital "unity" was the "most important" aspect of marriage, and cohabitation sat at its core. Nancy F. Cott, *Public Vows: A History of Marriage and the Nation* 10 (2002). Our Founding Fathers recognized marital and familial unity as integral to the Nation's social welfare. See Letter from President Thomas Jefferson to William Clarke (Sept. 10, 1809), <https://founders.archives.gov/documents/Jefferson/03-01-02-0407> ("[B]y a law of our nature we cannot be happy without the endearing connections of a family[.]"); Letter from President John Adams to Abigail Adams (Mar. 28, 1783),

05-02-0061 (“I cannot bear the Thought of living longer Separate [sic] from [my family].”). Because “the American derives from his own home that love of order which he afterwards carries with him into public affairs,” Alexis de Tocqueville, *Democracy in America* 285 (Henry Reeve trans., The Lawbook Exchange, Ltd. 2003) (1838), the family has long been recognized as the backbone of American society.

The centrality of marriage and family to American society has long been recognized by this Court. “Marriage and procreation are [so] fundamental to the very existence and survival of the [human] race,” *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942), that the institution of family is “established beyond debate as an enduring American tradition,” *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972); *see also Ginsberg v. New York*, 390 U.S. 629, 639 (1968) (family is “basic in the structure of our society”). “The integrity of the family unit has found protection in” our founding document, the Constitution itself. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972). 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.” *Moore v. East Cleveland*, 431 U.S. 494, 503 (1977). For these reasons, the Court has long recognized that the Fifth and Fourteenth Amendments’ Due Process Clauses protect, as a liberty interest, “freedom of personal choice in matters of marriage and family life.” *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639–40 (1974).

Across millennia, the Catholic Church has reiterated the importance of marriage and family. Dating back to Biblical times, married couples have

left their childhood homes to “be joined” joyfully with one another as “one flesh.” *Ephesians* 5:31 (New American Bible); *see also* *Genesis* 2:24 (New American Bible) (“That is why a man leaves his father and mother and clings to his wife, and the two of them become one body.”). “[T]he marriage covenant . . . is found throughout salvation history.” Compendium ¶ 219. “Notwithstanding the numerous changes that have taken place in the course of the centuries in the various cultures and in different social structures and spiritual attitudes, in every culture there exists a certain sense of the dignity of the marriage union . . . .” *Id.* ¶ 216. For good reason. “The family is the original cell of social life,” Catechism of the Catholic Church § 2207, at 533 (2d ed. 2019) (emphasis omitted) (“Catechism”), and “family has its foundation in the free choice of . . . spouses to unite themselves in marriage,” Compendium ¶ 215; *see also* Pope Saint John Paul II, Encyclical Letter *Centesimus Annus* § 13 (May 1, 1991) [https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf\\_jp-ii\\_enc\\_01051991\\_centesimus-annus.html](https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_01051991_centesimus-annus.html) (noting that the “the family . . . stem[s] from human nature itself and [has its] own autonomy”).

Our Nation’s immigration laws recognize that marriage has always been about two people building a life and a family home together. Since Congress began regulating immigration more than a century ago, “family unification [has been] the cornerstone of American immigration law and policy.” 136 Cong. Rec. 36838 (daily ed. Oct. 27, 1990); *see, e.g.*, Act of March 3, 1903, Pub. L. No. 162, §§ 2, 37, 32 Stat. 1213, 1214, 1221 (excluding from entry certain “classes of

aliens,” but creating a limited exception for the wife or minor children of a U.S. citizen or permanent resident); S. Rep. No. 82-1137, at 16 (1952) (noting “the well-established policy of maintaining the family unit wherever possible” in the immigration context). As Bishop Mark J. Seitz recently explained, “family unity and reunification . . . are foundational to the U.S. immigration system and central tenets of Catholic social teaching.”<sup>4</sup>

**B. The Right To Marry, Which Includes Establishing A Home And Raising A Family, Is Implicated When The Government Denies A Visa To A U.S. Citizen’s Spouse And That Right Demands Adequate Procedural Safeguards.**

A U.S. citizen has a fundamental liberty interest in marital unity and familial rights that is implicated by a decision under immigration law to deny a spousal visa. As this Court has made clear, the constitutional right to marry encompasses the rights to cohabit, *Loving v. Virginia*, 388 U.S. 1, 4, 11–12 (1967), procreate, *Skinner*, 316 U.S. at 541, “establish a home and bring up children,” *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923), and decide one’s place of residence with their immediate family, *Moore*, 431 U.S. at 504–

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<sup>4</sup> *U.S. Bishops’ Migration Chairman Responds to New Family Reunification Programs*, USCCB Office of Public Affairs (July 10, 2023) (cleaned up), <https://www.usccb.org/news/2023/us-bishops-migration-chairman-responds-new-family-reunification-programs>; see generally *Modern Catholic Social Teaching on Immigration: Notable Quotes*, CLINIC (June 18, 2015), <https://tinyurl.com/yc2bax3u> (highlighting teaching from as early as 1891).

06. The U.S. citizen’s liberty interest in marriage and family is not diminished because that citizen has an immigrant family. *See Zablocki v. Redhail*, 434 U.S. 374, 384 (1978) (“[T]he right to marry is of fundamental importance for *all* individuals.” (emphasis added)); *cf. Kleindienst v. Mandel*, 408 U.S. 753, 764–65 (1972) (holding that the First Amendment protects the right to receive information from a noncitizen speaker). Neither does a U.S. citizen’s right to reside in his or her country of citizenship dissipate because he or she is married to a noncitizen. *Cf. Ng Fung Ho v. White*, 259 U.S. 276, 284–85 (1922) (noting that a citizen is deprived of liberty and “all that makes life worth living” when forced to leave the country). Meaningful protection of such a core liberty interest can only be ensured through adequate procedural safeguards.

**1. The Adjudication Of A Spousal Visa For The Noncitizen Spouse Of A U.S. Citizen Implicates A Fundamental Liberty Interest.**

Any meaningful protection of marriage must therefore encompass a U.S. citizen’s right to seek to “establish a home [with a noncitizen spouse] and bring up children” in this country. *Meyer*, 262 U.S. at 399. This necessarily means that a U.S. citizen has a liberty interest in a nonarbitrary spousal visa adjudication,<sup>5</sup> a governmental decision that impacts marital unity and “choices concerning family living

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<sup>5</sup> This Court did not hold otherwise in *Din v. Kerry*, 718 F.3d 856, 863 (2013). There, the Court rejected a U.S. citizen’s constitutional challenge regarding a spousal visa, but no rationale commanded the support of a majority of the Court.

arrangements.” *Moore*, 431 U.S. at 499; *see also Loving*, 388 U.S. at 4 (striking law prohibiting “any white person and colored person” from “cohabiting”).

Accordingly, marital and familial rights permeate our immigration laws, which have long promoted U.S. citizens’ strong interests in residing in this country with their noncitizen spouses. *See supra* Arg. 1.A. Family unity is frequently the reason that U.S. citizens like Mrs. Muñoz—who has had to live away from her husband for eight of the fourteen years of her marriage—file an immediate-family petition for their spouse. *See* 8 U.S.C. § 1183a(a)(1)(B) (applying only to alien-spouse visa applications). Congress recognized as much when it established special procedures for obtaining immediate-family visas, *see, e.g.*, 8 U.S.C. §§ 1151(a)(1), 1153(a) (providing preferences for family sponsored immigrants), and exempted those visas from numeric caps and restrictions common to other forms of visas, *see id.* § 1151(b)(2)(A)(i) (exempting “immediate relatives,” including children and spouses, of U.S. citizens from numerical quotas). Every year, well over 100,000 noncitizens immigrate to the United States through marriage to a U.S. citizen.<sup>6</sup>

The Church teaches that marital and familial unity is a unified concept. As Pope Saint John Paul II explained, all people have “the right to live in a united family and in a moral environment conducive to the growth of [their] child’s personality” and “the right

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<sup>6</sup> *See* 2022 Yearbook Of Immigration Statistics, [https://www.dhs.gov/sites/default/files/2024-02/2023\\_0818\\_ply\\_yearbook\\_immigration\\_statistics\\_fy2022.pdf](https://www.dhs.gov/sites/default/files/2024-02/2023_0818_ply_yearbook_immigration_statistics_fy2022.pdf) (last visited March 15, 2024).



freely to establish a family, to have and to rear children.” Compendium ¶ 155 (emphasis omitted). “The procreative meaning of marriage involves not only the conception of children, but also their upbringing and education, including spiritual formation in the life of love.”<sup>7</sup> The “innate and permanent characteristics” of marriage “must be safeguarded against any attempt to undermine” its covenant. *Id.* ¶ 216 (emphasis omitted).

As a result, the Church teaches that all people “have the right to migrate to support themselves and their families,” and instructs that nations “provide ways to accommodate this right.” *Strangers No Longer* ¶ 35.<sup>8</sup> Pope Francis beseeches nations “to respect the right of all individuals to find a place that meets their basic needs and those of their families, and where they can find personal fulfillment.”<sup>9</sup> In enacting immigration policies, the Church “call[s] upon . . . lay leaders to ensure support for migrant and immigrant families,” *id.* ¶ 42, and implores that “[s]pecial encouragement should be given to migrants to be faithful to their spouses and families and to thereby live out the sacrament of marriage,” *id.* ¶ 46. Recognizing a U.S. citizen’s liberty interest in a spousal visa adjudication thus safeguards the marriage covenant.

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<sup>7</sup> A Pastoral Letter of the United States Conference of Catholic Bishops, *Marriage: Love and Life in the Divine Plan* (Nov. 17, 2009), <https://www.usccb.org/resources/pastoral-letter-marriage-love-and-life-in-the-divine-plan.pdf>.

<sup>8</sup> See also Catechism ¶ 2241.

<sup>9</sup> Pope Francis, *Fratelli Tutti*, Vatican (Oct. 3, 2020), <https://tinyurl.com/36zdptzj>.

The denial of a visa to a U.S. citizen's noncitizen spouse impacts the citizen's liberty interest in marriage because it conditions enjoyment of one fundamental right (marriage) on the sacrifice of another (residing in one's country of citizenship). U.S. citizens like Mrs. Muñoz have a due process interest in not being arbitrarily forced to sacrifice one right as a condition for exercising another. That a visa denial does not nullify a marriage is of no import. This Court has repeatedly struck down, as a direct burden on the right to marriage, state action that intrudes far into the sacred confines of a marital relationship. *See, e.g., Cleveland Bd. of Educ.*, 414 U.S. at 639–40 (“restrictive maternity leave regulations” posed too “heavy [a] burden on the exercise” of “freedom of personal choice in matters of marriage and family life”); *Turner v. Safley*, 482 U.S. 78, 99 (1987) (holding that state regulation prohibiting prisoners from marrying without the prison superintendent's permission impermissibly burdened the constitutional right to marry); *Boddie v. Connecticut*, 401 U.S. 371, 374, 383 (1971) (“prohibit[ing] a State from denying, solely because of inability to pay, access to its courts to individuals who seek judicial dissolution of their marriages” because it violated their Due Process right to adjust “fundamental human relationship”).

A couple's option to live together outside the United States does not extinguish a U.S. citizen's liberty interest in establishing her marital home in the United States. *See Mandel*, 408 U.S. at 765 (declining to hold that the “existence of other alternatives extinguishes altogether any constitutional interest . . . in this particular form of

access”); *see also Jones v. Helms*, 452 U.S. 412, 417–18 (1981) (“It is, of course, well settled that the right of a United States citizen to . . . take up residence in the State of his choice is protected by the Federal Constitution.”); *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (explaining that stripping a citizen of his fundamental right of citizenship at home, and forcing him to face the uncertainty of finding it abroad, was “a form of punishment more primitive than torture”). As the Church has emphasized, “persons should have the opportunity to remain in their homeland to support and to find full lives for themselves and their families.” *Strangers No Longer* ¶ 59.

## **2. The Ninth Circuit’s Framework Appropriately Safeguards The Fundamental Liberty Interest In Marital And Familial Unity That Is Burdened By Unreviewable Spousal Visa Denials.**

Insulating spousal visa denials from judicial review impermissibly burdens the core liberty interest in marital and familial unity and has severe practical harms. U.S. citizens ordinarily have strong personal and family ties to the United States, making relocation to another country daunting. For a U.S. citizen, like Mrs. Muñoz, whose spouse hails from a developing nation, relocation would mean having to forgo an American education and community for their U.S. citizen children in order to live with their spouse, or being forced to preserve these opportunities for their children on the condition of giving up the right to “establish a home” and “bring up children” with their spouse. *Meyer*, 262 U.S. at 399; *see also Moore*, 431 U.S. at 511 (Brennan, J., concurring) (“[T]he role

of the family in raising and training successive generations of the species makes it more important . . . than any other social or legal institution.”).

This conundrum is particularly challenging for Mrs. Muñoz, whose husband is a citizen of El Salvador, where widespread citizen insecurity and human rights concerns are prevalent.<sup>10</sup> For others, relocation is impractical or even impossible. Many U.S. citizens married to noncitizens have children, parents, or other family members residing in this country for whom they are primary caregivers and whom they cannot abandon in order to move overseas. In fact, at the time of the visa denial, Mrs. Muñoz was the caregiver for her mother. The Church recognizes that the U.S. citizen’s dilemma may yield an “unacceptable choice” and “difficult decision: either honor their moral commitment to family and [have the noncitizen spouse] migrate to the United States without proper documentation, or . . . face indefinite separation from loved ones.”<sup>11</sup> Strangers No Longer ¶ 65. Neither option safeguards the fundamental right to marriage or family. As this Court recognized, a parent’s “fundamental constitutional interest[] . . .

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<sup>10</sup> El Salvador: Events of 2022, Human Rights Watch, available at <https://www.hrw.org/world-report/2023/country-chapters/el-salvador#:~:text=Authorities%20committed%20widespread%20human%20rights,some%20neighborhoods%20and%20extort%20residents> (last visited March 15, 2024).

<sup>11</sup> Indeed, had Mrs. Muñoz and her noncitizen spouse simply remained in the United States, her noncitizen spouse could not have been removed without removal proceedings, where the couple would have had an opportunity to confront any proffered evidence of inadmissibility. See 8 U.S.C. § 1229a(b)(4)(B); *Yamataya v. Fisher*, 189 U.S. 86, 100–01 (1903).

in a familial relationship” is implicated by immigration laws that “make[ ] it more difficult for . . . children and their natural [parents] to be reunited in this country.” *Fiallo v. Bell*, 430 U.S. 787, 794, 795 n.6, 798 (1977).

Whereas the Government’s position erodes the commitment to marital and family unity enshrined in the Constitution, the Ninth Circuit’s framework—which recognizes a U.S. citizen’s liberty interest in a spousal visa adjudication—provides families with the opportunity to seek to remain with their loved ones in the United States. Pope Saint John Paul II explained that governments must “regulate the migratory flows with full respect for the dignity of the persons and for their families’ needs.”<sup>12</sup> This is all the more reason why a U.S. citizen should be provided with an adequate explanation when a spousal visa is denied. Before the Government forces married couples to live apart, the U.S. citizen is entitled to procedural due process to ensure the visa application was not arbitrarily denied. Otherwise, families may be left guessing, unable to vindicate a liberty interest, whether through the presentation of additional evidence or initiation of a new petition. The liberty interest in marriage and family is implicated when a U.S. citizen seeks to cohabit, live, and build a home with his or her noncitizen spouse and children in this country. To protect these crucial marital and familial rights, ordered liberty requires that this Court affirm the U.S. citizen’s liberty interest in a nonarbitrary

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<sup>12</sup> Pope Saint John Paul II, Message of the Holy Father John Paul II for the 90th World Day of Migrants and Refugees, Vatican (Dec. 15, 2003), <https://tinyurl.com/yy3nzphd>.

spousal visa adjudication.

**II. THE CATHOLIC CHURCH’S RESPECT FOR THE RIGHT OF THE GOVERNMENT TO DECIDE WHO REMAINS IN THE COUNTRY DOES NOT OUTWEIGH THE IMPORTANCE OF KEEPING FAMILIES TOGETHER.**

The Church recognizes the right of sovereign nations to regulate their borders, “make the exercise of the right to immigrate subject to various juridical conditions,” and control immigration in furtherance of the common good. Catechism ¶ 2241. But the Catholic Church’s respect for the right of the Government to decide who remains in the country is carefully balanced with the importance of keeping families together.

“A country’s regulation of borders and control of immigration must be governed by concern for all people and by mercy and justice.” Fr. Thomas Betz, *Catholic Social Teaching on Immigration and the Movement of Peoples*, USCCB, <https://tinyurl.com/yxlerkxz>; see also Pope Benedict XVI, *Message of His Holiness Pope Benedict XVI for the World Day of Migrants and Refugees*, Vatican (Oct. 12, 2012), <https://tinyurl.com/y6jgu8un> (explaining that although “every state has the right to regulate migration and to enact policies dictated by the general requirements of the common good,” states must always “safeguard[] respect for the dignity of each human person”). “A merciful immigration policy will not force married couples or children to live separated from their families for long periods.” Catholic Social Teaching on Immigration. Rather, Catholic principles dictate that “the right to family reunification” remain

at the forefront of immigration policies and regulations. *Strangers No Longer* ¶ 77 n.20. The Church’s commitment to protecting family unity and dignity, along with the Church’s “long and rich tradition in defending the right to migrate,” demands that it take a strong position in favor of a U.S. citizen’s liberty interest in the adjudication of a spousal visa. *Id.* ¶¶ 28, 66 n.17 (“The bishops in the United States have consistently supported reform of the family reunification visa system.”).

### CONCLUSION

For the reasons stated above and in Respondent’s brief, the Court should affirm the Ninth Circuit’s judgment.

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