

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 IMMIGRATION LAW PROFESSORS AS
AMICI CURIAE IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI CURIAE*^{*}

Amici are 37 law professors who are experts in immigration law. As teachers and scholars in the field, *amici* have a strong interest in the proper interpretation of the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.* (“INA”), as well as the practical consequences of interpretations advanced by parties to this Court’s immigration cases. *Amici* believe that if the Court finds that the statutory provision at issue in both petitioners’ cases (8 U.S.C. § 1159(b)) is subject to more than one reading as it relates to petitioners’ circumstances the Court should apply the rule of strict construction in favor of noncitizens and resolve any ambiguities in petitioners’ favor.

Amici will explain the strong historical pedigree and precedential status of the rule of strict construction for statutes relating to deportation—sometimes called the immigration rule of lenity—as a substantive rule of statutory interpretation. The rule, which requires that ambiguities in such statutes be resolved in favor of the noncitizen, is rooted in the severity of removal, in the separation of powers, and in fair notice concerns; it requires that Congress speak clearly when exercising its broad powers over immigration. If the Court should conclude that there is more than one plausible reading of 8 U.S.C. § 1159(b) in the circumstances of this case, the rule of strict construction offers an appropriate tool of statutory interpretation

^{*} Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part, and that no person other than *amici* or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

with which to construe that provision. Applying the rule here reinforces the conclusion that Section 1159(b), read in context, does not bar a noncitizen whose asylum has been terminated from applying for adjustment of status.

The list of the *amici curiae* law professors appears in the appendix to this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case presents a question of how to construe a provision of an immigration statute. Section 1159(b) of Title 8 provides the Secretary of Homeland Security or the Attorney General with the 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. 8 U.S.C. § 1159(b). The question is whether the phrase “any alien granted asylum” reaches a noncitizen who was granted asylum but whose asylum has since been terminated or whether these noncitizens are barred from the opportunity to request adjustment of status to lawful permanent residence. The latter reading (espoused by the government here) would close off the principal form of discretionary relief that allows asylees and their derivative family members to remain in the United States with a secure status.

The parties advance competing readings. The Board of Immigration Appeals (“Board” or “BIA”) characterized Section 1159(b) as “ambiguous” in the context of this case. *Matter of T-C-A-*, 28 I. & N. Dec. 472, 476 (2022). Federal courts have divided on interpretation, with one federal judge describing Section

1159(b) as “not a model of clarity” and the issue as “a difficult question of statutory construction.” *Cela v. Garland*, 75 F.4th 355, 366 (4th Cir. 2023) (Harris, J., concurring in part and dissenting in part); *accord* Pet. App. 19a (Robinson, J., dissenting).

Amici believe that petitioners have the better reading of the statutory text for the reasons stated in their brief. But if this Court finds the language ambiguous the Court should employ an interpretive tool that it developed for precisely this sort of ambiguity. For nearly eighty years, this Court has held that lingering ambiguities in the immigration laws should be resolved in the noncitizen’s favor. *See Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 449 (1987). This rule of strict construction rests on three considerations, each present here: removal is a sanction of extraordinary severity; Congress’s power over immigration is so broad that its exercise must at least be clear; and noncitizens are entitled to fair notice of the consequences that attach to their conduct.

The rule has never been repudiated. It was sidelined for a generation, not because this Court abandoned it, but because the Court’s decision in *Chevron USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), directed courts to defer to agency constructions of ambiguous statutes, and the courts of appeals perceived tension between deference and strict construction. *Loper Bright* removed that obstacle. Courts must now “exercise independent judgment,” using “the traditional tools of statutory construction” to determine “the best reading of the statute.” *Loper Bright Enters. v. Raimondo*, 603

U.S. 369, 394, 400–01 (2024). The rule of strict construction of ambiguous immigration provisions is one of those tools.

The government’s objections to application of the rule in this case do not withstand scrutiny. Its contention that the rule reaches only statutes that authorize removal cannot be squared with the rule’s rationale, with this Court’s precedents, or with the fact that denial of adjustment under Section 1159(b) in cases like this one will ordinarily lead to a removal order. The government’s alternative contention that any ambiguity must be “grievous” for the strict construction rule to apply is also without merit; it would import into the immigration laws a threshold developed for criminal statutes, one with a pedigree and justifications different from those of the strict construction rule for civil immigration cases. And arguments the government has put forward in other immigration cases likewise fail to overcome application of the rule of strict construction here.

If Section 1159(b) is susceptible of more than one reading, the rule of strict construction resolves the doubt in petitioners’ favor, and the judgment below should be reversed.

ARGUMENT

I. If the Court Finds That Section 1159(b) Is Subject to More Than One Reading, It Should Apply the Rule of Strict Construction and Resolve Any Ambiguities in Petitioners' Favor.

A. This Court Established the Rule of Strict Construction as a Substantive Rule of Statutory Interpretation Nearly Eighty Years Ago.

In 1948, confronting a four-way circuit split over the meaning of “sentenced more than once” in an immigration provision, this Court announced in *Fong Haw Tan* that it would resolve the resulting doubts in favor of the noncitizen, adopting the narrowest construction. 333 U.S. at 9–10. In the decades that followed, the Court reaffirmed the rule repeatedly. For example, in the seminal case on asylum, *INS v. Cardoza-Fonseca*, the Court determined what an applicant for asylum must show to establish a “well-founded fear of persecution.” The Court acknowledged “the longstanding principle of construing any lingering ambiguities in deportation statutes in favor of the alien,” though in that case it found the ordinary canons sufficient to resolve the question without resort to the principle. 480 U.S. 421, 449 (1987). No later decision rejected this rule of strict construction, and this Court cited it favorably in a majority opinion as recently as *Dada v. Mukasey*, 554 U.S. 1, 18–19 (2008).

The *Fong Haw Tan* Court rested its decision to accept the narrowest of four competing statutory

constructions on two propositions that favor its application here. First, removal of a noncitizen from this country is a sanction of extraordinary severity. *See* 333 U.S., at 10; *see also Galvan v. Press*, 347 U.S. 522, 530 (1954) (deportation may “deprive a man ‘of all that makes life worth living’” (citations omitted)). Congress—not the Executive and not the courts—must decide who bears that sanction. *See Fong Haw Tan*, 333 U.S. at 10. The Court explained that it would “resolve the doubts in favor of that [narrowest] construction because deportation is a drastic measure and at times the equivalent of banishment or exile.”¹ *Id.* at 8–10. The rule thus entered the law not as a tiebreaker of last resort but as the stated ground for choosing among competing constructions of an ambiguous provision.

Second, because “the stakes are considerable for the individual,” the Court explained, it would “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. The strict construction rule complemented the Court’s contemporaneous cases limiting constitutional scrutiny of congressional choices about immigration laws,

¹ *Fong Haw Tan* built on *Delgadillo v. Carmichael*, 332 U.S. 388 (1947), decided the Term before. There the Court held that a lawful permanent resident whose merchant ship was torpedoed, and who was rescued and brought ashore in Cuba before returning home a week later, had made no “entry” restarting the period in which a conviction would render him deportable. Because the “stakes are indeed high and momentous for the alien who has acquired his residence here,” the Court would not “attribute to Congress a purpose to make his right to remain here dependent on circumstances so fortuitous and capricious.” *Id.* at 391.

thereby respecting the overall scheme for separation of powers over immigration matters. The Court developed the strict construction rule alongside its recognition that there are few constitutional constraints on immigration lawmaking. Hiroshi Motomura, *Phantom Norms and Statutory Interpretation*, 100 Yale L.J. 545, 554–60 (1990). In this context, the rule of strict construction served to assure that the branch of government entrusted with outsized power over immigration law had considered the impact of its decisions and spoken with clarity. *See* Nancy Morawetz, *Strict Construction of Deportation Statutes After Loper Bright*, 100–1 N.Y.U. L. Rev. Online 1, 17–18 (2025) [hereinafter *Strict Construction*]. Given Congress’s broad prerogative in this area, a judicial review rule focused on clarity allocated the power between the branches in a way that provided Congress greater authority but commensurate accountability for exercise of that authority in connection with the outer boundaries of the removal power. *See id.*

Beyond the two rationales the Court articulated in *Fong Haw Tan*, the rule of strict construction serves the fair notice interests that underlie strict construction of penal statutes generally. This Court has recognized that noncitizens are entitled to fair notice of the immigration consequences of their conduct. *See, e.g., Jordan v. De George*, 341 U.S. 223, 231, (1951) (applying vagueness doctrine to a ground for deportation and asking whether the statute gave “sufficiently definite warning” of its consequences); *Sessions v. Dimaya*, 584 U.S. 148, 156 (2018). In *INS v. St. Cyr*, 533 U.S. 289 (2001), the Court declined to read the provision at issue to withdraw discretionary relief for noncitizens who had already pleaded guilty,

explaining that whether a statute operates retroactively “should be informed and guided by familiar considerations of fair notice, reasonable reliance, and settled expectations.” *Id.* at 321 (citation omitted).

These fair notice concerns carry particular weight in the immigration laws because removal is subject to no statute of limitations. *See Strict Construction, supra*, at 20–21. Among other grounds, as in the cases under review here, asylum can be terminated for a criminal conviction that is deemed a “particularly serious crime” – one that may have transpired decades ago. 8 U.S.C. § 1158(c)(2). A noncitizen with asylee status who has built a life here remains exposed indefinitely to the consequences of that decades-old event. And the consequences extend to derivatives (the asylee’s spouse and children): termination of asylum status for the principal results “in termination of the asylum status of a spouse or child whose status was based on the asylum application of the principal.” 8 C.F.R. § 208.24(d).

B. The Rule of Strict Construction Has Been Applied Consistently, and *Loper Bright* Restores It to Full Force.

1. This Court and the Courts of Appeals Have Applied the Rule for Decades.

For decades, this Court has recognized and applied the “longstanding principle of construing any lingering ambiguities” in immigration statutes in noncitizens’ favor. *See, e.g., Cardoza-Fonseca*, 480 U.S. at 449. The courts of appeals have followed, repeatedly recognizing the rule of strict construction in

immigration matters, including cases involving asylum.²

The rule has never been a makeweight. For two decades it regularly supplied the basis for decisions construing ambiguous immigration statutes in a variety of contexts, and it did so against the government’s arguments that a broad statutory purpose supports the wider reading, and that the agency’s own practice confirms the government’s reading. For example, in *Barber v. Gonzales*, 347 U.S. 637 (1954), the Court strictly construed a statute permitting deportation for crimes committed after the “entry” of a noncitizen into the United States. Plaintiff Barber was born in a U.S. territory and was thus considered an American national when he traveled to California. Shortly after Barber’s home territory gained independence, he was convicted of crimes in California and Washington. At issue during deportation proceedings was whether Barber had made an “entry” within the meaning of the deportation statute. The government warned that reading “entry” narrowly was “inconsistent with a broad congressional purpose to terminate the United States residence of alien criminals.” *Id.* at 642. The Court accepted the premise but declined the conclusion, concluding that Barber would face great hardship if required to leave his home: deportation statutes, “[a]lthough not penal in character,” may “inflict ‘the equivalent of banishment or exile,’ and should be strictly construed.” *Id.* at 642–43 (citation omitted). As a further basis for its reading, the

² See, e.g., *Siwe v. Holder*, 742 F.3d 603, 608–09 (5th Cir. 2014); *Cela*, 75 F.4th at 366–68 (Harris, J., concurring in part and dissenting in part).

government had also pressed twelve years of administrative construction that Congress had never repudiated. The Court’s opinion did not mention that argument. *See Strict Construction, supra*, at 11–12.

Bonetti v. Rogers, 356 U.S. 691 (1958), is to the same effect. At issue in *Bonetti* was whether a statute permitting deportation of noncitizens who “had been, after entering the United States, a member of the Communist Party” applied to Bonetti, who had entered the country twice: once as a Party member in 1923, and then again fifteen years later, after he had left the Party. The government pressed powerful grounds to support its congressional purpose argument: it cited extensive legislative history and filed a supplemental memorandum adding further evidence of Congress’s intent. *See Strict Construction, supra*, at 9–10. The dissent invoked “decades of uninterrupted administrative interpretation and practice.” *Bonetti*, 356 U.S. at 702–03 (Clark, J., dissenting). The Court nonetheless found the statute “quite ambiguous” as applied to the novel facts before it and resolved the ambiguity in the noncitizen’s favor. *Id.* at 699.

By the 1960s the rule’s existence was uncontested, and the only question was whether a given provision was ambiguous enough to trigger it. In *Costello v. INS*, 376 U.S. 120 (1964), the Court interpreted a statute that provided for deportation of a noncitizen “who at any time after entry is convicted” of two crimes. *Id.* at 121 (cleaned up). The petitioner in *Costello* had been a naturalized citizen at the time of conviction, though his citizenship was subsequently revoked on the grounds that it had been acquired by willful

misrepresentation. *Id.* The Court acknowledged that if doubt survived its statutory analysis, it “would nonetheless be constrained by accepted principles of statutory construction in this area of the law to resolve that doubt in favor of the petitioner.” *Id.* at 128. The dissent disputed only clarity, raising “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.” *Id.* at 148 (White, J., dissenting).

Two years later the Solicitor General himself referred to strict construction as “[t]he familiar rule that doubts concerning the interpretation of deportation laws must be resolved in favor of the alien,” contending only that the rule “did not authorize the court below to expand the language and purpose of the statute beyond the limits clearly fixed.” Brief for Petitioner at 36–37, *INS v. Errico*, 385 U.S. 214 (1966) (No. 54). At issue in *Errico* was whether a statutory exemption saved from deportation the unlawfully present parents of two U.S.-born children. The parents, who had misrepresented their status to gain entry into the U.S., argued that they were covered under a humanitarian provision exempting from deportation the parent of an American citizen “otherwise admissible” at the time of their entry. 385 U.S. 214, 215–16. The Court observed that the meaning of “otherwise admissible” was “not obvious” and therefore construed the statute in favor of the noncitizens. 385 U.S. at 225. The government in *Errico* did not dispute the existence of the rule or its potential application to the statute at issue there; it argued only that the statute was clear.

The remaining question is whether anything in the decades since has displaced the rule.

2. The Rule Survived the *Chevron* Era, and *Loper Bright* Restores It to Full Force.

Chevron did not displace the strict construction rule, but the rule was largely sidelined after the Court’s decision in that case. In *Cardoza-Fonseca*, this Court resolved the question before it based on the statute’s text, its correspondence to a United Nations Protocol, and its legislative history, finding those “ordinary canons of statutory construction compelling, even without regard to the longstanding principle of construing any lingering ambiguities in deportation statutes in favor of the alien.” 480 U.S. at 449. The Court thus reaffirmed the rule rather than discarding it. The Court relied on the rule in *St. Cyr*, 533 U.S. at 320, which concerned the availability of discretionary relief from deportation, and cited the rule favorably in *Dada*, 554 U.S. at 18–19, involving an alien who requested and was granted voluntary departure from the United States—a form of discretionary relief that avoids certain statutory penalties.

The courts of appeals, meanwhile, openly debated whether the rule could operate alongside *Chevron* deference, and several concluded that it could not—holding instead that *Chevron* required deference to the agency’s reasonable construction even when the rule would otherwise resolve the ambiguity in the noncitizen’s favor. *See, e.g., Olmos v. Holder*, 780 F.3d 1313, 1324 (10th Cir. 2015) (collecting cases from the First, Second, Fourth, and Eighth Circuits holding

that the rule does not displace *Chevron* deference); *Ruiz-Almanzar v. Ridge*, 485 F.3d 193, 198 (2d Cir. 2007). Twice this Court declined to resolve the tension, each time because it found the provision at issue before it clear. See *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 397–98 (2017); *Pugin v. Garland*, 599 U.S. 600, 610 (2023).

Loper Bright removed the obstacle. That decision directs courts to find the best reading of a statute using “the traditional tools of statutory construction,” 603 U.S. at 400–01, and substantive canons this Court applied long before *Chevron* are among those tools. See *Strict Construction*, *supra*, at 4. The one court of appeals to have addressed the strict construction rule for immigration statutes since *Loper Bright* confirmed that the tool remains available, observing that “[w]hen such 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.).³

Here the court below expressly set out (properly) to “use the ‘traditional tools of statutory construction’ to ‘resolve statutory ambiguities’ and ‘determine the

³ The government’s construction of the provision at issue here is an artifact of *Chevron*. The BIA did not conclude that the government’s reading was the better one. It concluded that “the text and legislative history of section 209(b) do not reveal whether Congress clearly intended” an answer, that the operative phrase “may be interpreted in different ways,” and that Section 1159(b) is for that reason “ambiguous.” *Matter of T-C-A-*, 28 I. & N. Dec. at 475–76. The Board then treated the ambiguity as a “delegation[] of authority to the agency to fill the statutory gap in reasonable fashion,” and it proceeded to fill that gap. *Id.* at 476.

best reading of the statute.” Pet. App. 8a (quoting *Loper Bright*, 603 U.S. at 400–01). But the court erred in not applying the strict construction rule. The panel searched for the best reading of the provision—the interpretation of which has divided both the courts and the Board—without employing the tool this Court developed for that very situation.

C. If the Court Should Conclude that Section 1159(b) Is Ambiguous in the Circumstances of This Case, It Should Apply the Rule of Strict Construction and Resolve Any Ambiguities in Petitioners’ Favor.

Amici believe that petitioners advance the better reading of Section 1159(b), for reasons they present in their opening brief. But the Court need not agree with petitioners in order to reverse. If the Court concludes that the provision is susceptible of more than one reading (and is therefore ambiguous), the rule of strict construction resolves the doubt.

As set out above, the tribunals that have construed Section 1159(b) in the circumstances of petitioners’ cases have noted that the provision lacks clarity and have divided sharply. The judges who have reached the question at issue here divide six to six. *See* Pet. 6. The Board expressly characterized the provision as ambiguous; its dissenting member found the provision unambiguous in petitioners’ favor; and the circuit court panels holding the text clear have reached opposite conclusions about what it “clearly” means. *Compare Siwe v. Holder*, 742 F.3d 603, 608 (5th Cir. 2014), *with* Pet. App. 12a.

The concerns underlying the rule of strict construction are present here. Asylum status carries protection from removal to any country, 8 C.F.R. § 208.22, and derivative status for spouses and children of the asylee, *id.* § 208.21. Without an opportunity to apply for adjustment of status, a noncitizen whose grant of asylum has been terminated faces the same stakes that the Court identified in *Fong Haw Tan*. Absent the protection afforded by asylee status or adjustment to lawful permanent resident status, the noncitizen faces the risk of removal. *See Jama v. Dep't of Homeland Sec.*, 760 F.3d 490, 496 (6th Cir. 2014) (termination of refugee status and denial of adjustment are “intermediate steps in the removal of an alien”). In fact, in some cases (including those under review here) noncitizens challenge termination of asylee status and seek relief through adjustment only after they have been placed in removal proceedings. Whether Section 1159(b) is characterized as conferring a benefit (as the government argues in this case) or as authorizing removal, under the government’s reading the individual faces the same injury. *See St. Cyr*, 533 U.S. at 314 (invoking the rule of strict construction with respect to eligibility for discretionary relief).

The government’s reading of Section 1159(b) would remove an entire class of noncitizens from consideration for adjustment of status. A noncitizen whose asylum is terminated is barred from seeking adjustment not because an immigration judge or the Attorney General has weighed his circumstances and denied relief, but because he stands outside the class the agency may consider at all. Pet. App. 28a–29a (Robinson, J., dissenting). Absent this bar,

discretionary action to adjust status would be an available form of relief for former asylees whose individual circumstances warranted it. The immigration judge who heard Mr. Wassily's case determined that, despite his criminal convictions, his individual circumstances (including *inter alia* his continued well-founded fear of persecution for his Coptic Christian beliefs, indications of rehabilitation in the years since his 2004 convictions, and family unification concerns) warranted adjustment of his status based on humanitarian considerations. Pet. App. 52a-54a, 56a-58a. The government's reading of Section 1159(b) completely cuts off the opportunity for Mr. Wassily to avoid removal based on that individualized determination.

The consequences of barring any consideration of adjustment of status are grave for both former asylees and their spouses and children. The government may terminate a grant of asylum due to (among other circumstances) the individual's commission of a "particularly serious crime," a fundamental change in conditions in the country of origin, or where an agreement with a third country provides a "safe" country option for removal. See 8 U.S.C. § 1158(c)(2). A noncitizen whose asylum is terminated due to past crimes (the situation of these petitioners) and who is denied adjustment under Section 1159(b) risks return to the country from which he sought protection; such return "ultimately ha[s] the potential for life or death consequences." See *In Re J-J-*, 21 I. & N. Dec. 976, 986-87 (B.I.A. 1997) (Rosenberg, Board Member, dissenting). And since termination of asylum also removes protection for the asylee's spouse and children, they too will risk removal and return to the place

of persecution. Family members may not speak the language of the former asylee's country of origin, may have few connections to that country, and may be subject to persecution for similar reasons as the former asylee.

Congress enacted the Refugee Act of 1980 "to provide 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, tit. I, § 101(b), 94 Stat. 102, 102 (1980). Denying an opportunity for protection against return to a country where a former asylee faced persecution is plainly inconsistent with these purposes. Construing Section 1159(b) strictly in favor of a noncitizen whose asylum status has been terminated, to permit at least the opportunity for discretionary relief, is far more consistent with those purposes. Courts should expect Congress to legislate clearly on this issue in view of the potential life and death consequences of removal without the opportunity for adjustment of status. *Cf. Cardoza-Fonseca*, 480 U.S. at 436–41, 449 (noting intent of Congress to conform U.S. law to United Nations Protocol regarding status of refugees); *Negusie v. Holder*, 555 U.S. 511, 534–37 (2009) (Stevens, J. concurring in part and dissenting in part) (noting Congress's effort to conform U.S. laws to international humanitarian principles).

Even if conditions in the country of origin have changed, return to that country can result in serious hardships for the former asylee and their kin. Though some human rights conditions may have changed, or even if conditions have improved in some ways, vulnerable groups within the country may still suffer

from a range of harms, including lingering human rights abuses, weak state protection, and elevated levels of generalized violence.

Removal to a third country can also place the former asylee and their family in grave danger. The designated third country may present new safety risks, including targeting due to the outsider status of new arrivals with no prior connection to the country. In addition, the receiving third country may send the former asylee elsewhere, including back to the country where they had experienced or feared persecution.⁴ And the former asylee and his family would face the hardship of displacement to at least one more country with which none of them has a connection and where they may not speak the language or be familiar with local customs, opening them to mistreatment as outsiders.

Moreover, removal in and of itself is likely to cause great hardship to the former asylee and their family regardless of the grounds for termination of asylee status. Many asylees and their families are no longer recent arrivals, but have lived in the United States for decades,⁵ where they have built careers, religious ties,

⁴ See Robbie Corey-Boulet & Emmanuel Bruce, *Ghana Took in Trump's Deported West Africans. Then It Forced Them Home*, Reuters (Jan. 17, 2026), <https://perma.cc/2MMV-7BLV>; Sheriff Bojang Jr., *Equatorial Guinea Sends Eight of Trump's Nine Deportees Home, Braces For New Arrivals*, Africa Report (Jan. 16, 2026), <https://perma.cc/M8LS-BDPC>.

⁵ On average, applicants for asylum wait six years for asylum adjudication, with some waiting significantly longer, see Am. Imm. Lawyers Ass'n, *High Stakes Asylum: How Long an Asylum Case Takes and How We Can Do Better* 16 (Aug. 14, 2023), <https://perma.cc/LYN8-C964>. Then, one in five adjudications can

and civic relationships. Uprooting the former asylee and his family after such prolonged residence would sever social networks, disrupt their employment and education, and undo the stable and productive lives they have built. Removal from this country disrupts the hard-won sense of permanence, security, and safety the former asylee and his family have achieved and relied on. It also disrupts the communities that they've settled into.

The government's reading of the statute would deny any opportunity for an immigration judge or the Attorney General to consider a former asylee's individual circumstances that could warrant consideration of an adjustment request—including a well-founded fear of harm upon return to the country of origin, the age and seriousness of the crimes that led to termination of asylee status, any successful rehabilitation achieved by the former asylee, the former asylee's family situation (particularly the impact of removal on the welfare of the former asylee's spouse and children), and contributions the former asylee may have made to our country through gainful employment or other community service.

In light of the broad power Congress exercises in the areas of asylum and adjustment of status, the Court should assume that Congress would have spoken clearly, providing notice if it had intended that application of Section 1159(b) would produce such consequences. But Congress made no clear statement supporting the government's reading. The bar to

take longer than 34 months. See <https://egov.uscis.gov/processing-times>.

consideration of petitioners' requests for adjustment of status that the government posits appears nowhere in the text of Section 1159(b); it is an inference the government draws from the words "status" and "adjust." *See Cela*, 75 F.4th at 364–65. Congress knew how to require continuing status when it wanted to: it did that for refugees in the neighboring subsection, limiting eligibility to those whose "admission has not been terminated." 8 U.S.C. § 1159(a)(1)(A). It imposed no parallel requirement in Section 1159(b).

The government's reading of Section 1159(b) would place petitioners, categorically, beyond the reach of discretionary relief Congress provided for and that would otherwise be available to them. Because Congress did not legislate clearly in support of this result, any doubt should be resolved in petitioners' favor.

II. The Government's Arguments Are Without Merit.

A. The Rule of Strict Construction Is Not Limited to Statutes That Authorize Removal.

The government argues that the rule of strict construction is limited to deportation statutes and that Section 1159(b) is about benefits, not deportation. Pet. Opp'n 14. But termination of asylee status leads to removal proceedings and inability to seek adjustment of status bars the principal form of relief from removal. *See, e.g., Matter of N-A-I*, 27 I. & N. Dec. 72, 76 (B.I.A. 2017) ("[B]eing granted asylum is not the same as having lawful permanent resident status, and removal proceedings may ensue if an

alien’s asylee status is terminated.”).⁶ Both petitioners here had their asylum terminated and now face removal. Pet. App. 3a–5a (Wassily); *id.* at 6a–7a (Velasquez Arreaga). Under the government’s reading of the statute, neither may seek discretionary relief that would otherwise be available to them, to pursue adjustment to lawful permanent resident status and thereby avoid removal.

Section 1159(b) is thus an immigration statute setting out a form of discretionary relief the denial of which ordinarily leads to removal. That is what matters for purposes of the rule of strict construction, not the label the government attaches to the provision.

Moreover, courts and commentators alike have recognized that the strict construction rule reaches beyond provisions that authorize removal. *See, e.g., St. Cyr*, 533 U.S. at 298 (applying the rule in addressing “the Attorney General’s conclusion that, as a matter of statutory interpretation, [petitioner] is not eligible for discretionary relief” and retroactivity of repeal of discretionary relief from deportation); *Dada*, 554 U.S. at 4–5, 18–19 (resolving whether under 8 U.S.C. § 1229 Congress intended to qualify the statutory right to apply for reopening—a discretionary form of relief— and citing case law recognizing “the longstanding principle of construing any lingering ambiguities in deportation statutes in favor of the alien”); *Errico*, 385 U.S. at 215, 225

⁶ This Court has recognized that Congress has largely eliminated the substantive distinction between “removal” and “deportation.” *See Riley v. Bondi*, 606 U.S. 259, 267 (2025).

(involving the deportation of aliens “on the ground that they were excludable at the time of entry” and noting that “[e]ven if there were some doubt as to the correct construction of the statute, the doubt should be resolved in favor of the alien” (citation omitted)); *cf.* *Yu v. Brown*, 92 F. Supp. 2d 1236, 1248–49 (D.N.M. 2000) (“[A]lthough the statute at issue in this case involves an adjustment of status, rather than deportation, the end result is the same and . . . would result in [Plaintiffs]’ deportation. Accordingly, although the Court does not have any lingering doubts about the temporal scope of the Amendment, such ambiguities if they existed would necessarily need to be resolved in favor of the immigrant Plaintiffs.”); *Lok v. INS*, 548 F.2d 37, 39 (2d Cir. 1977) (“Deportation is a sanction which in severity surpasses all but the most Draconian criminal penalties. We note at once, therefore, the settled doctrine that deportation statutes, if ambiguous, must be construed in favor of the alien. The recognition of this principle is especially pertinent in a case where the alien seeks to avoid deportation through the expedient of Section 212(c) . . . despite a ground for exclusion.” (citations omitted)); *see generally* Brian G. Slocum, *The Immigration Rule of Lenity and Chevron Deference*, 17 Geo. Immigr. L.J. 515, 523–24 (2003) (stating that the rule has been applied “to a wide variety of statutory provisions, including provisions that provide relief from deportation, asylum provisions, provisions closing deportation hearings to the public . . .”).

This Court’s treatment of asylum provisions points the same way. In *Cardoza-Fonseca* the Court construed Section 208(a), which governs eligibility for asylum, and Section 243(h), which governs

withholding of removal, to determine whether the two impose the same standard of proof. 480 U.S. at 423. The Court concluded that “ordinary canons of statutory construction” were “compelling, even without regard to” the principle of construing lingering ambiguities in the noncitizen’s favor. *Id.* at 449. That comment makes clear that the Court considered the rule applicable to an asylum case and a provision offering the potential for protection from removal for an asylee. The government offers no reason why a rule available to construe the provision governing the grant of asylum should be unavailable to construe a provision governing what becomes of the same person afterward.

B. There Is No “Grievous Ambiguity” Threshold Limiting Application of Strict Construction in Civil Immigration Cases.

Contrary to the government’s assertion (Br. in Opp. 14), there is no requirement that ambiguity be “grievous” before courts will apply the strict construction rule. In interpreting criminal statutes, this Court has sometimes “suggested that courts should consult the rule of lenity only when . . . a court confronts a ‘grievous’ statutory ambiguity.” *Wooden v. United States*, 595 U.S. 360, 392 (2022) (Gorsuch, J., concurring in the judgment) (quoting *Shaw v. United States*, 580 U.S. 63, 71 (2016)). Setting aside whether a “grievous ambiguity” threshold is appropriate or even workable for interpreting criminal statutes,⁷ no such

⁷ As Justice Gorsuch has observed, the first discussion of a “grievous” ambiguity standard “was dicta” and “does not derive from any well-considered theory about lenity or the mainstream of this Court’s opinions.” *Wooden*, 595 U.S. at 392–94 (Gorsuch, J.,

threshold applies to the immigration rule of strict construction. This Court should not require Section 1159(b) to be “grievous[ly]” ambiguous before applying the rule of strict construction, for two reasons: (1) the caselaw does not support application of a grievous-ambiguity threshold to the immigration rule of strict construction; and (2) applying such a threshold would undermine the separation-of-powers concerns that animate the rule of strict construction.

This Court has never required ambiguities in a civil immigration statute to be “grievous” before applying the rule of strict construction. The government cites *Pugin v. Garland*, where this Court interpreted a statute defining “aggravated felony” in immigration law—a definition with both civil and criminal consequences. 599 U.S. at 609. But *Pugin* is thin support for the application of a grievous ambiguity threshold in the civil immigration context. In *Pugin*, a pre-*Loper Bright* decision, the Court reasoned that the statutory ambiguity at hand could be sufficiently resolved using other interpretation tools, so there was no need to rely on lenity. *Id.* With *Chevron* deference overruled, the Court need no longer hold the rule of strict construction, or any other canon of statutory construction, in reserve. *Supra* Section I.B.

Additionally, the statutory provision interpreted in *Pugin* involved language borrowed from the

concurring in the judgment) (citing *Huddleston v. United States*, 415 U.S. 814, 831 (1974)). Because the threshold arose from dicta, “the precise meaning of ‘grievously ambiguous’ is not entirely clear.” *Cargill v. Garland*, 57 F.4th 447, 470 (citing *Shular v. United States*, 589 U.S. 154, 168 (2020) (Kavanaugh, J., concurring)).

criminal law context and therefore implicated the traditional criminal rule of lenity. At issue there was the phrase “obstruction of justice,” a criminal-law concept incorporated into the aggravated-felony definition of an immigration statute. 599 U.S. at 602–03. This Court has previously held that when an identical phrase has an application in both a criminal and a noncriminal context, “the [criminal] rule of lenity applies” to ensure consistency across applications. *Leocal v. Ashcroft*, 543 U.S. 1, 11 n.8 (2004). So in *Pugin*, to interpret language borrowed from criminal law, this Court evaluated the applicability of criminal lenity and its associated “grievous ambiguity” threshold. See *Pugin*, 599 U.S. at 609 (quoting *Ocasio v. United States*, 578 U.S. 282, 295 n.8 (2016)).

The language at issue in this case operates purely within the immigration context, so the *Ocasio* Court’s concern regarding consistency across applications does not apply. Instead, the more relevant canon is the longstanding immigration rule discussed in this brief -- that statutory ambiguities with potentially harsh consequences should be construed in favor of the noncitizen. The Court need not and should not import the heightened “grievous ambiguity” threshold to interpret a statutory provision with no criminal application.

In addition, as discussed above, the Court developed the strict construction rule in part due to separation of powers concerns related to Congress’s expansive powers in the immigration area. See *supra* Section I.A.2. Since *Fong Haw Tan*, this Court has expected Congress to speak clearly when seeking to impose a severe consequence such as deportation on

noncitizens, with the rule of strict construction serving as a check on Congress's otherwise broad immigration power. Limiting the rule to "grievous" ambiguities would undermine the role of the rule of strict construction in ensuring that Congress speaks clearly on matters that affect the ability of noncitizens to remain in the United States. In any event, the provision at issue here, which has evenly divided the judges who have considered it in the circumstances of this case (*See* Pet. 6), should satisfy any "grievously ambiguous" standard."

CONCLUSION

For the reasons set forth above, if the Court should conclude that Section 1159(b) is ambiguous as it applies to the circumstances of these cases, it should reverse the judgment of the court of appeals and remand for further proceedings consistent with this Court's opinion.

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