

No. _____

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

TAMER S. WASSILY,
Petitioner,

v.

PAMELA BONDI, UNITED STATES ATTORNEY
GENERAL,
Respondent.

BYRON E. VELASQUEZ ARREAGA,
Petitioner,

v.

PAMELA BONDI, UNITED STATES ATTORNEY
GENERAL,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The asylum laws offer protection against removal for certain noncitizens in this country who suffered past persecution or reasonably fear future persecution in their country of nationality. For those “granted asylum,” the immigration laws also provide a pathway to obtain lawful permanent resident (LPR) status. Under 8 U.S.C. § 1159(b), the government “may adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum,” if certain statutory criteria are satisfied. The question presented is:

Whether noncitizens who were “granted asylum,” but whose asylum was later terminated, are eligible for adjustment to LPR status under Section 1159(b) (as the Fifth Circuit held), or are categorically ineligible (as the Second and Fourth Circuits held)?

PARTIES TO THE PROCEEDING

Petitioners in this Court and in the court of appeals are Tamer S. Wassily and Byron E. Velasquez Arreaga.

Respondent in this Court and in the court of appeals is Pamela Bondi, Attorney General.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

Wassily v. Bondi, No. 22-6247, United States Court of Appeals for the Second Circuit, judgment entered August 7, 2025 (150 F.4th 100), rehearing denied October 14, 2025.

Velasquez Arreaga v. Bondi, No. 23-6289, United States Court of Appeals for the Second Circuit, judgment entered August 7, 2025 (150 F.4th 100), rehearing denied October 14, 2025.

People v. Velasquez-Arreaga, No. 2019-09518, 306/18, judgment entered October 20, 2021 (198 A.D.3d 933).

Wassily v. Holder, No. 10-2804, United States Court of Appeals for the Second Circuit, judgment entered May 1, 2013 (523 F. App'x 783), amended May 3, 2013.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Tamer S. Wassily and Byron E. Velasquez Arreaga respectfully petition this Court for a writ of certiorari to review the judgments of the United States Court of Appeals for the Second Circuit in these cases.¹

OPINIONS BELOW

The decision of the court of appeals for both Wassily and Velasquez Arreaga (App. 1a-30a) is reported at 150 F.4th 100. The orders of the court of appeals denying rehearing en banc (App. 31a-32a) are unreported. The decisions of the Board of Immigration Appeals for Wassily (App. 33a-36a, 59a-61a, 62a-68a) and Velasquez Arreaga (App. 109a-115a, 121a-27a) are unreported. The decisions of the immigration judges for Wassily (App. 37a-58a, 69a-108a) and Velasquez Arreaga (App. 128a-34a, 135a-40a) are also unreported. A prior decision of the court of appeals for Wassily is not published but is reported at 523 F. App'x 783.

JURISDICTION

The court of appeals entered judgment on August 7, 2025. App. 1a-30a. On October 14, 2025, the court of appeals denied petitioners' timely petitions for rehearing en banc. *Id.* at 31a-32a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

¹ Petitioners file this petition jointly under Supreme Court Rule 12.4 ("When two or more judgments are sought to be reviewed on a writ of certiorari to the same court and involve identical or closely related questions, a single petition for a writ of certiorari covering all the judgments suffices.").

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Relevant statutory and regulatory provisions are reproduced in the petition appendix. App. 141a-58a.

INTRODUCTION

Section 1159(b) of Title 8 of the United States Code provides that the Attorney General “may adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum.”² The question presented is an important one for noncitizens who were granted asylum: whether the Attorney General has discretion to adjust their status to lawful permanent resident (LPR) if their asylum has been terminated. That question has divided the courts of appeals and the Board of Immigration Appeals (BIA).

In a split decision, the Second Circuit held that the Attorney General has no such discretion because the termination of asylum is a categorical bar to LPR adjustment under Section 1159(b). In so holding, the Second Circuit sided with a similarly split decision from the Fourth Circuit, as well as a split BIA decision, and diverged from a unanimous decision out of the Fifth Circuit. Counting heads, the judges who have considered this question are now evenly split: 6-6. Only this Court can definitively resolve the entrenched conflict.

The Second Circuit also picked the wrong side of the split. Under the plain text of the statute, “[a]ny alien granted asylum”—regardless whether their

² Although the Secretary of the Department of Homeland Security also has authority to adjust, this petition uses “Attorney General” as shorthand.

asylum has since been terminated—is eligible for adjustment to LPR status, assuming the other express statutory criteria are satisfied. The phrase “granted asylum” is used elsewhere in the same subsection to refer to a completed, historical event—not a continuing, present status. By contrast, neighboring provisions within Section 1159 *do* require continuing status. The imposition of an extratextual, continuing status requirement for asylum cannot be squared with the statute or the discretion vested in the Attorney General. And especially after *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), any ambiguity the conflicting interpretations might suggest should be resolved in favor of petitioners—given the longstanding canon that ambiguities in deportation statutes must be construed in favor of the noncitizen.

This Court’s review is needed to resolve the conflict, to give effect to the statutory text, and to return discretion to the Attorney General. It is also needed to prevent perverse consequences. The Second Circuit’s decision will harm noncitizens who have lost asylum through no fault of their own and those who still fear persecution. It will harm innocent spouses and children whose status is “derivative.” And it will harm all those who, but for termination, would have been worthy of waivers for humanitarian, family-unity, or public-interest reasons. This petition is an ideal vehicle and there is no reason to wait. The Court should grant review.

STATEMENT OF THE CASE

1. The Immigration and Nationality Act provides protections for noncitizens who are “unable or unwilling to return to” their home “country because of

persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. § 1101(a)(42)(A). Individuals who satisfy that definition and are outside the United States may be admitted as refugees under Section 1157. *Id.* § 1157(c). Individuals who satisfy that definition and are already physically present in the United States may be granted asylum under Section 1158. *Id.* § 1158(a). Spouses and children of asylees may receive “derivative” protection. *See id.* § 1158(b)(3)(A).

Neither refugee status under Section 1157 nor asylum status under Section 1158 “convey[s] a right to remain permanently in the United States.” *Id.* § 1158(c)(2); *see id.* § 1157(c)(4). For that, a noncitizen must adjust to LPR status under Section 1159. Adjustment to LPR status is available for both refugees and asylees, but the preconditions differ.

Under Section 1159(a)(1), refugees can adjust to LPR status if (A) their admission “has not been terminated”; (B) they have been “physically present in the United States for at least one year”; and (C) they have not already acquired LPR status. *Id.* § 1159(a)(1). If refugees meet each of these conditions and are admissible (subject to certain waivers), they “shall ... be regarded” as LPRs. *Id.* § 1159(a)(2).

By contrast, under Section 1159(b), the Attorney General “may adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum,” if certain other conditions are met. *Id.* § 1159(b). Specifically, the noncitizen must (1) have applied for adjustment to LPR status; (2) have “been physically present in the United States for at least one year after being granted asylum”;

(3) “continue[] to be a refugee” or the child or spouse of a refugee; (4) have not firmly resettled in a foreign country; and (5) otherwise be admissible “at the time of examination for adjustment”—unless subsection (c) provides an exception. *Id.* Subsection (c), in turn, allows the Attorney General to grant waivers of certain grounds of inadmissibility “for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.” *Id.* § 1159(c).

The grounds for terminating the status of a person admitted as a refugee under Section 1157 and a person granted asylum under Section 1158 are likewise distinct. Refugee status under Section 1157 may be terminated only “if the Attorney General determines that the alien was not in fact a refugee within the meaning of section 1101(a)(42) ... at the time of the alien’s admission.” *Id.* § 1157(c)(4). Asylum status under Section 1158 may be terminated for many different reasons—most of which turn on a change in circumstances arising after the initial grant of asylum. *See id.* § 1158(c)(2). These include a change in the conditions in a noncitizen’s home country, an intervening bilateral agreement between the United States and another country, the noncitizen acquiring a new nationality, or the noncitizen being convicted of a “particularly serious crime,” defined to include any “aggravated felony.” *Id.* § 1158(b)(2)(A), (b)(2)(B)(i), (c)(2)(A)-(D). When a principal asylee’s status is terminated, any derivative spouse or child loses their asylum as well. *See* 8 C.F.R. § 1208.24(d).

2. Both petitioners had their asylum terminated and were ultimately denied LPR status.

a. Petitioner Tamer Wassily is a native and citizen of Egypt. App. 3a. In 2000, he was granted asylum due to persecution in Egypt for his Coptic

Christian beliefs. *Id.* In 2004, he was convicted of third-degree stalking and child endangerment, and the government moved to reopen removal proceedings. *Id.*

The immigration judge (IJ) found that Wassily's conviction was a particularly serious crime and terminated his asylum. *Id.* Wassily appealed to the BIA, which affirmed. *Id.* at 3a-4a. Wassily then filed a petition for review, which the Second Circuit granted, finding that remand was required for the BIA to determine whether "reliable evidence supports a particularly serious crime determination." *Wassily v. Holder*, 523 F. App'x 783, 785 (2d Cir. 2013).

On remand, Wassily filed an application to adjust to LPR status. *See* App. 39a-40a. The IJ again determined that Wassily's conviction was a particularly serious crime and terminated his asylum. *Id.* at 4a-5a; *see id.* at 46a-50a. In the same decision, the IJ considered and granted Wassily's application for adjustment to LPR status. *Id.* at 51a-58a.

The IJ first found that Wassily satisfied the statutory conditions in Section 1159(b)(1)-(4). *Id.* at 51a-54a. In considering Section 1159(b)(3)'s "continues to be a refugee" requirement, the IJ noted Section 1159 "does not contain an explicit requirement" that an applicant also have "continued asylee status." *Id.* at 4a (quoting *id.* at 52a). And the IJ found he continued to have a "well-founded fear of persecution" based on his Coptic Christian beliefs. *Id.* at 52a-54a. Next, because Wassily did not satisfy Section 1159(b)(5)'s requirement that he be otherwise admissible "at the time of examination for adjustment," 8 U.S.C. § 1159(b)(5), the IJ considered whether Wassily was entitled to a discretionary waiver of inadmissibility under Section 1159(c). *Id.*

at 54a-57a. The IJ concluded that Wassily was, finding that “humanitarian considerations,” such as the threat of religious persecution and family unification, “weigh[ed] in favor of a discretionary grant.” *Id.* at 57a. The IJ thus granted Wassily’s application to adjust to LPR status. *Id.* at 58a.

The BIA reversed. *Id.* at 5a. The BIA did not find that Wassily did not merit adjustment as a matter of discretion. Instead, relying on an intervening (and split) BIA decision, the BIA held that Wassily was categorically ineligible to adjust to LPR status because his asylum had been terminated before his adjustment application was adjudicated. *Id.*; *see id.* at 33a-36a (citing *Matter of T-C-A-*, 28 I. & N. Dec. 472 (B.I.A. 2022)).

b. Petitioner Byron Velasquez Arreaga is a native and citizen of Guatemala who was granted asylum in 1996. *Id.* at 6a. In 2015 and 2018, Velasquez Arreaga was convicted for driving while intoxicated, and the government commenced removal proceedings. *Id.*

The IJ found that Velasquez Arreaga’s convictions were particularly serious crimes and terminated his asylum. *Id.* at 6a-7a. Velasquez Arreaga subsequently applied to adjust to LPR status, but the IJ found that Velasquez Arreaga was ineligible to adjust because his asylum had been terminated—reaching the opposite result from the IJ in Wassily’s case. *Id.* at 7a.

Velasquez Arreaga appealed to the BIA, which affirmed. *Id.*; *see id.* at 121a-27a. Velasquez Arreaga then filed a petition for review in the Second Circuit, and the parties agreed to a remand based on the non-finality of his 2018 conviction. *Id.* at 109a-10a; *see id.* at 116a-20a. Once that conviction became final, the

BIA issued a decision consistent with its prior order, holding that once Velasquez Arreaga “was no longer an asylee, he was ineligible to adjust” to LPR status. *Id.* at 113a; *see id.* at 7a.

3. Petitioners filed separate petitions for review in the Second Circuit, which had jurisdiction under 8 U.S.C. § 1252(a)(5). But the court of appeals heard argument in tandem and issued an identical opinion in both cases. In a split decision, the court denied both petitions and held that once asylum has been terminated, adjustment under Section 1159(b) is categorically unavailable. App. 1a-18a (majority); *id.* at 19a-30a (Robinson, J., dissenting). In so holding, the court acknowledged it was “declin[ing] to follow the Fifth Circuit’s” contrary decision. *Id.* at 13a n.13.

a. Focusing on Section 1159(b)’s introductory language, the majority held that “the status of any alien granted asylum” referred to a present condition, such that “only noncitizens with current asylum status [can] adjust to [LPR] status.” *Id.* at 2a-3a. The majority concluded that the “ordinary meaning of ‘status’ signals a present condition’—in particular, a legal condition.” *Id.* at 12a (quoting *Cela v. Garland*, 75 F.4th 355, 364 (4th Cir. 2023), *cert. denied*, 144 S. Ct. 2657 (2024)). If Congress had intended for “anyone previously granted asylum to become a lawful permanent resident,” the majority reasoned, there would have been “no need for Congress to use the word ‘status’ at all.” *Id.*

The majority also looked to “the neighboring provision of 8 U.S.C. § 1158(c).” App. 13a. The majority reasoned that since “granted asylum” and “asylum granted” in that provision refer to “then-existing asylum status,” the phrase “any alien granted asylum” in the neighboring Section 1159(b)

must also refer to then-existing asylum status. *Id.* at 13a-14a. The majority acknowledged that the use of “granted asylum” in Section 1159(b)(2), the actual provision at issue, points in the opposite direction. *Id.* at 15a. But it concluded that inclusion of the word “being” before “granted” in that provision made all the difference. *Id.*

The majority likewise acknowledged that “other parts of 8 U.S.C. § 1159” expressly require a noncitizen seeking adjustment to “maintain some other current condition.” *Id.* at 14a. But it deemed these provisions irrelevant because they do not “speak[] of a ‘granted’ status.” *Id.* at 14a-15a & n.14. And while the majority admitted its reading intruded on the Attorney General’s discretion under Section 1159(c) to waive grounds of inadmissibility, it found that intrusion acceptable because the grounds for inadmissibility and termination are not perfectly “coextensive.” *Id.* at 16a.

Finally, the majority found its reading “buttressed” by a post-enactment “statutory note” to the Immigration Act of 1990. *Id.* at 16a-18a. That note stated that Section 1159(b) shall apply to a noncitizen “granted asylum before the date of the enactment of this Act (regardless of whether or not such asylum has been terminated ...)” and “who is no longer a refugee because of a change in circumstances in a foreign state.” *Id.* at 17a (emphasis omitted) (quoting Pub. L. No. 101-649, § 104(d), 104 Stat. 4978, 4985 (1990)). The majority believed this note indicated Section 1159(b) did not normally apply “‘regardless of whether or not’ their asylum had been terminated.” *Id.* at 17a-18a (quoting Immigration Act).

b. Judge Robinson dissented. In her view, the “best understanding of § 1159(b) is that it encompasses ‘any’ noncitizen ‘granted asylum,’ regardless of whether the asylum was subsequently terminated.” *Id.* at 20a.

“[A]ny alien granted asylum,” the dissent explained, is a past-tense phrase covering all aliens who had been previously granted asylum, regardless whether their asylum was terminated. *Id.* The dissent emphasized the “expansive meaning” of “any,” *id.* (citation omitted), and the fact that “if Congress had intended ‘any alien granted asylum’ to mean ‘any asylee,’ or any noncitizen ‘who continues to be subject to asylum protections,’ it could have said so,” *id.* at 20a-21a.

Congress did just that in Section 1159, the dissent explained. The statute “tells us in no uncertain terms that when Congress intended to require continuity of a predicate status as a precondition to adjustment to LPR status, it said so in plain terms.” *Id.* at 21a. And Congress “did so *three times* within § 1159.” *Id.* at 24a. For “a Congress downright preoccupied with the timing question in front of us now,” the dissent continued, its “failure to specify that asylee status must be current under § 1159(b) can only be understood as a purposeful omission.” *Id.* at 25a (quoting *Cela*, 75 F.4th at 367 (Harris, J., concurring in part and dissenting in part)).

The dissent noted this interpretation resulted in the similar treatment of those granted admission as refugees under Section 1157 and those granted asylum under Section 1158. *Id.* at 26a. And that interpretation “maintain[ed] the balance Congress struck” in Section 1159(c)’s waiver provision. *Id.* at 27a. The majority’s reading, by contrast,

“categorically strip[ped] the Attorney General” of discretion if asylum has been terminated. *Id.* at 30a; *see id.* at 27a-30a.

The dissent also highlighted the “incongruous” result of the majority’s reading, which would make the authority to grant LPR status “depend entirely on the order” in which petitions for termination of asylum and for adjustment of status are considered. *Id.* at 29a. The dissent explained that, under the majority’s reading, two noncitizens—both of whom remain refugees and satisfy all of the qualifications of Section 1159(b)—could be treated differently merely because an IJ resolved the petition for termination of asylum before the application for adjustment. *Id.*

4. The court of appeals denied rehearing en banc. *Id.* at 31a-32a.

REASONS FOR GRANTING THE WRIT

This case presents a recurring and important question: whether noncitizens who have been “granted asylum,” but whose asylum was later terminated, remain eligible for adjustment to LPR status under Section 1159(b). The Second Circuit’s split decision deepened an existing and acknowledged circuit split between the (split) Fourth Circuit and the Fifth Circuit. Even the BIA split on this question. Only this Court can definitively resolve the conflict.

The Second Circuit also got the answer to that question wrong. Text and context make clear that Congress knew how to impose a continuing-asylum requirement if it wanted to, but it declined to do so here. And the error is an important one. The Second Circuit’s decision means near-certain removal not only for noncitizens whose grants of asylum have been terminated—but also for their innocent spouses and

children. This petition also presents an ideal vehicle: In Wassily's case, the IJ found that humanitarian considerations warranted a discretionary grant of LPR status. And the BIA denied adjustment to LPR status solely because his asylum had been terminated. The Court's review is warranted.

I. The Second Circuit's Decision Deepens An Acknowledged Circuit Split Between The Fourth And Fifth Circuits

The question presented has divided the courts of appeals. The Fifth Circuit has unanimously held that Section 1159(b) unambiguously *permits* noncitizens whose asylum has been terminated to adjust to LPR status. By contrast, the Second and Fourth Circuits have held in split decisions that Section 1159(b) unambiguously *precludes* such adjustment. The Court's review is needed to resolve the conflict.

In *Siwe v. Holder*, the Fifth Circuit unanimously held that Section 1159(b) permits adjustment to LPR status for noncitizens whose asylum has been terminated. 742 F.3d 603, 606-12 (5th Cir. 2014) (Jones, Wiener, & Graves, JJ.). The Fifth Circuit relied on the plain meaning of "any alien granted asylum" to hold that a noncitizen granted asylum in the past qualifies for adjustment of status, regardless whether his asylum has been subsequently terminated. *Id.* (quoting 8 U.S.C. § 1159(b)). As the Fifth Circuit explained, Congress's inclusion of express "continuing-status requirements" in Sections 1159(a) and (b) shows "Congress knows how to impose a continuing-status requirement when it wishes to do so." *Id.* at 608-09. But "[n]owhere" in Section 1159 "d[id] Congress require that an alien's asylum, once granted, still must be in effect at the time he applies

for adjustment of status.” *Id.* at 608. Any alternative reading, the Fifth Circuit reasoned, would undermine “Congress’s careful balancing of interests” in Section 1159(c)’s waiver provision. *Id.* at 609.

In *Cela v. Garland*, a divided panel of the Fourth Circuit held exactly the opposite—that Section 1159(b) unambiguously *precludes* the Attorney General from adjusting the status of noncitizens whose asylum has been terminated. 75 F.4th 355, 363-65 (4th Cir. 2023) (Agee & Quattlebaum, JJ.). There, both the majority and dissent acknowledged that its decision created a circuit split. *See id.* at 365 n.11 (acknowledging “the Fifth Circuit reached a different conclusion”); *id.* at 366 (Harris, J., concurring in part and dissenting in part).

The majority was “persuaded by the words ‘status’ and ‘adjust,’” concluding that “‘status’ signals a present condition” and “‘adjust’ suggests a requirement of an existing status.” *Id.* at 364-65. The dissent, in turn, concluded that “Congress did not intend to limit eligibility for adjustment of status under § 1159(b) to current asylees,” and reasoned that “any alien granted asylum” is not synonymous with an “asylee.” *Id.* at 366 (Harris, J., concurring in part and dissenting in part). Like the Fifth Circuit, the dissent emphasized that “when Congress intended to impose a continuing-status requirement in § 1159, it did so expressly and unambiguously.” *Id.* at 367. And again like the Fifth Circuit, the dissent noted that a categorical rule precluding adjustment “has the effect of undermining the discretion that Congress clearly sought to vest in the agency head under § 1159(c).” *Id.* at 367-68.

The Second Circuit has now sided with the Fourth Circuit, App. 12a, and “decline[d] to follow the Fifth

Circuit’s reading” in *Siwe*, *id.* at 14a n.13. Judge Robinson in dissent likewise noted the “circuit split on the question.” *Id.* at 19a. In a footnote, the Second Circuit majority suggested the Fifth Circuit might have reached a different conclusion had it “consider[ed] the language of 8 U.S.C. § 1159(b) in light of 8 U.S.C. § 1158(c).” App. 14a n.13. But the Fifth Circuit would not (and could not) overturn circuit precedent on that basis without taking the issue en banc. *See Henry v. Educ. Fin. Serv. (In re Henry)*, 944 F.3d 587, 591 (5th Cir. 2019) (overruling must be “unequivocally directed by controlling Supreme Court precedent” (citation omitted)). What’s more, only noncitizens can file petitions for review from BIA decisions. *See* 8 U.S.C. § 1252(b)(3) (Attorney General is always the respondent). Which means that so long as the BIA continues to follow *Siwe* in the Fifth Circuit—as it is required to do—the split will remain entrenched.

Nor is there any need for further percolation. In opposing further review in *Cela*, the government specifically noted petitioners’ two pending cases and suggested they “may well result in additional reasoned decisions made with the benefit of the analysis of the Board and the other circuits.” SG Br. 15-16, in *Cela v. Garland*, No. 23-686 (May 8, 2024), 2024 WL 2093969 (“*Cela* SG Br.”). That has now happened: three courts of appeals have carefully grappled with interpreting the statutory provision at issue and the split has only deepened.³ There is no reason to further delay the Court’s review.

³ Other courts of appeals have noted or addressed the question presented—albeit only in passing. *See, e.g., Ishmael v.*

II. The Second Circuit’s Decision Is Wrong

Section 1159(b)’s prefatory clause allows the Attorney General to “adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum,” if five criteria are met. 8 U.S.C. § 1159(b). The question presented is whether the Attorney General may adjust the status of noncitizens who were “granted asylum,” but whose asylum has since been terminated. The text of Section 1159(b) and the surrounding context of Section 1159 make clear the answer to that question is yes. The Second Circuit’s contrary reasoning does not withstand scrutiny. And any ambiguity should be resolved in petitioners’ favor.

A. Section 1159(b) Does Not Impose A Continuing-Asylum Requirement

Section 1159(b)’s text and the immediate context make clear that any noncitizen granted asylum can adjust to LPR status even after termination.

1. Section 1159(b)’s prefatory clause is written using expansive and backward-looking terms. The Attorney General may adjust the status of “*any* alien

Att’y Gen., 77 F.4th 175, 179-80 (3d Cir. 2023) (holding that petitioner met “the statutory requirements to apply for adjustment of status,” even though the earlier “terminat[ion of] his grant of asylum” was proper); *Abrahamyan v. Garland*, No. 22-854, 2023 WL 8908755, at *2 (9th Cir. Dec. 27, 2023) (noting the “conflict between the Fourth and Fifth Circuits about the meaning of ‘the status of any alien granted asylum’ under § 1159(b)” but declining to “weigh in”); *Bare v. Barr*, 975 F.3d 952, 966-67 (9th Cir. 2020) (noting the issue and citing *Siwe*, but leaving the question undecided); *Sharashidze v. Gonzales*, 480 F.3d 566, 568 (7th Cir. 2007) (stating, in dicta, that those with “terminated asylee status” are “no longer eligible” for adjustment of status under Section 1159(b)).

granted asylum.” 8 U.S.C. § 1159(b) (emphases added). “[A]ny” has an “expansive meaning.” App. 20a (Robinson, J., dissenting) (quoting *United States v. Gonzales*, 520 U.S. 1, 5 (1997)); see *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 219 (2008). And “granted,” when used as a past-tense verb, refers to something that has happened in the past. See, e.g., *United States v. Wilson*, 503 U.S. 329, 333 (1992) (“Congress’ use of a verb tense is significant”); *Cullen v. Pinholster*, 563 U.S. 170, 182 (2011) (emphasizing “backward-looking language” in construing past-tense statutory terms). Plainly read, Section 1159(b) “encompasses ‘any’ noncitizen ‘granted asylum,’ regardless of whether the asylum was subsequently terminated.” App. 20a (Robinson, J., dissenting).

Perhaps even more notable, though, is what Section 1159(b)’s prefatory clause does *not* say. “Nowhere in this section does Congress require that an alien’s asylum, once granted, still must be in effect at the time he applies for adjustment of status.” *Siwe*, 742 F.3d at 608. “[I]f Congress had intended ‘any alien granted asylum’ to mean ‘any asylee,’ or any noncitizen ‘who continues to be subject to asylum protections,’ it could have said so.” App. 20a (Robinson, J., dissenting); see also *Cela*, 75 F.4th at 366 (Harris, J., concurring in part and dissenting in part) (“[T]he term “any alien granted asylum” is not synonymous with the term “asylee,” which Congress would be expected to use had it intended to require *current* asylum status.”). But Congress instead used the phrase “any alien granted asylum.” And courts should not “read[] words ... into a statute that do not appear on its face.” *Bates v. United States*, 522 U.S. 23, 29 (1997). Yet that is exactly what the Second

Circuit did—reading “granted asylum” to mean “presently be granted asylum.” App. 12a.

2. “There is a case to be made that the phrase ‘any alien granted asylum,’ standing alone, answers [the question presented] in favor of eligibility.” *Cela*, 75 F.4th at 366 (Harris, J., concurring in part and dissenting in part). But, of course, the prefatory clause does not stand alone. And what follows in the remainder of Section 1159(b) further confirms the phrase’s ordinary meaning.

To start, Section 1159(b)(2) provides that an applicant for adjustment of status must have been “physically present in the United States for at least one year after being granted asylum.” 8 U.S.C. § 1159(b)(2). In this paragraph, “granted asylum” can only refer to a completed, historical event, not a continuing, present status. And “identical words ... in different parts of the same statute are generally presumed to have the same meaning.” *IBP, Inc. v. Alvarez*, 546 U.S. 21, 34 (2005); see *Powerex Corp. v. Reliant Energy Servs.*, 551 U.S. 224, 232 (2007) (finding canon “doubly appropriate” where phrase was “simultaneously inserted two subsections later”).

Section 1159(b) also imposes two *express* continuing-status rules unrelated to asylum status. Section 1159(b)(3) requires that an applicant “continue[] to be a refugee within the meaning of Section 1101(a)(42)(A)” when seeking adjustment. 8 U.S.C. § 1159(b)(3). And Section 1159(b)(5) requires that the applicant remain “admissible ... at the time of examination for adjustment.” *Id.* § 1159(b)(5). These explicit continuing-status requirements make the absence of anything similar in Section 1159(b)’s prefatory clause especially “conspicuous[].” *Siwe*, 742 F.3d at 608; see *Collins v.*

Yellen, 594 U.S. 220, 248 (2021) (courts assume that “Congress acts intentionally and purposely” when using language in one section of a statute and omitting it elsewhere (citation omitted)); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987) (same). Congress clearly knew how to require that a noncitizen “continue[] to be” an asylee or remain an asylee “at the time of examination for adjustment.” See App. 24a (Robinson, J., dissenting). It chose not to require either here.

3. The rest of Section 1159 resolves any lingering doubt.

a. The immediately preceding subsection, Section 1159(a), governs LPR adjustment for refugees and was enacted at the same time as Section 1159(b). See Refugee Act of 1980, Pub. L. No. 96-212, § 201(b), 94 Stat. 102, 105-06. Just like (b)(3) and (5), subsection (a) imposes its own explicit continuing-status requirement. It allows the Attorney General to adjust a refugee’s status only if his admission as a refugee “has not been terminated.” 8 U.S.C. § 1159(a)(1)(A). Congress could have imposed parallel requirements in subsections (a) and (b). That is, it could have allowed asylees to adjust status only if their asylum “has not been terminated.” It did not.

In short, “*three times* within § 1159,” Congress “specif[ied] when a noncitizen must maintain a predicate status in order to be potentially eligible for adjustment of status.” App. 24a (Robinson, J., dissenting). Yet it did not do so here. For “a Congress downright preoccupied with the timing question,” this “can only be understood as a purposeful omission.” *Cela*, 75 F.4th at 367 (Harris, J., concurring in part and dissenting in part); see App. 24a-25a (Robinson, J., dissenting).

Congress had good reasons for treating refugees and asylees differently when it comes to termination. The Attorney General may terminate asylum for a host of reasons—several of which rest entirely outside an asylee’s control. A “fundamental change in circumstances” in the noncitizen’s country of origin, for example, may lead to termination of asylum. 8 U.S.C. § 1158(c)(2)(A); *see id.* § 1158(b)(1)(A). Or a treaty might allow removal to a third country where the noncitizen could receive asylum (or equivalent protections). *See id.* § 1158(c)(2)(C). Even for those whose termination was a result of criminal convictions, *see id.* § 1158(b)(2), (c)(2)(B), the convictions have nothing to do with a fear of persecution in their home country, if forced to return. And many of these former asylees and derivative spouses and children may have established strong ties to the United States over a long period of time.

Refugees, on the other hand, are subject to a different adjustment scheme. They must present themselves for LPR adjustment within one year of arriving in the United States. *Id.* § 1159(a)(1)-(2). And unlike asylees, there is only one ground for termination of refugee status: “The refugee status of any alien ... may be terminated ... if the Attorney General determines that the alien *was not in fact a refugee* within the meaning of section 1101(a)(42) ... at the time of the alien’s admission.” *Id.* § 1157(c)(4) (emphasis added). So under the statute, when a refugee’s status is terminated, he (i) will have been present in the United States for, at most, a single year, and (ii) would have never been properly considered a refugee in the first place—meaning he *never* faced a likelihood of persecution in his home country and was *never* properly admitted to this

country. Congress decided that such refugees should not be able to adjust to LPR status, while leaving the Attorney General with discretion to adjust to LPR status the status of former asylees who feared (and may still fear) persecution, and who spent years building a life in this country—as well as those granted asylum as derivative asylees.

And in one important respect, Section 1159(b) does treat those granted asylum under Section 1158 the same as those admitted as refugees under Section 1157: both must be “found to be refugees” to adjust to LPR status. App. 29a-30a (Robinson, J., dissenting). In this sense, the “two categories of noncitizens do stand in the same shoes.” *Id.* at 29a.

b. The immediately subsequent subsection, Section 1159(c), further supports petitioners’ interpretation. Section 1159(b)(5) requires that noncitizens be “admissible” when they apply for adjustment to LPR status—*i.e.*, not subject to any ground of inadmissibility in 8 U.S.C. § 1182(a). But Congress created an “except[ion]” in subsection (c), 8 U.S.C. § 1159(b)(5), which allows the Attorney General to “waive” that requirement “for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.” *Id.* § 1159(c). That is, Congress “expressly contemplate[d] that some noncitizen refugees with criminal convictions, including for potentially serious crimes, may nevertheless be eligible for LPR status.” App. 28a (Robinson, J., dissenting).

Because the grounds for termination of asylum substantially overlap with the grounds for inadmissibility, *compare* 8 U.S.C. § 1182(a), *with id.* § 1158(c)(2), the decision below “deprives the Attorney General ... of that discretion in cases in

which asylum has been terminated.” App. 28a (Robinson, J., dissenting); *see also Siwe*, 742 F.3d at 609 (government’s reading “effectively abrogate[s] Congress’s careful balancing of interests” in Section 1159(c)); *Cela*, 75 F.4th at 367-68 (Harris, J., concurring in part and dissenting in part) (government’s reading “undermin[es] the discretion that Congress clearly sought to vest in the agency head under § 1159(c)”). It is strange to think that, in any case involving termination, the Attorney General is “categorically strip[ped]” of discretion, App. 30a (Robinson, J., dissenting)—no matter the public interest, no matter the need to ensure family unity, and no matter the humanitarian concerns.

4. Other statutory and regulatory indicia point in the same direction. The Department of Justice regulations align with petitioners’ reading, interpreting Section 1159(b)’s reference to “any alien granted asylum” to mean “any alien who has been granted asylum.” 8 C.F.R. § 1209.2(a)(1); *see* App. 25a (Robinson, J., dissenting).

And so does the statutory history. More than half a century ago, Congress rejected a continuing lawful-status requirement for adjustment to LPR status. Under the 1952 INA, the Attorney General could grant adjustment only to someone who was “lawfully admitted” and who was “continuing to maintain that status.” INA, Pub. L. No. 82-414, § 245(a), 66 Stat. 163, 217 (1952). The 1952 Act was criticized because, among other things, “this new adjustment of status may be granted only to an alien lawfully admitted ... who is continuing to maintain that status,” thereby excluding the “great number” of noncitizens “whose present status is irregular, for one reason or another.” *Whom Shall We Welcome: Report of the President’s*

Commission on Immigration and Nationalization 210-11 (1953), https://ia801306.us.archive.org/14/items/whomweshallwelco00unit/whomweshallwelco00unit_bw.pdf. In 1958, Congress responded by eliminating these “rigidly limited conditions,” *id.*, and permitting adjustment for any noncitizen admitted as a “bona fide nonimmigrant,” Act of Aug. 21, 1958, Pub. L. No. 85-700, 72 Stat. 699, 699. While the adjustment provisions continued to evolve to the language we have today, Congress never reimposed any continuing lawful-status requirement. Congress’s decision to dispense with that requirement should be respected.

B. The Second Circuit’s Reasoning To The Contrary Is Flawed

The Second Circuit’s response to this textual and contextual evidence was limited. The majority relied instead on the word “status,” two phrases in Section 1158(c), and a post-enactment statutory note for support. None holds up.

1. Start with the word “status.” The majority noted that “‘the ordinary meaning of “status” signals a present condition’—in particular, a legal condition.” App. 12a (quoting *Cela*, 75 F.4th at 364). But that just begs the question of what “status” is being adjusted: “current asylum status” or something else—like “non-LPR status” or the status of having once been “granted asylum.” *See Cela*, 75 F.4th at 366 (Harris, J., concurring in part and dissenting in part).

The majority then reasoned that, unless status refers to present asylum status, “there would be no need for Congress to use the word ‘status’ at all.” App. 12a. But it would have been grammatically awkward, and likely incorrect, to omit the word “status” and

allow the Attorney General to adjust to “the status of an alien lawfully admitted for permanent residence ... any alien granted asylum.” After all, the thing being adjusted is the noncitizen’s *status*—not the noncitizen himself.

Other textual cues suggest that “status” refers to something other than “current asylum status.” Congress’s use of the word “any” in “the status of *any* alien granted asylum” dissociates a noncitizen’s “status” from whether he was “granted asylum.” While it might make sense to say that a noncitizen has the “status” of “*an* alien granted asylum,” it makes no sense to say he has the “status” of “*any* alien granted asylum.” The actual statutory phrase, naturally read, describes “any” noncitizens who share a common historical fact: they were once *granted* asylum, whether or not they currently have “asylum status” or are “asylees.”

2. The majority’s reliance on two phrases in the “neighboring provision of 8 U.S.C. § 1158(c)” is similarly misplaced. App. 13a. Section 1158(c) provides benefits to “an alien granted asylum” and states that “[a]sylum granted ... may be terminated.” 8 U.S.C. § 1158(c)(1)-(2). But neither of those phrases is identical to Section 1159(b), which reaches “*any* alien granted asylum.” And both the majority and the government admitted that “granted asylum” refers to a past event rather than a present condition in Section 1159(b)(2). App. 15a (Section 1159(b)(2) “clearly ... refers to a completed event”); *see* CA2 *Wassily* Gov’t Br. 39, ECF 38 (similar); CA2 *Velasquez Arreaga* Gov’t Br. 29-30, ECF 32 (similar). So Section 1158(c) at most suggests “granted asylum” can be used both ways.

How “granted asylum” is used in Section 1159(b), then, depends on context. And the Second Circuit majority offered little justification for favoring the “neighboring” provision of Section 1158, App. 13a, over Section 1159(b)’s own statutory home. That Section 1159(b)(2) uses the auxiliary verb “being” does not render it inapposite, *contra id.* at 15a, because an auxiliary verb is not necessary to make the word “granted” refer to a past event. Consider, for example, a benefit for “any person exposed to” certain toxins; that would not require continuing or present exposure. *Cf.* 38 U.S.C. § 1112(c)(1) (addressing “radiation-exposed veteran[s]”). And on the flip side, the majority itself used an auxiliary verb when reading the statutory phrase its way, finding “granted asylum” to mean to “presently *be* granted asylum.” App. 12a (emphasis added). So the presence or absence of an auxiliary verb cannot be dispositive.

3. Nor does the post-enactment statutory note “buttress[]” the majority’s reading; if anything, it undermines it. *Contra id.* at 16a.

In 1990, Congress exempted certain noncitizens from a then-existing numerical cap on adjustment applications, permitting adjustment so long as the noncitizen was “granted asylum before the date of the enactment of this Act (regardless of whether or not such asylum has been terminated ...).” Immigration Act of 1990, Pub. L. No. 101-649, § 104(c)-(d), 104 Stat. 4978, 4985-86. The majority believed this note “suggests” that Section 1159(b) does not allow those whose asylum has been terminated to adjust, because otherwise the note would have been “unnecessar[y].” App. 17a-18a. But it is “just as plausible” that Congress merely “sought to clarify that § 1159(b) applies to all noncitizens granted asylum *before the*

date of the 1990 Act.” *Id.* at 27a n.3 (Robinson, J., dissenting). In that case, the parenthetical is a belt-and-suspenders caution, confirming Congress’s belief that noncitizens “granted asylum” who are eligible to adjust status under Section 1159(b) include those whose asylum was later terminated. *Cf. Boechler, P.C. v. Commissioner*, 596 U.S. 199, 206 (2022) (A “parenthetical” is “typically used to convey an ‘aside’ or ‘afterthought.’”). At bottom, “this data point doesn’t move the needle.” App. 27a n.3 (Robinson, J., dissenting).

C. Any Ambiguity Must Be Resolved In Favor Of The Noncitizen Petitioners

For the reasons set forth above, the best reading of the statute is that any noncitizen “granted asylum” can adjust to LPR status under Section 1159(b) regardless of termination. A dozen jurists have nonetheless adopted diametrically opposed readings of the same language. *Supra* at 12-14. Some have expressly recognized the interpretive difficulty. App. 19a (Robinson, J., dissenting) (“This is a difficult case, as reflected by a circuit split on the question.”); *Cela*, 75 F.4th at 366 (Harris, J., concurring in part and dissenting in part) (“To be sure, § 1159(b) is not a model of clarity, and I find this to be a difficult question of statutory construction”). And the BIA majority itself found ambiguity. *Matter of T-C-A-*, 28 I. & N. Dec. at 475-76. At the very least, then, the statutory provision is ambiguous—and any ambiguity must be construed in favor of the noncitizen petitioners.

It is well-established that any lingering ambiguity in a deportation statute must be construed “in favor of the alien.” *INS v. St. Cyr*, 533 U.S. 289, 320 & n.45

(2001) (citation omitted). Deportation and removal are “drastic measure[s],” *Padilla v. Kentucky*, 559 U.S. 356, 360 (2010) (citation omitted), with “considerable” stakes “for the individual”—so courts “will not assume that Congress meant to trench on his freedom beyond that which is required by the narrowest of several possible meanings of the words used,” *Costello v. INS*, 376 U.S. 120, 128 (1964) (citation omitted).

In the past, there was, perhaps, some confusion on how to reconcile this rule of lenity with *Chevron*. See, e.g., *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 397 (2017) (declining to decide “whether the rule of lenity or *Chevron* receives priority” in interpreting ambiguous immigration statutes because the statute at issue was unambiguous). *Loper Bright* resolves any such confusion, leaving only the “longstanding principle of construing any lingering ambiguities in deportation statutes in favor of the alien.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 449 (1987); see also *Castillo v. Bondi*, 140 F.4th 777, 781 (6th Cir. 2025) (explaining that when “uncertainty clouds a deportation statute, ‘the longstanding principle of construing’ it ‘in favor of the alien’ kicks into gear” (quoting *Cardoza-Fonseca*, 480 U.S. at 449)).

III. The Question Presented Is Important And This Petition Is An Ideal Vehicle

The question presented is important. Without this Court’s review, the Second Circuit’s decision will lead to significant and anomalous consequences. And this petition presents an ideal vehicle to decide the issue.

A. The Question Presented Is Important

1. The question presented affects all noncitizens whose asylum has been terminated. Under the

Second Circuit’s rule, they will be categorically ineligible for adjustment to LPR status under Section 1159(b) regardless of their circumstances. Unless they happen to be married to a U.S. citizen, they likely will lack any other basis to immediately adjust to LPR status. And because the most common basis for terminating asylum often precludes the grant of withholding of removal, *compare* 8 U.S.C. § 1158(b)(2), (c)(2)(B), *with id.* § 1231(b)(3)(B), those noncitizens will likely face removal to the same countries from which they fled or fear persecution. That is, the termination of asylum will often foreclose adjustment and virtually ensure their removal.

There are many reasons to think these harsh consequences are neither necessary nor intended.

First, the impact is not limited to the noncitizen whose asylum was terminated. Termination automatically extends to principal asylees’ spouses and children. *See* 8 C.F.R. § 1208.24(d) (principal asylee’s termination “shall result in termination of” derivative asylee’s status). In 2023 (the most recent year with government data) alone, nearly 5,000 individuals received derivative asylum. Noah Schofield & Amanda Yap, *Asylees: 2023*, at 1, Off. of Homeland Security Statistics (Oct. 2024), https://ohss.dhs.gov/sites/default/files/2024-10/2024_1002_ohss_asylees_fy2023.pdf. If the decision below stands, these innocent spouses and children—through no fault of their own—will be precluded from adjusting to LPR status and will face removal themselves.

Second, those granted asylum “can lose that status for a host of reasons,” many of which are outside the control of the noncitizen. App. 26a (Robinson, J., dissenting). Asylum can be terminated, for example,

because the noncitizen was resettled elsewhere prior to arriving in the United States or due to an intervening bilateral agreement between the United States and another country. 8 U.S.C. § 1158(c)(2)(B)-(C), (b)(2)(A)(vi). And this is far from hypothetical: the United States recently signed several of these bilateral agreements. *See, e.g.*, 90 Fed. Reg. 51376-86 (Nov. 17, 2025) (bilateral agreement with Ecuador); 90 Fed. Reg. 42597-601 (Sept. 3, 2025) (bilateral agreement with Uganda); Press Release, U.S. Dep’t of State, *Signing of a Safe Third Country Agreement with Paraguay* (Aug. 14, 2025), <https://www.state.gov/releases/office-of-the-spokesperson/2025/08/signing-of-a-safe-third-country-agreement-with-paraguay> (bilateral agreement with Paraguay); 90 Fed. Reg. 31670-76 (July 15, 2025) (bilateral agreement with Guatemala); 90 Fed. Reg. 30076-86 (July 8, 2025) (bilateral agreement with Honduras). Noncitizens whose asylum was terminated for these reasons will be ineligible for adjustment too.

Third, even if a noncitizen’s asylum is terminated due to a criminal conviction, *see* 8 U.S.C. § 1158(c)(2)(B), discretion to adjust to LPR status in appropriate circumstances remains important. For one thing, even relatively minor criminal conduct may support termination. Although termination is limited to convictions for “particularly serious crime[s],” *id.* § 1158(b)(2)(A)(ii), the definition of a “particularly serious crime,” for purposes of asylum termination, includes any “aggravated felony,” *id.* § 1158(b)(2)(B)(i). And the “aggravated felony” category is both notoriously capacious—paradoxically including “misdemeanors”—and often “not clear.” *Padilla*, 559 U.S. at 377-79 (Alito, J., concurring in the judgment) (citations omitted); *see United States v.*

Pacheco, 225 F.3d 148, 149-50, 153-54 (2d Cir. 2000) (reluctantly concluding that a misdemeanor conviction for stealing a \$10 video game, with a one-year suspended sentence, qualified as an “aggravated felony”), *cert. denied*, 533 U.S. 904 (2001).

Plus, “the statutory structure” already “takes account of” criminal convictions through the admissibility requirement in Section 1159(b)(5) and the waiver provision in Section 1159(c). App. 29a (Robinson, J., dissenting). Even in cases involving more serious criminal conduct, adjustment still has an important role to play. Take Wassily’s case: even though the IJ terminated his asylum based on his conviction, the same IJ found he still had a “well-founded fear of persecution” based on his Coptic Christian faith. *Id.* at 53a-54a. Citing humanitarian concerns such as religious persecution and family unification, the IJ waived inadmissibility under Section 1159(c) and granted adjustment to LPR status. *Id.* at 51a-58a.

2. The Second Circuit’s decision also makes the outcome of a noncitizen’s case “depend entirely on the order in which the two petitions—for termination of asylum and for adjustment of status—are considered.” *Id.* at 29a (Robinson, J., dissenting). Consider the following scenario: a noncitizen granted asylum is placed in removal proceedings. He applies to the IJ for adjustment of status under Section 1159(b) as a defense to removal. The government, in turn, asks the IJ to terminate the noncitizen’s asylum under Section 1158(c)(2). In that scenario, the BIA has explained that an IJ has discretion to decide the termination motion before the application for adjustment, or vice versa. *See Matter of V-X*, 26 I. & N. Dec. 147, 149 n.1 (B.I.A. 2013) (IJs

may, but need not, decide adjustment before termination).

Within the Fifth Circuit, the timing does not matter; noncitizens can adjust their status before or after termination of asylum under *Siwe*. But within the Second and Fourth Circuits, the sequencing is now dispositive: a decision on termination controls whether adjustment of status is available. That gives the government a compelling incentive to push for early termination—and overworked IJs a compelling incentive to accede to such requests.

The decision below attempted to turn that sequencing into a positive, reasoning that an IJ could “defer[] ruling on a motion to terminate asylum status in favor of first adjudicating an application for adjustment of status.” App. 16a. But that just underscores that the Second Circuit’s understanding of the statute is flawed. Again, take Wassily’s case, where the IJ terminated his status *right before* finding him eligible for adjustment. *Compare id.* at 46a-50a (terminating asylum status), *with id.* at 51a-58a (granting adjustment). On the Second Circuit’s logic, Wassily could have received adjustment if the IJ had just swapped a few paragraphs of the decision around. That “incongruous” result makes nonsense of the statutory scheme and has nothing to commend it. *Id.* at 29a (Robinson, J., dissenting).

B. This Petition Is An Ideal Vehicle

This petition presents an ideal vehicle for the Court’s review. The Second Circuit thoroughly addressed the question presented and squarely resolved it. There were no alternative grounds for decision. And for Wassily in particular, resolution of the question presented is outcome-determinative.

The Court’s prior denial of the petition in *Cela* does not warrant a different result for several reasons. *First*, the circuit split has now deepened and produced another carefully reasoned decision—and dissent. That is exactly the development the government suggested might be forthcoming. *See Cela* SG Br. 16. To the extent these then-pending Second Circuit cases counseled against review in *Cela*, their resolution counsels in favor of review here.

Second, the denial in *Cela* came before this Court overruled *Chevron* in *Loper Bright*. At that time, there was an unresolved question about the relationship between the rule of lenity and *Chevron* when it came to resolving statutory ambiguity. To the extent that unanswered question posed a wrinkle to fully resolving the question presented, that is no longer the case. After *Loper Bright*, the rule of lenity controls.

Third, the government posited in *Cela* that a decision in the petitioner’s favor would be “unlikely to affect the outcome of [his] case” because the IJ “would be unlikely to grant a discretionary waiver” and “adjust petitioner’s status.” *Cela* SG Br. 16. And it argued that “[t]his Court’s resources are better spent on case in which its judgment is likely to change the result.” *Id.* That is this case. The IJ already granted a discretionary waiver to Wassily and adjusted his status. *See supra* at 6-7. If the Court were to grant and reverse, its judgment would “change the result.”

CONCLUSION

The petition for a writ of certiorari should be granted.

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