No. 25-842

In the Supreme Court of the United States

TAMER S. WASSILY,
Petitioner,
v.
TODD BLANCHE, ATTORNEY GENERAL,
Respondent.

BYRON E. VELASQUEZ ARREAGA,
Petitioner,
v.
TODD BLANCHE, ATTORNEY GENERAL,
Respondent.

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

BRIEF FOR PETITIONERS

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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, remain eligible for adjustment to LPR status under Section 1159(b).

PARTIES TO THE PROCEEDINGS BELOW

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 Todd Blanche, Attorney General.

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OPINIONS AND ORDERS BELOW

The decision of the court of appeals for both Wassily and Velasquez Arreaga (Pet. App. 1a-30a) is reported at 150 F.4th 100. The orders of the court of appeals denying rehearing en banc (Pet. App. 31a-32a) are unreported. The decisions of the Board of Immigration Appeals for Wassily (Pet. App. 33a-36a, 59a-61a, 62a-68a) and Velasquez Arreaga (Pet. App. 109a-15a, 121a-27a) are unreported. The decisions of the immigration judges for Wassily (Pet. App. 37a-58a, 69a-108a) and Velasquez Arreaga (Pet. 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 in both cases on August 7, 2025. Pet. App. 1a-30a. On October 14, 2025, the court of appeals denied petitioners' timely petitions for rehearing en banc. *Id.* at 31a-32a. The petition for a writ of certiorari was timely filed on January 12, 2026, and granted on June 29, 2026.[1] This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Relevant statutory and regulatory provisions are reproduced in the addendum to this brief.

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[1] Petitioners filed their petition for a writ of certiorari jointly under Supreme Court Rule 12.4.

INTRODUCTION

The Refugee Act of 1980 (1980 Act) codified the Nation's commitment to providing protection to those with 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). Noncitizens who face such a fear of persecution can secure a grant of asylum, and their spouses and children can secure derivative protection. But to remain in this country permanently, they must eventually adjust to lawful permanent resident (LPR) status. The 1980 Act provided that path.

Section 1159(b) allows the Secretary of Homeland Security or the Attorney General,[2] in his "discretion," to "adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum who" satisfies five enumerated conditions set forth in paragraphs (1)-(5). 8 U.S.C. § 1159(b). Those conditions include continuing to be a refugee (i.e., continuing to fear persecution), being physically present in this country for more than a year, and being admissible at the time of adjustment (or obtaining a waiver from the Attorney General for humanitarian, family unity, or public interest reasons). The question presented asks whether Congress silently added a sixth condition: that the noncitizen also continue to be an asylee at the time of adjustment—or, put another way, that asylum status has not been terminated.

At the time of the 1980 Act, this question was, at best, a theoretical one. The only ground for termination of asylum was no longer qualifying as a

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[2] This brief uses "Attorney General" as a shorthand.

refugee, and continuing to be a refugee was already a listed condition in paragraph (b)(3). *See* 1980 Act, Pub. L. No. 96-212, § 201(b), 94 Stat. 102, 103, 105-06 (§§ 208-209). That put asylees (granted protection after arriving in this country) on all fours with refugees (granted protection before arriving in this country). Refugee status could be terminated only if the noncitizen was not a refugee, and Congress specified that refugees could not adjust if their refugee status had been "terminated." *Id.* at 105 (§ 209(a)(1)(A)). So in 1980, refugees who had been granted asylum but had criminal convictions (like petitioners) were eligible to adjust to LPR status. Whether adjustment would actually be granted remained a matter squarely within the Attorney General's discretion.

Today, the answer to the question presented is critical. For noncitizens still facing a well-founded fear of persecution, it is the difference between the possibility of adjustment (in the Attorney General's discretion) and removal. That is because Congress has since added other grounds to terminate asylum. As a result, a noncitizen whose asylum has been terminated may still satisfy each of the five statutory conditions to adjustment. Whether termination erects a categorical bar has become dispositive.

The question, then, is whether a sixth condition of continuing asylum status can be read into seven words in the introductory clause: "the status of any alien granted asylum." The answer is no. The Attorney General can adjust the current status of any noncitizen previously granted asylum so long as the conditions in the five numbered paragraphs are satisfied. There is no additional, continuing asylum status requirement. The traditional tools of statutory interpretation make that clear. But if ambiguity remains, the longstanding rule of construing statutes with removal consequences in favor of the noncitizen resolves it in petitioners' favor.

In the end, the competing interpretations have starkly different consequences. Under petitioners' reading, adjustment is not automatic; it is a matter of the Attorney General's sound discretion. Under the government's, noncitizens who have lived in the United States for decades—who have built careers, raised families, paid taxes, and contributed to their communities—face removal to countries where they still fear persecution or where they have no ties. That includes innocent refugees and spouses and children of refugees whose asylum is terminated through no fault of their own. The Court should reverse.

STATEMENT OF THE CASE

A. Legal Background

The immigration laws provide 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 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 is available for both refugees and asylees.

Under Section 1159(a)(1), those initially admitted as 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).

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 who" meets certain conditions. *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 inadmissibility grounds "for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest." *Id.* § 1159(c).

When Congress enacted the 1980 Act, the only ground for terminating asylum paralleled the only ground for terminating refugee status and mirrored the Section 1159(b)(3) condition to LPR adjustment.

Asylum could be terminated if and only if an asylee was "no longer a refugee within the meaning of section 101(a)(42)(A) owing to a change in circumstances in the alien's country of nationality." Pub. L. No. 96-212, § 201(b), 94 Stat. at 105. In 1996, Congress amended Section 1158 to provide additional grounds for termination, but made no corresponding change to Section 1159(b). Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, § 604(a), 110 Stat. 3009-546, 3009-692 to -693.

The grounds for termination of asylum today still include a change of conditions in a noncitizen's home country, 8 U.S.C. § 1158(c)(2)(A), but they now also include: an intervening bilateral agreement between the United States and another country, *id.* § 1158(c)(2)(C); the noncitizen acquiring a new nationality, *id.* § 1158(c)(2)(E); or the noncitizen being convicted of a "particularly serious crime," defined to include any "aggravated felony," *id.* § 1158(b)(2)(A)(ii), (b)(2)(B)(i), (c)(2)(B), and certain lesser offenses, *see id.* § 1158(b)(2)(B)(ii); *Nethagani v. Mukasey*, 532 F.3d 150, 155-56 (2d Cir. 2008); *Ali v. Achim*, 468 F.3d 462, 469 (7th Cir. 2006). Under the governing regulations, 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).

B. Factual And Procedural Background

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

a. Petitioner Tamer Wassily is a native and citizen of Egypt. Pet. 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 Board of Immigration Appeals (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* Pet. App. 39a-40a. The IJ again determined that Wassily's conviction was a particularly serious crime and terminated his asylum. *Id.* at 4a; *see id.* at 46a-50a. In the same decision, the IJ considered and granted Wassily's application for adjustment to LPR status. *Id.* at 4a-5a, 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 that 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 that Wassily 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). Pet. App. 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 disagree with the IJ's determination that Wassily merited discretionary adjustment. Instead, relying on an intervening (and split) BIA decision, it 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 of 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 applied to adjust to LPR status, but the IJ found him 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. He 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.

2. Petitioners filed separate petitions for review in the Second Circuit, which heard argument in tandem and issued the same 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. *Id.* at 1a-18a (majority); *id.* at 19a-30a (Robinson, J., dissenting).

a. Focusing on Section 1159(b)'s introductory clause, 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 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.* It found the "more natural reading" of "granted asylum" to be "presently be granted asylum." *Id.*

The majority also looked to "the neighboring provision of 8 U.S.C. § 1158(c)." *Id.* at 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 Section 1159(b) should 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 section at issue, points in the opposite direction. *Id.* at 15a. But it believed inclusion of the word "being" before "granted" in that paragraph explained 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 those 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 which, it determined, indicated that Section 1159(b) did not normally apply "'whether or not' … asylum had been terminated.'" *Id.* at 16a-18a (citation omitted).

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 (citation omitted).

"[A]ny alien granted asylum," she 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 other provisions of 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. In fact, Congress "did so *three times* within § 1159." *Id.* at 24a. For "a Congress downright preoccupied with the timing question in front of us now," 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 that its reading had the virtue of "maintain[ing] the balance Congress struck" in Section 1159(c)'s waiver provision, which "expressly contemplates that some noncitizen refugees with criminal convictions … may nevertheless be eligible for LPR status." *Id.* at 27a-28a. The majority's reading, by contrast, "categorically strips the Attorney General" of discretion if asylum has been terminated. *Id.* at 30a; *see id.* at 27a-30a. The dissent explained that its reading also 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 the dissent 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 adjustment of status are considered. *Id.* at 29a.

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

SUMMARY OF ARGUMENT

The question presented is whether the phrase "the status of any alien granted asylum" in Section 1159(b) refers to the current status of any noncitizen previously granted asylum or only noncitizens who presently have asylum status. Text, context, structure, history, and purpose provide a clear answer: any noncitizen previously granted asylum is eligible to adjust to LPR status if the conditions in paragraphs (1)-(5) are satisfied. And if ambiguity remains, the rule of lenity resolves it in petitioners' favor.

A. Most naturally read, "any alien granted asylum" includes every noncitizen who was or has been granted asylum. "Granted" is a past participle used to refer to a discrete and completed event that occurred at a particular moment in time. "Any" is an expansive modifier. And the alternative "presently be granted asylum" reading, Pet. App. 12a, is far from natural. If Congress intended to limit adjustment to "any alien possessing asylum," or "any asylee," it could have and would have said so.

The preceding words, "the status," do not transform that phrase into a continuing asylum status requirement; they do something else. Adjustment involves moving from one status (non-LPR status) to another (LPR status). But a noncitizen who no longer has *asylum* status still has *some* status—whether lawful or unlawful—which can be adjusted to LPR status. Congress did not specify "asylum status," and the intervening word "any" means that "alien granted asylum" is not just a wordier way to do the same. "[T]he status" simply allows adjustment of whatever status a noncitizen previously granted asylum currently holds.

B. Statutory context and structure overwhelmingly confirm that ordinary meaning.

Most notably, Congress imposed *express*, continuing conditions *three* times in Section 1159: twice in Section 1159(b) itself, and once in the neighboring and analogous Section 1159(a). Section 1159(b)(3) requires that a noncitizen "continue[] to be a refugee," 8 U.S.C. § 1159(b)(3); Section 1159(b)(5) requires that the applicant be "admissible … at the time" of adjustment, *id.* § 1159(b)(5); and Section 1159(a) allows adjustment for refugees only if refugee status "has not been terminated," *id.* § 1159(a). Congress could have easily used any of those formulations to impose a continuing asylum status condition. Structurally too, it could have included a paragraph (6), listing continuing asylum status alongside the other conditions in paragraphs (1)-(5). The conspicuous absence of any express continuing asylum status condition means there is none.

Other contextual clues point in the same direction. Petitioners' reading gives full force to the Attorney General's Section 1159(c) authority to waive certain grounds of inadmissibility for humanitarian and similar reasons; the government's reading would take core parts of that discretion away. While short of wholesale superfluity, there is no reason to think Congress intended to fundamentally alter the Attorney General's discretion in such an oblique fashion. And Congress's only other use of "granted asylum" in Section 1159(b) provides further support for petitioners' reading.

C. Statutory history reinforces the same conclusion: Congress did not require continuing asylum status.

In 1980, when Section 1159 was enacted, Congress had already imposed (in 1952)—and removed (in 1958)—a continuing condition in the adjustment context. When Congress wanted a continuing condition in Section 1159, it followed the 1952 model, *see* 8 U.S.C. § 1159(b)(3); when it didn't, Congress omitted that language, *id.* § 1159(b).

The omission of a continuing asylum status requirement made perfect sense in 1980. The only ground for terminating asylum was no longer being a refugee, and continuing to be a refugee was already required for adjustment under Section 1159(b)(3). In 1980, noncitizen refugees with criminal convictions could adjust to LPR status if they satisfied the paragraph (1)-(5) conditions and, as needed, obtained a subsection (c) waiver from the Attorney General. And while Congress later added more grounds to terminate asylum in Section 1158, it made no corresponding change to Section 1159.

Petitioners' reading is faithful to that history. The government's alternative is not. It would work a fundamental and backdoor expansion of the seven words ("the status of any alien granted asylum"), while simultaneously contracting the Attorney General's waiver authority—both unchanged since 1980—without a single word from Congress.

D. Petitioners' reading furthers statutory purpose too. The subset of noncitizens impacted by this interpretive question is composed of those who (i) were previously granted asylum and are no longer asylees, (ii) remain current refugees continuing to fear persecution, (iii) have been in this country for years (and sometimes decades), (iv) are either admissible or would receive a waiver from the Attorney General for humanitarian, family unity, or public interest reasons, and (v) have not firmly resettled in another country. The government's reading would categorically bar *all* of them from adjusting to LPR status. That includes, among many others, innocent spouses and children who lose derivative asylum status through no fault of their own. And it would treat refugees who are former asylees (in Section 1159(b)) differently and less favorably than all other refugees (in Section 1159(a)).

Rather than defend that result as furthering congressional purpose, the government has identified a workaround: IJs can just decide the adjustment application before terminating asylum. True, but that just proves petitioners' point. Congress did not intend to categorically bar adjustment to those who have lost (or will imminently lose) asylum status or to deprive the Attorney General of his discretion to waive inadmissibility as needed. Section 1159(b) should not be read to create such untoward results.

E. If ambiguity remains, the rule of lenity kicks in and resolves the interpretive question in petitioners' favor. The well-settled and longstanding principle is that ambiguous provisions leading to the severe sanction of removal should be construed in favor of the noncitizen. That principle applies with full force here: without adjustment, removal will follow for petitioners and other noncitizen refugees whose asylum has been terminated.

ARGUMENT

ANY NONCITIZEN PREVIOUSLY GRANTED ASYLUM CAN SEEK ADJUSTMENT TO LPR STATUS UNDER SECTION 1159(b)

The ultimate question in this case is whether the phrase "the status of any alien granted asylum" in Section 1159(b) refers to the current status of any noncitizen previously granted asylum or only noncitizens who presently have asylum status. Text, context, structure, history, and purpose all point in the same direction: the Attorney General may, in his discretion, adjust the status of any noncitizen previously granted asylum so long as the express statutory conditions in paragraphs (1)-(5) are satisfied. There is no additional, continuing asylum status condition. But if ambiguity remains, the rule of lenity resolves it in petitioners' favor.

A. Section 1159(b)'s Plain Text Does Not Require Continuing Asylum Status

The phrase "the status of any alien granted asylum" is most naturally read to refer to the current status of every noncitizen previously granted asylum—not to require continuing asylum status.

1. Start with the phrase "any alien granted asylum."

a. "[G]ranted" is the past participle of the verb "grant," modifying the word "alien." *See* Bryan A. Garner, *Garner's Modern English Usage* 1229 (5th ed. 2022) (past participles "end[] usu[ally] in *-ed*, *-en*, or *-t*"). A past participle is "[a] verb form indicating past or completed action … that is used as a verbal adjective." *The American Heritage Dictionary* 1287 (4th ed. 2000); *see Fla. Dep't of Rev. v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 39 (2008). Past participles typically create a "perfect" aspect of a verb, indicating a "completed" action. Pam Peters, *The Cambridge Guide to English Usage* 409 (2004); *see id.* at 50-51 (describing "*perfect* (-ed) *aspect*"); Garner, *supra*, at 1229. That contrasts with present participles (-ing endings), which convey an imperfect or progressive aspect, indicating "the [verb's] action is still going on." Peters, *supra*, at 50, 409. Past participles are also "normally passive," *id.* at 409, meaning the noun is receiving, not doing, the action.

Congress often uses past participles in that perfect, passive sense. For example, when Congress authorizes a lawsuit by "[a]ny person injured in his business or property by reason of" certain violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1964(c), it means any person with past injuries (regardless whether they are still injured). Likewise, when Congress confers a benefit on "any person exposed to" certain toxins, *cf.* 38 U.S.C. § 1112(c)(1), that benefit extends to any person with past exposure (regardless of current exposure). So too here: use of the past participle suggests the "alien" received a grant of asylum in the past—nothing more. *See Piccadilly Cafeterias, Inc.*, 554 U.S. at 39, 41; *cf. United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of a verb tense is significant in construing statutes.").

The chosen verb ("grant") suggests the same. "Grant" means "to bestow or transfer formally." *Webster's New Collegiate Dictionary* 496 (1981) (def. 2); *see Webster's Third New International Dictionary* 989 (1976) (def. 2) ("give, bestow, [or] confer"); *The Random House Dictionary of the English Language* 831 (2d ed. 1987) ("to bestow or confer, esp[ecially] by a formal act"); *The Concise Oxford Dictionary* 433 (7th ed. 1982) (def. 3) ("give (possession, right), formally"); *Grant*, *Black's Law Dictionary* 629 (5th ed. 1979) ("To bestow; to confer upon some one other than the person or entity which makes the grant."). Whereas other verbs (like "hold" or "possess") connote something ongoing, "grant" naturally refers to a discrete act that occurred at a particular moment in time. *Cf. Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 84 (2017) ("a debt *owed*" most naturally refers to "a debt *currently* owed" (second emphasis added)).

The sweeping modifier "any" provides further support. "'[A]ny' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 219 (2008) (quoting *United States v. Gonzales*, 520 U.S. 1, 5 (1997)). "[A]ny" "means what it says," and should not be "limited to some subset" of the relevant category. *Gonzales*, 520 U.S. at 5 (citation omitted).

Put together, the phrase "any alien granted asylum" is most naturally read to refer to every noncitizen who was (or has been) granted asylum.

b. That is all the more clear when compared to the alternative reading—that "any alien granted asylum" means the noncitizen must "*presently be* granted asylum." Pet. App. 12a (emphasis added). There is nothing natural about that. Sure, past participles can sometimes be used to indicate a present state, but the verb matters. There is no present "grant" of asylum at the time of adjustment. For every noncitizen seeking adjustment, the "grant" of asylum happened at least one year prior. *See* 8 U.S.C. § 1159(b)(2).

Context matters too. Had Congress intended to describe only noncitizens with current asylum status, there were far more direct ways to say that than "any alien granted asylum." Congress could have said "any alien possessing asylum," "any alien holding asylum," "any alien with asylum," or just "any asylee." Or it could have kept the current formulation and added a "continues to" condition. *See infra* at 21-23. The choice of the verb "grant," used as a past participle, in the phrase "any alien granted asylum," does not readily translate to any of the above. Different or additional words are missing and needed to get to that reading.

2. The preceding words, "the status," do not provide the missing condition—they do something else entirely. Adjustment of status involves moving from one status to another. And the thing being adjusted is the noncitizen's status, not the noncitizen himself. Inclusion of the words "the status" simply describes the transformation from one status (non-LPR status) to another (LPR status).

"[T]he status of any alien granted asylum" refers to any "status" a noncitizen previously granted asylum currently holds. That could be asylum status. It could also be any number of other lawful statuses. *E.g.,* 8 U.S.C. § 1255a(a) ("[t]emporary resident status"); *id.* § 1101(a)(15)(A)(iii) ("nonimmigrant status"); *id.* § 1254a(a)(1)(A) ("temporary protected status"). Or it could be an unlawful status. Congress recognizes that noncitizens may hold an "unlawful immigration status." *Id.* § 1255(c). As does the Executive Branch. *See* U.S. Citizenship and Immigration Services, *Policy Manual*, Vol. 7, pt. B, ch. 3, §§ B-C (Aug. 2026), https://www.uscis.gov/policy-manual/volume-7-part-b-chapter-3 (recognizing the termination of lawful status results in "unlawful immigration status"). And so have the courts. *E.g.*, *Tula-Rubio v. Lynch*, 787 F.3d 288, 295 (5th Cir.

2015) (recognizing that "status" "encompasses both lawful and unlawful legal conditions" (emphasis omitted)); *see Saldivar v. Sessions*, 877 F.3d 812, 815-19 (9th Cir. 2017) (same).

The critical point is that noncitizens who have lost asylum status still have a status from which they can adjust to LPR status. And that remains true whether the former asylee's current status is lawful or unlawful. *E.g.*, 8 U.S.C. §§ 1255a, 1255b, 1229b (allowing noncitizens with unlawful status to adjust to LPR status).

If Congress had meant to limit "the status" to "asylum status," it would have said exactly that. And the wordier statutory phrasing—"the status of any alien granted asylum"—does not do the same work. The intervening word "any" dissociates a noncitizen's "status" from whether he was "granted asylum." After all, it makes no sense to say that a noncitizen has the "status" of "*any* alien granted asylum."

* * *

Putting it all together, the phrase "the status of any alien granted asylum" describes "any" noncitizens who share a common historical fact: they were once granted asylum, whether they currently have "asylum status" or some other non-LPR status.

B. Statutory Context And Structure Confirm That Continuing Asylum Status Is Not Required

The statutory context and structure overwhelmingly confirm that all noncitizens previously granted asylum may adjust to LPR status if the conditions set forth in paragraphs (1)-(5) are satisfied. Congress did not silently engraft a sixth, additional, continuing asylum status condition. *See*

Sw. Airlines Co. v. Saxon, 596 U.S. 450, 455 (2022) (to discern "ordinary meaning," words "must be read and interpreted in their context, not in isolation" (citations omitted)).

1. The first and most powerful contextual clue is the stark contrast between the absence of any express continuing asylum status condition in Section 1159 and the presence of *three* other express continuing conditions in Section 1159. Congress clearly knew how to impose a continuing condition when it wanted to, and it did not do so in the introductory clause. *See Simmons v. Himmelreich*, 578 U.S. 621, 627 (2016) ("[W]e presume Congress says what it means and means what it says").

Starting with Section 1159(b). Section 1159(b)(3) requires that an applicant "continue[] to be a refugee within the meaning of [S]ection 1101(a)(42)(A)" when seeking adjustment. 8 U.S.C. § 1159(b)(3). Two paragraphs later, in Section 1159(b)(5), Congress required that the applicant be "admissible … at the time of examination for adjustment." *Id.* § 1159(b)(5). That is, "[t]wice within § 1159(b) *itself* Congress wrote in an unmistakable continuing-status requirement." *Cela v. Garland*, 75 F.4th 355, 367 (4th Cir. 2023) (Harris, J., concurring in part and dissenting in part), *cert. denied*, 144 S. Ct. 2657 (2024).

The immediately preceding subsection, Section 1159(a), imposes yet another explicit continuing requirement in analogous circumstances. Subsection (a), which governs LPR adjustment for refugees admitted under Section 1157, allows the Attorney General to adjust a refugee's status only if his admission as a refugee "has not been terminated" "at the time of the alien's inspection and examination." 8 U.S.C. § 1159(a)(1)(A), (a)(2).

Simply put, Congress knew how to require that a noncitizen "continue[] to be" an asylee, or be an asylee "at the time of examination for adjustment," or to allow adjustment only if the noncitizen's asylum "has not been terminated." Yet it did none of the above; any comparable language is "conspicuously absent" from the introductory clause. *Siwe v. Holder*, 742 F.3d 603, 608 (5th Cir. 2014).

Nor can Section 1159(b)'s introductory language fairly be described as just a "varying [way] to require" a "current condition." Pet. App. 14a; *see also Cela*, 75 F.4th at 364 & n.10. Just line them up:

- Section 1159(a)(1)(A) requires that a refugee's status "has not been terminated."
- Section 1159(b)(3) requires that a noncitizen granted asylum "continues to be a refugee."
- Section 1159(b)(5) requires that a noncitizen granted asylum be "admissible … at the time of examination for adjustment."
- Section 1159(b) allows the adjustment of "the status of any alien granted asylum."

One of these things is not like the others.

The inclusion of three express continuing conditions "confirms that Congress purposefully omitted any such condition regarding asylum." *Siwe*, 742 F.3d at 608. For "a Congress downright preoccupied with the timing question," its failure to specify that asylum status must be current "can only be understood as a purposeful omission." *Cela*, 75 F.4th at 367 (Harris, J., concurring in part and dissenting in part); *see Russello v. United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (citation omitted)); *M&K Emp. Sols., LLC v. Trs. of the IAM Nat'l Pension Fund*, 146 S. Ct. 1224, 1231-32 (2026) (same); *Mullin v. Al Otro Lado*, 146 S. Ct. 2079, 2091 (2026) (similar).

2. The statutory structure provides further reinforcement. Section 1159 identifies the object of adjustment in the introductory clause—"the status of any alien granted asylum"—and then defines the specific requirements for adjustment (i.e., "who" qualifies) in the five numbered paragraphs that follow. Two of those paragraphs contain express continuing conditions. 8 U.S.C. § 1159(b)(3), (5). If Congress had intended continuing asylum status to be a condition for adjustment to LPR status, it would have been very easy to add a (6) "continues to be an asylee" or "is an asylee at the time of examination for adjustment." That Congress did not counsels against reading an unenumerated sixth condition into the introductory text.

3. Section 1159(b)(5) and (c) provide additional support. Recall that Section 1159(b)(5) imposes one of the express continuing requirements: noncitizens generally must be "admissible" at the time of examination for adjustment. *Id.* § 1159(b)(5). But the Attorney General retains discretion under subsection (c) to "waive" that requirement "for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest." *Id.* § 1159(c).

Petitioners' reading gives those interlocking provisions full force. If a noncitizen previously granted asylum is inadmissible, he will be ineligible for adjustment to LPR status—but the Attorney

General would retain discretion to waive that requirement in appropriate circumstances. The government's reading "vitiate[s]" that discretion. *Siwe*, 742 F.3d at 609. If a noncitizen has his asylum terminated and is inadmissible for that same reason, it is game over. No matter the humanitarian concerns, no matter the need to ensure family unity, and no matter the public interest. There is no reason to think Congress wanted the Attorney General to be categorically stripped of the discretion expressly granted in subsection (c).

That the grounds for inadmissibility and the grounds for termination are not entirely coextensive is no answer. This is not a superfluity argument. Subsection (c) still has work to do if, for example, a noncitizen is inadmissible for "health-related" reasons or because of his "membership in [a] totalitarian party." Resp. Cert. Br. 14 (citing 8 U.S.C. § 1182(a)(1), (a)(3)(D)). But there is substantial overlap between the grounds for inadmissibility and the grounds for termination. *Compare* 8 U.S.C. § 1182(a), *with id.* § 1158(c)(2). And there are a significant number of noncitizens who would be eligible for waiver under petitioners' reading and not eligible for waiver under the government's reading. That number includes noncitizens with criminal convictions, like petitioners.

The question, then, is whether Congress expressly opened the door to waiver in Section 1159(c) only to surreptitiously close it for a significant subset of those inadmissible noncitizens—through the introductory clause in Section 1159(b). Not quite an elephant in a mousehole, perhaps, but certainly a circuitous way to gut the Attorney General's discretion. *Cf. United States v. Hansen*, 599 U.S. 762, 778 (2023) (declining to assume "Congress took a circuitous route to convey a sweeping … message"); *Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran v. Elahi*, 556 U.S. 366, 386 (2009) ("Congress could not have intended [certain statutory words] to narrow so dramatically an important provision that it inserted in the same statute.").

4. Another contextual clue is that the only other time Congress used the phrase "granted asylum" in Section 1159, it was referring to a past event. 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" refers to a completed, historical event, not a continuing, present status. Pet. App. 15a (acknowledging that Section 1159(b)(2)'s use of "granted asylum" refers "to a completed event rather than a current status"). "[I]dentical 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). And that canon is "doubly appropriate" where the same phrase was "simultaneously inserted" in the same provision. *Powerex Corp. v. Reliant Energy Servs., Inc.*, 551 U.S. 224, 232 (2007); *see Monsalvo v. Bondi*, 604 U.S. 712, 726 (2025); 1980 Act, Pub. L. No. 96-212, § 201(b), 94 Stat. 102, 103, 105-06 (adding § 209(b)-(c)).

That Section 1159(b)(2) includes the auxiliary verb "'being'" and the temporal term "'after'" does not change the analysis. Pet. App. 15a; Resp. Cert. Br. 11-12. A past participle need not include an auxiliary verb to refer to a completed action. *See* Rodney Huddleston & Geoffrey K. Pullum, *The Cambridge Grammar of the English Language* 78 (2002) (explaining that "[h]e showed me a hurriedly written first draft" is "comparable to" "[t]he first draft was written hurriedly"). And because Section 1159(b)'s introductory clause has none, *some* auxiliary verb must be implied. The only question is whether that language is best read as "presently be granted asylum" (the Second Circuit's reading), Pet. App. 12a, or "was (or has been) granted asylum" (petitioners' reading). The use of "granted asylum" right next door in Section 1159(b)(2) is one contextual point (among many) favoring the latter.

Congress's use of "granted asylum" to refer to present asylum status in Section 1158(c) does not suggest otherwise. Pet. App. 13a-14a. It is easily explained by that section's differing text and context. Section 1158(c) is titled "Asylum status." Paragraph (2) concerns the "Termination of asylum," and provides that "[a]sylum granted … may be terminated" when certain conditions are met. 8 U.S.C. § 1158(c)(2). Of course the Attorney General cannot terminate asylum if asylum status no longer exists. Paragraph (1), in turn, describes the ongoing benefits available to "an alien granted asylum," including that the Attorney General "shall not remove … the alien." *Id.* § 1158(c)(1). Current asylum status is needed because, among other reasons, paragraph (3) provides that an alien whose asylum status has been terminated is no longer protected from removal. *Id.* § 1158(c)(3).

In the end, context provides the answer. That the two words "granted" "asylum" *could* refer to a present status does not answer whether they *do* refer to a present status in Section 1159(b). It provides no reason to choose the neighboring provision of Section 1158(c) over Section 1159(b)'s own statutory home.

And it does not explain the conspicuous absence of any *express* continuing asylum status language.

C. Statutory History Reinforces That Continuing Asylum Status Is Not Required

That Congress knew how to impose a continuing asylum status requirement and did not do so in Section 1159(b) is reinforced by the statutory history. *See Hansen*, 599 U.S. at 775 ("Statutory history is an important part of th[e] context."); *BNSF Ry. Co. v. Loos*, 586 U.S. 310, 318-20 (2019) (considering statutory language upon enactment and subsequent amendments to provide context); *id.* at 329 (Gorsuch, J., dissenting) (noting that "everyone agrees" the "record of enacted changes Congress made to the relevant statutory text over time" can "sometimes shed light on meaning" (emphasis omitted)).

1. In Section 245 of the Immigration and Nationality Act of 1952 (1952 Act), Congress enacted the first general adjustment of status provision. Pub. L. No. 82-414, § 245(a), 66 Stat. 163, 217 (1952)[3]; *see Marques v. Lynch*, 834 F.3d 549, 559 (5th Cir. 2016). As relevant, Section 245 provided: "The status of an alien who was lawfully admitted to the United States as a bona fide nonimmigrant *and who is continuing to maintain that status* may be adjusted by the Attorney General in his discretion … to that of an alien lawfully admitted for permanent residence …." Pub. L. No. 82-414, § 245(a), 66 Stat. at 217 (emphasis added).

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

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[3] This provision is now codified at 8 U.S.C. § 1255.

continuing to maintain that status." *Whom Shall We Welcome: Report of the President's Commission on Immigration and Naturalization* 210-11 (1953), https://dn760107.eu.archive.org/0/items/whomweshallwelco00unit/whomweshallwelco00unit.pdf. And the "continuing to maintain" requirement excluded a "great number" of noncitizens "whose present status [was] irregular, for one or another reason." *Id.*

In 1958, Congress amended Section 245 to eliminate that continuing requirement: "The status of an alien who was admitted to the United States as a bona fide nonimmigrant may be adjusted by the Attorney General … to that of an alien lawfully admitted for permanent residence …." Act of Aug. 21, 1958, Pub. L. No. 85-700, 72 Stat. 699, 699. That is, Congress removed the requirement to "contin[ue] to maintain" a particular status, such that noncitizens who had violated the terms of their visas or otherwise lost lawful status were now eligible for adjustment. *See* S. Rep. No. 85-2133 (1958), *reprinted in* 1958 U.S.C.C.A.N. 3698, 3698-99 (purpose was to "broaden the discretionary authority of the Attorney General").

Sections 1157, 1158, and 1159 were enacted as part of the 1980 Act, which "provide[d] a permanent and systematic procedure for the admission to this country of refugees of special humanitarian concern to the United States." Pub. L. No. 96-212, § 101(b), 94 Stat. at 102; *see INS v. Cardoza-Fonseca*, 480 U.S. 421, 427 (1987) ("The Refugee Act of 1980 established a new statutory procedure for granting asylum to refugees."). At that time, Congress knew exactly how to condition adjustment on maintaining a status. When Congress wanted a continuing condition in Section 1159(b), it followed the same approach as the 1952 Act, spelling the requirement out: the applicant must "continue[] to be a refugee." Pub. L. No. 96-212, § 201(b), 94 Stat. at 106 (adding § 209(b)(3)). Congress could have done the same for asylum status—limiting adjustment to noncitizens who "continue[] to be an asylee" or who "continue[] to maintain asylum status." It did neither. In light of the history, that silence speaks volumes.

2. There is a good reason why Congress did not impose a continuing asylum status requirement: the 1980 Act worked perfectly well without one. And nothing relevant has changed since 1980.

a. In 1980, there was only one ground for terminating refugee status (for individuals outside the United States who are admitted as refugees) and only one ground for terminating asylum status (for individuals inside the United States who secure asylum). For refugees: "[t]he 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 101(a)(42) at the time of the alien's admission." *Id.*, 94 Stat. at 104 (adding § 207(c)(4)). For asylees, asylum similarly could be terminated only if the noncitizen was "no longer a refugee within the meaning of section 101(a)(42)(A) owing to a change in circumstances in the alien's country of nationality." *Id.*, 94 Stat. at 105 (adding § 208(b)). Both turned on whether the noncitizen was or continued to be a refugee.

The adjustment provision tracked that perfectly. Section 1159(a) allowed adjustment of status for a person admitted as a refugee if his refugee status "has not been terminated." 8 U.S.C. § 1159(a)(1)(A). Section 1159(b), in turn, allowed adjustment of status for a person granted asylum if he "continues to be a refugee." *Id.* § 1159(b)(3). Congress's focus was on prohibiting adjustment for non-refugees. And because the (b)(3) condition for adjustment was coextensive with that sole ground for termination, a continuing asylum status requirement would have done no work and served no purpose.

At that time too, refugees with criminal convictions would have been eligible for adjustment if the paragraph (1)-(5) conditions were satisfied. Most would fail the present-admissibility requirement under Section 1159(b)(5), but the Attorney General had authority to waive that requirement under subsection (c) for "humanitarian purposes, to assure family unity, or when it is otherwise in the public interest." Pub. L. No. 96-212, § 201(b), 94 Stat. at 106 (adding § 209(b)-(c)). Put another way, the enacting Congress "expressly contemplate[d] that some noncitizen refugees with criminal convictions, including for potentially serious crimes, may nevertheless be eligible for LPR status." Pet. App. 28a (Robinson, J., dissenting).

As originally enacted, then, petitioners (and others like them) would not have been categorically barred from adjusting to LPR status. They would still be refugees. There would have been no ground for termination of asylum. And the inadmissibility condition could be waived for humanitarian or family unity reasons—as it was for Wassily. *Id.* at 51a-58a.

b. Nothing relevant has changed since 1980. The operative language of Section 1159 remains the same.

Turning first back to the general adjustment provision in Section 1255. In 1986, Congress amended that provision again, this time to reimpose a continuing status requirement. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603,

§ 117, 100 Stat. 3359, 3384 (1986). As amended, Section 1255(c)(2) provides that adjustment under that provision is not available for a noncitizen "who is not in legal immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own for technical reasons) to maintain continuously a legal status since entry into the United States." *Id.* But Congress made no change to Section 1159.

Then, in 1996, Congress expanded the grounds for terminating asylum under Section 1158. *See* IIRIRA, Pub. L. No. 104-208, Div. C, § 604(a), 110 Stat. 3009-546, 3009-692 to -693 (1996). Asylum can now be terminated for many reasons other than failure to satisfy the refugee definition: if an agreement allows removal to a third country where the noncitizen could receive asylum (or equivalent protections), 8 U.S.C. § 1158(c)(2)(C); if the noncitizen has acquired a new nationality and "enjoys the protection of" that country, *id.* § 1158(c)(2)(E); or if a noncitizen commits certain criminal offenses, *id.* § 1158(c)(2)(B), (b)(2). As amended, "individuals who still qualify as *refugees* may nevertheless lose the protection of *asylum* under § 1158 for reasons unrelated to whether they face persecution in their country of origin." Pet. App. 23a (Robinson, J., dissenting).

When Congress amended Section 1158, it cross-referenced Section 1159(b). *See* Pub. L. No. 104-208, § 604(a), 110 Stat. at 3009-693; 8 U.S.C. § 1158(d)(3). And it made some ministerial changes to Section 1159 itself. *See* Pub. L. No. 104-208, § 308(g)(3)-(4), 110 Stat. at 3009-622 ("references to Section 236" and "Section 237"); *id.* § 371(b), 110 Stat. at 3009-645 ("Substitution for Term 'Special Inquiry Officer.'"); *id.* § 604(b), 110 Stat. at 3009-694 ("Conforming and

Clerical Amendments."). But Congress left the operative language in Section 1159(b) untouched. And nothing suggests the Section 1158(c)(2) expansion was intended to fundamentally change the availability of adjustment, or the Attorney General's waiver authority, for individuals who are refugees.

c. This statutory history strongly confirms petitioners' reading. Under that reading, Section 1159 does the same work today as it did in 1980. "[T]he status of any alien granted asylum" identifies a class of noncitizens with a past grant of asylum; Section 1159(b)(3) screens out noncitizens who are no longer refugees; and Section 1159(b)(5) and (c) determine what criminal history disqualifies those noncitizens from adjustment and what can be forgiven through waiver.

Under the government's reading, those seven words ("the status of any alien granted asylum") silently ballooned in importance after a 1996 amendment to a neighboring provision. Before 1996, termination of asylum was immaterial; (b)(3) independently excluded those who were no longer refugees; and noncitizens with criminal convictions who remained refugees could adjust to LPR status in the Attorney General's discretion. After 1996, termination of asylum was determinative and all refugees with qualifying criminal convictions were categorically barred from adjusting to LPR status. Congress would not have made such a significant change without saying a word. *Cf. Bd. of Trs. of the Leland Stanford Junior Univ. v. Roche Molecular Sys., Inc.*, 563 U.S. 776, 792 (2011) ("[I]f Congress had intended such a sea change in [the law] it would have said so clearly—not obliquely ….").

3. The intervening Immigration Act of 1990 is fully consistent with that history and does not change the meaning of the operative text. Pet. App. 16a.

The 1990 Act added a statutory note to Section 1159, which provides that Section 1159(b) "shall also apply" to a noncitizen (A) "who was granted asylum before the date of the enactment of this Act (regardless of whether or not such asylum has been terminated under [Section 1158(b)])," (B) "who is no longer a refugee because of a change in circumstances in a foreign state," and (C) "who was (or would be) qualified for adjustment of status" "but for paragraphs (2) and (3)" of Section 1159(b) and "but for any numerical limitation." Pub. L. No. 101-649, § 104(d)(1)(A)-(C), 104 Stat. 4978, 4985-86 (1990).

That note was motivated by a specific geopolitical problem: the fall of repressive regimes in Eastern Europe had created an anomalous situation for asylees already living in the United States. *See* 136 Cong. Rec. H8689 (daily ed. Oct. 2, 1990). The amendment "addresse[d] the problem created by the current requirement that *an asylee must prove that he or she still meets the definition of refugee* in order to adjust his or her status to that of permanent resident." *Id.* (Rep. Rostenkowski) (emphasis added). "It is incongruous," a proponent of the amendment explained, "that the otherwise welcome demise of a repressive regime in an asylee's home country should make it virtually impossible for the asylee to remain in the United States for failure to prove a continuing well-founded fear of persecution." *Id.* At that time, the positive reality of "emerging democracies" entailed the negative externality of "mass denials of status adjustment"—a mismatch the amendment sought to ameliorate. *Id.* In short, the purpose of the note was to ensure that noncitizens granted asylum *who were no longer refugees* as a result of post-Cold War regime changes could still adjust to LPR status. *See* Pet. App. 27a n.3 (Robinson, J., dissenting).

The parenthetical ("regardless of whether or not such asylum has been terminated under [Section 1158(b)]") was a prudent clarification because, at that time, the same inability to satisfy the refugee definition was the *only* ground for termination of asylum. *See supra* at 29-32. So the entire class of former refugees Congress was trying to protect would lose asylum status for the very reason the note was designed to address: changed country conditions. *See* 136 Cong. Rec. at H8689 ("under current law, th[e] change in circumstances in the homeland permits the [Immigration and Naturalization Service] to deny adjustment to permanent resident status, to terminate asylee status, and to initiate deportation proceedings"). And any other former refugees would remain ineligible for adjustment under Section 1159(b)(3). To eliminate any possible confusion, Congress simply confirmed that termination of asylum did not matter. *See, e.g.*, *Snyder v. United States*, 603 U.S. 1, 19 (2024) ("Congress commonly writes federal statutes … in such a belt and suspenders manner.").

That parenthetical clarification, in a statutory note, adopted by a different Congress a decade after the operative language in Section 1159 was enacted, cannot bear any additional weight.

A "parenthetical" is "typically used to convey an 'aside' or 'afterthought.'" *Boechler, P.C. v. Commissioner*, 596 U.S. 199, 206 (2022) (citation omitted); *cf. Becerra v. Empire Health Found. for Valley Hosp. Med. Ctr.*, 597 U.S. 424, 440 (2022)

(Congress does not alter "'fundamental[s]' of a statutory scheme" in parentheticals (citation omitted)). And the statutory note was adopted a decade after the operative text in Section 1159. *See* Immigration Act of 1990, Pub. L. No. 101-649, § 104(d), 104 Stat. at 4985; Pub. L. No. 96-212, § 201(b), 94 Stat. at 105. Whatever Congress may or may not have believed about the scope of Section 1159(b)'s introductory clause in 1990 sheds no meaningful light on the statutory text a different Congress enacted in 1980. *See Bostock v. Clayton County*, 590 U.S. 644, 670 (2020) ("[S]peculation about [the actions of] a later Congress … offers a 'particularly dangerous' basis on which to rest an interpretation of an existing law a different and earlier Congress did adopt." (citation omitted)); *O'Gilvie v. United States*, 519 U.S. 79, 90 (1996) ("[T]he view of a later Congress cannot control the interpretation of an earlier enacted statute.").

D. Statutory Purpose Further Demonstrates That Continuing Asylum Status Is Not Required

Petitioners' reading furthers Congress's purpose. There are many reasons why Congress would want the Attorney General to retain discretion to adjust the status of noncitizen refugees whose grants of asylum were terminated. To date, the government has not disagreed. And its solution (i.e., sequencing adjustment before termination) only proves Congress did not intend a categorical bar.

1. Consider the subset of noncitizens impacted by this interpretive question. These are individuals who (i) were previously granted asylum and are no longer asylees, (ii) continue to be refugees under Section

1159(b)(3), (iii) have been in the United States for more than a year (and often far longer),[4] (iv) are admissible or would be granted a waiver under subsection (c) for humanitarian or similar reasons, and (v) have not firmly resettled in another country. Unless married to a U.S. citizen, these former asylees will likely lack any other basis to immediately adjust. And because the most common basis for terminating asylum also precludes withholding of removal, *compare* 8 U.S.C. § 1158(b)(2), (c)(2)(B), *with id.* § 1231(b)(3)(B), they will likely face removal to the very countries from which they fled. So the question is whether Congress intended to categorically foreclose adjustment and virtually ensure removal of current refugees, who have lived in this country for years or even decades, and who are either admissible or would warrant a waiver on humanitarian, family unity, or public interest grounds.

Also remember that, today, those granted asylum can lose asylum status for many different reasons, some entirely outside their control. Pet. App. 26a (Robinson, J., dissenting). Asylum can be terminated because of an intervening bilateral agreement

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[4] Many seeking adjustment have lived in the United States for far longer than a year. At the time of Section 1159's enactment, and for decades after, there were systemic barriers and massive backlogs that deterred and prevented asylees from adjusting promptly. Until 2005, a statutory cap of 10,000 annual adjustments produced a backlog exceeding 150,000 applications, with some asylees waiting thirteen years or more. *See* REAL ID Act of 2005, Pub. L. No. 109-13, § 101(g)(1), 119 Stat. 231, 305 (repealing cap); American Immigration Lawyers Association, AILA Issue, *Eliminate the Asylee Adjustment Cap* (2004), https://www.aila.org/library/eliminate-the-asylee-adjustment-cap.

between the United States and another country. *See* 8 U.S.C. § 1158(c)(2)(C).[5] Because the noncitizen was resettled elsewhere prior to arriving in the United States, even if that country is no longer available or safe for them. *Id.* § 1158(c)(2)(B), (b)(2)(A)(vi). Or, under the governing regulations, because asylum was derivative and the principal asylee's status was terminated. *See* 8 C.F.R. § 1208.24(d). That is, innocent spouses and children, who bear no responsibility for the conduct triggering termination, would lack continuing asylum status.

Even when a noncitizen's asylum is terminated due to a criminal conviction, *see* 8 U.S.C. § 1158(c)(2)(B), the conduct supporting termination could be relatively minor. Although termination is limited to convictions for "particularly serious crime[s]," *id.* § 1158(b)(2)(A)(ii), that category includes any "aggravated felony," *id.* § 1158(b)(2)(B)(i)—and even offenses that fall short of that threshold, *see id.* § 1158(b)(2)(B)(ii); *Nethagani v. Mukasey*, 532 F.3d 150, 156 (2d Cir. 2008); *Ali v. Achim*, 468 F.3d 462, 469 (7th Cir. 2006). The "'aggravated felony'" category is also notoriously capacious—paradoxically including "'misdemeanors'" —and often "not clear." *Padilla v. Kentucky*, 559 U.S. 356, 377-79 (2010) (Alito, J., concurring in the judgment) (citations omitted); *see United States v.*

[5] The United States has recently signed several such agreements. *See, e.g.*, 90 Fed. Reg. 51376 (Nov. 17, 2025) (Ecuador); 90 Fed. Reg. 42597 (Sept. 3, 2025) (Uganda); Press Release, U.S. Dep't of State, *Signing of a Safe Third Country Agreement with Paraguay* (Aug. 14, 2025), https://assets.aila.org/files/a66ab0ff-b974-4f8e-8c6d-723b873444df/25081506.pdf?1755285350; 90 Fed. Reg. 31670 (July 15, 2025) (Guatemala); 90 Fed. Reg. 30076 (July 8, 2025) (Honduras).

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); *United States v. Graham*, 169 F.3d 787, 793 (3d Cir.) (misdemeanor petit larceny conviction, with a maximum of a year's imprisonment), *cert. denied*, 528 U.S. 845 (1999); *United States v. Christopher*, 239 F.3d 1191, 1193 (11th Cir.) (misdemeanor conviction for shoplifting), *cert. denied*, 534 U.S. 877 (2001).

Whatever the triggering event, the key point is: the only former asylees eligible to seek adjustment are those who are still refugees, who have lived in the United States for years, and who are either admissible or able to secure a humanitarian waiver.

2. Reading Section 1159(b) to protect this population also results in the consistent treatment of noncitizens admitted as refugees under Section 1157 and refugees granted asylum under Section 1158.

Under Section 1159(a), refugees admitted under Section 1157 may adjust to LPR status so long as their "admission" as a refugee "has not been terminated." 8 U.S.C. § 1159(a). Individuals granted asylum who are seeking adjustment must similarly prove they "continue[] to be a refugee." *Id.* § 1159(b)(3). The focus for both is on noncitizens with a well-founded fear of persecution—whether refugees or asylees. The government's reading would shift that focus for asylees only, affording them less protection than their refugee counterparts. *See* Pet. App. 26a (Robinson, J., dissenting).

3. That IJs can still exercise discretion to adjust those noncitizens to LPR status before terminating

asylum status is a vice, not a virtue. As the Second Circuit explained, and as the government has argued, IJs can avoid the categorical bar on adjustment by simply "deferring ruling on a motion to terminate asylum status in favor of first adjudicating an application for adjustment of status." Pet. App. 16a; *see* Resp. Cert. Br. 14; CA2 Respondent's Br. 46-47. True, but that just shows Congress did *not* intend to categorically prohibit adjustment. Petitioners' reading of the introductory clause is a far more direct way to give effect to that intent than relying on the vagaries of the order in which an IJ decides competing petitions to terminate and adjust.

Wassily's case illustrates the point. The IJ first terminated his asylum and then found him eligible for adjustment because he still had a "well-founded fear of persecution" based on his Coptic Christian faith and humanitarian and family unity concerns justified a waiver of inadmissibility. *Compare* Pet. App. 46a-50a (terminating asylum status), *with* Pet. App. 51a-58a (granting adjustment). On petitioners' reading of Section 1159, that was perfectly permissible. On the government's reading, it was not—*but* if the IJ had only started with the adjustment application, he could have reached the same result. That makes nonsense of the statutory scheme and has nothing to commend it. Pet. App. 29a (Robinson, J., dissenting); *cf. Pulsifer v. United States*, 601 U.S. 124, 149 (2024) (rejecting construction that "makes a hash of the scheme Congress devised").

Congress did not categorically bar adjustment to LPR status under Section 1159(b) simply because asylum status has been (or inevitably would be) terminated—regardless of the order.

* * *

Text, context, structure, history, and purpose all lead to the same conclusion. "[T]he status of any alien granted asylum" means the current status of any alien previously granted asylum. It does not impose a continuing asylum status requirement. Noncitizens whose asylum has been terminated but who satisfy the conditions in paragraphs (1)-(5) are not categorically ineligible for adjustment.

E. If Ambiguity Remains, It Should Be Resolved In Favor Of Petitioners' Reading

A plain reading of Section 1159(b) shows that "the status of any alien granted asylum" means the current status of any alien previously granted asylum—full stop. But if ambiguity remains on that score, it should be resolved in petitioners' favor under the well-settled rule of lenity. *See Leocal v. Ashcroft*, 543 U.S. 1, 11 n.8 (2004) (where a provision "lack[s] clarity, [the Court] would be constrained to interpret any ambiguity in the statute in petitioner's favor").

There is a "longstanding principle of construing any lingering ambiguities" in statutes impacting removal "in favor of the alien." *Cardoza-Fonseca*, 480 U.S. at 449. This rule emerged from a body of doctrine in the criminal sphere "founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department." *United States v. Wiltberger*, 18 U.S. (5 Wheat.) 76, 95 (1820) (Marshall, C.J.). The genesis of this rule in the immigration context is often traced to *Fong Haw Tan v. Phelan*, 333 U.S. 6, 9-10 (1948). There, the Court held that "because deportation is a drastic measure and at times the equivalent of banishment or exile," and "since the stakes are considerable for the individual," "we 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." *Id.* at 10. As a result, statutory provisions bearing on whether a noncitizen will be removed must be strictly construed in the noncitizen's favor.

This Court has repeatedly restated and reaffirmed that rule. *See Barber v. Gonzales*, 347 U.S. 637, 642 (1954); *Bonetti v. Rogers*, 356 U.S. 691, 699 (1958); *Costello v. INS*, 376 U.S. 120, 128 (1964); *id.* at 148 (White, J., dissenting) ("no quarrel with the doctrine that where the Court is unable to discern the intent of Congress, ambiguities should be resolved in favor of the deportee"); *INS v. Errico*, 385 U.S. 214, 225 (1966); *Cardoza-Fonseca*, 480 U.S. at 449; *INS v. St. Cyr*, 533 U.S. 289, 320 (2001); *see also Dada v. Mukasey*, 554 U.S. 1, 18-19 (2008) (citing "the longstanding principle" of lenity in the immigration context (citation omitted)); *Kawashima v. Holder*, 565 U.S. 478, 489 (2012) (acknowledging that the Court has previously "construed ambiguities in deportation statutes in the alien's favor"); *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 397-98 (2017) (recognizing the existence of the rule in the immigration context).

The rule of lenity did little work for many years due in part to confusion about how to reconcile it with *Chevron* deference. *See Esquivel-Quintana*, 581 U.S. at 397. But *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), resolved that confusion. Now, when "uncertainty clouds a deportation statute, 'the longstanding principle of construing' it 'in favor of the alien kicks into gear.'" *Castillo v. Bondi*, 140 F.4th 777, 781 (6th Cir. 2025) (Sutton, C.J.) (citation omitted); Nancy Morawetz, *Strict Construction of Deportation Statutes After* Loper Bright, 100 N.Y.U. L. Rev. Online 1, 2-3 (2025).

If uncertainty remains about the meaning of Section 1159(b)'s introductory clause, that longstanding principle should kick in. That is because the consequence of the government's reading is the "drastic measure" of removal. *Padilla*, 559 U.S. at 360 (citation omitted). Once asylum has been terminated, removal proceedings are triggered. *See* 8 U.S.C. § 1158(c)(2)-(3); 8 C.F.R. § 1208.24(a), (c), (e)-(f).[6] And if adjustment is not available, removal follows as a matter of course. *See* 8 U.S.C. § 1158(c)(3) (subjecting asylee whose status has been terminated to "any applicable grounds" of "inadmissibility or deportability"); *cf. Sessions v. Dimaya*, 584 U.S. 148, 153 (2018) ("[R]emoval is a virtual certainty for an alien found to have an aggravated felony conviction, no matter how long he has previously resided here.").[7] Because the question is whether adjustment under Section 1159(b) "saves [a noncitizen] from

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[6] Every case implicated by the circuit split arose in the context of removal proceedings. *See* Pet. App. 3a (government "moved to reopen Wassily's removal proceedings"); *id.* at 6a (government "commenced removal proceedings" against Velasquez Arreaga); *Cela*, 75 F.4th at 358 (government "began removal proceedings"); *Siwe*, 742 F.3d at 604 ("government instituted removal proceedings").

[7] Former asylees may still seek country-specific, conditional protections including, for example, statutory withholding, 8 U.S.C. § 1231(b)(3), or CAT relief, 8 C.F.R. § 1208.16(c). But all noncitizens in removal proceedings can seek these same protections, and any underlying order of removal remains in effect.

deportation," any "doubt should be resolved in favor of the alien." *Errico*, 385 U.S. at 215, 225.

It does not matter that "Section 1159(b) is not" itself "a deportation statute." Resp. Cert. Br. 14. Although some cases articulate the rule in reference to "deportation statutes," the government cites no case that has limited the rule in that way. And this Court has applied it more broadly to statutory provisions that bear on whether a noncitizen will or will not be removed. *See St. Cyr*, 533 U.S. at 315 (applying rule of lenity to statutory provision about noncitizen's eligibility for a discretionary waiver); *Errico*, 385 U.S. at 218-24 (applying rule of lenity to statutory provision that relieved certain noncitizens from deportation who had entered through fraud or misrepresentation but were "otherwise admissible"); *see also Dada*, 554 U.S. at 18-19 (citing rule of lenity when interpreting "[v]oluntary departure" provision, which the Court characterized as "an agreed-upon exchange of benefits, much like a settlement agreement"); *Cardoza-Fonseca*, 480 U.S. at 423, 449 (explaining that the category of "deportation statutes" subject to lenity includes provisions where noncitizens "can seek relief" from deportation, including asylum provisions).[8]

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[8] So have the courts of appeals. *See, e.g.*, *Jeudy v. Holder*, 768 F.3d 595, 600 (7th Cir. 2014) (applying lenity to stop-time provision governing LPRs' eligibility for cancellation of removal); *Velásquez-García v. Holder*, 760 F.3d 571, 579 (7th Cir. 2014) (applying lenity to age-out provision governing visa preference classification for children of LPRs); *Padash v. INS*, 358 F.3d 1161, 1173 (9th Cir. 2004) (applying lenity to adjustment of status provision for children of U.S. citizens and LPRs); *Lok v. INS*, 548 F.2d 37, 39 (2d Cir. 1977) (observing that the rule is "especially pertinent" in cases involving relief from deportation);

This all makes sense: banishment is banishment. Whether it results from a provision that orders removal or saves one from removal, the consequences for the noncitizen and for the separation of powers remain the same. *See* Brian G. Slocum, *The Immigration Rule of Lenity and* Chevron *Deference*, 17 Geo. Immigr. L.J. 515, 519-23 (2003).

Accordingly, if this Court concludes that Section 1159(b)'s introductory clause is ambiguous, it should apply the rule of lenity to hold that all noncitizens previously granted asylum are eligible to adjust to LPR status—even if asylum was later terminated.

CONCLUSION

The judgments of the court of appeals should be reversed.

Respectfully submitted,

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Lennon v. INS, 527 F.2d 187, 193 (2d Cir. 1975) (applying lenity in construing exclusion provision).

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§ 1101. Definitions

(a) As used in this chapter—

* * *

(42) The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that 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, or (B) in such special circumstances as the President after appropriate consultation (as defined in section 1157(e) of this title) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this chapter, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive

population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

* * *

8 U.S.C. § 1157

§ 1157. Annual admission of refugees and admission of emergency situation refugees

* * *

(c) Admission by Attorney General of refugees; criteria; admission status of spouse or child; applicability of other statutory requirements; termination of refugee status of alien, spouse or child

(1) Subject to the numerical limitations established pursuant to subsections (a) and (b), the Attorney General may, in the Attorney General's discretion and pursuant to such regulations as the Attorney General may prescribe, admit any refugee who is not firmly resettled in any foreign country, is determined to be of special humanitarian concern to the United States, and is admissible (except as otherwise provided under paragraph (3)) as an immigrant under this chapter.

(2)(A) A spouse or child (as defined in section 1101(b)(1)(A), (B), (C), (D), or (E) of this title) of any refugee who qualifies for admission under paragraph (1) shall, if not otherwise entitled to admission under paragraph (1) and if not a person described in the second sentence of section 1101(a)(42) of this title, be entitled to the same admission status as such refugee if accompanying, or following to join, such refugee and if the spouse or child is admissible (except as otherwise provided under paragraph (3)) as an immigrant under this chapter. Upon the spouse's or child's admission to the United States, such admission shall be charged against the numerical limitation established in accordance with the appropriate subsection under which the refugee's admission is charged.

(B) An unmarried alien who seeks to accompany, or follow to join, a parent granted admission as a refugee under this subsection, and who was under 21 years of age on the date on which such parent applied for refugee status under this section, shall continue to be classified as a child for purposes of this paragraph, if the alien attained 21 years of age after such application was filed but while it was pending.

(3) The provisions of paragraphs (4), (5), and (7)(A) of section 1182(a) of this title shall not be applicable to any alien seeking admission to the United States under this subsection, and the Attorney General may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Any such waiver by the Attorney General shall be in writing and shall be granted only on an individual basis following an investigation. The Attorney General shall provide for the annual reporting to Congress of the number of waivers granted under this paragraph in the previous fiscal year and a summary of the reasons for granting such waivers.

(4) The refugee status of any alien (and of the spouse or child of the alien) may be terminated by the Attorney General pursuant to such regulations as the Attorney General may prescribe if the Attorney

General determines that the alien was not in fact a refugee within the meaning of section 1101(a)(42) of this title at the time of the alien's admission.

* * *

8 U.S.C. § 1158

§ 1158. Asylum

(a) Authority to apply for asylum

(1) In General

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.

(2) Exceptions

(A) Safe third country

Paragraph (1) shall not apply to an alien if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.

(B) Time limit

Subject to subparagraph (D), paragraph (1) shall not apply to an alien unless the alien demonstrates by clear and convincing evidence that the application has been filed within 1 year after the date of the alien's arrival in the United States.

(C) Previous asylum applications

Subject to subparagraph (D), paragraph (1) shall not apply to an alien if the alien has previously applied for asylum and had such application denied.

(D) Changed circumstances

An application for asylum of an alien may be considered, notwithstanding subparagraphs (B) and (C), if the alien demonstrates to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing an application within the period specified in subparagraph (B).

(E) Applicability

Subparagraphs (A) and (B) shall not apply to an unaccompanied alien child (as defined in section 279(g) of title 6).

(3) Limitation on judicial review

No court shall have jurisdiction to review any determination of the Attorney General under paragraph (2).

(b) Conditions for granting asylum

(1) In general

(A) Eligibility

The Secretary of Homeland Security or the Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Secretary of Homeland Security or the Attorney General under this section if the Secretary of Homeland Security or the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title.

(B) Burden of proof

(i) In general

The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of section 1101(a)(42)(A) of this title. To establish that the applicant is a refugee within the meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant.

(ii) Sustaining burden

The testimony of the applicant may be sufficient to sustain the applicant's burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. In determining whether the applicant has met the applicant's burden, the trier of fact may weigh the credible testimony along with other evidence of record. Where the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.

(iii) Credibility determination

Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor. There is no presumption of credibility, however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.

(2) Exceptions

(A) In general

Paragraph (1) shall not apply to an alien if the Attorney General determines that—

(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

(ii) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

(iii) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;

(iv) there are reasonable grounds for regarding the alien as a danger to the security of the United States;

(v) the alien is described in subclause (I), (II), (III), (IV), or (VI) of section 1182(a)(3)(B)(i) of this title or section 1227(a)(4)(B) of this title (relating to terrorist activity), unless, in the case only of an alien described in subclause (IV) of section 1182(a)(3)(B)(i) of this title, the Attorney General determines, in the Attorney General's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; or

(vi) the alien was firmly resettled in another country prior to arriving in the United States.

(B) Special rules

(i) Conviction of aggravated felony

For purposes of clause (ii) of subparagraph (A), an alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.

(ii) Offenses

The Attorney General may designate by regulation offenses that will be considered to be a crime described in clause (ii) or (iii) of subparagraph (A).

(C) Additional limitations

The Attorney General may by regulation establish additional limitations and conditions, consistent with this section, under which an alien shall be ineligible for asylum under paragraph (1).

(D) No judicial review

There shall be no judicial review of a determination of the Attorney General under subparagraph (A)(v).

(3) Treatment of spouse and children

(A) In general

A spouse or child (as defined in section 1101(b)(1)(A), (B), (C), (D), or (E) of this title) of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, be granted the same status as the alien if accompanying, or following to join, such alien.

(B) Continued classification of certain aliens as children

An unmarried alien who seeks to accompany, or follow to join, a parent granted asylum under this subsection, and who was under 21 years of age on the date on which such parent applied for asylum under this section, shall continue to be classified as a child for purposes of this paragraph and section 1159(b)(3) of this title, if the alien attained 21 years of age after such application was filed but while it was pending.

(C) Initial jurisdiction

An asylum officer (as defined in section 1225(b)(1)(E) of this title) shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child (as defined in section 279(g) of title 6), regardless of whether filed in accordance with this section or section 1225(b) of this title.

(c) Asylum status

(1) In general

In the case of an alien granted asylum under subsection (b), the Attorney General—

(A) shall not remove or return the alien to the alien's country of nationality or, in the case of a person having no nationality, the country of the alien's last habitual residence;

(B) shall authorize the alien to engage in employment in the United States and provide the alien with appropriate endorsement of that authorization; and

(C) may allow the alien to travel abroad with the prior consent of the Attorney General.

(2) Termination of asylum

Asylum granted under subsection (b) does not convey a right to remain permanently in the United States, and may be terminated if the Attorney General determines that—

(A) the alien no longer meets the conditions described in subsection (b)(1) owing to a fundamental change in circumstances;

(B) the alien meets a condition described in subsection (b)(2);

(C) the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien is eligible to receive asylum or equivalent temporary protection;

(D) the alien has voluntarily availed himself or herself of the protection of the alien's country of nationality or, in the case of an alien having no nationality, the alien's country of last habitual residence, by returning to such country with permanent resident status or the reasonable possibility of obtaining such status with the same rights and obligations pertaining to other permanent residents of that country; or

(E) the alien has acquired a new nationality and enjoys the protection of the country of his or her new nationality.

(3) Removal when asylum is terminated

An alien described in paragraph (2) is subject to any applicable grounds of inadmissibility or deportability under section[1] 1182(a) and 1227(a) of this title, and the alien's removal or return shall be directed by the Attorney General in accordance with sections 1229a and 1231 of this title.

* * *

[1] So in original. Probably should be "sections".

8 U.S.C. § 1158 (1997)

§ 1158. Asylum

(a) Authority to apply for asylum

(1) In General

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.

(2) Exceptions

(A) Safe third country

Paragraph (1) shall not apply to an alien if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.

(B) Time limit

Subject to subparagraph (D), paragraph (1) shall not apply to an alien unless the alien demonstrates by clear and convincing evidence that the application has been filed within 1 year after the date of the alien's arrival in the United States.

(C) Previous asylum applications

Subject to subparagraph (D), paragraph (1) shall not apply to an alien if the alien has previously applied for asylum and had such application denied.

(D) Changed circumstances

An application for asylum of an alien may be considered, notwithstanding subparagraphs (B) and (C), if the alien demonstrates to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing an application within the period specified in subparagraph (B).

(3) Limitation on judicial review

No court shall have jurisdiction to review any determination of the Attorney General under paragraph (2).

(b) Conditions for granting asylum

(1) In general

The Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Attorney General under this section if the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title.

(2) Exceptions

(A) In general

Paragraph (1) shall not apply to an alien if the Attorney General determines that—

(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

(ii) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

(iii) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;

(iv) there are reasonable grounds for regarding the alien as a danger to the security of the United States;

(v) the alien is inadmissible under subclause (I), (II), (III), or (IV) of section 1182(a)(3)(B)(i) of this title or removable under section 1227(a)(4)(B) of this title (relating to terrorist activity), unless, in the case only of an alien inadmissible under subclause (IV) of section 1182(a)(3)(B)(i) of this title, the Attorney General determines, in the Attorney General's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; or

(vi) the alien was firmly resettled in another country prior to arriving in the United States.

(B) Special rules

(i) Conviction of aggravated felony

For purposes of clause (ii) of subparagraph (A), an alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.

(ii) Offenses

The Attorney General may designate by regulation offenses that will be considered to be a crime described in clause (ii) or (iii) of subparagraph (A).

(C) Additional limitations

The Attorney General may by regulation establish additional limitations and conditions, consistent with this section, under which an alien shall be ineligible for asylum under paragraph (1).

(D) No judicial review

There shall be no judicial review of a determination of the Attorney General under subparagraph (A)(v).

(3) Treatment of spouse and children

A spouse or child (as defined in section 1101(b)(1)(A), (B), (C), (D), or (E) of this title) of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, be granted the same status as the alien if accompanying, or following to join, such alien.

(c) Asylum status

(1) In general

In the case of an alien granted asylum under subsection (b) of this section, the Attorney General—

(A) shall not remove or return the alien to the alien's country of nationality or, in the case of a person having no nationality, the country of the alien's last habitual residence;

(B) shall authorize the alien to engage in employment in the United States and provide the alien with appropriate endorsement of that authorization; and

(C) may allow the alien to travel abroad with the prior consent of the Attorney General.

(2) Termination of asylum

Asylum granted under subsection (b) of this section does not convey a right to remain permanently in the United States, and may be terminated if the Attorney General determines that—

(A) the alien no longer meets the conditions described in subsection (b)(1) of this section owing to a fundamental change in circumstances;

(B) the alien meets a condition described in subsection (b)(2) of this section;

(C) the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien is eligible to receive asylum or equivalent temporary protection;

(D) the alien has voluntarily availed himself or herself of the protection of the alien's country of nationality or, in the case of an alien having no nationality, the alien's country of last habitual residence, by returning to such country with permanent resident status or the reasonable possibility of obtaining such status with the same rights and obligations pertaining to other permanent residents of that country; or

(E) the alien has acquired a new nationality and enjoys the protection of the country of his or her new nationality.

(3) Removal when asylum is terminated

An alien described in paragraph (2) is subject to any applicable grounds of inadmissibility or deportability under section[1] 1182(a) and 1227(a) of this title, and the alien's removal or return shall be directed by the Attorney General in accordance with sections 1229a and 1231 of this title.

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[1] So in original. Probably should be "sections".

8 U.S.C. § 1158 (1982)

§ 1158. Asylum procedure

(a) Establishment by Attorney General; coverage

The Attorney General shall establish a procedure for an alien physically present in the United States or at a land border or port of entry, irrespective of such alien's status, to apply for asylum, and the alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title.

(b) Termination of asylum by Attorney General; criteria

Asylum granted under subsection (a) of this section may be terminated if the Attorney General, pursuant to such regulations as the Attorney General may prescribe, determines that the alien is no longer a refugee within the meaning of section 1101(a)(42)(A) of this title owing to a change in circumstances in the alien's country of nationality or, in the case of an alien having no nationality, in the country in which the alien last habitually resided.

(c) Status of spouse or child of alien granted asylum

A spouse or child (as defined in section 1101(b)(1)(A), (B), (C), (D), or (E) of this title) of an alien who is granted asylum under subsection (a) of this section may, if not otherwise eligible for asylum under such subsection, be granted the same status as the alien if accompanying, or following to join, such alien.

8 U.S.C. § 1159

§ 1159. Adjustment of status of refugees

(a) Inspection and examination by Department of Homeland Security

(1) Any alien who has been admitted to the United States under section 1157 of this title—

(A) whose admission has not been terminated by the Secretary of Homeland Security or the Attorney General pursuant to such regulations as the Secretary of Homeland Security or the Attorney General may prescribe,

(B) who has been physically present in the United States for at least one year, and

(C) who has not acquired permanent resident status,

shall, at the end of such year period, return or be returned to the custody of the Department of Homeland Security for inspection and examination for admission to the United States as an immigrant in accordance with the provisions of sections 1225, 1229a, and 1231 of this title.

(2) Any alien who is found upon inspection and examination by an immigration officer pursuant to paragraph (1) or after a hearing before an immigration judge to be admissible (except as otherwise provided under subsection (c)) as an immigrant under this chapter at the time of the alien's inspection and examination shall, notwithstanding any numerical limitation specified in this chapter, be regarded as lawfully admitted to the United States for permanent residence as of the date of such alien's arrival into the United States.

(b) Requirements for adjustment

The Secretary of Homeland Security or the Attorney General, in the Secretary's or the Attorney General's discretion and under such regulations as the Secretary or the Attorney General may prescribe, may adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum who—

(1) applies for such adjustment,

(2) has been physically present in the United States for at least one year after being granted asylum,

(3) continues to be a refugee within the meaning of section 1101(a)(42)(A) of this title or a spouse or child of such a refugee,

(4) is not firmly resettled in any foreign country, and

(5) is admissible (except as otherwise provided under subsection (c)) as an immigrant under this chapter at the time of examination for adjustment of such alien.

Upon approval of an application under this subsection, the Secretary of Homeland Security or the Attorney General shall establish a record of the alien's admission for lawful permanent residence as of the date one year before the date of the approval of the application.

(c) Coordination with section 1182

The provisions of paragraphs (4), (5), and (7)(A) of section 1182(a) of this title shall not be applicable to any alien seeking adjustment of status under this section, and the Secretary of Homeland Security or the Attorney General may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

8 U.S.C. § 1159 (1997)

§ 1159. Adjustment of status of refugees

(a) Criteria and procedures applicable for admission as immigrant; effect of adjustment

(1) Any alien who has been admitted to the United States under section 1157 of this title—

(A) whose admission has not been terminated by the Attorney General pursuant to such regulations as the Attorney General may prescribe,

(B) who has been physically present in the United States for at least one year, and

(C) who has not acquired permanent resident status,

shall, at the end of such year period, return or be returned to the custody of the Service for inspection and examination for admission to the United States as an immigrant in accordance with the provisions of sections 1225, 1229a, and 1231 of this title.

(2) Any alien who is found upon inspection and examination by an immigration officer pursuant to paragraph (1) or after a hearing before an immigration judge to be admissible (except as otherwise provided under subsection (c)) as an immigrant under this chapter at the time of the alien's inspection and examination shall, notwithstanding any numerical limitation specified in this chapter, be regarded as lawfully admitted to the United States for permanent residence as of the date of such alien's arrival into the United States.

(b) Maximum number of adjustments; recordkeeping

Not more than 10,000 of the refugee admissions authorized under section 1157(a) of this title in any fiscal year may be made available by the Attorney General, in the Attorney General's discretion and under such regulations as the Attorney General may prescribe, may adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum who—

(1) applies for such adjustment,

(2) has been physically present in the United States for at least one year after being granted asylum,

(3) continues to be a refugee within the meaning of section 1101(a)(42)(A) of this title or a spouse or child of such a refugee,

(4) is not firmly resettled in any foreign country, and

(5) is admissible (except as otherwise provided under subsection (c) of this section) as an immigrant under this chapter at the time of examination for adjustment of such alien.

Upon approval of an application under this subsection, the Attorney General shall establish a record of the alien's admission for lawful permanent residence as of the date one year before the date of the approval of the application.

(c) Applicability of other Federal statutory requirements

The provisions of paragraphs (4), (5), and (7)(A) of section 1182(a) of this title shall not be applicable to any alien seeking adjustment of status under this section, and the Attorney General may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

8 U.S.C. § 1159 (Supp. II 1991)

§ 1159. Adjustment of status of refugees

* * *

EFFECTIVE DATE OF 1990 AMENDMENT

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WAIVER OF NUMERICAL LIMITATION FOR CERTAIN CURRENT ASYLEES; ADJUSTMENT OF CERTAIN FORMER ASYLEES

Section 104(c), (d) of Pub. L. 101–649 provided that:

"(c) WAIVER OF NUMERICAL LIMITATION FOR CERTAIN CURRENT ASYLEES.—The numerical limitation on the number of aliens whose status may be adjusted under section 209(b) of the Immigration and Nationality Act [8 U.S.C. 1159(b)] shall not apply to an alien described in subsection (d) or to an alien who has applied for adjustment of status under such section on or before June 1, 1990.

"(d) ADJUSTMENT OF CERTAIN FORMER ASYLEES.—

"(1) IN GENERAL.—Subject to paragraph (2), the provisions of section 209(b) of the Immigration and Nationality Act [8 U.S.C. 1159(b)] shall also apply to an alien—

"(A) who was granted asylum before the date of the enactment of this Act [Nov. 29, 1990] (regardless of whether or not such asylum has been terminated under section 208(b) of the Immigration and Nationality Act [8 U.S.C. 1158(b)]),

"(B) who is no longer a refugee because of a change in circumstances in a foreign state, and

"(C) who was (or would be) qualified for adjustment of status under section 209(b) of the Immigration and Nationality Act as of the date of the enactment of this Act but for paragraphs (2) and (3) thereof and but for any numerical limitation under such section.

"(2) APPLICATION OF PER COUNTRY LIMITATIONS.—The number of aliens who are natives of any foreign state who may adjust status pursuant to paragraph (1) in any fiscal year shall not exceed the difference between the per country limitation established under section 202(a) of the Immigration and Nationality Act [8 U.S.C. 1152(a)] and the number of aliens who are chargeable to that foreign state in the fiscal year under section 202 of such Act."

[Section 104(c), (d) of Pub. L. 101-649 effective Nov. 29, 1990, and (unless otherwise provided) applicable to fiscal year 1991, see section 161(b) of Pub. L. 101-649, set out as an Effective Date of 1990 Amendment note under section 1101 of this title.]

8 U.S.C. § 1159 (1982)

§ 1159. Adjustment of status of refugees

(a) Criteria and procedures applicable for admission as immigrant; effect of adjustment

(1) Any alien who has been admitted to the United States under section 1157 of this title—

(A) whose admission has not been terminated by the Attorney General pursuant to such regulations as the Attorney General may prescribe,

(B) who has been physically present in the United States for at least one year, and

(C) who has not acquired permanent resident status,

shall, at the end of such year period, return or be returned to the custody of the Service for inspection and examination for admission to the United States as an immigrant in accordance with the provisions of sections 1225, 1226, and 1227 of this title.

(2) Any alien who is found upon inspection and examination by an immigration officer pursuant to paragraph (1) or after a hearing before a special inquiry officer to be admissible (except as otherwise provided under subsection (c) of this section) as an immigrant under this chapter at the time of the alien's inspection and examination shall, notwithstanding any numerical limitation specified in this chapter, be regarded as lawfully admitted to the United States for permanent residence as of the date of such alien's arrival into the United States.

(b) Maximum number of adjustments; recordkeeping

Not more than five thousand of the refugee admissions authorized under section 1157(a) of this title in any fiscal year may be made available by the Attorney General, in the Attorney General's discretion and under such regulations as the Attorney General may prescribe, to adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum who—

(1) applies for such adjustment,

(2) has been physically present in the United States for at least one year after being granted asylum,

(3) continues to be a refugee within the meaning of section 1101(a)(42)(A) of this title or a spouse or child of such a refugee,

(4) is not firmly resettled in any foreign country, and

(5) is admissible (except as otherwise provided under subsection (c) of this section) as an immigrant under this chapter at the time of examination for adjustment of such alien.

Upon approval of an application under this subsection, the Attorney General shall establish a record of the alien's admission for lawful permanent residence as of the date one year before the date of the approval of the application.

(c) Applicability of other Federal statutory requirements

The provisions of paragraphs (14), (15), (20), (21), (25), and (32) of section 1182(a) of this title shall not be applicable to any alien seeking adjustment of status under this section, and the Attorney General may waive any other provision of such section (other than paragraph (27), (29), or (33) and other than so much of paragraph (23) as relates to trafficking in narcotics) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

8 C.F.R. § 1208.24

§ 1208.24 Termination of asylum or withholding of removal or deportation

(a) *Termination of asylum by the Service.* Except as provided in paragraph (e) of this section, an asylum officer may terminate a grant of asylum made under the jurisdiction of an asylum officer or a district director if following an interview, the asylum officer determines that:

(1) There is a showing of fraud in the alien's application such that he or she was not eligible for asylum at the time it was granted;

(2) As to applications filed on or after April 1, 1997, one or more of the conditions described in section 208(c)(2) of the Act exist; or

(3) As to applications filed before April 1, 1997, the alien no longer has a well-founded fear of persecution upon return due to a change of country conditions in the alien's country of nationality or habitual residence or the alien has committed any act that would have been grounds for denial of asylum under § 1208.13(c)(2).

* * *

(c) *Procedure*. Prior to the termination of a grant of asylum or withholding of deportation or removal, the alien shall be given notice of intent to terminate, with the reasons therefor, at least 30 days prior to the interview specified in paragraph (a) of this section before an asylum officer. The alien shall be provided the opportunity to present evidence showing that he or she is still eligible for asylum or withholding of deportation or removal. If the asylum officer determines that the alien is no longer eligible for asylum or withholding of deportation or removal, the alien shall be given written notice that asylum status or withholding of deportation or removal and any employment authorization issued pursuant thereto, are terminated.

(d) *Termination of derivative status.* The termination of asylum status for a person who was the principal applicant shall result in termination of the asylum status of a spouse or child whose status was based on the asylum application of the principal. Such termination shall not preclude the spouse or child of such alien from separately asserting an asylum or withholding of deportation or removal claim.

(e) *Removal proceedings.* When an alien's asylum status or withholding of removal or deportation is terminated under this section, the Service shall initiate removal proceedings, as appropriate, if the alien is not already in exclusion, deportation, or removal proceedings. Removal proceedings may take place in conjunction with a termination hearing scheduled under § 1208.24(f).

(f) *Termination of asylum, or withholding of deportation or removal, by an immigration judge or the Board of Immigration Appeals.* An immigration judge or the Board of Immigration Appeals may reopen a case pursuant to § 3.2 or § 3.23 of this chapter for the purpose of terminating a grant of asylum, or a withholding of deportation or removal. In such a reopened proceeding, the Service must establish, by a preponderance of evidence, one or more of the grounds set forth in paragraphs (a) or (b) of this section. In addition, an immigration judge may terminate a grant of asylum, or a withholding of deportation or removal, made under the jurisdiction of the Service at any time after the alien has been provided a notice of intent to terminate by the Service. Any termination under this paragraph may occur in conjunction with an exclusion, deportation, or removal proceeding.

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