

In the Supreme Court of the United States

TAMER S. WASSILY, PETITIONER

v.

TODD BLANCHE, ATTORNEY GENERAL

BYRON E. VELASQUEZ ARREAGA, PETITIONER

v.

TODD BLANCHE, ATTORNEY GENERAL

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

BRIEF FOR THE RESPONDENT

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QUESTION PRESENTED

Whether an alien who was granted asylum, but whose asylum status was later terminated, may adjust under 8 U.S.C. 1159(b) to the status of an alien lawfully admitted for permanent residence.

PARTIES TO THE PROCEEDING

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

Respondent in this Court and in the court of appeals is Todd Blanche, in his official capacity as Attorney General.

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BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-30a) is reported at 150 F.4th 100. In the case of Tamer Wassily, the relevant decisions of the Board of Immigration Appeals (Pet. App. 33a-36a) and immigration judge (Pet. App. 37a-58a) are unreported, as are prior decisions of the Board of Immigration Appeals and immigration judge (Pet. App. 59a-108a). A prior decision of the court of appeals is available at 523 Fed. Appx. 783. In the case of Byron Velasquez Arreaga, the relevant decisions of the Board of Immigration Appeals (Pet. App. 109a-115a) and immigration judge (Pet. App. 128a-134a, 135a-140a) are unreported, as are prior orders of the court of appeals and the Board of Immigration Appeals (Pet. App. 116a, 121a-127a).

JURISDICTION

The judgment of the court of appeals was entered on August 7, 2025. Petitions for rehearing en banc were denied on October 14, 2025 (Pet. App. 31a-32a). The petition for a writ of certiorari was filed on January 12, 2026. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Pertinent statutory and regulatory provisions are reproduced in the appendix to this brief. App., *infra*, 1a-23a.

INTRODUCTION

The Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, authorizes the Secretary of Homeland Security or the Attorney General, in his discretion, to “adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum” who meets certain conditions. 8 U.S.C. 1159(b). The question presented is whether that provision applies to aliens whose asylum status has been terminated. The court of appeals correctly held that it does not.

When Congress bestows a benefit on an “alien granted asylum,” the common-sense understanding is that the benefit inures to an alien with asylum status, not to any alien who once had that status but was later deprived of it. That is the way Congress used the same phrase in defining the benefits accompanying asylum status in 8 U.S.C. 1158, as petitioners acknowledge. Congress used the same phrase to the same effect when defining an additional benefit in Section 1159(b). The statutory text and context both point in the same direction: To adjust to the “status of an alien lawfully admitted for permanent residence” under Section 1159(b), an alien must,

at the time of adjustment, possess the “status of an[] alien granted asylum”—*i.e.*, asylum status. 8 U.S.C. 1159(b).

Petitioners’ contrary arguments require this Court to accept the premise that Congress viewed the relevant distinction for eligibility for adjustment of status as whether an alien has ever been granted asylum—regardless of whether that status was revoked as mistaken or fraudulent, or was terminated due to criminal activity. That premise is unfounded. Petitioners’ asserted support boils down to Congress’s use of a past participle that can sometimes function as a verb, what petitioners view as clearer requirements of other continuing conditions elsewhere, and a series of unwarranted inferences drawn from other statutory provisions, statutory history, and supposed congressional purpose. None of those arguments, nor the rule of lenity, can overcome the force of the plain statutory text as reinforced by the relevant context. This Court should affirm the decision below.

STATEMENT

A. Legal Background

The INA governs aliens’ admission to and removal from the United States. This case concerns provisions of the INA that were first enacted as part of the Refugee Act of 1980 (Refugee Act), Pub. L. No. 96-212, 94 Stat. 102. The Refugee Act authorizes certain forms of relief for aliens who qualify as refugees, meaning that they are facing persecution in their home countries because of race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. 1101(a)(42)(A). An alien outside of the United States who qualifies under that definition may apply for admission as a refugee, 8 U.S.C. 1157(c), whereas an alien who is physically present in the United States may apply for asylum, 8 U.S.C. 1158(a)(1).

The Attorney General or the Secretary of Homeland Security “may,” in his discretion, grant an alien asylum status if the alien shows that he qualifies as a refugee and does not fall into a disqualifying exception. 8 U.S.C. 1158(b)(1)(A); see 8 U.S.C. 1158(a)(2) and (b)(2). An “alien granted asylum” may not be removed to his home country, may work in the United States, and may be given advance consent for travel abroad. 8 U.S.C. 1158(c)(1). The spouse and children of an alien “granted asylum” may “be granted the same status.” 8 U.S.C. 1158(b)(3)(A).

“Asylum granted * * * may be terminated” for various reasons, including if the alien no longer qualifies as a refugee, has committed a particularly serious crime, is subject to removal to a third country pursuant to a bilateral or multilateral agreement, has returned to his home country, or has acquired a new nationality. 8 U.S.C. 1158(c)(2). When asylum status is terminated, the alien is subject to any applicable grounds of inadmissibility or deportability. 8 U.S.C. 1158(c)(3). As with the grant of asylum, termination is discretionary. See 8 U.S.C. 1158(c)(2); *In re K-A-*, 23 I. & N. Dec. 661, 666 (B.I.A. 2004).

After an alien has been granted asylum, he may be eligible for adjustment of status. Under 8 U.S.C. 1159(b), the Secretary of Homeland Security or the Attorney General, in his discretion and subject to additional regulations, “may adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum” who meets certain conditions. The alien must (1) apply for adjustment of status, (2) have at least one year of physical presence in the United States after being granted asylum, (3) continue to be a refugee or a spouse or child of a refugee, (4) not be firmly resettled in any foreign country, and (5) be

admissible as an immigrant or qualify for a waiver of inadmissibility described in 8 U.S.C. 1159(c). 8 U.S.C. 1159(b); see 8 C.F.R. 209.2, 1209.2. Section 1159(c), in turn, provides that certain grounds of inadmissibility are inapplicable and allows the Secretary or the Attorney General to waive other grounds of inadmissibility “for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.” 8 U.S.C. 1159(c).

B. Factual And Procedural Background

Petitioners are two aliens who were previously granted asylum, had their asylum status terminated after convictions for particularly serious crimes, and were later found ineligible for adjustment of status because of their asylum terminations.

1. Petitioner Tamer Wassily, a native and citizen of Egypt, entered the United States on a tourist visa in 1993. Pet. App. 3a. He remained here after the expiration of his authorized period of admission and was placed in removal proceedings, in which he was granted asylum by an immigration judge (IJ) in 2000. See *ibid.* In 2004, Wassily was convicted of stalking in the third degree and child endangerment, in violation of New York state law. *Ibid.* Based on those convictions, the Department of Homeland Security (DHS) moved to reopen his removal proceedings and terminate his asylum status. *Ibid.* In the reopened proceedings, the IJ concluded that Wassily’s stalking conviction was for a particularly serious crime, terminated the previous grant of asylum, and denied his renewed applications for asylum and related protection. *Id.* at 69a-108a. The Board of Immigration Appeals (Board) dismissed Wassily’s administrative appeal. *Id.* at 62a-68a. Among other things, the Board rejected Wassily’s contention that his

former counsel was ineffective because he “fail[ed] to request that [Wassily] be allowed to pursue adjustment of status prior to termination of his asylee status.” *Id.* at 63a.

The court of appeals granted Wassily’s petition for review and remanded to allow the agency to reconsider whether Wassily had been convicted of a particularly serious crime. 523 Fed. Appx. 783. The court also held that the Board “did not adequately explain” its rejection of Wassily’s ineffective-assistance claim. *Id.* at 786. The case was remanded to the IJ and Wassily was permitted to file an application to adjust his status. Administrative Record 695. On remand, the IJ again determined that the stalking offense constituted a particularly serious crime and that Wassily’s asylum status was properly terminated. Pet. App. 46a-50a. But the IJ also addressed Wassily’s application to adjust his status and concluded that Wassily remained eligible to adjust to lawful-permanent-resident status under 8 U.S.C. 1159(b), despite the prior termination of his asylum status. Pet. App. 52a. Although finding it an “extremely close case,” the IJ proceeded to exercise discretion both to grant a waiver of inadmissibility and to adjust his status. *Id.* at 56a; see *id.* at 51a-58a.

On the government’s appeal, the Board vacated the IJ’s decision. Pet. App. 33a-36a. In doing so, the Board relied on *In re T-C-A-*, 28 I. & N. Dec. 472 (B.I.A. 2022), in which it had held that the best reading of Section 1159(b) allows only an alien who currently possesses asylum status to adjust to lawful-permanent-resident status. See Pet. App. 35a. Because Wassily’s asylum status had previously been terminated, the Board vacated the IJ’s decision as to adjustment of status and ordered Wassily’s removal. *Id.* at 36a.

Wassily then filed a petition for review with the Second Circuit.

b. Petitioner Byron Velasquez Arreaga, a native and citizen of Guatemala, unlawfully entered the United States in 1995 and was granted asylum the following year. Pet. App. 6a. He later committed multiple criminal offenses, including those reflected in a 2015 conviction for driving while intoxicated and a 2018 conviction for aggravated driving while intoxicated, both under New York state law. *Ibid.*

The 2018 conviction prompted DHS to move to terminate Velasquez Arreaga's asylum status and institute removal proceedings against him. Pet. App. 6a. Concluding that the 2015 and 2018 convictions were, individually and together, particularly serious crimes, an IJ terminated Velasquez Arreaga's asylum status. *Id.* at 6a-7a; see *id.* at 136a. Following the IJ's decision, Velasquez Arreaga indicated his intent to seek adjustment of status, but DHS filed a motion to pretermitt that application, arguing that he was statutorily ineligible because of the termination of his asylum status. *Id.* at 7a. The IJ granted DHS's motion, agreeing that only aliens with current asylum status are eligible to adjust under Section 1159(b). *Id.* at 135a-140a. On appeal, the Board affirmed the IJ's decision regarding adjustment of status. *Id.* at 121a-127a. After a remand by the Second Circuit on the collateral question of whether and when the 2018 conviction became final, see *id.* at 116a-119a, the Board ultimately dismissed Velasquez Arreaga's appeal, *id.* at 109a-115a.

Velasquez Arreaga filed a petition for review with the Second Circuit, which was consolidated with Wassily's for purposes of argument and decision. See Pet. App. 2a.

2. a. The court of appeals denied both petitions. Pet. App. 1a-30a. The court held that the “more natural reading” of the statutory phrase “‘the status of any alien granted asylum’ is that a noncitizen must presently be granted asylum to adjust to lawful permanent resident status.” *Id.* at 12a. The court explained that “‘the ordinary meaning of ‘status’ signals a present condition’—in particular, a legal condition.” *Ibid.* (quoting *Cela v. Garland*, 75 F.4th 355, 364 (4th Cir. 2023), cert. denied, 144 S. Ct. 2657 (2024)) (citation omitted). If present status were not important, the court observed, there would have been no reason for Congress to use the term “status” at all. *Ibid.* The court found additional support for its interpretation in a neighboring provision that “consistently uses ‘granted’ to refer to then-existing asylum status,” *id.* at 13a (citing 8 U.S.C. 1158(c)), and in another provision that expressly permitted certain aliens granted asylum before a certain date to apply for adjustment of status “regardless of whether or not such asylum has been terminated,” *id.* at 17a (quoting Immigration Act of 1990, Pub. L. No. 101-649, § 104(d)(1)(A), 104 Stat. 4985 (8 U.S.C. 1159 note)) (emphasis omitted).

The court of appeals rejected petitioners’ invocation of other provisions of 8 U.S.C. 1159 that “use varying language to require that a noncitizen seeking adjustment to lawful permanent resident status maintain some other current condition.” Pet. App. 14a. The court explained that those other provisions “cast no doubt” on Section 1159(b)’s clear language requiring “current asylum status.” *Id.* at 15a. Nor was the court persuaded by petitioners’ reliance on the Attorney General’s discretion under Section 1159(c) to waive grounds of inadmissibility that overlap in part with the grounds for terminating asylum. *Id.* at 15a-16a. Petitioners asserted

that, because of the overlap, the waiver provision would have most effect in the context of aliens whose asylum status had been terminated. See *ibid.* But the court explained that the waiver authority is “not coextensive” with the grounds for termination and the statute therefore “continues to vest the Secretary or Attorney General with discretion to waive the admissibility requirement, including in cases where an IJ defers ruling on a motion to terminate asylum status in favor of first adjudicating an application for adjustment of status.” *Id.* at 16a.

b. Judge Robinson dissented. Pet. App. 19a-30a. Although she considered this “a difficult case,” *id.* at 19a, she concluded that Section 1159(b) should not be limited to aliens with current asylum status in light of Congress’s use of the term “*any* alien granted asylum,” *id.* at 20a (emphasis added), the other provisions imposing continuing requirements, *id.* at 21a-24a, and what she viewed as an “incongruous result” for the waiver provision, *id.* at 29a.

c. The court of appeals denied rehearing en banc. Pet. App. 31a-32a.

SUMMARY OF ARGUMENT

Congress has authorized the Secretary or the Attorney General to “adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum” who meets certain conditions. 8 U.S.C. 1159(b). That provision does not apply to aliens whose asylum status has already been terminated.

A. Reading Section 1159(b) to apply only to aliens with current asylum status is consistent with the statutory text and context. The word “granted” is a past participle that can refer either to a completed action or to a present state. Here, the full statutory phrase indi-

cates the latter. Section 1159(b) contemplates the alien's transition from one status (that of an "alien granted asylum") to another (that of an "alien lawfully admitted for permanent residence"). The alien must be in the first status in order to adjust to the second.

The immediate statutory context confirms that Congress used the phrase "alien granted asylum" to refer to the alien's present status. In a neighboring section, Congress identified benefits available to an "alien granted asylum," including protection from removal and work authorization. 8 U.S.C. 1158(c)(1). Those benefits undisputedly cease when asylum status is terminated. The opportunity to apply for adjustment of status is another benefit that likewise ceases when an alien is no longer "granted asylum." And a 1990 amendment to Section 1159 confirms the point. Congress enacted a separate provision that permits "[c]ertain [f]ormer [a]sylees" to adjust their status under Section 1159(b) "regardless of whether or not such asylum has been terminated." 8 U.S.C. 1159 note. That express exception for a limited class of aliens whose asylum status has been terminated indicates that Section 1159(b) generally does not permit adjustment for those who have lost their asylum status.

B. Petitioners' contrary arguments are unpersuasive. On the text, they argue that the word "granted" indicates a past event, but they ultimately acknowledge that Congress used the same phrase in Section 1158(c)(1) to refer to someone with continuing asylum status. The inclusion of other continuing requirements using different wording in other parts of Section 1159 does not cast doubt on the phrase that Congress used in both Sections 1158(c)(1) and 1159(b) to refer to continuing asylum status. And contrary to petitioners' contention, the Attorney General's statutory authority to waive certain grounds of

inadmissibility when adjusting an alien's status retains its force under the government's reading. The statutory regime simply requires an exercise of discretion not to terminate an alien's asylum if there is a desire to exercise the discretionary waiver authority.

The statutory history and purpose provide no support for petitioners' preferred interpretation. Petitioners highlight the text of a separate adjustment-of-status provision that was superseded decades before Section 1159's enactment and that sheds no light on its meaning. They erroneously assert that the current-asylum requirement would have done no work when Section 1158 was first enacted. And they rely on their incorrect understanding of the Attorney General's waiver authority in attempting to show that Congress intended that some former asylees remain eligible for adjustment.

Finally, petitioners' last-resort appeal to lenity is misplaced. In the immigration context, that rule applies only to grievous ambiguities in deportation statutes. Section 1159(b) is neither a deportation statute nor ambiguous.

ARGUMENT

ADJUSTMENT OF STATUS UNDER 8 U.S.C. 1159(b) IS AVAILABLE ONLY TO ALIENS WITH ASYLUM STATUS

In the Refugee Act, Congress authorized the Secretary or the Attorney General, in his discretion, to “adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum” who meets certain conditions. 8 U.S.C. 1159(b). Petitioners do not qualify for that discretionary benefit because the termination of their asylum status means that they are no longer “alien[s] granted asylum.”

A. The Statutory Text And Context Confirm That Section 1159(b) Limits Adjustment Of Status To Aliens With Asylum Status

The court of appeals correctly held that the phrase “the status of any alien granted asylum” is most naturally read as referring to an alien with asylum status. 8 U.S.C. 1159(b); see Pet. App. 12a. That reading is supported by the statutory text and context.

1. Under the plain text of Section 1159(b), “the status of any alien granted asylum” refers to an alien with asylum status

In determining whether petitioners are eligible for adjustment of status under Section 1159(b), the critical statutory phrase is “the status of any alien granted asylum.” 8 U.S.C. 1159(b). The word “granted” is a past participle. As this Court has recognized, a past participle may indicate “past or completed action,” *Florida Dep’t of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 39 (2008), or it may be used as an “adjective[] to describe the present state of a thing,” *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 84 (2017). See Bryan A. Garner, *Garner’s Modern English Usage* 1229 (5th ed. 2022).

“Widening [the] view to take in the statutory phrase” reveals whether Congress used the term to describe a historical event or a present state. *Henson*, 582 U.S. at 84. The language of Section 1159(b) is focused on the “*status* of any alien granted asylum.” 8 U.S.C. 1159(b) (emphasis added). Status is defined as a person’s “legal relation * * * to the rest of the community,” and includes the “rights, duties, capacities, and incapacities which determine a person to a given class.” *Black’s Law Dictionary* 1264 (5th ed. 1979); see *American Heritage Dictionary* 1260 (1980) (“The legal character or condi-

tion of a person or thing”); *Webster’s Third New International Dictionary* 2230 (1976) (“[T]he condition (as arising out of * * * alienage * * *) of a person that determines the nature of his legal personality, his legal capacities, and the nature of the legal relations to the state or to other persons into which he may enter”). As the court of appeals recognized, “the ordinary meaning of ‘status’ signals a present condition.” Pet. App. 12a (quoting *Cela v. Garland*, 75 F.4th 355, 364 (4th Cir. 2023), cert. denied, 144 S. Ct. 2657 (2024)).

Section 1159(b) plainly uses “status” in its ordinary, present sense. The statute permits the Attorney General to “adjust” (or “change,” *American Heritage Dictionary* 16) an alien’s status from one condition (the “status of an[] alien granted asylum”) to another (the “status of an alien lawfully admitted for permanent residence”), 8 U.S.C. 1159(b). Congress thus used parallel structure to identify the two statuses by means of the conferring event. Just as the “status of an alien lawfully admitted for permanent residence” is lawful-permanent-resident status, see 8 U.S.C. 1101(a)(20), the “status of any alien granted asylum” is asylum status. And in authorizing an adjustment from one status to the other, Section 1159(b) requires that the alien be in the first status at the time of the potential adjustment.

Congress manifestly knows how to provide aliens with immigration benefits that are not conditioned on present status. In 8 U.S.C. 1158(a)(1), for example, Congress provided that “[a]ny alien who is physically present in the United States * * * , irrespective of such alien’s status, may apply for asylum.” And in two subsections of 8 U.S.C. 1255, Congress provided for adjustment of an alien’s status “to that of an alien lawfully admitted for permanent residence” without identifying the alien’s

prior status as part of the threshold eligibility. Section 1255(a) provides threshold eligibility for adjustment of status for “an alien who was inspected and admitted or paroled into the United States” who meets certain conditions, 8 U.S.C. 1255(a), and Section 1255(i) extends threshold eligibility to “an alien physically present in the United States” under certain circumstances, 8 U.S.C. 1255(i)(1). If Congress had wanted to allow all aliens who have ever been granted asylum to be eligible for adjustment of status, without regard to their current status, it could have specified that adjustment was available “irrespective of status” or defined an alien’s threshold eligibility without invoking the alien’s initial status at all. That Congress did not do so in Section 1159(b) indicates that it did not intend that result.

Nor is it unusual for Congress to have used the past participle “granted” as an adjective describing a present state in Section 1159(b). It has used the same formulation, for example, when imposing conditions on “[p]ersons granted authority to make arrests,” 51 U.S.C. 20134; when requiring a “person granted an exemption” from certain requirements to demonstrate continued compliance with conditions, 21 U.S.C. 360j(m)(5); and when providing that “[e]ach person granted a customs broker’s license” shall receive certain permits, 19 U.S.C. 1641(c)(1). In each of those instances, Congress used the past participle, and it would make little sense to read those provisions as imposing requirements or benefits that persist even after the “granted” authorities, exemptions, or licenses have lapsed.

Common usage likewise confirms that past participles are used to refer to present conditions rather than a previous status that has since been rescinded. If a university announced that any person *granted* an hon-

orary degree was invited to a celebratory dinner, no one would expect that invitation to extend to an individual whose honorary degree was revoked. If this Court stated that any lawyer *admitted* to the Supreme Court Bar may sit in the bar section during oral argument, all would understand that a disbarred attorney would be turned away. And, to adapt an example recently used by the Court, if the U.S. Olympic Committee enacted a rule that any athlete *awarded* an Olympic gold medal could be called an Olympic Champion, an athlete who had been stripped of her medal could no longer claim that title. Cf. *Hewitt v. United States*, 606 U.S. 419, 428-429 (2025). As in those common-usage examples, Section 1159(b) grants a particular privilege to a group defined by a particular status. When that status is terminated, the privilege is no longer available.

2. *The immediate statutory context confirms that Section 1159(b) refers to aliens with asylum status*

The immediate statutory context of Section 1159(b) provides strong indications that Congress used the phrase “alien granted asylum” to reach only those with current asylum status. The same phrase is undisputedly used to that effect in a neighboring section of the INA, and Congress enacted a limited exception allowing only certain aliens whose asylum status has been terminated to apply for adjustment under Section 1159(b).

a. In the section of the INA governing grants of asylum, 8 U.S.C. 1158, Congress set out who is eligible to apply for asylum, the conditions for granting asylum, and what benefits accompany asylum status. The subsection with the heading “[a]sylum status” provides that “[i]n the case of an *alien granted asylum* * * * , the Attorney General” “shall not remove” the alien to his home country, “shall authorize the alien to engage in

employment,” and may grant “prior consent” to “allow the alien to travel abroad.” 8 U.S.C. 1158(c)(1)(A)-(C) (emphasis added). The next paragraph further provides that “[a]sylum granted * * * may be terminated” in certain circumstances. 8 U.S.C. 1158(c)(2). Termination of asylum results in the termination of the benefits listed in Section 1158(c)(1). See 8 U.S.C. 1158(c)(3) (providing that an alien whose asylum status has been terminated “is subject to any applicable grounds of inadmissibility and deportability” and may be removed in accordance with certain provisions); 8 C.F.R. 1208.24(c) (requiring notice to aliens that the termination of asylum ends employment authorization).

As petitioners acknowledge (Br. 26), Section 1158(c)(1)’s enumeration of the benefits available to an “alien granted asylum” plainly refers to an alien who retains asylum status. In the very next section of the INA, Congress used the same phrase when granting an additional benefit to “any alien granted asylum”: the opportunity to apply for adjustment of status. 8 U.S.C. 1159(b). Just as the benefits in Section 1158(c)(1) cease upon termination, eligibility for adjustment of status ceases when the alien is no longer “granted asylum.” See *United States Postal Serv. v. Konan*, 607 U.S. 391, 403 (2026) (applying the “presumption that ‘[a] term bears a consistent meaning throughout’” an act) (citation omitted).

To be sure, “the presumption of consistent usage” may “readily yield[] to context.” *Utility Air Regulatory Grp. v. EPA*, 573 U.S. 302, 320 (2014) (citation and internal quotation marks omitted). That is why petitioners’ counterexample (Br. 25-27)—an appearance of “granted asylum” in 8 U.S.C. 1159(b)(2)—is appropriately read as referring to a completed event. There,

Congress required that an alien be “physically present in the United States for at least one year after being granted asylum” to be eligible for adjustment of status. *Ibid.* Section 1159(b)(2) differs from the language in Section 1159(b)’s introductory clause in multiple respects. Unlike the introductory clause, Section 1159(b)(2) does not include the phrase “alien granted asylum.” Instead, it refers to “being granted asylum.” *Ibid.* Congress thus “pair[ed] the past participle with an auxiliary verb,” which is the “ordinar[y]” way “[t]o indicate an action or event” rather than a present status. *EB5 Holdings Inc. v. Edlow*, 166 F.4th 1106, 1112 (D.C. Cir. 2026); see Bryan A. Garner, *The Chicago Guide to Grammar, Usage, and Punctuation* 190 (2016) (*Chicago Guide*) (“With auxiliary verbs, participles function as verbs[.] * * * A participle may also function without an auxiliary as an adjective.”). Further confirming that usage, Section 1159(b)(2) specifies a time period that runs from the date that asylum was granted. In that context, it is evident that the language refers to a completed historical event rather than the alien’s continuing asylum status.

By contrast, Section 1159(b)’s introductory clause, shares relevant contextual cues with the list of benefits in Section 1158(c)(1). Both use the phrase “alien granted asylum”; both provide particular benefits to an “alien granted asylum”; and neither uses an auxiliary verb or otherwise indicates that the historical event rather than present status is relevant. The presumption of consistent usage across those provisions thus remains un rebutted.

b. Further support for reading Section 1159(b) to require current asylum status comes from an amendment to that provision’s applicability made in the Immigra-

tion Act of 1990 (1990 Act), Pub. L. No. 101-649, 104 Stat. 4978.

At the time of the amendment, Section 1159(b) imposed a limit on the number of “alien[s] granted asylum” who could adjust their status in a given fiscal year. See 8 U.S.C. 1159(b) (1988). The 1990 Act increased that limit to 10,000 and added two provisions that affect the operation of Section 1159(b). The first provision is entitled “Waiver of Numerical Limitation for Certain Current Asylees,” and it provides that the “numerical limitation on the number of aliens whose status may be adjusted under section [1159(b)] * * * shall not apply” to certain aliens, including those who had “applied for adjustment of status” under Section 1159(b) “on or before June 1, 1990.” § 104(c), 104 Stat. 4985 (8 U.S.C. 1159 note). The second provision is entitled “Adjustment of Certain Former Asylees,” and it provides that Section 1159(b) shall apply to an alien “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])” and “who is no longer a refugee because of a change in circumstances in a foreign state.” § 104(d)(1)(A) and (B), 104 Stat. 4985 (emphasis added).

Both of those provisions operate on the assumption that those eligible to apply for adjustment of status under Section 1159(b) are current asylees. The first provision does so by referring to aliens who had applied for adjustment of status under Section 1159(b) prior to June 1, 1990, as “[c]ertain [c]urrent [a]sylees” that the provision then exempted from the numerical limit. 1990 Act § 104(c), 104 Stat. 4985. See *Dubin v. United States*, 599 U.S. 110, 120-121 (2023) (noting that “the title of a statute and the heading of a section” may be useful inter-

pretive tools) (citation omitted). The second provision makes its assumption even clearer by providing that “[c]ertain [f]ormer [a]sylees” may apply for adjustment of status “regardless of whether or not” their asylum status “has been terminated.” 1990 Act § 104(d)(1)(A), 104 Stat. 4985. The express articulation of that limited exception “suggests that 8 U.S.C. § 1159(b) does not, as a general matter, allow noncitizens whose asylum status has been terminated to adjust to lawful permanent resident status.” Pet. App. 17a. By including that limited exception but declining to amend the text of Section 1159(b) itself to allow all other former asylees to adjust status, Congress presumably “act[ed] intentionally and purposely.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987) (citation omitted).

B. Petitioners’ Contrary Arguments Lack Merit

Petitioners’ contrary reading of Section 1159(b) is inconsistent with statutory text and context. They give short shrift to the use of identical language in Section 1158(c) to refer to continuing asylum status and brush aside the 1990 Act, while drawing unwarranted inferences from the text and history of other provisions.

1. Petitioners’ textual arguments cannot be squared with the relevant context

a. Petitioners’ textual argument focuses (Br. 16-20) almost exclusively on Congress’s use of the term “granted.” Petitioners contend that “granted” is best read to indicate past or completed action because Congress “often uses past participles in that perfect, passive sense,” Br. 17; that “grant” connotes a completed action, such that Congress would have used a term like “hold[]” or “possess[]” to refer to an ongoing state or would have limited adjustment to “any asylee,” Br. 19;

and that “[t]here is no present ‘grant’ of asylum at the time of adjustment,” Br. 18.

Each of those arguments about Section 1159(b) is undermined by petitioners’ acknowledgment (Br. 26) of “Congress’s use of ‘granted asylum’ to refer to present asylum status in Section 1158(c).” As explained above, see pp. 15-17, *supra*, the use of that phrase in Section 1158(c)(1) demonstrates that Congress shared neither petitioners’ reading of the phrase “alien granted asylum” nor their preference for using only alternative formulations to impose an ongoing-status requirement. Indeed, despite their list of “far more direct ways” to refer to current asylum status, Br. 18-19, petitioners cite no INA provision that actually refers to an “alien possessing asylum,” an “alien holding asylum,” or an “alien with asylum.”

Petitioners’ other alternative—“asylee” (Br. 19)—is also dubious. Although Congress has at times referred to an “asylee” or “asylees,” that term was absent from the Refugee Act, likely because it was not in common use in 1980. Seven years later, Bryan A. Garner observed that “asylee” was “becoming a standard word in the language of the law for ‘a refugee applying for asylum’”—a definition that does not clearly include an alien who has already been granted asylum status. *A Dictionary of Modern Legal Usage* 71 (1987). Even so, he noted that the word had “not yet made its way into the dictionaries.” *Ibid.*; see *Webster’s Dictionary of English Usage* 382 (1989) (noting that William Safire “has noticed such coinages as *asylee* for one seeking asylum”; concluding that such words had not yet “established themselves in the language”). The word was, for instance, absent from the second edition of the *Oxford English Dictionary* in 1989 and the second edition

of the *Random House Unabridged Dictionary* as newly revised and updated in 1993. It was not defined in *Black's Law Dictionary* until 1999. Compare *Black's Law Dictionary* 124 (6th ed. 1990) (listing *asylum*, but not *asylee*), with *Black's Law Dictionary* 121 (7th ed. 1999) (defining *asylee* as “[a] refugee applying for asylum; an asylum-seeker”).

Petitioners’ contention that Congress should have used a different formulation in Section 1159(b) than the one it used in Section 1158(c)(1) would “allow the perfect to be the enemy of the merely excellent.” *Tapia v. United States*, 564 U.S. 319, 328 (2011). “Congress expressed itself clearly” even if petitioners now think that they have “come up with something even better.” *Ibid.*

b. Congress’s use of the term “any” in Section 1159(b) does not change that result. While the word “any” has a broadening effect, see *Patel v. Garland*, 596 U.S. 328, 338 (2022), “it cannot expand the reach of the noun it modifies,” *City & County of San Francisco v. EPA*, 604 U.S. 334, 348 (2025). The phrase “alien granted asylum” refers either to any alien with asylum status or to any alien who was once granted that status. “Any” ensures that all aliens in the appropriate category are included, but it cannot “transform[]” or “change in the least[] the clear meaning of the phrase selected by Congress.” *Freeman v. Quicken Loans, Inc.*, 566 U.S. 624, 635 (2012). If, for example, Congress had stated in Section 1158(c) that the listed benefits applied “[i]n the case of *any* alien granted asylum,” that would not prevent those benefits from lapsing for any alien whose asylum status is terminated. The same reasoning applies to Section 1159(b).

After giving outsized importance to the term “any,” petitioners seek (Br. 19) to discount the relevance of

Section 1159(b)'s reference to the “*status* of any alien granted asylum.” 8 U.S.C. 1159(b) (emphasis added). Petitioners recognize (Br. 19) that “status” refers to an alien’s present state, but they contend that Congress was indifferent as to what the alien’s present status is, so long as the alien once had asylum status. That assertion ignores the structure of Section 1159(b), which identifies both the post-adjustment “status of an alien lawfully admitted for permanent residence” and the pre-adjustment “status of any alien granted asylum” by using parallel language, indicating that both phrases identify a relevant status. See pp. 12-13, *supra*.

Petitioners attempt (Br. 20) to escape that parallelism by returning to the word “any” and contending that it “dissociates a noncitizen’s status from whether he was ‘granted asylum.’” But that would be a particularly oblique way to indicate that one phrase referring to status does not identify a relevant status even when the parallel phrase does. Far more likely, Congress simply used “any” rather than “an” based on its standard drafting practices, to ensure that “all of the members of the class of individuals or entities” are covered. Office of the Legislative Counsel, U.S. Senate, *Legislative Drafting Manual* § 104(b)(2) (1997).

That Congress has elsewhere authorized adjustment of status for certain aliens who are without lawful status does not indicate otherwise. Contra Pet. Br. 20 (citing 8 U.S.C. 1255a, 1255b, and 1229b). The provisions in which Congress has done so look nothing like Section 1159(b). Instead, they expressly provide that adjustment is available to certain aliens who are “in an unlawful status,” 8 U.S.C. 1255a(a)(2)(A), who have “failed to maintain a status,” 8 U.S.C. 1255b(a), or who are “inadmissible or deportable,” 8 U.S.C. 1229b(b)(1). The ex-

istence of provisions explicitly providing for aliens without lawful status to adjust their status in narrow circumstances has no bearing on the interpretation of a provision that never mentions unlawful status and instead focuses on the “status of any alien granted asylum.”

2. *The contextual features that petitioners invoke do not support their interpretation*

In turning to statutory context, petitioners give undue weight to some provisions while misapprehending or failing to recognize the significance of others.

a. Petitioners contend (Br. 21-23) that Congress used clearer language to impose other continuing requirements in Section 1159. Specifically, Congress has required that an alien “continue[] to be a refugee” and be “admissible * * * at the time of examination for adjustment.” 8 U.S.C. 1159(b)(3) and (5). And, in addressing refugees who were conditionally admitted to the United States under 8 U.S.C. 1157(c), Congress has required those “whose admission has not been terminated” to “return or be returned to the custody of the Department of Homeland Security for inspection and examination” after one year. 8 U.S.C. 1159(a)(1)(A).

While those provisions undoubtedly impose continuing requirements, they do not show that Congress consistently used any single formulation to do so. Congress could sensibly choose to achieve a similar result in Section 1159(b) by permitting an adjustment from the initial status of an “alien granted asylum” to the new status of a lawful permanent resident. The use of “different and arguably even more obvious terms” in some parts of Section 1159(b) does not make its introductory clause “any less clear.” *Department of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 51-52 (2024).

Petitioners nevertheless assert (Br. 22) that the phrase “any alien granted asylum” is “not like” the language in Section 1159’s other continuing requirements. But that is because the requirement is included in Section 1159(b)’s introductory clause identifying the threshold category of eligible aliens rather than being listed as an additional condition. Presumably, if Congress had provided for adjustment of “the status of any alien *who is* granted asylum,” petitioners would agree that current asylum status is required. Yet that phrasing would still differ markedly from other continuing requirements. And as the list of benefits in Section 1158(c) shows, Congress did not need to use “is” to indicate that the phrase “alien granted asylum” excludes those whose asylum status is terminated. See pp. 15-17, *supra*. Instead, by using “granted asylum” without an auxiliary verb, Congress was already indicating that the phrase functions “as an adjective.” *Chicago Guide* 160.

b. Petitioners attempt (Br. 23) to use the structure of Section 1159(b) to their advantage by contending that Congress would have placed any continuing requirement in a numbered paragraph rather than in Section 1159(b)’s introductory clause. That inference lacks support. Regardless of the interpretation this Court adopts, the introductory clause must be read to identify the threshold category of aliens eligible for adjustment of status, whereas the numbered paragraphs impose additional limitations within that category. Nothing about that structure suggests that the threshold category may depend on a completed event but not a continuing status.

c. Section 1159(c)’s waiver authority likewise does not support petitioners’ interpretation. Under that provision, the Attorney General “may waive” certain bars to admissibility that would otherwise prevent an alien

from adjusting status when he finds that doing so would further “humanitarian purposes,” “assure family unity,” or be “in the public interest.” 8 U.S.C. 1159(c). Petitioners contend (Br. 24) that, because there is “substantial overlap” in the grounds for inadmissibility and the grounds for termination of asylum status, reading Section 1159(b) to require current asylum status would often “strip[] [the Attorney General] of the discretion” Section 1159(c) affords him. That does not follow.

Petitioners’ account ignores that whether to terminate asylum in the first place is a decision that is vested in the discretion of the Attorney General, see 8 U.S.C. 1158(c), and often exercised, as here, by his delegees in the immigration courts, see pp. 5-7, *supra* (describing the terminations of petitioners’ asylum status by IJs). If the Attorney General wishes to exercise his discretion to waive inadmissibility and allow a particular alien to adjust status, he need only exercise his discretion at both points in a way that achieves that outcome. Contrary to petitioners’ contention (Br. 24), giving the Attorney General the ability to make both discretionary decisions does not “gut the Attorney General’s discretion.” It simply requires the Attorney General and his delegees to decline to terminate an alien’s asylum status in the first instance if they want to retain the discretion to grant that alien lawful-permanent-resident status.

d. Petitioners also fail to take due account of provisions in the 1990 Act that addressed the applicability of Section 1159(b). Petitioners attempt (Br. 33-34) to limit the significance of those provisions by asserting that the purpose of the amendment was to allow aliens granted asylum to adjust status even if they no longer qualified as refugees because of changed circumstances in their home countries following the Cold War. Petitioners are

correct that the amendment was motivated by a concern that changing conditions in certain countries would render some aliens who had been granted asylum ineligible to adjust their status. But petitioners are incorrect to suggest that Congress viewed the ineligibility as stemming only from Section 1159(b)(3)'s requirement that an alien "continues to be a refugee," and not from the possibility that the alien's asylum status could be terminated due to the changed conditions.

The 1990 Act plainly addressed both of those concerns. To overcome the concern that some aliens might no longer qualify as refugees, Congress specified that "the provisions of [Section 1159(b)] shall also apply to an alien * * * who is no longer a refugee because of a change in circumstances in a foreign state." 1990 Act § 104(d)(1)(B), 104 Stat. 4985 (8 U.S.C. 1159 note). To overcome the separate concern that some aliens' asylum status might be terminated, Congress specified that "the provisions of [Section 1159(b)] shall also apply to an alien * * * 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])." 1990 Act § 104(d)(1)(A), 104 Stat. 4985. Thus, instead of referring to an alien "granted asylum," Congress employed a structure similar to that in Section 1159(b)(2), using an auxiliary verb to indicate a completed event and focusing on the date of that event. See p. 17, *supra*. That distinct grammatical formulation suggests that the amendment applies to aliens previously granted asylum without necessarily requiring current status. The addition of the parenthetical then makes clear that an alien who received asylum before the 1990 Act remains eligible for adjustment of status "regardless of whether or not such asylum has been terminated." 1990 Act § 104(d)(1)(A),

104 Stat. 4985. Petitioners do not dispute the “clarify[ing]” effect of the parenthetical in the 1990 Act. Br. 34. But their attempt to minimize its significance for Congress’s understanding of these provisions depends on conflating the phrasing of Section 104(d)(1)(A) with Section 1159(b) itself. In the limited exception with the auxiliary verb, the parenthetical was clarifying; had such language been included in Section 1159(b), it would have been transformative.

The legislative history that petitioners cite (Br. 33-34) confirms that Members of Congress viewed the termination of asylum as generally precluding a subsequent adjustment of status under Section 1159(b). In the floor debate that petitioners quote, the House of Representatives was considering an amendment that would have addressed the perceived problem in a different way than the language eventually adopted. That amendment would have added a new sentence to Section 1158, stating that the “Attorney General may not terminate [asylum] status on the basis that the alien is no longer a refugee unless the alien has been provided notice of such termination and the right to apply for adjustment of status under [Section 1159(b)],” as well as an opportunity “to file an application.” 136 Cong. Rec. 27,133 (1990). The amendment then would have stricken from Section 1159(b)(3) the requirement that an alien must “continue[] to be a refugee” in order to adjust status. See *ibid.*

By ensuring that an alien whose asylum status was subject to potential termination would be given an opportunity to adjust status before any termination could occur, the proposed amendment operated on the understanding that the termination of asylum would render an alien ineligible to adjust status under Section 1159(b). Confirming that understanding, one Member who spoke

in favor of the amendment explained that it “would install new procedural safeguards against summary termination of asylee status.” 136 Cong. Rec. at 27,133 (statement of Rep. Rostenkowski). Such safeguards were necessary because “[o]therwise, summary termination would be available to the immigration authorities as a mechanism to short-circuit an asylee’s attempt to adjust to permanent resident status under the new rules.” *Ibid.* Petitioners’ view belies the underlying premise that a termination of asylum status would also terminate an alien’s ability to adjust to lawful-permanent-resident status under Section 1159(b).

Congress ultimately opted not to enact that amendment. Instead of eliminating the requirement to continue being a refugee for all aliens applying to adjust status under Section 1159(b) going forward, Congress adopted a narrower fix, which targeted aliens who had been granted asylum before the date of the amendment’s enactment. 1990 Act § 104(d)(1)(A), 104 Stat. 4985. In doing so, Congress remained attuned to the concern that “[c]ertain [f]ormer [a]sylees” would not be eligible for adjustment under Section 1159(b) due to termination of their status. § 104(d), 104 Stat. 4985. Its decision to address that concern for only a limited class of aliens should be taken into account in interpreting Section 1159(b) as it stands today.

In a final attempt to evade the implications of the 1990 Act, petitioners contend (Br. 35) that the Court should disregard the provisions about “[c]ertain [f]ormer [a]sylees” because their enactment cannot affect the meaning of the earlier-enacted text in Section 1159(b). But as this Court has long understood and recently reaffirmed, “[i]t is the ‘most rudimentary rule’ of statutory interpretation ‘that courts do not interpret

statutes in isolation, but in the context of the *corpus juris* of which they are a part, including later-enacted statutes.” *Watson v. Republican Nat’l Comm.*, 146 S. Ct. 2165, 2173 (2026) (quoting *Branch v. Smith*, 538 U.S. 254, 281 (2003)). Thus, “a later enactment will ‘often change the meaning that would otherwise be given to an earlier provision that is ambiguous.’” *Id.* at 2177 n.8 (quoting Antonin Scalia & Bryan A. Garner, *Reading Law* 330 (2012)). To the extent that any ambiguity existed in Section 1159(b) before 1990, the Court should “interpret the earlier provision ‘to contain that permissible meaning which fits most logically and comfortably into the body of both previously and subsequently enacted law.’” *Ibid.* (quoting *West Va. Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 100 (1991)).

Petitioners’ cited authorities are not to the contrary. In *Bostock v. Clayton County*, 590 U.S. 644 (2020), the Court rejected attempts to draw inferences based on *inaction* by later Congresses. *Id.* at 670. An unenacted statute plainly does not become part of the body of law that courts must read as a body. And in *O’Gilvie v. United States*, 519 U.S. 79 (1996), the Court interpreted the meaning of a statute as it existed in a particular tax year and therefore declined to rely on an amendment to the statute that postdated that tax year. *Id.* at 81-82, 89-90. Neither case provides a basis for this Court to ignore the relevance of a provision that was a part of the statutory regime for decades before petitioners sought to adjust their own status.

3. *Nothing in the statutory history indicates that Congress intended petitioners’ reading*

The statutory history that petitioners invoke does not support their reading. Their arguments are prem-

ised on unfounded inferences that do not withstand scrutiny.

a. Petitioners spend several pages (Br. 27-32) rehearsing the history of 8 U.S.C. 1255—a separate statutory provision that allows for adjustment of status for certain aliens. As originally enacted, that provision allowed for adjustment of 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.” 8 U.S.C. 1255(a) (1952). In 1958, Congress removed the language stating that the alien must continue to maintain his nonimmigrant status. See 8 U.S.C. 1255(a) (1958). Then, in 1986, Congress added a new subsection providing that adjustment under Section 1255(a) was not available for most aliens lacking a lawful status. See 8 U.S.C. 1255(c) (Supp. IV 1987). Petitioners contend (Br. 28) that when Section 1159 was enacted in 1980, if Congress had wanted to impose a continuing-status requirement, it would have reached back to the language it had used 28 years earlier in the 1952 version of Section 1255(a).

That argument essentially repeats petitioners’ unpersuasive contention that Congress uses only a limited set of phrases to convey a continuing requirement and that “alien granted asylum” is not among them. Moreover, Congress presumably specified in the 1952 version of Section 1255(a) that an alien must “continu[e] to maintain” his status because that provision referred to an “alien who *was* lawfully admitted” in a particular status, 8 U.S.C. 1255(a) (1952) (emphasis added)—a phrase with a past-tense auxiliary verb that is more readily construed to refer to a past event than a present status, see p. 17, *supra*. Regardless, it is exceedingly unlikely that the 1980 Congress had in mind the long-superseded

1952 statute and viewed its formulation as the model for imposing any continuing-status condition.

b. Petitioners next invoke (Br. 29-30) the history of Sections 1158 and 1159 and specifically contend (Br. 30) that, as those provisions were originally enacted, “a continuing asylum status requirement would have done no work.” That is the case, according to petitioners, because in 1980, the Attorney General could terminate asylum status only if the alien was no longer a refugee. See Refugee Act § 208(b), 94 Stat. 105. And because Section 1159(b) already conditioned adjustment of status on the alien’s continuing to be a refugee, petitioners contend (Br. 30) that a continuing-asylum-status requirement would have “served no purpose.” That is incorrect.

The threshold requirement of asylum status serves the purpose of pretermittting any further inquiry into the remaining requirements for adjustment of status. If an alien’s asylum status were terminated based on changed conditions and he could later apply for adjustment of status, that would allow him to relitigate whether he qualifies as a refugee. If there were any lapse in time between the termination and consideration of an application for adjustment of status, the alien could assert that there had been intervening events in his home country that rendered him a refugee once more. But requiring continuing asylum status allows the Attorney General to make a single determination during the termination proceedings and then decline to undertake additional factfinding regarding country conditions should the alien thereafter apply for adjustment of status.

In addition, giving effect to the termination of a previous grant of asylum vindicates the agency’s inherent

power to revisit its own decisions to “correct its own errors or otherwise appropriately to modify” its action, including “when a fraud has been perpetrated” on the agency. *Alberta Gas Chems., Ltd. v. Cenalese Corp.*, 650 F.2d 9, 13 (2d Cir. 1981) (quoting 2 Kenneth Culp Davis, *Administrative Law Treatise* § 18.09, at 606 (1958)); see *Mazaleski v. Treusdell*, 562 F.2d 701, 720 (D.C. Cir. 1977) (“We have many times held that an agency has the inherent power to reconsider and change a decision if it does so within a reasonable period of time.”) (citation omitted); see also *American Trucking Ass’ns v. Frisco Transp. Co.*, 358 U.S. 133, 145 (1958) (“[T]he presence of authority in administrative officers and tribunals to correct [inadvertent ministerial] errors has long been recognized—probably so well recognized that little discussion has ensued in the reported cases.”). In keeping with that well-recognized power, regulations predating the Refugee Act permitted the Immigration and Naturalization Service to reopen and reconsider immigration decisions on its own motion. 8 C.F.R. 103.5 (1979).

The regulations implementing Section 1158 have also consistently recognized that authority. Since the first interim regulations were adopted, they have provided that asylum status may be terminated or revoked where it appears that the alien was not in fact eligible for asylum when it was granted, including because of fraud. See 8 C.F.R. 1208.24(a); 8 C.F.R. 208.15(a)(3) (1981). An alien may have been ineligible for asylum for reasons having nothing to do with his refugee status. See 8 C.F.R. 208.8(f)(1) (1981) (providing that asylum shall be denied if the alien has engaged in persecution or certain criminal conduct, among other reasons). In those circumstances, too, Section 1159(b)’s threshold require-

ment of continuing asylum status would preclude those aliens who were previously granted asylum on mistaken or fraudulent grounds from being eligible to apply for a further immigration benefit.

Nor does the presence of a continuing-asylum requirement render superfluous the additional requirement that the alien “continues to be a refugee.” 8 U.S.C. 1159(b). Because the termination of asylum status has always been within the discretion of the Attorney General, an alien may continue to be “granted asylum” even when he ceases to qualify as a refugee. Congress has provided the Attorney General with the discretion not to terminate asylum status in such circumstances, but it has not further permitted an adjustment to lawful-permanent-resident status under Section 1159(b).

As petitioners recognize (Br. 31), Congress broadened the statutory grounds for terminating asylum in 1996. See Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, § 604(a), 110 Stat. 3009-692 to 3009-693. Petitioners nevertheless object (Br. 32) that, under the government’s interpretation, Section 1159(b)’s threshold requirement of asylum status increased in importance when the additional bases for termination were enacted. With each additional ground for termination, petitioners explain, more aliens could have their status terminated and then become ineligible to adjust their status. Petitioners believe (*ibid.*) that “Congress would not have made such a significant change without saying a word.”

But Congress actually said many words when making that change. It expressly added each of the additional bases for terminating asylum. And just six years earlier, Congress had enacted the 1990 Act, in which

Congress made evident that it was aware of the effect that termination of asylum would have on the ability to adjust status. See pp. 17-19, *supra*. When Congress expanded the grounds for termination in 1996, it could have altered the threshold condition for adjustment of status, just as it had done for “[c]ertain [f]ormer [a]sylees” in the 1990 Act. § 104(d), 104 Stat. 4985 (8 U.S.C. 1159 note). But it chose not to do so. No additional words were required to effectuate the desired change.

In any event, petitioners overstate the changes that IIRIRA made with respect to termination of asylum status. Ever since the Attorney General adopted interim regulations implementing Section 1158 in 1980, regulations have provided for the termination or revocation of asylum status based on a “conviction of a serious crime.” 8 C.F.R. 208.15(a)(2) (1981); see 45 Fed. Reg. 37,392 (June 2, 1980). Regardless of whether petitioners view those regulations as consistent with the statutory language, they formed part of the backdrop when Congress amended the statutory bases for termination in 1996. See 8 C.F.R. 208.14(d)(1), 208.24(a)(3) (1995). Congress therefore would have been aware that additional statutory grounds for termination would not constitute a “sea change.” Pet. Br. 32 (citation omitted).

4. Petitioners’ interpretation is not necessary to achieve Congress’s purposes

Petitioners contend that their interpretation is more consistent with the statutory purpose. But in doing so, they suggest barriers to the statute’s operation that do not exist. Adjustments to lawful-permanent-resident status under Section 1159(b) can continue to operate as Congress intended without being made available to former asylees.

a. Petitioners once again invoke (Br. 36-38) the Attorney General's waiver authority in contending that Congress did not intend to foreclose adjustment of status for all aliens whose asylum status has been terminated. That argument suffers from the same flaws as petitioners' contextual argument relying on the same waiver provision. See pp. 24-25, *supra*. By ignoring the Attorney General's discretion when deciding whether to terminate asylum, petitioners draw unsupported inferences. Permitting the Attorney General to waive grounds for inadmissibility that overlap with grounds for asylum termination indicates that Congress did not intend to foreclose adjustment to every alien whose asylum status *could be* terminated. But it does not follow that Congress further intended to allow adjustment for those whose asylum status *actually has been* terminated.

An alien's asylum status may be subject to termination for reasons "entirely outside [his] control," Pet. Br. 36, or based on criminal conduct that is "relatively minor," *id.* at 37. If so, those factors may weigh against the Attorney General's exercise of discretion to terminate asylum. Where the Attorney General decides not to terminate asylum, Congress has left open a pathway to citizenship in some instances. See *In re K-A-*, 23 I. & N. Dec. 661, 662 (B.I.A. 2004) (dismissing appeal of IJ decision declining to terminate alien's asylum status and adjusting her status based on the hardship her removal would cause to her "severely disabled United States citizen child"). But the Attorney General may also exercise discretion to decide that, despite potentially sympathetic circumstances, termination of asylum is warranted. That discretion may be exercised on an individualized basis when taking into consideration an alien's particular circumstances, or by regulation as in

the case of derivative asylees. See 8 C.F.R. 1208.24(d) (terminating derivative asylum status automatically upon the termination of the principal applicant's asylum status). Where the Attorney General concludes that asylum should be terminated, no congressional purpose is thwarted by precluding that alien from seeking adjustment of status under Section 1159(b).

Petitioner Wassily's circumstances do not suggest otherwise. In his case, the IJ—using authority delegated from the Attorney General, see 8 C.F.R. 1003.10, 1208.24(f), 1245.2(a)(1)(i)—terminated Wassily's asylum status before considering his application to adjust status (while operating under the mistaken belief that continuing asylum status was unnecessary at that point). See Pet. App. 52a. Of course, the Court's resolution of this case will prevent such a mistake from being repeated in the future. But even for Wassily, the IJ's error was no bar to the Attorney General's exercise of discretion. If he had wished to do so, he could have directed the Board to refer the case to him and exercised his own discretion to decline to terminate Wassily's asylum status before adjusting his status to that of a lawful permanent resident. See 8 C.F.R. 1003.1(h)(1)(i) (requiring the Board to refer to the Attorney General all cases that "[t]he Attorney General directs the Board to refer to him"). That the Attorney General has the ultimate discretion and must exercise that discretion consistently across the two decisions does not "make[] nonsense of the statutory scheme." Pet. Br. 39. It simply indicates that Congress reasonably expected the Executive to harmonize its various interests when exercising both forms of discretion.

b. Petitioners likewise miss the mark in contending (Br. 38) that precluding former asylees from adjusting

status under Section 1159(b) would afford them “less protection than their refugee counterparts,” who may adjust status under Section 1159(a). According to petitioners (*ibid.*), for aliens admitted as refugees as well as those granted asylum, the focus when considering eligibility for adjustment of status should be on whether they have a “well-founded fear of persecution” (and therefore continue to be refugees).

Even under petitioners’ interpretation of “alien granted asylum,” however, the availability of adjustment to refugees and asylees would not be the same. For the former, “refugee status” may be terminated only when “the alien was not in fact a refugee * * * at the time of the alien’s admission.” 8 U.S.C. 1157(c)(4); see 8 C.F.R. 207.9. But an alien who is admitted as a refugee does not have to continue to qualify as a refugee at the time of adjustment. 8 U.S.C. 1159(a). Thus, if country conditions changed in the intervening year between his admission as a refugee and his return to DHS for adjustment of status, that would not be a basis for terminating his refugee status or for declining to adjust his status to that of an alien lawfully admitted for permanent residence. By contrast, an “alien[] granted asylum” is not eligible to adjust status unless he “continues to be a refugee.” 8 U.S.C. 1159(b)(3).

More fundamentally, Congress designed the statutory framework that treats those with refugee status and those with asylum status differently in certain respects. Congress decided to allow for termination of asylum status in more circumstances than refugee status. And Congress imposed requirements for adjustment for “aliens granted asylum” in Section 1159(b) that it did not impose for refugees in Section 1159(a).

Such policy choices are for Congress alone. See *Patel*, 596 U.S. at 346.

5. *Resort to the immigration rule of lenity is unwarranted*

Petitioners finally resort (Br. 40-44) to lenity, citing the “longstanding principle of construing any lingering ambiguities in deportation statutes in favor of the alien.” *INS v. St. Cyr*, 533 U.S. 289, 320 (2001) (quoting *Cardoza-Fonseca*, 480 U.S. at 449). That argument fails.

a. As an initial matter, the principle that petitioners cite does not apply because Section 1159 is not a deportation statute. The principle is grounded in this Court’s reasoning that “deportation is a drastic measure and at times the equivalent of banishment or exile,” such that the Court “will not assume that Congress meant to trench on [an alien’s] freedom beyond that which is required by the narrowest of the several possible meanings of the words used.” *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948); see *INS v. Errico*, 385 U.S. 214, 225 (1966). The Court thus expects Congress to speak with added clarity when dealing with the serious matter of deportation.

In allowing certain aliens granted asylum to adjust their status to that of a lawful permanent resident, Section 1159(b) does not deal with deportation. Instead, it provides a discretionary immigration benefit that is a step along the path to citizenship. See 8 U.S.C. 1427(a) (conditioning naturalization in part on an alien residing continuously in the United States for at least five years after “being lawfully admitted for permanent residence”); see also Pet. App. 13a-14a. When such benefits are at issue, this Court has at times construed any ambiguity in favor of the government. See *Swan & Finch*

Co. v. United States, 190 U.S. 143, 146 (1903) (holding that where a “governmental grant of a privilege or benefit” is at issue, “it is to be construed in favor of the government and against the party claiming the grant”); *United States v. Manzi*, 276 U.S. 463, 467 (1928) (applying that principle to a grant of citizenship).

Petitioners nevertheless contend (Br. 43) that this Court has applied the lenity principle beyond deportation statutes to “provisions that bear on whether a non-citizen will or will not be removed.” But the examples they cite involved statutes that were directly connected to deportation or removal proceedings. In *Errico*, for example, the statute involved an express waiver of deportation for certain aliens. 385 U.S. at 215. *St. Cyr* involved a statute that had been interpreted to authorize certain aliens “to apply for a discretionary waiver from deportation.” 533 U.S. at 295. And in *Dada v. Mukasey*, 554 U.S. 1 (2008), the Court considered the interaction between “the statutory right to file a motion to reopen in removal proceedings” and the “rules governing voluntary departure” when requested at the conclusion of removal proceedings. *Id.* at 8; see *id.* at 8-9.

Section 1159(b)’s connection to removal is far more attenuated. Nothing in the text of Section 1159(b) expressly connects it to removal, and it regularly operates wholly outside the context of removal proceedings. Under petitioners’ logic, the rule of lenity would apply to any provision authorizing immigration benefits that could prevent removal—including naturalization provisions. U.S. citizenship is the ultimate protection against removal, and aliens with lawful-permanent-resident status may attempt to naturalize to avoid removal proceedings, just as petitioners here sought to adjust their status. See, e.g., *In re Hidalgo*, 24 I. & N. Dec. 103, 107-

108 (B.I.A. 2007) (recognizing that an IJ may terminate removal proceedings if DHS provides “affirmative communication regarding the [alien’s] prima facie eligibility for naturalization”). Yet that would run counter to this Court’s recognition that “[c]itizenship is a high privilege, and when doubts exist concerning a grant of it, generally at least, they should be resolved in favor of the United States.” *Manzi*, 276 U.S. at 467. The Court should therefore decline to extend the rule of lenity to this context.

b. In all events, “even assuming that the rule of lenity can be invoked in this particular civil immigration context, the rule applies only if after seizing everything from which aid can be derived, there remains grievous ambiguity.” *Pugin v. Garland*, 599 U.S. 600, 610 (2023) (citation and internal quotation marks omitted). Because the traditional tools of statutory interpretation are sufficient to conclude that “the status of any alien granted asylum” refers to an alien with current asylum status, there is no basis for resorting to lenity. See *ibid.*

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

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APPENDIX

1. 8 U.S.C. 1158 provides:

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.

(1a)

(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 appli-

cant 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 reason-

able 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 section¹ 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.

(d) Asylum procedure

(1) Applications

The Attorney General shall establish a procedure for the consideration of asylum applications filed under subsection (a). The Attorney General may re-

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

quire applicants to submit fingerprints and a photograph at such time and in such manner to be determined by regulation by the Attorney General.

(2) Employment

An applicant for asylum is not entitled to employment authorization, but such authorization may be provided under regulation by the Attorney General. An applicant who is not otherwise eligible for employment authorization shall not be granted such authorization prior to 180 days after the date of filing of the application for asylum.

(3) Fees

The Attorney General shall impose fees for the consideration of an application for asylum, for employment authorization under this section, and for adjustment of status under section 1159(b) of this title. Nothing in this paragraph may be construed to limit the authority of the Attorney General to set additional adjudication and naturalization fees in accordance with section 1356(m) of this title.

(4) Notice of privilege of counsel and consequences of frivolous application

At the time of filing an application for asylum, the Attorney General shall—

(A) advise the alien of the privilege of being represented by counsel and of the consequences, under paragraph (6), of knowingly filing a frivolous application for asylum; and

(B) provide the alien a list of persons (updated not less often than quarterly) who have in-

licated their availability to represent aliens in asylum proceedings on a pro bono basis.

(5) Consideration of asylum applications

(A) Procedures

The procedure established under paragraph (1) shall provide that—

(i) asylum cannot be granted until the identity of the applicant has been checked against all appropriate records or databases maintained by the Attorney General and by the Secretary of State, including the Automated Visa Look-out System, to determine any grounds on which the alien may be inadmissible to or deportable from the United States, or ineligible to apply for or be granted asylum;

(ii) in the absence of exceptional circumstances, the initial interview or hearing on the asylum application shall commence not later than 45 days after the date an application is filed;

(iii) in the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within 180 days after the date an application is filed;

(iv) any administrative appeal shall be filed within 30 days of a decision granting or denying asylum, or within 30 days of the completion of removal proceedings before an immigration judge under section 1229a of this title, whichever is later; and

(v) in the case of an applicant for asylum who fails without prior authorization or in the absence of exceptional circumstances to appear for an interview or hearing, including a hearing under section 1229a of this title, the application may be dismissed or the applicant may be otherwise sanctioned for such failure.

(B) Additional regulatory conditions

The Attorney General may provide by regulation for any other conditions or limitations on the consideration of an application for asylum not inconsistent with this chapter.

(6) Frivolous applications

If the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(A), the alien shall be permanently ineligible for any benefits under this chapter, effective as of the date of a final determination on such application.

(7) No private right of action

Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

(e) Commonwealth of the Northern Mariana Islands

The provisions of this section and section 1159(b) of this title shall apply to persons physically present in the Commonwealth of the Northern Mariana Islands or arriving in the Commonwealth (whether or not at a desig-

nated port of arrival and including persons who are brought to the Commonwealth after having been interdicted in international or United States waters) only on or after January 1, 2014.

2. 8 U.S.C. 1159 provides:

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.

3. 8 U.S.C. 1159 note provides in pertinent part:

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

Pub. L. 101-649, title I, § 104(c), (d), Nov. 29, 1990, 104 Stat. 4985, as amended by Pub. L. 104-208, div. C, title VI, § 604(b)(2), Sept. 30, 1996, 110 Stat. 3009-694, 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 of the Immigration and Nationality Act [8 U.S.C. 1158]),

“(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.]

4. 8 C.F.R. 208.8(f) (1981) provided:

Decision by the district director.

Denial—(1) *General*. The district director shall deny a request for asylum or extension of asylum status if it is determined that the alien:

(i) Is not a refugee within the meaning of section 101(a)(42) of the Act;

(ii) Has been firmly resettled in a foreign country;

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

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

(v) There are serious reasons for considering that the alien has committed a serious non-political crime outside the United States prior to the arrival of the alien in the United States; or

(vi) There are reasonable grounds for regarding the alien as a danger to the security of the United States.

(2) *Discretion*. Among other grounds, the district director may deny a request for asylum or extension of asylum status in the exercise of discretion if it is deter-

mined that there is an outstanding offer of resettlement by a third nation where the applicant will not be subject to persecution and the applicant's resettlement in a third nation is in the public interest.

(3) *Applicant for admission.* If an asylum request by an applicant for admission is denied, he/she shall be expeditiously placed under exclusion proceedings, unless the applicant elects to withdraw the application for admission.

(4) *Applicant in the United States.* If a request for asylum or extension of asylum by an alien in the United States is denied, the district director may in his discretion, grant voluntary departure pursuant to O.I. 242.10, or commence deportation proceedings pursuant to 8 CFR 242.1.

5. 8 C.F.R. 208.15(a) (1981) provided:

Termination of asylum status.

Ground. (1) Changed circumstances in the asylee's country of nationality, or last habitual residence if he/she has no nationality, eliminates the need for asylum, or;

(2) The asylee poses a danger to the security of the United States, or because of conviction of a serious crime poses a danger to the community, as described in § 208.8(f)(iv) of this part, or;

(3) It appears that the alien was not in fact eligible for asylum for any reason specified in § 208.8(f).

6. 8 C.F.R. 208.14(d) (1995) provided:

Approval, denial, or referral of application.

Mandatory denials. An application for asylum shall be denied if:

- (1) The alien, having been convicted by a final judgment of a particularly serious crime in the United States, constitutes a danger to the community;
- (2) The applicant has been firmly resettled within the meaning of § 208.15;
- (3) There are reasonable grounds for regarding the alien as a danger to the security of the United States; or
- (4) The alien has been convicted of an aggravated felony, as defined in section 101(a)(43) of the Act, 8 U.S.C. 1101(a)(43).

7. 8 C.F.R. 208.24(a) (1995) provided:

Revocation of asylum or withholding of deportation.

Revocation of asylum by the Assistant Commissioner, Office of Refugees, Asylum, and Parole. Upon motion by the Assistant Commissioner and following an interview by an asylum officer, the grant to an alien of asylum made under the jurisdiction of an Asylum Officer may be revoked if, by a preponderance of the evidence, the INS establishes that:

- (1) The alien no longer has a well-founded fear of persecution upon return due to a change of conditions in the alien's country of nationality or habitual residence;

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

(3) The alien has committed any act that would have been grounds for denial of asylum under § 208.14(d).

8. 8 C.F.R. 1208.24 provides in pertinent part:

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).

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(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.

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(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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9. 8 C.F.R. 1209.2(a) provides:

Adjustment of status of alien granted asylum.

The provisions of this section shall be the sole and exclusive procedure for adjustment of status by an

asylee admitted under section 208 of the Act whose application is based on his or her asylee status.

(a) *Eligibility.* (1) Except as provided in paragraph (a)(2) or (a)(3) of this section, the status of any alien who has been granted asylum in the United States may be adjusted to that of an alien lawfully admitted for permanent residence, provided the alien:

- (i) Applies for such adjustment;
- (ii) Has been physically present in the United States for at least one year after having been granted asylum;
- (iii) Continues to be a refugee within the meaning of section 101(a)(42) of the Act, or is the spouse or child of a refugee;
- (iv) Has not been firmly resettled in any foreign country; and
- (v) Is admissible to the United States as an immigrant under the Act at the time of examination for adjustment without regard to paragraphs (4), (5)(A), (5)(B), and (7)(A)(i) of section 212(a) of the Act, and (vi) has a refugee number available under section 207(a) of the Act.

If the application for adjustment filed under this part exceeds the refugee numbers available under section 207(a) of the Act for the fiscal year, a waiting list will be established on a priority basis by the date the application was properly filed.

(2) An alien, who was granted asylum in the United States prior to November 29, 1990 (regardless of whether or not such asylum has been terminated under section

208(b) of the Act), and is no longer a refugee due to a change in circumstances in the foreign state where he or she feared persecution, may also have his or her status adjusted by the director to that of an alien lawfully admitted for permanent residence even if he or she is no longer able to demonstrate that he or she continues to be a refugee within the meaning of section 101(a)(42) of the Act, or to be a spouse or child of such a refugee or to have been physically present in the United States for at least one year after being granted asylum, so long as he or she is able to meet the requirements noted in paragraphs (a)(1)(i), (iv), and (v) of this section. Such persons are exempt from the numerical limitations of section 209(b) of the Act. However, the number of aliens who are natives of any foreign state who may adjust status pursuant to this paragraph in any fiscal year shall not exceed the difference between the per country limitation established under section 202(a) of the Act and the number of aliens who are chargeable to that foreign state in the fiscal year under section 202 of the Act. Aliens who applied for adjustment of status under section 209(b) of the Act before June 1, 1990, are also exempt from its numerical limitation without any restrictions.

(3) No alien arriving in or physically present in the Commonwealth of the Northern Mariana Islands may apply to adjust status under section 209(b) of the Act in the Commonwealth of the Northern Mariana Islands prior to January 1, 2030.