

No. 25-842

IN THE
Supreme Court of the United States

TAMER S. WASSILY, *et al.*,

Petitioners,

v.

TODD BLANCHE, ATTORNEY GENERAL,

Respondent.

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

**BRIEF OF *AMICUS CURIAE* FEDERATION
FOR AMERICAN IMMIGRATION REFORM
IN SUPPORT OF RESPONDENT**

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INTEREST OF *AMICUS CURIAE*

Amicus curiae Federation for American Immigration Reform (“FAIR”) is a nonprofit corporation and membership organization that was founded in 1979 and has its principal place of business in Washington, D.C. FAIR’s mission is to advocate for immigration policy that is in America’s best interests. FAIR has been involved in hundreds of legal cases since 1980, either as a party or *amicus curiae*, with the aim of advancing this mission.¹

SUMMARY OF ARGUMENT

Congress has authorized the Secretary of Homeland Security or the Attorney General to “adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum.” 8 U.S.C. § 1159(b). Petitioners, whose grants of asylum were terminated because they were convicted of serious crimes, seek adjustment to permanent residence and urge this Court to invoke the rule of lenity to resolve any ambiguity in this statute in their favor. Brief for Petitioners (Pet. Br.) at 40-44.

This Court should reject Petitioners’ invitation to favor them at the expense of the American people. First of all, immigration statutes are not punitive, so “lenity” has no logical place in their interpretation. Second, in drafting the asylum statute, Congress struck a balance between

1. Counsel for *amicus* authored this brief in whole, no party’s counsel authored this brief in whole or in part, and no person or entity, other than *amicus curiae*, its members, or its counsel, has contributed monetarily to its preparation or submission.

offering protection to aliens from persecution abroad and protecting the American people from potentially dangerous aliens. The rule of lenity, however, is one-sided, focusing here on only one of these purposes (extending protection to aliens) at the expense of the other (protecting the American people). It is thus inappropriate to apply it in the asylum context.

The problem is especially acute in this case. Here, applying the rule of lenity to decide this case in Petitioners' favor would allow the termination of their grants of asylum to be, in effect, reversed—and then some, as the status of lawful permanent resident would give them many additional benefits. At the same time, the adjustment could only increase and extend the danger Petitioners have been found to pose to public safety. The intensification of potential public harm the application of the rule would create makes that application doubly inappropriate here.

ARGUMENT

The rule of lenity should not apply in asylum cases generally or to this case in particular.

There is no question that the United States has a right inherent in its sovereignty to defend itself from foreign dangers by controlling the admission of aliens. “It is an accepted maxim of international law that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe.” *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892); *see also Galvan v. Press*, 347 U.S. 522,

531 (1954) (“Policies pertaining to the entry of aliens and their right to remain here are . . . entrusted exclusively to Congress . . .”). Exercising this sovereign prerogative, Congress has enacted a comprehensive and detailed statutory scheme regulating immigration, the purpose of which is to prevent and deter illegal immigration and provide for the removal of certain undesirable aliens.

Congress has authorized the Secretary of Homeland Security or the Attorney General to grant asylum to an alien who is unable or unwilling to return to their country of nationality “because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. § 1101(a)(42)(A) (defining refugee); *see also id.* § 1158(b)(1)(A) (authorizing the grant of asylum to an alien who is a refugee). Congress, however, established limits on this authority to grant asylum. For example, Congress precludes the government from granting asylum to an alien who, “having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States.” 8 U.S.C. § 1158(b)(2)(A)(ii); *see also id.* § 1158(b)(2)(A)(iii)-(v) (barring asylum to aliens who commit serious nonpolitical crimes outside the United States, who are a danger to the security of the United States, or who are inadmissible or deportable on certain terrorist grounds). To further protect the American people, Congress authorized the government to terminate a grant of asylum if an alien meets any of the exceptions listed in § 1158(b)(2). 8 U.S.C. § 1158(c)(2). It is apparent from this scheme that Congress sought to offer protection to aliens from persecution abroad, but precluded this protection from being extended

to aliens who may be a danger to safety or welfare of the American people.

The rule of lenity in the immigration context is often traced to this Court's decision in *Fong Haw Tan v. Phelan*, in which the Court held that "because deportation is a drastic measure and at times the equivalent of banishment or exile," and "since the stakes are considerable for the individual," "we will not assume that Congress meant to trench on his freedom beyond that which is required by the narrowest of several possible meanings of the words used." 333 U.S. 6, 9-10 (1948).

The rule marked a departure. Long before the rule of lenity was announced in 1948, this Court had rejected the premise upon which it is based. In 1893, this Court recognized that:

The order of deportation is not a punishment for crime. It is not a banishment, in the sense in which that word is often applied to the expulsion of a citizen from his country by way of punishment. It is but a method of enforcing the return to his own country of an alien who has not complied with the conditions upon the performance of which the government of the nation, acting within its constitutional authority and through the proper departments, has determined that his continuing to reside here shall depend.

Fong Yue Ting v. United States, 149 U.S. 698, 730 (1893). Indeed, "[t]he right to expel aliens is a sovereign power necessary to the safety of the country," and an exercise

of this right seeks only “to rid the country of persons who had shown by their career that their continued presence here would not make for the safety or welfare of society.” *Mahler v. Eby*, 264 U.S. 32, 39 (1924) (citing *Fong Yue Ting*, 149 U.S. at 730).

Under the view of these cases, immigration restrictions are enacted to protect the safety and welfare of the American people, not to punish aliens for wrongdoing. If there is no punishment, it is odd to speak of “lenity.”

Even if *Fong Haw Tan* is regarded as amending this view (or if the rule of “lenity” was misnamed in the immigration context, and is really a rule of judicial “compassion”), it is inappropriate to apply the rule in the asylum context. Here, Petitioners had their grants of asylum terminated because they had been convicted of particularly serious crimes. Pet. App. at 3a, 6a. Congress has made the judgment that those convicted of such crimes are “a danger to the community of the United States.” 8 U.S.C. § 1158(b)(2)(A)(ii). Because Congress sought to protect the American people in authorizing the government to terminate grants of asylum to such individuals, and the rule of lenity counteracts this purpose, the rule is out of place in the asylum context.

This is particularly so since Petitioners seek further protection from removal through adjustment of status to that of a lawful permanent resident. Lawful permanent residents enjoy many of the same rights as American citizens, such as the ability to work without restrictions, own property, and receive certain public benefits. *See, e.g.*, 8 C.F.R. § 274a.12(a)(1) (establishing that lawful permanent residents are authorized to work in the United

States due to their status). Lawful permanent residents are also eligible to naturalize. 8 U.S.C. § 1427(a). By the same token, Petitioner's adjustment to that status would only enhance and make more permanent the danger they have been found to pose to public safety. It is thus especially inappropriate to apply the rule of lenity in this case.

CONCLUSION

For the foregoing reasons, the judgment of the court below should be affirmed.

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Respectfully submitted,

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