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 OF NATIONAL IMMIGRANT JUSTICE CENTER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

The National Immigrant Justice Center (NIJC) is a non-profit corporation headquartered in Chicago, Illinois. NIJC is dedicated to ensuring human rights protections and access to justice for all immigrants, refugees, and asylum seekers. By partnering with more than 2,000 attorneys from the Nation's leading law firms, NIJC provides direct legal services to approximately 11,000 individuals annually. This experience informs NIJC's advocacy, litigation, and educational initiatives, as it promotes human rights on a local, regional, national, and international stage. NIJC has a substantial interest in the issue before the Court, both as an advocate for the rights of immigrants generally and as the leader of a network of *pro bono* attorneys who regularly represent immigrants. Among those NIJC serves are asylees and their spouses and children, whose ability to remain together lawfully in the United States often depends on the discretionary adjustment of status that 8 U.S.C. § 1159(b) provides.

INTRODUCTION AND SUMMARY OF ARGUMENT

The decision below violates the text and structure of the Immigration and Nationality Act (INA) by imposing an additional condition on a noncitizen's pathway to adjustment of status that Congress did not write. Amicus submits this brief to explain that the decision

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[1] No counsel for any party authored this brief in whole or in part. No party, counsel, or person other than *Amicus* and its counsel contributed money to fund the preparation and submission of this brief. *See* S. Ct. R. 37.6.

below also produces untenable consequences for innocent beneficiaries of asylum status—including spouses, children, and others who committed no wrongdoing. The vision of the adjustment of status provision adopted below is not one Congress enacted or intended.

When the government terminates an individual's asylum status, a federal regulation terminates his spouse's and children's derivative asylum automatically—with no separate notice or hearing. 8 C.F.R. § 1208.24(d). Because a derivative's asylum status depends on the principal's, spouses and children can lose that status because of someone else's conduct—a principal's criminal conviction, other developments affecting the principal's status, or even a principal's naturalization. Under the decision below and the government's interpretation of 8 U.S.C. § 1159(b), those family members are categorically ineligible for adjustment to lawful permanent resident (LPR) status, no matter the merits of their individual cases.

In contrast, a ruling for petitioners would uphold the statutory text and ensure that these family members remain eligible to adjust status. Section 1159(b)'s actual conditions still govern every applicant, and the relevant adjustment requirement for family members holding derivative asylum is whether they remain "a spouse or child of such a refugee." 8 U.S.C. § 1159(b)(3). Whether a noncitizen is a "refugee" is a factual inquiry into whether someone has suffered past persecution or reasonably fears future persecution in the country of nationality. *See* 8 U.S.C. § 1101(a)(42)(A). It does not depend on whether the noncitizen presently holds asylum status. A principal whose asylum status is terminated may remain, in fact, a refugee. And if he does, his spouse and children remain the spouse and children of a refugee, satisfying Section 1159(b)(3).

Congress chose to address any concerns about undeserving applications by giving the government broad discretion over adjustment of status in individual cases, not by imposing a categorical bar based on changes in asylum status. Section 1159(c) authorizes the government to waive inadmissibility for humanitarian purposes, to assure family unity, or when otherwise in the public interest. 8 U.S.C. § 1159(c). At the same time, the statute specifies the few histories, such as participation in acts of genocide or Nazi persecution, that are beyond the waiver's reach. *See id.* § 1182(a)(3)(E). Termination of asylum status is not one of them.

The government's reading would impose a categorical rule that eliminates discretion where it is most critical: when the consequences of a denial fall on innocent noncitizens who lose derivative asylum status through no fault of their own. A ruling for petitioners, by contrast, would not harm the government's asserted interests. Adjustment to LPR status remains a discretionary process, and the government retains every power to deny it. The government's position thus changes the outcome in just one situation: where the government would otherwise have granted adjustment to a noncitizen it believed deserving. This Court should not endorse that nonsensical, not to mention atextual, reading of Congress's work.

ARGUMENT

I. The Decision Below Bars Spouses and Children Whose Asylum Is Terminated Automatically Because of Conduct That Was Not Theirs.

The government's reading of Section 1159(b) implicates more than the cases of principal asylees like petitioners Tamer Wassily and Byron Velasquez Arreaga. It also bears on the fate of numerous spouses and children who were granted asylum based on a principal's application. As noted, when a principal's asylum is terminated, a federal regulation automatically terminates the status of any spouse or child who holds asylum status derivatively. Under the government's reading, these family members are barred from even applying for adjustment to LPR status, no matter the merits of their individual cases. Indeed, under the government's theory, an asylee spouse or child who becomes the victim of domestic violence or abuse risks the automatic loss of her status and mandatory removal proceedings if she reaches out to the police for protection.

A. The asylum status of derivative spouses and children terminates automatically with the principal's.

When noncitizens are granted asylum in the United States, their families may receive what is known as "derivative" protection. A spouse or unmarried child under the age of 21 of an asylee "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." 8 U.S.C. § 1158(b)(3)(A). Although derivative spouses and children obtain asylum through a principal's application rather than through their own asylum applications, they hold "the same status" and receive the same benefits as principal asylees. These include legal protection from removal to their country of nationality, work authorization, and, after one year of physical presence in the United States, eligibility for adjustment to LPR status. *See id.* § 1158(c)(1)(A)-(B); *id.* § 1159(b)(2).

But derivative spouses and children remain in a precarious position. Under the governing regulation, if a principal's asylum status is subsequently terminated, a derivative's status terminates automatically along with it. 8 C.F.R. § 1208.24(d) ("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."). The derivative's asylum status ends by operation of the regulation itself, without any kind of discretionary decision or judgment. The spouse and children simply lose their asylee status, regardless of the circumstances. The regulation admits of no exception and grants no discretion to alter this result.

Moreover, all of the procedural protections afforded by the governing regulation run to the principal, not to the derivative family members. The principal must receive notice of intent to terminate a grant of asylum "with the reasons therefor" at least thirty days before an interview with an asylum officer and must also be given "the opportunity to present evidence showing that he or she is still eligible for asylum." *Id.* § 1208.24(c). But spouses and children receive no separate notice or hearing. The next step is often to place the entire family in removal proceedings because once asylum is terminated, the government "shall initiate removal proceedings." *Id.* § 1208.24(e).

The government's reading of Section 1159(b) turns that automatic loss of status into a categorical bar to adjustment. The family is left not merely in danger of removal but also unable even to apply for discretionary adjustment of status. This result follows inexorably from the government's approach, as shown through four steps. First, the government terminates the principal's asylum on one of the statutory grounds enumerated in 8 U.S.C. § 1158. Second, by operation of 8 C.F.R. § 1208.24(d), the derivative's asylum status is automatically terminated. Third, the derivative therefore no longer "presently" holds asylum status. Fourth, and most relevant here, because the government reads "the status of any alien granted asylum" in 8 U.S.C. § 1159(b) to require that an applicant "must presently be granted asylum to adjust to lawful permanent resident status," Pet. App. 12a, the derivative is categorically blocked from Section 1159(b)'s pathway to lawful permanent residence. Derivative spouses and children are thus rendered ineligible even to apply for adjustment, regardless of their conduct, the equities, and the merits of the applications they would have filed.

B. The government's reading punishes asylee survivors of domestic violence for seeking protection.

The government's reading produces its most perverse results for asylee survivors of domestic violence. Asylees of course are not immune from the scourge of domestic violence. Yet under the government's position, a phone call to the police that ought to lead to safety leads to the survivor's own loss of status and mandatory removal proceedings.

The mechanism is straightforward. If a principal asylee is convicted of domestic violence or child abuse, that conviction can trigger termination of the principal's asylum status. Crimes of domestic violence and assault may be deemed particularly serious crimes. *See, e.g.*, *Hernandez v. Garland*, 47 F.4th 908, 916 (9th Cir. 2022). Such a finding is particularly likely if the conviction constitutes an aggravated felony. *Aviles-Tavera v. Garland*, 22 F.4th 478, 484 (5th Cir. 2022). But agency case law also permits non-aggravated felonies to be found particularly serious on a "case-by-case basis." *In re B-Z-R-*, 28 I. & N. Dec. 563, 563 (A.G. 2022). A particularly serious crime finding bars an individual from asylum, 8 U.S.C. § 1158(b)(2)(A)(ii), and permits termination of asylee status on that basis, *id.* § 1158(c)(2)(B).

An asylee who calls the police to protect herself or her children from domestic violence thus risks triggering a cascade of consequences. Federal law encourages "pro-arrest policies" in domestic violence cases. *United States v. Casciano*, 124 F.3d 106, 110 (2d Cir. 1997) (citing the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103–322, 108 Stat. 1796 (containing Title IV, also known as the Violence Against Women Act)). And, the more serious the abuse, the more likely that the resulting conviction will strip asylee status from the abusive spouse. The survivors most in need of continued protection are thus the most likely to find that their complaint led not only to the removal of their abuser but also to the automatic loss of asylee status for themselves and their children—and, under the government's reading, the categorical denial of any discretionary adjustment application.

Such a result would run counter to Congress's purpose in other areas of immigration law. Congress has repeatedly legislated with awareness of the challenges faced by immigrant victims of domestic violence, starting with the Violence Against Women Act of 1994. Congress was concerned that where "one spouse is not a citizen, and the non-citizen[']s legal status depends on his or her marriage to the abuser[] . . . a battered spouse may be deterred from taking action to protect himself or herself[] . . . because of the threat or fear of deportation." H.R. Rep. No. 103-395, at 25-28 (1993). Congress has afforded various protections for immigrant victims of domestic violence, reasoning that "providing battered immigrant women and children . . . with protection . . . frees them to cooperate with law enforcement and prosecutors in criminal cases brought against their abusers and the abusers of their children without fearing that the abuser will retaliate by withdrawing or threatening withdrawal of access to an immigration benefit under the abuser's control." Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1502, 114 Stat. 1464, 1518. The decision below produces the very outcome Congress legislated to prevent: survivors deterred from calling the police by the threat of losing not just their asylee status but also the opportunity to adjust status.

Amicus recognizes that Congress's goals in other immigration statutes do not directly govern the language here. But the dissonance between congressional intent as to survivors of domestic violence and the effects of the result below should give pause. The decision below undermines Congress's goals and does so in a manner that allows no agency discretion to take ameliorative action.[2] Accordingly, if any ambiguity remains after the ordinary tools of statutory construction are exhausted, the Court should avoid adopting a reading that strips eligibility from derivative spouses and children who lost their asylee status when their abuser's status was terminated.

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[2] Noncitizen victims of domestic violence may apply for "U visa" status, 8 U.S.C. § 1101(a)(15)(U); 3 U.S. Citizenship & Immigr. Servs., *USCIS Policy Manual*, pt. C, ch. 2, but only 10,000 such visas are available annually, leading to a decade-long queue for such visas. *See Gonzalez v. Cuccinelli*, 985 F.3d 357, 362 (4th Cir. 2021). During that time, they would lack legal status and remain at risk of removal.

C. The government's reading would affect derivative family members in various nonculpable circumstances, including the naturalization of their spouse or parent.

Domestic violence cases illustrate the problem starkly, but they are not the only casualties of the government's reading. Any of the statutory termination grounds can set the same machinery in motion. Termination of the principal's asylum can rest on any of five statutory grounds. 8 U.S.C. § 1158(c)(2). The first ground is when the principal "no longer meets the conditions" for asylum "owing to a fundamental change in circumstances." *Id.* § 1158(c)(2)(A). Most commonly, that means a change in conditions in a noncitizen's home country. The second ground is often based on the principal's misconduct, as described above, where a principal stands convicted of "a particularly serious crime." *Id.* § 1158(b)(2)(A)(ii). But it also encompasses conditions independent of wrongdoing, such as firm resettlement in another country before arriving in the United States. *Id.* § 1158(b)(2)(A)(vi).

The third ground is diplomatic. An asylee "may be removed, pursuant to a bilateral or multilateral agreement," to a third country where the asylee's life or freedom would not be threatened. *Id.* § 1158(c)(2)(C). The fourth is reavailment: "voluntarily" returning to the country of nationality. *Id.* § 1158(c)(2)(D). That statutory language can mislead, however, because a return that appears voluntary on paper may be coerced in fact—as when a regime detains or threatens the relatives of an asylee left behind to force a return.[3] The fifth ground is acquisition of a new nationality by the principal. *Id.* § 1158(c)(2)(E).

It is evident that many of the grounds for termination of asylum involve no wrongdoing at all: a regime falls, a treaty is signed, a family returns home under duress, a naturalization is granted. Even the conduct-based ground reaches conditions, like firm resettlement, that involve no wrongdoing either. And no ground turns on anything the derivative spouse or child did. Yet under the government's reading of Section 1159(b) and 8 C.F.R. § 1208.24(d), every ground automatically terminates the derivative's asylum, which has the effect (according to the government) of stripping these family members of the opportunity even to apply for adjustment of status.

This bar can even apply to derivatives who have already applied for adjustment, because family members

[3] The tactic is well documented. In 2023, a federal jury in Brooklyn convicted three defendants for their role in a campaign, directed by the People's Republic of China, to force the repatriation of asylum seekers in the United States, including by threatening family members. *See* Press Release, U.S. Dep't of Just., *Federal Jury Convicts Three Defendants of Interstate Stalking of Chinese Nationals in the U.S. and Two of Those Defendants for Acting or Conspiring to Act on Behalf of the People's Republic of China* (June 20, 2023), https://www.justice.gov/usao-edny/pr/federal-jury-convicts-three-defendants-interstate-stalking-chinese-nationals-us-and (describing *United States v. McMahon*, No. 21-cr-265 (E.D.N.Y. filed Oct. 27, 2020); *see also* Nate Schenkkan & Isabel Linzer, *Out of Sight, Not Out of Reach: The Global Scale and Scope of Transnational Repression*, Freedom House 1-2 (2021) (identifying "coercion by proxy" as a repatriation tactic used by more than thirty governments).

may lose eligibility while their own applications sit in the government's queue. In *Yan Zheng v. Sessions*, USCIS held a derivative husband's adjustment of status application in abeyance awaiting the outcome of his wife's termination and removal proceedings. No. 1:17CV232, 2018 WL 3040350, at *3 (M.D.N.C. June 19, 2018). The district court determined that it could provide no relief with regard to the husband's application, reasoning that "[b]ecause his asylum status is derivative of his wife's, it depends entirely on the outcome of her removal proceedings." *Id.* Under the government's reading, if a principal's asylum status is terminated while a derivative's adjustment application remains pending, the family member—eligible on the day he applied—loses his path to permanent residence through no act of his own.

The government's reading also threatens perverse consequences where the principal naturalizes. By its terms, 8 U.S.C. § 1158(c)(2)(E) is not limited to the acquisition of a *foreign* nationality. Amicus is aware of at least one case in which the agency terminated a derivative child's asylum because his mother, the principal asylee, naturalized as a U.S. citizen. Her naturalization was the very outcome the immigration laws exist to encourage. Yet it stripped her child's asylum and, on the government's reading, his path to permanent residence with it. The agency's own guidance already forecloses derivative adjustment in this scenario on the dubious rationale that because a naturalized principal "no longer meets the definition of a refugee," her spouse or children "no longer qualify as the spouse or child of a refugee." 7 U.S. Citizenship & Immigr.

Servs., *USCIS Policy Manual*, pt. M, ch. 2(C)(2). But the government's reading here would foreclose far more. The agency's rationale leaves spouses and children the chance to show they continue to be refugees in their own right, but the government's interpretation, through the termination that naturalization itself triggers, forecloses adjustment categorically, no matter what the spouse or child could show.

Petitioners' understanding of the statute helps avoid these results. The government has offered no reading that preserves eligibility for derivative asylees whose parent naturalizes, just as it offers no comfort for asylees whose spouse or parent is convicted of abusing them.

D. The rule harms families, and threatens broader harm in the future.

Court decisions document real-world examples of derivative spouses and children losing their asylum status in this way—frequently amounting to a single sentence, because once the principal's asylum is terminated, there is little for the derivative to litigate. The decisions collected here are unpublished or non-precedential and are included as documented instances of the practice.

In *Singh v. Garland*, the Ninth Circuit upheld the termination of a husband's asylum status and determined that because the wife's asylum status "derived from" her husband's, the Board of Immigration Appeals did not err in terminating hers as well. No. 22-603, 2023 WL 3074280, at *1 (9th Cir. Apr. 25, 2023). In *Singh v. Holder*, a wife and two children lost asylum when the husband's status was terminated, and the Second Circuit concluded that the family could point to no basis to contest their removability. 488 F. App'x 476, 477-78 (2d Cir. 2012) (summary order) ("They do not dispute that [the husband]'s asylum status was terminated, which resulted in the termination of the asylum status of the remaining petitioners, because that status was derivative."). In *Nuru v. Garland*, a son admitted to the United States at the age of fourteen as a derivative lost asylum when the government terminated his mother's status on suspicion of fraud. 857 F. App'x 724, 725 (4th Cir. 2021). His mother subsequently was granted asylum again based on a new application—but by then, her son had aged out of derivative eligibility, and he was ordered removed. *Id.* at 725-27. And in *Sidhu v. Bardini*, the derivative asylum of a husband and four children terminated when the wife's status was terminated. No. C 08-05350, 2009 WL 1626381, at *2 (N.D. Cal. June 10, 2009). The notice of intent to terminate ran to the wife alone, and the termination letter sent to her enclosed a single notice placing "you and your dependents" in removal proceedings. *Id.*

There are likely far more examples than can be located through public information because the loss of derivative status is unlikely to appear with any frequency in published decisions. As explained, it generates no written analysis as to the derivative because there is no separate notice, no separate findings, and rarely more than a sentence in any later opinion confirming that the derivative's status terminated with the principal's. But the phenomenon remains real and significant, as the examples above show.

The affected class is also poised to grow in light of two recent policy developments. First, asylum may be terminated based on an intervening bilateral agreement between the United States and a third country, 8 U.S.C. § 1158(c)(2)(C), and the government signed five such agreements in 2025 alone. Pet. Br. 36-37 & n.5. Second, in December 2025, USCIS ordered a comprehensive re-review of already approved benefit requests, including asylum grants, for nationals of nineteen countries, while freezing those individuals' pending applications for permanent residence. Dep't of Homeland Sec., USCIS, Policy Memorandum: *Hold and Review of all Pending Asylum Applications and all USCIS Benefit Applications Filed by Aliens from High-Risk Countries*, PM-602-0192 (Dec. 2, 2025). The list of countries affected by the re-review was later expanded to thirty-nine in total. *See* Dep't of Homeland Sec., USCIS, Policy Memorandum: *Hold and Review of USCIS Benefit Applications Filed by Aliens from Additional High-Risk Countries*, PM-602-0194 (Jan. 1, 2026); Proclamation No. 10998, 90 Fed. Reg. 59,717 (Dec. 16, 2025). A district court has since vacated those directives, and litigation continues. *See Dorcas Int'l Inst. of R.I. v. U.S. Citizenship & Immigr. Servs.*, No. 26-CV-132, __ F. Supp. 3d __, 2026 WL 1622708, at *57 (D.R.I. June 5, 2026), *appeal docketed*, No. 26-1703 (1st Cir. June 12, 2026). Whatever the directives' fate, they illustrate that termination of asylum status can occur based on broad policy choices rather than through case-specific determinations. Under 8 C.F.R. § 1208.24(d), the termination of every principal's asylum—whether in a categorical re-review or based on a third-country agreement—will automatically terminate the spouse's and children's asylum as well.

E. A ruling for petitioners merely preserves these families' eligibility.

A ruling for petitioners would preserve the eligibility of derivative family members to adjust to LPR status and does not mandate that their adjustment applications be granted. The reason lies in the text of 8 U.S.C. § 1159(b). To adjust to LPR status under Section 1159(b), an applicant must satisfy each of its five enumerated conditions for adjustment. The relevant condition for derivative spouses and children is the third: whether the applicant "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." 8 U.S.C. § 1159(b)(3). Crucially, that condition rests on the statutory definition of "refugee," and not on anyone's asylum status. A "refugee" is a person unable or unwilling to return home "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." *Id.* § 1101(a)(42)(A). That statutory definition asks a factual question: whether a noncitizen has suffered past persecution or reasonably fears future persecution in the country of nationality. Thus "refugee" is not a synonym for "asylee," which is a legal status. A noncitizen may lose asylum status while remaining, in fact, a refugee.

The statutory grounds for termination of asylum show how this can happen. For example, when a principal's asylum is terminated for "a particularly serious crime," *id.* § 1158(b)(2)(A)(ii), the termination is based on a criminal conviction. It neither requires nor implies any finding that a principal's fear of persecution has abated. Thus, in the underlying decision terminating Wassily's asylum, the immigration judge found that he "still qualifies as a refugee as he has a well-founded fear of persecution in Egypt on account of his religion." Pet. App. 57a.

If the principal remains a refugee, then his spouse and children remain "a spouse or child of such a refugee," satisfying Section 1159(b)(3). Therefore, under petitioners' reading, derivative spouses and children who lose asylum because a principal's status has been terminated under these circumstances would remain eligible to apply for adjustment to LPR status.

II. The Decision Below Incorrectly and Unfairly Eliminates the Discretion Congress Enacted.

Congress anticipated that some applicants for adjustment to LPR status would not merit it, and it chose to address this issue by giving case-by-case discretion to the agency. Nothing in that statutory text or structure makes termination of asylum a categorical bar to adjustment. The government's reading creates a new bar, and in doing so eliminates the discretion that Congress expressly conferred.

A. The statutory structure involves discretion, not categorical bars.

Start with Section 1159(b). It provides that the government "may adjust . . . the status of any alien granted asylum" who satisfies five numbered conditions. 8 U.S.C. § 1159(b). Under the fifth condition, the applicant must be "admissible (except as otherwise provided under subsection (c)) as an immigrant under this chapter at the time of examination for adjustment." *Id.* § 1159(b)(5). Admissibility is measured against Section 1182(a), which sets forth the list of bases for disqualification: health grounds, criminal grounds, security grounds, and many others. *Id.* § 1182(a). Because a criminal conviction ordinarily renders a noncitizen inadmissible under Section 1182(a)(2), nearly every asylee whose asylum was terminated for a conviction will fail the fifth condition for admissibility for the same reason.

But subsection (b)(5) expressly provides an exception, subsection (c), which performs two distinct functions. First, it takes three grounds of inadmissibility off the table for refugees: likelihood of becoming a public charge, absence of labor certification, and lack of documentation. *Id.* § 1159(c); *id.* § 1182(a)(4), (5), (7)(A). Second, for nearly every other ground, Congress substituted discretion for automatic exclusion: "the Secretary of Homeland Security or the Attorney General may waive any other provision of such section . . . for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest." *Id.* § 1159(c).

The statutory structure serves a clear purpose. A disqualifying conviction presumptively bars adjustment under subsection (b)(5), and subsection (c) permits the government to waive that bar on a case-by-case basis when humanitarian concerns, family unity, or the public interest warrant it. The judgment is discretionary. The IJ in Wassily's own case performed this discretionary review in granting the waiver and adjusting his status. Carefully reviewing the record, the IJ balanced family unity and humanitarian considerations against Wassily's criminal conduct and concluded that the favorable discretionary factors in his case outweighed the adverse ones. Pet. App. 54a-57a. The BIA reversed not because the IJ weighed anything improperly, but because, in its view, termination of asylum status made Wassily categorically ineligible for discretionary review and a waiver. *See* Pet. App. 35a-36a.

Under the decision below, whenever a ground of inadmissibility also supports termination of asylum status, and termination comes first, the waiver question can never be reached. On the government's reading, a noncitizen's convictions exclude him from adjustment "even though Congress specified that those convictions need not exclude him." *Cela v. Garland*, 75 F.4th 355, 367 (4th Cir. 2023) (Harris, J., concurring in part and dissenting in part) (emphasis omitted); *see also* Pet. App. 30a (Robinson, J., dissenting) (the panel majority's reading "categorically strips" the Secretary and the Attorney General of the discretion subsection (c) confers); *Siwe v. Holder*, 742 F.3d 603, 609 (5th Cir. 2014) (the government's interpretation "would effectively abrogate Congress's careful balancing of interests, as codified in [Section 1159(c)]"). Neither the panel majority below nor the government has explained why Congress would expressly enact an individualized waiver in the statute and then, in the statute's prefatory words, silently withdraw it from the very cases in which it matters.

The consequences of the government's interpretation fall particularly harshly on the families described in Part I. Congress expressly named "family unity" as one of only three purposes for which inadmissibility may be waived. 8 U.S.C. § 1159(c). Yet on the government's reading, the waiver does not reach the people the family-unity clause should cover.

The panel majority below responded that the grounds of inadmissibility and the grounds for termination are not perfectly "coextensive," Pet. App. 16a—that is to say, the waiver in subsection (c) would still partially survive for a subset of noncitizens under the government's reading. But that is no answer for derivative families. Because the regulation terminates every derivative's asylum automatically upon the principal's termination, 8 C.F.R. § 1208.24(d), no derivative in that position could present the family-unity case for a waiver that subsection (c) invites.

B. Congress did not make termination of asylum a categorical bar to adjustment.

Congress wrote certain waiver limits expressly into subsection (c). The Secretary or Attorney General may waive any ground of inadmissibility "other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)." 8 U.S.C. § 1159(c). Taken together, the list of cross-referenced provisions reflects a judgment about the kinds of conduct that should render a noncitizen beyond the reach of discretion: controlled-substance trafficking, *id.* § 1182(a)(2)(C); security grounds, such as espionage, sabotage, and the violent overthrow of the government, *id.* § 1182(a)(3)(A); terrorist activities, *id.* § 1182(a)(3)(B); serious adverse foreign-policy consequences, *id.* § 1182(a)(3)(C); and participation in Nazi persecution, genocide, torture, or extrajudicial killing, *id.* § 1182(a)(3)(E).

Congress therefore decided which kinds of conduct foreclose discretion and left the rest to individual judgment. It did not include in the list the agency's termination of asylum status. Yet the government's reading makes termination itself a categorical, unwaivable bar. This bar is more expansive than any Congress drafted, as it sweeps in personal histories that Congress made expressly forgivable and, in some cases, people with no relevant histories at all (*e.g.*, the derivative who lost asylum when a spouse or parent's status was terminated; the family whose asylum ended because of a treaty; or a spouse or child who lost status because of a principal's acquisition of a new nationality). This is particularly problematic because Congress reserved categorical exclusion for the worst of the worst—terrorists, spies, torturers, and Nazi persecutors. *See id.* § 1182(a)(3)(A), (B), (E). The decision below extends it to innocent spouses and children.

Statutory history supports the view that Congress has consistently legislated to support an individual's access to consideration of the merits of their application. When events outside a noncitizen's control have arbitrarily blocked an established path to permanent residence, Congress's practice has been correction, not categorical exclusion. Two episodes illustrate the pattern.

The first is the Immigration Act of 1990. There, Congress confronted a class of asylees who stood to lose their path to permanent residence for reasons unrelated to anything they had done: the collapse of the Eastern European regimes they had fled, which meant they no longer qualified as "refugees" and were thus ineligible for adjustment of status under Section 1159(b)(3). Congress responded by directing that Section 1159(b) "shall also apply" to affected refugees who had been granted asylum before the Act's enactment to allow adjustment of status "regardless of whether or not such asylum has been terminated." Immigration Act of 1990, Pub. L. No. 101-649, § 104(d)(1)(A), 104 Stat. 4978, 4985. When a geopolitical event outside asylees' control threatened to cut off their access to adjustment, the corrective Congress chose was to keep their applications alive for decision—expressly including asylees whose status had been terminated.[4]

The second episode involved the so-called "widow penalty." For decades, the government took the position that when a citizen spouse died before a petition based on the marriage was adjudicated, the surviving spouse was no longer an "immediate relative" and thus no longer eligible. *See, e.g.*, *Matter of Varela*, 13 I. & N. Dec. 453, 453-54 (B.I.A. 1970) (petition properly denied where the citizen petitioner died approximately three

[4] Petitioners explain why the panel majority erred in reading the 1990 Act's statutory note to Section 1159 as implying that terminated asylees are otherwise outside Section 1159(b). Pet. Br. 33-35. In brief: the note addressed only termination under Section 1158(b), and the sole statutory ground for terminating asylum at the time was the same inability to satisfy the refugee definition that the note addressed. So the entire class Congress sought to protect—asylees no longer refugees because repressive regimes had fallen—would have lost asylum for that very reason. The note's parenthetical was belt-and-suspenders confirmation that such termination did not matter for them, not a negative implication about a broader class.

weeks after filing). Eligibility thus turned on whether the government happened to adjudicate before the spouse died, and the courts of appeals eventually divided. *Compare Freeman v. Gonzales*, 444 F.3d 1031, 1039 (9th Cir. 2006), and *Lockhart v. Napolitano*, 573 F.3d 251, 263 (6th Cir. 2009), *with Robinson v. Napolitano*, 554 F.3d 358, 364-65 (3d Cir. 2009). The Sixth Circuit refused to attribute to Congress "an absurd or manifestly unjust result" under which "approvable petitions will be treated differently depending solely upon when the government grants the approval." *Lockhart*, 573 F.3d at 260 (internal quotation marks omitted). Congress then settled the matter by statute, directing that a surviving relative's pending application "shall" be "adjudicated notwithstanding the death of the qualifying relative." 8 U.S.C. § 1154(*l*)(1); Department of Homeland Security Appropriations Act, 2010, Pub. L. No. 111-83, § 568(d)(1), 123 Stat. 2142, 2187 (2009). And Congress made clear this protection applied to derivative asylees—the surviving spouse and children of principal asylees—so long as they resided in the United States at the time of the qualifying relative's death and continue to reside there. 8 U.S.C. § 1154(*l*)(2)(G). This provision does not apply where the Secretary determines that "approval would not be in the public interest," *id.* § 1154(*l*)(1). This discretion is how Congress sought to address concerns about adjustment of asylees, whether they have lost asylum status or not.

Congress's intent over time is clear. When an event outside a noncitizen's control—a regime's collapse, a spouse's death, the timing of the government's own adjudication—arbitrarily destroys an established path to permanent residence, Congress restores the individual's access to consideration on the merits. The reading adopted below inverts the pattern: the court below found in Section 1159(b)'s prefatory words a categorical exclusion Congress nowhere enacted.

C. Preserving eligibility creates no windfall.

A ruling for petitioners would not lead to the grant of green cards contrary to the public interest. Adjustment to LPR status itself is discretionary. 8 U.S.C. § 1159(b). The subsection (c) waiver is permissive, and the government may exercise its discretion to deny it. *Id.* § 1159(c). The numbered conditions of subsection (b) remain independent requirements for adjustment that every applicant must meet. *Id.* § 1159(b). Any conduct that supported termination of asylum status, for the principal or a derivative, can function as an adverse factor to be considered and weighed in the waiver analysis. An adjudicator persuaded that a conviction reflects present danger may deny the waiver, or deny adjustment, for precisely that reason. And derivative asylum is discretionary at the threshold: a spouse or child "may[] . . . be granted the same status." *Id.* § 1158(b)(3)(A). The government exercises judgment before any derivative ever holds the LPR status at issue.

But discretion also matters in the opposite direction. Where a termination of status involves no conduct at all, or turns on a characterization that can conceal coercion or changed facts—a treaty with a third country, a "voluntary" availment procured by threats against an asylee's family, or a derivative spouse's or child's automatic loss of status—discretion permits the government to weigh what actually happened and what a termination ground actually signifies for the noncitizen seeking adjustment. The categorical bar does not allow that question to be asked.

The difference between the government's categorical reading and petitioners' discretionary one is not whether the undeserving can be denied. They can, under either interpretation of the statute. The difference is that petitioners' reading leaves the government the power to say no *and* the power to say yes when warranted. That is the reading faithful to the INA's text and structure. This Court should uphold it in this case.

CONCLUSION

For the foregoing reasons, the judgments of the court of appeals should be reversed.

Respectfully submitted,

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