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 *Amicus Curiae* of America's Future, Citizens United, and Conservative Legal Defense and Education Fund in Support of Petitioners

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J. Burnett, "Biden Pledges to Dismantle Trump's Sweeping Immigration Changes — But Can He Do That?" *NPR* (Sept. 14, 2020) 24
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INTEREST OF THE *AMICI CURIAE*[1]

Amici Curiae America's Future, Citizens United, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income tax under sections 501(c)(3) or 501(c)(4) of the Internal Revenue Code. These *amici* participate in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law.

America's Future filed an *amicus* brief in support of the Petition for Certiorari in this case: Brief *Amicus Curiae* of America's Future in Support of Petitioners (July 31, 2025). Additionally, some of these *amici* have filed *amicus* briefs in this Court supporting Trump Administration applications for stay of district court injunctions, including three involving immigration issues, where stays were issued by this Court.

- *Noem v. National TPS Alliance* (May 8, 2025), supporting the Trump Administration's revocation of Temporary Protected Status for Venezuela;
- *Noem v. Doe* (May 15, 2025), supporting the Trump Administration's termination of parole processes for Cubans, Haitians, Nicaraguans, and Venezuelans; and

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[1] It is hereby certified that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

- *Department of Homeland Security v. D.V.D.* (June 5, 2025), supporting the Trump Administration's ability to deport illegal aliens to third countries when needed and Executive Power to conduct immigration and foreign relations.

STATEMENT OF THE CASE

In July 2017, six individual plaintiffs and organizational plaintiff Al Otro Lado, Inc. filed suit against the Secretary of the Department of Homeland Security ("DHS") and two officials of Customs and Border Protection ("CBP"). The suit alleged that CBP officers were failing to follow both international law and the Immigration and Nationality Act ("INA") by not immediately reviewing asylum requests of aliens who were stopped near the southern border and prevented from entering the United States.

On August 23, 2022, the district court entered final judgment for Defendants on Plaintiffs' claims of violations of the INA and the Non-Refoulement Doctrine. However, it entered judgment for Plaintiffs on their claims of violation of Section 706(1) of the Administrative Procedure Act ("APA") and violation of procedural due process. The claim for violation of Section 706(2) of the Administrative Procedure Act — agency action in excess of statutory authority and without observance of procedures required by law — was dismissed as moot. *Al Otro Lado, Inc. v. Mayorkas*, 2022 U.S. Dist. LEXIS 159511 at *7 (S.D. Cal. 2022) ("*A.O.L. I*").

The district court issued a permanent injunction, preventing Defendants from "applying ... the 'Interim Final Transit Rule' ... or the ... 'Final Transit Rule' ... to [any] 'non-Mexican asylum seekers who were unable to make a direct asylum claim at a U.S. [Port of Entry] before July 16, 2019 because of the U.S. Government's metering policy, and who continue to seek access to the U.S. asylum process.'" *Id.* at *8.

On appeal, the Government argued that 8 U.S.C. § 1158(a)(1) states that "[a]ny alien who is physically present in the United States or who arrives in the United States ... may apply for asylum" and that the law thus would not apply to an alien stopped at the border who had not yet entered the United States. *Al Otro Lado v. Exec. Off. for Immigr. Review,* 120 F.4th 606, 615 (9th Cir. 2024) ("*A.O.L. II*"). On October 23, 2024, a split panel of the Ninth Circuit disagreed, over a strong dissent from Judge Nelson. *Id.* at 618-19. The Ninth Circuit affirmed most of the district court's decision, concluding that the metering policy violated Section 706(1) of the APA.

The Ninth Circuit addressed the district court's compliance with *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022), but found it unnecessary. The court ruled that "asylum eligibility under § 1158 ... is not covered by § 1252(f)(1)," and that "[e]ven though asylum eligibility may change the outcome of a removal proceeding under a covered provision, such an effect is collateral" to the removal proceeding, and therefore § 1252(f)(1)'s jurisdictional bar does not apply. *A.O.L. II* at 628.

On May 14, 2025, the Ninth Circuit denied *en banc* review. *Al Otro Lado v. Exec. Off. for Immigr. Rev.*, 138 F.4th 1102 (9th Cir. 2025). On the same day, the panel issued an amended opinion in substantially similar language to its October 2024 opinion. *Al Otro Lado v. Exec. Off. for Immigr. Review*, 2025 U.S. App. LEXIS 11683 (9th Cir. 2025) ("*A.O.L. III*").

Judge Nelson dissented from the denial of rehearing *en banc*. Judge Nelson argued that an alien standing on Mexican soil has not "arrived in the United States," and so cannot demand review for asylum under the statute. *Id.* at *90-91 (Nelson, J., dissenting from denial of rehearing *en banc*). Judge Nelson also challenged the district court's ruling that the metering policy "withheld" rather than merely was "delaying" agency action on asylum petitions. *Id.* at *116. Judge Nelson likewise rejected Plaintiffs' due process argument, contending that the rights are granted to aliens by Congress via statute and that the Fifth Amendment requires no more. *Id.* at *109. Judge Nelson argued that the district court's injunction against metering should be vacated as moot since the government had terminated the policy.

Judge Bress also dissented, joined by several other judges. Like Judge Nelson, he concluded that the phrase "arrived in the United States" does not include aliens in Mexico. *Id.* at *119-20 (Bress, J., dissenting from denial of rehearing *en banc*). Judge Bea, joined by two other judges, also dissented on the same grounds. *Id.* at *140 (Bea, J., dissenting from denial of rehearing *en banc*).

SUMMARY OF ARGUMENT

The Ninth Circuit ruled that an alien on Mexican soil has "arrive[d] in the United States" under federal law. This conclusion is entirely untethered from the text. It renders the words carefully chosen by Congress ineffectual and thereby usurps Congress' authority to make law. In doing so, the Ninth Circuit ignored the clear distinction established by Congress between aliens who are inside the country and those who were not. There was no ambiguity, and no inconsistency, nor any other basis for the Ninth Circuit to look behind the text. The text used by Congress was clear and effectuated its purpose.

This case was not the first in which the Ninth Circuit gave an new and inventive reading of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 in order to achieve the policy objectives of that court. Previously, the Ninth Circuit chose to grant aliens the right to file habeas challenges for a new purpose — "to obtain additional administrative review of his asylum claim and ultimately authorization to stay in this country." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 106 (2020). This Court did not allow that misreading of the INA to stand, and should not allow this decision either.

During the past year, the Ninth Circuit, and certain other courts have been hostile to efforts by the Trump Administration to enforce immigration laws. These decisions have required this Court to intervene to stay injunctions unlawfully entered. However, it

was not during the first or second Trump Administration, but during the Obama Administration, that the border officials created the "metering" process to control the process by which applications for asylum were reviewed. It was the Biden Administration which reversed the policies of the first Trump Administration which not only created chaos at the border, but effectively threw open the border, resulting in untold crime and other negative effects.

The decisions being reached in the hallowed halls of the Ninth Circuit in San Francisco do not help our nation control its border. The law that was reinterpreted by the Ninth Circuit is nearly three decades old, and the court below's reversal of its meaning is an affront to the Congress that wrote the law, the men and women who enforce it, and the People who elected President Trump to reverse the open border policies of the prior Administration to protect the nation from "illegal immigration," a term that the Ninth Circuit declines to use, even if it is in the very name of the statute being reinterpreted.

ARGUMENT

I. THE NINTH CIRCUIT'S INTERPRETATION OF 8 U.S.C. §§ 1157 AND 1158 IS ERRONEOUS AND CANNOT BE ALLOWED TO STAND.

The area of immigration law is complex, and the course of proceedings in this case has been long and tortured, but this case focuses on a narrow issue of

statutory interpretation. The Ninth Circuit has interpreted two near-identical Immigration and Nationality Act provisions to have a new meaning not previously ascribed to them. The Ninth Circuit deemed an alien who is somewhere near to, but still physically outside of the United States, to have arrived "in" the United States.[2] The policy consequences of this interpretation are clear — that aliens who are not "in" the United States will be provided rights that Congress did not give them because they were still in another country, here Mexico. That erroneous interpretation apparently advances the policy preferences of the majority of the Ninth Circuit judges, but at great cost. That cost includes: crushing the distinction Congress chose to make between aliens outside and inside the country; impairing the ability of the Executive Branch of government to enforce our nation's immigration laws effectively; and usurping the authority of the Legislative Branch through the manipulation of statutory language.

Judge Nelson made this point clearly:

> More than being wrong, the majority's conclusion is harmful. Judicial redlining of statutes, as the majority does here, undercuts Congress's authority, eliminates citizens' ability to rely on the law, and erodes democracy, allowing unelected judges to revise

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[2] "Plaintiffs have not identified a single example of when 'arrives in' means anything besides physically reaching a destination." *A.O.L. III* at 76 (Nelson, J., dissenting).

> the decisions of the People's representatives. [*A.O.L. III* at *88 (Nelson, J., dissenting).]

There are two primary statutes. First, 8 U.S.C. § 1158(a)(1) governing "asylum" provides:

> Any alien who is physically present in the United States or **who arrives in the United States** (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, **may apply for asylum** in accordance with this section or, where applicable, section 1225(b) of this title. [Emphasis added.]

The second statute, 8 U.S.C. § 1225(a)(1), addressing "inspection by immigration officers," states:

> An alien present in the United States who has not been admitted or **who arrives in the United States** (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) **shall be deemed** for purposes of this chapter **an applicant** for admission. [Emphasis added.]

Employing the same language in both statutes, Congress distinguished between an alien "who arrives in the United States" and one who has not arrived, giving certain rights only to those "in the United

States." Under the Ninth Circuit's entirely novel interpretation, those aliens who are to be found in some proximity to our border (how close was a matter on which the Ninth Circuit was not clear) would all have the right to apply for asylum — not at the moment they entered the United States, but at the moment they came somewhere near. The Court described this point only as when the alien "presents herself to an official at the border." *A.O.L. III* at *23.

As Judge Nelson pointed out in dissent:

> The majority's reading places aliens on the Mexican side of the border in a penumbral zone where they can apply for refugee status under § 1157 or for asylum under § 1158. Thus, while the statutory scheme applies different protections to an alien based on her location — either in the United States or out of it — the majority's reading creates a fiction where these aliens are entitled to both. [*Id.* at *90 (Nelson, J., dissenting).]

The Ninth Circuit sought to justify its decision as a simple act of statutory interpretation of § 1158(a)(1), which states that an "alien who is physically present in the United States or who arrives in the United States ... may apply for asylum." The court asserted that since the second phrase — "arrives in the United States" — involves physical entry into the United States, it thus would be redundant to the first phrase, "physically present in the United States." *A.O.L. III* at *21. For that reason, the court imagined that the term "arrives in the United States" actually includes aliens

not in the United States, but rather "at the border, whichever side of the border they are standing." *Id.* at *22.

However, there is another, more logical and more natural way to read the two phrases which eliminates any inconsistency. The phrase "arrives in the United States" uses the intransitive, singular, present tense verb "arrives" followed by a phrase specifying "where" the person must arrive — "in the United States," not "at the border." Put simply, that phrase indicates a person who has just crossed the border into the United States, while the phrase "physically present in the United States" indicates a person whose entry had not just occurred and was not found at the border. Thus, the right to seek asylum is not limited to a person setting foot on U.S. territory for the first time, but extends to those who did not just cross the border moments before. The statute does not need to be re-written by the Ninth Circuit to avoid redundancy, as there is no redundancy.

Consider the practical effect of how the Ninth Circuit's crushing of this clear statutory distinction would alter the protection of our border. At times, there has been a surge of illegal aliens still in Mexico, all demanding entry into the United States — a demand that border officials are physically incapable of accommodating. Allowing such a surge of migrants into the country can also cause danger for both border officials and aliens. Such surges can be used as a tactical device by those seeking to penetrate our border with massive numbers of immigrants arriving at the same time, and the Ninth Circuit decision facilitates

such a strategy. While it may be that no such crush of migrants is occurring at the Mexican border at the moment in 2026, this does not make the need for this Court to rule correctly any less significant. The litigation below began in 2017, at the outset of the first Trump Administration, continued through President Trump's first term as well as all of President Biden's term, and now comes to this Court during President Trump's second term. Moreover, the interpretation adopted by this Court will last well beyond the current Administration.

II. THE NINTH CIRCUIT HAD NO AUTHORITY TO IMPUTE ITS PREFERRED MEANING TO THE CLEAR LANGUAGE OF STATUTES.

Both 8 U.S.C. §§ 1158 and 1225 were adopted nearly three decades ago, substantially in their current form, as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), 110 STAT. 3009-546. As this Court has declared, "[a] major objective of IIRIRA was to 'protec[t] the Executive's discretion' from undue interference by the courts; indeed, that 'can fairly be said to be the theme of the legislation.'" *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 112 (2020) (*quoting Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 486 (1999)). The Ninth Circuit's ruling below could be described as being "contrary to more than a century of precedent." *Thuraissigiam* at 138.

In its final word on the case below, the Ninth Circuit derided "[t]he Government's interpretation

[that] the phrase 'arrives in the United States' [applies] only to those who are also 'physically present in the United States.'" *A.O.L. III* at *22. Instead, the court posited, "the phrase 'arrives in the United States' encompasses those who encounter officials at the border, whichever side of the border they are standing on." *Id.* That is, as far as the Ninth Circuit is concerned, a person still in Mexico has "arrive[d] in the United States." It was on this fabrication that the Ninth Circuit based its holding.

In Through the Looking Glass, Lewis Carroll demonstrates through dialogue the utter confusion that arises when the meaning of words is not respected.

> "When I use a word," Humpty Dumpty said in rather a scornful tone, "it means just what I choose it to mean — neither more nor less."
>
> "The question is," said Alice, "whether you can make words mean so many different things."
>
> "The question is," said Humpty Dumpty, "which is to be master — that's all."[3]

In our system of law, the clear language chosen by Congress is the master, not the Ninth Circuit. If judges are allowed to twist the meaning of the text, border officials would have no idea what a law means and how to enforce it until several years after it is

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[3] L. Carroll, Through the Looking Glass at 124 (Macmillan & Co.: 1895).

enacted, when the judiciary imposes its final meaning on the text. As the British Judge Vaughan put it in the context of the criminal law in 1677, "For a law which a man cannot obey, nor act according to it, is void, and no law: and it is impossible to obey contradictions, or act according to them." *Thomas v. Sorrell*, Vaughan 330, 337 (1673). A similar principle applies here.

The need for government, including judges, to respect the text strictly, arises most frequently in the criminal context. As Harvard Law Professor Lon L. Fuller put it in his work, The Morality of Law, "[t]he desideratum of clarity represents one of the most essential ingredients of legality…. This proposition is scarcely subject to challenge."[4] By this principle, it is not possible that an immigrant simultaneously stands in Mexico, yet has "arrive[d] in the United States." This Court need not even search out the intent of Congress here. The plain meaning of the text of the statute in service to its obvious purpose is itself determinative. As Professor Fuller argued, "it is a serious mistake — and a mistake made constantly — to assume that, though the busy legislative draftsmen can find no way of converting his objective into clearly stated rules, he can always safely delegate this task to the court or a special administrative tribunal." Fuller at 64.

Here, the Ninth Circuit has not just taken the obvious reading and replaced it with a less plausible

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[4] L. Fuller, The Morality of Law at 63, Y. Elman and I. Gershoni, eds. (Yale Univ. Press 2000) (hereinafter "Fuller").

one, but it has also taken the plain meaning and inverted it, in an unalloyed act of judicial "legislation." The Ninth Circuit's answer to Humpty Dumpty's question "which is to be master" is simple — "the courts." The law enacted by the elected representatives of the People was rewritten by lawyers in robes to mean the opposite of what its words say. The Ninth Circuit replaced a "government of laws" with a "government of judges."

As Justice Thomas reminds us, the doctrine of adhering to the plain text of the statute is:

> a very old idea, one that constrains judges to a lawfinding rather than lawmaking role by focusing their work on the statutory text.... [T]extualism serves as an essential guardian of the due process promise of fair notice. If a judge could discard an old meaning and assign a new one to a law's terms, all without any legislative revision, how could people ever be sure of the rules that bind them?... Were the rules otherwise, Blackstone warned, the people would be rendered "slaves to their magistrates." [*Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 434 (2024) (Thomas, J., concurring).]

III. THE NINTH CIRCUIT HAS A HISTORY OF MISREADING IIRIRA.

In *Thuraissigiam*, this Court was required to correct another Ninth Circuit decision under IIRIRA. That case involved a challenge to the constitutionality

of 8 U.S.C. § 1252, which limited the right of aliens to file habeas challenges when the government denied their claims of "credible fear of persecution" if returned to their home countries. This Court concluded that, even physical presence, if gained illegally, did not constitute "effect[ing] an entry" to the United States.

> [A]n alien who tries to enter the country illegally is treated as an "applicant for admission,"... and an alien who is detained shortly after unlawful entry cannot be said to have "effected an entry...." Like an alien detained after arriving at a port of entry, an alien like respondent is "on the threshold."... For these reasons, an alien in respondent's position has only those rights regarding admission that Congress has provided by statute. [*Thuraissigiam* at 140.]

In *Thuraissigiam v. United States Dep't of Homeland Sec.*, 917 F.3d 1097 (9th Cir. 2019), the Ninth Circuit noted this Court's ruling in *Landon v. Plasencia*, 459 U.S. 21 (1982), that "a noncitizen 'has no constitutional rights regarding his application' for entry into the country." *Thuraissigiam*, 917 F.3d at 1110. However, the Ninth Circuit then simply dismissed this Court's ruling as "addressing due process, not habeas, rights," and proceeded to declare it a "constitutional minimum" — and thus necessarily subject to judicial review — "whether [an alien] was detained pursuant to the 'erroneous interpretation or application of relevant law.'" *Id.* at 1110, 1118. Further, despite *Landon*, the Ninth Circuit went on to declare that the alien had "procedural due process

rights," specifically the right "'to expedited removal proceedings that conformed to the dictates of due process.'" *Id.* at 1111, n.15.

On review, this Court flatly rejected the Ninth Circuit's reasoning. This Court declared the Ninth Circuit's ruling to be "contrary to more than a century of precedent." *Thuraissigiam*, 591 U.S. at 138. This Court ruled that "[h]abeas has traditionally been a means to secure *release* from unlawful detention, but respondent invokes the writ to achieve an entirely different end, namely, to obtain additional administrative review of his asylum claim and ultimately to obtain authorization to stay in this country." *Id.* at 107.

Rejecting the Ninth Circuit's assertion that there is a "constitutional minimum" that operates as essentially a "get out of jurisdictional limits free card" for the judiciary, this Court ruled that:

> "[t]he power to admit or exclude aliens is a sovereign prerogative," ... the Constitution gives "the political department of the government" plenary authority to decide which aliens to admit, ... and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted. [*Id.* at 139.]

Now, in yet another effort to evade the rules set by Congress, the Ninth Circuit has simply undertaken to create, *ex nihilo*, the status of "arrive[d] in the United States" and bestow it on persons physically in Mexico

(and presumably Canada as well, as long as an alien there is within some unknown degree of proximity to the U.S. border). Again, the boundless creativity of the Ninth Circuit should be reversed.

IV. THE NINTH CIRCUIT HAS DISREGARDED THE GOVERNMENT'S NEED TO MANAGE THE CHAOS AT THE SOUTHERN BORDER.

The Government's opening brief explains the circumstances at the Mexican border which in 2016 led to the practice known as "metering." *See* Pet. Br. at 2-3. It further explains that "ports of entry along the U.S.-Mexico border ... encountered more than 150,000 in Fiscal Year 2016, a 70% increase over Fiscal Year 2014." *Id*. at 5. Its brief provides numerous illustrations how overcrowding at ports of entry impaired operations. *See id*. at 5-6. The Ninth Circuit refused to recognize the reality of the problem at the border over many years.

In the year 2021 alone, more than 2 million "border crossers and illegal aliens arrived at the porous southern border — a foreign population larger than the resident population of Philadelphia, Pennsylvania. From January 2021 to August 2021, for example, more than half a million aliens were released into the U.S. interior."[5]

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[5] J. Binder, "Biden's Next Move: Busing, Flying Thousands of Illegal Aliens into American Communities Every Day," *Breitbart* (Apr. 1, 2022).

> Biden officials are readily admitting that about half a million border crossers and illegal aliens are expected to show up at the U.S.-Mexico border every month [if the courts allow the administration to end its "Title 42" policy]. **This is the equivalent of a population the size of Atlanta, Georgia, arriving at the border over the course of just 28 to 30 days.** [*Id.* (emphasis added).]

In March 2023, U.S. Border Patrol chief Raul Ortiz also testified to chaos at the border. "[Homeland Security] Committee Chairman Representative Mark Green [R-TN] asked Ortiz, 'Does DHS have operational control of our entire border?' Ortiz responded, 'No, sir.'"[6]

Many Americans see a pattern of decisions and actions by the American ruling class which have consistently favored the interests of foreigners over Americans.[7] The Ninth Circuit's radical decision to prevent the orderly consideration of asylum applications at the border imposes "intentional stress" and could be seen as part of a dangerous "strategy of controlled destruction, whereby American systems [for] immigration ... are deliberately overwhelmed [to create] [c]haos and disillusionment." *Id.*

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[6] N. Mordowanec, "Border Patrol Chief Admits Biden Official Wrong About 'Operational Control,'" *Newsweek* (Mar. 15, 2023).

[7] *See* S. Cortes, "The Ruling Class Prioritizes Foreigners," *Cortes Investigates* (Jan. 10, 2026).

V. IN RECENT MONTHS, THIS COURT REPEATEDLY HAS BEEN REQUIRED TO CORRECT LOWER COURT DECISIONS LIMITING EXECUTIVE BRANCH AUTHORITY OVER IMMIGRATION.

The Ninth Circuit's decision is not unique, but one of several efforts by the lower federal courts to limit the Executive Branch's authority to control immigration, even where jurisdiction was removed expressly by Congress.

A. *Bouarfa v. Mayorkas.*

In late 2024, this Court decided *Bouarfa v. Mayorkas*, 604 U.S. 6 (2024), which involved a visa petition filed by the wife of a Palestinian national. The government denied the visa petition after determining that a previous marriage had been entered into to evade immigration laws. The courts below disregarded jurisdiction-stripping code sections and assumed jurisdiction to review the denial of the petition. This Court determined that the controlling statute — which vests discretion in the Secretary of Homeland Security to "revoke the approval of any petition" "for good and sufficient cause" — barred judicial review. *Id.* at 12. This Court explained:

> Through §1252(a)(2)(B), Congress stripped federal courts of jurisdiction to review two categories of discretionary agency decisions.... [I]n the provision at issue here, Congress barred review of "any other decision or action of the Attorney General or the Secretary of

> Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary." [*Id.* at 11.]

B. *Noem v. National TPS Alliance*.[8]

Under 8 U.S.C. § 1254a, the DHS Secretary is authorized to designate a foreign country for Temporary Protected Status ("TPS") when individuals from that country cannot safely return due to war, natural disaster, or other extraordinary and temporary circumstances. TPS status allows aliens from designated nations an expedited process to apply for legal status. After DHS Secretary Kristi Noem vacated a TPS designation for Venezuela granted by her predecessor, Alejandro Mayorkas, the Northern District of California enjoined the revocation, despite a provision in the INA making TPS designations completely discretionary and barring judicial review of TPS designations or terminations. *Nat'l TPS All. v. Noem*, 773 F. Supp. 3d 807 (N.D. Cal. 2025). The Ninth Circuit refused to stay the injunction (*Nat'l TPS All. v. Noem*, 2025 U.S. App. LEXIS 9436 (9th Cir. 2025)), requiring this Court to do so on May 19, 2025. *Noem v. Nat'l TPS All.*, 145 S. Ct. 2728 (2025). On August 29, 2025, the Ninth Circuit affirmed the preliminary injunction. *Noem v. Nat'l TPS All.*, 150 F.4th 1000 (9th Cir. 2025). Subsequently, the district court granted summary judgment to the plaintiffs

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[8] These *amici* filed an *amicus* brief supporting the Government's application for stay. Brief *Amicus Curiae* of America's Future, *et al.* (May 8, 2025).

(*Nat'l TPS All. v. Noem*, 798 F. Supp. 3d 1108 (N.D. Cal. 2025) and *Nat'l TPS All. v. Noem*, 2025 U.S. Dist. LEXIS 256153 (N.D. Cal. 2025), which are now on appeal before the Ninth Circuit (*see* Docket Nos. 25-5724 and 26-187).

C. *Noem v. Doe*.[9]

The Biden Administration adopted a wholesale (non-individualized) policy allowing aliens from four countries — Cuba, Haiti, Nicaragua, and Venezuela ("CHNV") — to have categorical parole status, despite the INA requiring that parole be granted on a case-by-case basis. On January 20, 2025, President Trump issued Executive Order 14165, "Securing Our Borders." Section 7 of that Order directs the Secretary of Homeland Security to, consistent with applicable law, take all appropriate action to "[t]erminate all categorical parole programs that are contrary to the policies of the United States established in [the President's] Executive Orders, including the program known as the 'Processes for Cubans, Haitians, Nicaraguans, and Venezuelans.'"

The district court enjoined the Trump Administration's termination of the CHNV parole program, again despite jurisdiction-stripping statutes. *Doe v. Noem,* 778 F. Supp. 3d 311 (D. Mass. 2025). The applicable statute provided, "Notwithstanding **any other provision of law ...**, **no court shall have**

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[9] These *amici* filed an *amicus* brief supporting the Government's application for stay. Brief *Amicus Curiae* of America's Future, *et al.* (May 15, 2025).

jurisdiction to review ... **any other decision or action** of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this title...." 8 U.S.C. § 1252(a)(2)(B)(ii) (emphasis added). Upon application, the Supreme Court stayed the Massachusetts court's injunction. *See Noem v. Doe*, 145 S. Ct. 1524 (2025).

D. *Department of Homeland Security v. D.V.D.*[10]

The District of Massachusetts issued an injunction preventing the Trump Administration from removing illegal aliens to "third countries" when they made a showing of fear to return to their home countries, under the "Convention Against Torture."

The government challenged the injunction on the basis of three jurisdiction-stripping statutes, including 8 U.S.C. § 1252(g) which states: "Except as provided in this section ... **no court shall have jurisdiction** to hear any cause or claim by or on behalf of any alien...." (Emphasis added.) Additionally, 8 U.S.C. § 1252(a)(5) states: "a petition for review filed with an appropriate **court of appeals** in accordance with this section shall be the **sole and exclusive** means for judicial review of an order of removal entered or issued under any provision of this Act." (Emphasis added.) Finally, 8 U.S.C. § 1252(b)(9) states: "Except as otherwise provided in this section, **no court shall have**

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[10] Some of these *amici* filed an *amicus* brief supporting the Government's application for stay. Brief *Amicus Curiae* of America's Future, *et al.* (June 5, 2025).

jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), **to review such an order**...." (Emphasis added). The district court issued its injunction even though these three statutes divest the district court of jurisdiction to review the Administration's decisions. On June 23, 2025, the Supreme Court granted the stay, allowing the third-country removals to resume. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). Even then, the district court resisted this Court's stay, requiring this Court to issue a "clarification" on July 3, 2025. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2627 (2025).

VI. THE JUDICIARY NEEDS TO BE MINDFUL OF THE DUTY OF THE EXECUTIVE BRANCH TO PROTECT THE NATION'S BORDERS.

In enacting the IIRIRA, Congress empowered the executive branch to carry out its duty to defend the nation's borders. The challenge here commenced during the first year of President Trump's first term, continued throughout the entire Biden Administration, and now continues into 2026 during President Trump's second term. While this case was pending, the country has suffered an unprecedented number of illegal border crossings.

President Biden took office in January 2021 promising to reverse all of Trump's actions taken to

protect the border in his first Administration.[11] And beginning in the first hours of his Administration, Biden began to do so.[12] This policy created the most massive influx of illegal immigration in our Nation's history. Data on immigration is available for a five-year period during which this litigation has been pending:

> Between October 2019 and June 2024, US Customs and Border Protection (CBP) reported just under 11 million border encounters nationwide. That's roughly equivalent to the current population of North Carolina, the ninth most populous state.
>
> Monthly encounters peaked with over 370,000 people in December 2023. ["What can the data tell us about unauthorized immigration?," *USA Facts* (Aug. 1, 2024).]

That same source reports that, in December 2023, "CBP encountered nearly 12,000 people at the border every day." *Id*. Imagine how the Ninth Circuit rule would work in the face of such numbers of aliens massing at the border on a daily basis. As a result of both apparent deliberate neglect and many impediments to enforcement of our immigration laws,

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[11] J. Burnett, "Biden Pledges to Dismantle Trump's Sweeping Immigration Changes — But Can He Do That?" *NPR* (Sept. 14, 2020).

[12] A. Holpuch & L. Gambino, "Joe Biden reverses anti-immigrant Trump policies hours after swearing-in," *The Guardian* (Jan. 20, 2021).

approximately 18.6 million illegal aliens reside in the United States as of March 2025.[13]

President Trump was elected in 2024 based in large part on his promise to restore the rule of law to immigration enforcement, and he took swift action beginning on his first day in office. For example, on January 20, 2025, he issued both a proclamation entitled "Guaranteeing the States Protection Against Invasion" and Executive Order 14165, "Securing Our Borders."

The lower federal courts cannot be allowed to continue to place impediments in the way of a President who seeks to enforce our Nation's borders.

CONCLUSION

This Court should reverse the judgment of the court of appeals with directions to dismiss the suit.

Respectfully submitted,

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[13] "How Many Illegal Aliens Are in the United States?," *FAIR* (Mar. 7, 2025).

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