No. 25-842

In the Supreme Court of the United States

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

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

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

REPLY BRIEF FOR PETITIONERS

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INTRODUCTION

Congress did not intend to foreclose adjustment to LPR status for every noncitizen whose asylum status could be terminated. The government agrees. So this case is not about why Congress would have allowed the Attorney General to exercise discretion to grant LPR status to refugees with criminal convictions. All agree he has that power. It is about whether Congress cut off that discretion at the moment of termination. Nothing in Section 1159 says that.

The absence of any express reference to the termination of asylum, to continuing asylum status, or to maintaining asylum at the time of examination is powerful evidence no such condition exists. When Congress wanted adjustment to turn on a continuing condition, it said so explicitly, *three* times in Section 1159, in those words, and in enumerated paragraphs. The government never explains why a Congress so careful about listing present conditions in Section 1159 would impose this one condition by implication.

The government nonetheless asks this Court to read that implied condition into the seven words "the status of any alien granted asylum." 8 U.S.C. § 1159(b). The government agrees "granted" can refer to a completed event, and that, ultimately, it comes down to context. The immediate context is Section 1159, which uses "granted asylum" as a completed event and which includes express continuing conditions. That "granted" or "granted asylum" refers to a present state elsewhere carries far less weight.

The parties also agree that Section 1159 authorizes adjustment from one status to another. The government's only basis for limiting the former to "asylum status" is an artificial parallelism it gets by

omitting the word "any" or rewriting it as "an[]." And the current status of "any" alien granted asylum need not be asylum status to be adjusted.

The government's absolutist reading of Section 1159 has nothing to commend it. It would lead to the removal of innocent spouses and children, who bear no responsibility for triggering termination. It would send current refugees back to the countries from which they fled. And it has forced the government to invent workarounds to prevent what all seem to agree are untoward and unintended consequences.

No workaround is needed. Section 1159(b) means what it says: any noncitizen granted asylum may seek adjustment if the five conditions Congress wrote are satisfied. There is no additional, implicit condition of continuing asylum status. And whether to adjust remains in the Attorney General's discretion.

ARGUMENT

"[T]he status of any alien granted asylum," read in context, refers to the current status of any noncitizen who was or has been granted asylum. Statutory history and purpose reinforce that reading. And any ambiguity resolves in petitioners' favor.

A. "Granted Asylum," Read In Context, Refers To A Completed Action

The government agrees "granted" is a past participle, which may indicate completed action or describe a present state—depending on context. Resp. Br. 12. But for context, the government skips over Section 1159, relying instead on a neighboring provision and use of the word "granted" elsewhere. The immediate statutory context is more compelling.

1. The government admits the only other use of "granted asylum" in Section 1159 "refers to a

completed historical event rather than the alien's continuing asylum status." *Id.* at 17. And it acknowledges the "presumption of consistent usage." *Id.* at 16 (citation omitted). The government nonetheless argues that because Section 1159(b)(2) includes an auxiliary verb and temporal language, and the introductory clause does not, they should be read differently. That conclusion does not follow.

Inclusion of the phrase "at least one year after being" in Section 1159(b)(2) makes clear the reference is to a completed event, but the absence of comparable language in Section 1159(b) does not convey the opposite. The specific temporal language was needed in (b)(2) to connect the grant of asylum to the one-year time period; inserting "after being" into the introductory language would not do the same work and would be, at best, linguistically strained (the status of any alien *after being* granted asylum).

Nor is the absence of an *alternative* auxiliary verb in the introductory clause probative. As this Court recognized in *Henson v. Santander Consumer USA Inc.*, when an auxiliary verb was missing from the statutory phrase "'debts owed or due … another,'" it had to choose between auxiliary verbs: "debts that *are* owed or due another" or "debts that *were* owed or *are* due another." 582 U.S. 79, 81, 84 (2017) (alteration in original) (citation omitted). And in *Florida Department of Revenue v. Piccadilly Cafeterias, Inc.*, this Court held the past participle in "under a plan confirmed" indicated "past or completed action," despite the lack of an auxiliary verb. 554 U.S. 33, 38-39 (2008) (citations omitted).

For the phrase "granted asylum," Congress sometimes includes clarifying auxiliary verbs. *E.g.*, 8 U.S.C. § 1182(n)(4)(E)(ii) ("is granted asylum"); *id.*

§ 1613(b)(1)(B) (same); *id.* § 1252(e)(2)(C) ("has been granted asylum"); *id.* § 1157(a)(4) ("were granted asylum"). And it sometimes does not. *E.g.*, *id.* § 1364(b)(1) ("aliens … granted asylum"); Immigration Act of 1990, Pub. L. No. 101-649, § 141(c)(1)(F), 104 Stat. 4978, 5003 (1990 Act) ("aliens granted asylum"). So the absence just begs the question: *what* auxiliary verb fits best? Pet'rs Br. 25-26.

2. The immediate statutory context and structure provide the answer. Section 1159 sets forth continuing conditions in express and enumerated terms; it does not sneak them in through vague introductory phrases. And the government's interpretation takes away much of the Attorney General's discretion Section 1159(c) expressly grants.

a. Take Section 1159(a). The introductory language refers to "[a]ny alien who has been admitted," and then imposes an enumerated condition "whose admission has not been terminated." 8 U.S.C. § 1159(a)(1)(A). In the government's view, Congress could have said "[a]ny alien granted admission" and it would have meant the same thing.

But that is not how Congress drafted Section 1159. Every time Congress wanted a continuing condition, it said so in express terms. It used temporal language. It listed the conditions in enumerated paragraphs. And it left no room for doubt. *See id.* § 1159(a)(1)(A), (b)(3), (b)(5); Resp. Br. 23 (admitting these "undoubtedly" impose continuing conditions). If Congress had meant "any alien who has been granted asylum … whose asylum has not been terminated," or "any alien granted asylum who … continues to have asylum," or "any alien granted asylum who … has

asylum at the time of examination," it would have said that—and listed it as a sixth condition.

The government has three responses; none are compelling.

First, the government says (at 24) the introductory clause uses different language because it is a "threshold category," rather than "an additional condition." But the same is true of Section 1159(a)(1). The parallel "threshold category" is "[a]ny alien who has been admitted to the United States," which is then limited to those "whose admission has not been terminated" in paragraph (A). When Congress wanted to place conditions on the "threshold category," it did so in the paragraphs that followed.

Second, the government argues that just because Sections 1159(a)(1)(A), (b)(3), and (b)(5) are "more obvious" does not make Section 1159(b)'s introductory clause "less clear." Resp. Br. 23 (citation omitted); *cf. id.* at 21 (similar). Of course it does. "That Congress chose not to adopt those 'readily available and apparent alternative[s]' supports the conclusion" it did not intend to impose a continuing asylum condition. *Mullin v. Al Otro Lado*, 609 U.S. 258, 271 (2026) (alteration in original) (citation omitted); *see Advocate Health Care Network v. Stapleton*, 581 U.S. 468, 477 (2017) (noting failure to adopt "ready alternative").

Third, the government criticizes some of petitioners' alternative formulations. Resp. Br. 20-21. But the most obvious alternatives—those used elsewhere in Section 1159—remain untouched.

And the fact that "'possessing'" and "'holding'" were not used elsewhere in the INA to refer to asylum (at 20) does not mean Congress could not access that

ordinary lexicon. Even the government inserts "possess" to get to its interpretation. *Id.* at 2-3, 24. Plus, other comparable words, like "maintain," *were* used in similar contexts. *E.g.*, 8 U.S.C. §§ 1184(a)(1), 1203(b), 1251(a)(9), 1255b(a), 1258. That included the asylum regulation, which provided an asylum applicant had to be "maintaining a lawful status." 8 C.F.R. § 108.1 (1980); *see* 44 Fed. Reg. 21,253, 21,256 (Apr. 10, 1979). Congress could have readily required applicants for adjustment to maintain, or even just have, asylum.[1]

b. Section 1159(c)'s waiver authority provides further, immediate contextual support.

The government admits "that Congress did not intend to foreclose adjustment to every alien whose asylum status could be terminated." Resp. Br. 35 (emphasis omitted). It does not dispute that the Attorney General's exercise of discretion is important, or that the grounds for termination substantially overlap with the grounds for inadmissibility. Pet'rs Br. 24. And it does not dispute that, under its interpretation, a decision to terminate *forecloses* any exercise of discretion under Section 1159(c).

The government previously sought to avoid this problem with a workaround: IJs could simply "defer[] ruling on a motion to terminate asylum status in favor of first adjudicating an application for adjustment of

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[1] The government is right that "asylee" did not appear in the 1980 Act or contemporaneous dictionaries, but it was not far behind. Congress used "asylee status" in 1981, Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, § 544(a), 95 Stat. 357, 460, and some courts referred to asylees at that time, *e.g.*, *Fernandez-Roque v. Smith*, 539 F. Supp. 925, 932-33 (N.D. Ga. 1982); *Chun v. Sava*, 708 F.2d 869, 876-77 (2d Cir. 1983).

status." Pet'rs Br. 39 (citation omitted). As petitioners explained, that only shows Congress did not intend a categorical bar. So the government proposes yet another way to reach the same result: the IJ could choose not to terminate asylum at all. Resp. Br. 25. According to the government (at 36), the IJ in Wassily's case made that "mistake": he never should have terminated asylum. That too makes nonsense of congressional intent, and poses its own problems.

The don't-terminate-asylum solution does not mean Section 1159(c) "retains its force." *Id.* at 10-11. It would still have no work to do once asylum is terminated. Nor does the government's reading "harmonize" two "forms of discretion." *Id.* at 36. It simply shifts the discretion from one statutory form (Section 1159(c)) to another (Section 1158(c)).

But the two forms of discretion are also not the same. Section 1159(c) is explicit about the grounds for waiver: "humanitarian purposes, to assure family unity, or when it is otherwise in the public interest." 8 U.S.C. § 1159(c). Section 1158(c)(2) just says "may." *Id.* § 1158(c)(2). And the implementing regulation says nothing about humanitarian, family unity, or similar concerns; the focus for termination is whether the noncitizen is still "eligible" for asylum. 8 C.F.R. § 1208.24(c); *see id.* § 208.24(c). That Wassily's IJ exercised the discretion granted expressly in Section 1159(c), rather than what the government now reimagines Section 1158(c)(2) to implicitly allow, was no "mistake." It is the statutory scheme Congress enacted.[2]

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[2] That the Attorney General "could have directed the Board to refer [Wassily's] case to him," Resp. Br. 36, is no

The general discretion not to terminate asylum also won't save those most deserving of adjustment. The government is conspicuously silent when it comes to the innocent spouses and children granted derivative asylum who would automatically lose the ability to seek adjustment if the primary holder's asylum is terminated. Pet'rs Br. 4, 37; *see* Nat'l Immigrant Just. Ctr. Amicus Br. (NIJC Br.) 4-7; Immigr. L. Professors Amici Br. (Profs. Br.) 16-17. The governing regulation provides that derivative asylum status shall terminate "automatically." Resp. Br. 36; *see* 8 C.F.R. § 1208.24(d). The government never explains how the Attorney General could terminate asylum for the principal holder but not the derivative asylee, or why he would choose not to terminate asylum for the principal without a humanitarian, family unity, or other reason. The domestic-violence examples in the NIJC amicus brief (at 7-9) put a fine point on the problem. The government apparently would have the Attorney General either retain asylum status for the abuser or terminate for all—and, in doing so, categorically preclude the victims from seeking LPR adjustment. Giving the Section 1159(c) waiver full force would avoid that perverse and unnecessary tradeoff.

3. The government's present-state interpretation of "granted asylum," by contrast, does not come from Section 1159. It comes from the neighboring Section 1158(c), other uses of the word "granted" in the U.S.

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answer. Self-referral is "used sparingly," follows "no statutory or regulatory roadmap," and cannot be requested by immigrant respondents. Stella Burch Elias & Paul Gowder, *Against Attorney General Self-Referral in Immigration Law*, 109 Minn. L. Rev. 2331, 2334, 2341, 2398 (2025).

Code, and common usage. None of the government's examples compel a present-state reading of "granted asylum" or override the text's statutory home.

a. Start with Section 1158(c). As petitioners explained, the use of "granted asylum" and "asylum granted" there conveys a present state because of the surrounding context. Pet'rs Br. 26. Section 1158(c)(2) is all about termination of asylum, and (c)(1) requires the Attorney General to do things that (c)(3) prohibits him from doing when asylum is terminated. Section 1159's context points in the other direction.

The government attempts to link the two through a "benefits" framing. Resp. Br. 2, 10. But Congress did not. Congress did not list adjustment to LPR status as a benefit conferred in Section 1158. It provided the opportunity to seek adjustment to refugees and asylees alike in a separate provision. Unlike the Section 1158 benefits, which flow from the grant of asylum itself, adjustment is a distinct, discretionary form of relief that follows a highly reticulated application process with numerous other conditions a noncitizen must satisfy.

b. Zooming out further, the government (at 14) points to examples of "granted" in the U.S. Code that reference a present state. But for each, the surrounding context—not just the past participle "granted"—suggests that reading. A "person granted a customs broker's license" must "*hold[]* a valid … license" to "conduct customs business," 19 U.S.C. § 1641(a)(1), (b)(1) (emphasis added); a "person granted an exemption" may be required to "demonstrate *continued* compliance" with statutory requirements, 21 U.S.C. § 360j(m)(5) (emphasis added); and "[p]ersons granted authority to make arrests … may exercise that authority *only while*

guarding and protecting" certain property, 51 U.S.C. § 20134 (emphasis added).

And other examples point the other way. Review of an "allegation of misconduct by an individual granted authority" under a statute, 2 U.S.C. § 185(d)(3)(E); 44 U.S.C. § 3903(c)(5), can occur whether or not the individual still possesses that authority. Receiving "reimbursement" from a "person granted [an] exemption," 15 U.S.C. § 2603(c)(3)(A), can happen even if the exemption has since lapsed.

Other uses of "granted *asylum*" in the U.S. Code, though also not uniform, are more to the point. Several "granted asylum" provisions include express temporal language to require continuing asylum status. *E.g.*, 8 U.S.C. § 1252(e)(2)(C) ("petitioner … has been granted asylum under section 1158 of this title, *such status not having been terminated*" (emphasis added)); *id.* § 1641(b)(2) ("'qualified alien' means an alien who, *at the time* the alien applies for, receives, or attempts to receive a Federal public benefit, is … an alien *who is* granted asylum" (emphases added)). That Congress followed this approach for the continuing conditions in Section 1159 itself, but not for "granted asylum," is more probative than disparate uses of "granted" elsewhere.

c. The government's "common-usage examples" (at 14-15) fare no better. Once again, there are counter-examples. If a company provided that any employee granted a security clearance must keep all information confidential, no one would think the employee could hold a press conference if his security clearance was revoked. And a person granted coverage under an insurance policy may still submit a claim after the policy expires or is terminated.

The bigger problem is the government's examples fail to track Section 1159. They assume a guaranteed benefit where only an opportunity to apply exists. So the closer analogy would be if any person granted an honorary degree may request a seat at a celebratory dinner (subject to the university president's discretion). Or if a lawyer admitted to the Supreme Court Bar may request a seat in the bar section (subject to the Chief Justice's discretion). The government's examples also assume readers will infer a continuing condition based on context and when it seems absurd not to. But Section 1159 takes a different approach: it includes *express* continuing conditions. And granting the Attorney General discretion to adjust a former asylee's status (including a former derivative asylee's status) to LPR status in appropriate circumstances is far from absurd.

B. The Attorney General Can Adjust The Current Status Of A Noncitizen Previously Granted Asylum

The government's other textual hook is the word "status." It argues (i) "status" denotes a present condition; (ii) Section 1159(b) authorizes "an adjustment from one status to the other"; and (iii) the "parallel structure" and "parallel language" show the pre-adjustment status must be "asylum status." Resp. Br. 12-13, 22. The first and second are true, but the third does not follow. There is no parallel.

1. The parties agree that "status" denotes a present condition. Pet'rs Br. 19-20; Resp. Br. 22. The parties also agree the Attorney General is adjusting from one status to another. Pet'rs Br. 19-20; Resp. Br. 13. And although both the Second and Fourth Circuits seemed to believe "status" can only be a

"legal" status, Pet. App. 12a; *Cela v. Garland*, 75 F.4th 355, 364 (4th Cir. 2023), the government does not defend that position. For good reason: it is demonstrably wrong. *See* Pet'rs Br. 19-20; Am. Immigr. Lawyers Ass'n Amicus Br. 16-18.

2. The only question, then, is whether the phrase "the status of any alien granted asylum" refers to "asylum status" only or to any "status" the noncitizen currently holds. The government argues the former based on Section 1159(b)'s "parallel" structure and language. But it elides one critical flaw: the two clauses are not, in fact, parallel.

Congress wrote "*an* alien lawfully admitted for permanent residence" but "*any* alien granted asylum." The government has to rewrite the second phrase as "an[] alien granted asylum" to make them match. Resp. Br. 13. And it repeatedly does exactly that, truncating the statutory phrase to "alien granted asylum," *e.g.*, *id.* at 2, 10, 15, 23, or altering it to "an[] alien granted asylum," *id.* at 3, 13, to create artificial parallelism. No matter how many times the government does so, the statute says what it says.

The government dismisses the inconvenient word "any" as too "oblique" to matter. *Id.* at 22. And it points to a 1997 Senate drafting manual to explain away its significance. *Id.* But that source supports *petitioners'* reading. As the manual instructs, while the indefinite article "an" should "[g]enerally" be used, "any" should be used instead "[i]f there is any possibility that a provision could be read to apply to fewer than all of the members of the class." Office of the Legislative Counsel, U.S. Senate, *Legislative Drafting Manual* § 104(b)(1)-(2) (1997), https://law.yale.edu/sites/default/files/documents/pdf/Faculty/SenateOfficeoftheLegislativeCounsel_Legisl

ativeDraftingManual%281997%29.pdf. Who could Congress have been concerned about excluding other than noncitizens whose asylum was later terminated? Because Congress chose to use "any" (when "an alien granted asylum" would have worked perfectly well grammatically), the full class is included. *See Bernal v. NRA Grp., LLC*, 930 F.3d 891, 896 (7th Cir. 2019) ("absent limiting language, 'any' should mean 'any'").

Nor would a quasi-parallel structure carry the day regardless. The first general adjustment provision used similar language and a similar (albeit inverted) structure:

> The status of an alien who was lawfully admitted to the United States as a bona fide nonimmigrant and *who is continuing to maintain that status* may be adjusted by the Attorney General in his discretion … to that of an alien lawfully admitted for permanent residence ….

Immigration and Nationality Act, Pub. L. No. 82-414, § 245(a), 66 Stat. 163, 217 (1952) (emphasis added). It permitted the Attorney General to adjust from one status ("[t]he status of an alien who was lawfully admitted to the United States as a bona fide nonimmigrant") to another (the status of "an alien lawfully admitted for permanent residence"). *Id.* But there is no question the 1958 version of this statutory provision did *not* require continuing status. Congress intentionally deleted the phrase "who is continuing to maintain that status" and left the grammatical structure intact. Pet'rs Br. 27-28.

3. The government's other arguments are unavailing.

The government claims that provisions letting noncitizens without lawful status adjust "look nothing like" Section 1159(b) because they expressly name an unlawful starting status. Resp. Br. 22. That misses the point. Those provisions show what the courts of appeals got wrong, and what the government does not dispute: that unlawful status is still a "status" from which a noncitizen can adjust. Pet'rs Br. 20. They also each mention unlawful status because they are limited to that status. *See* 8 U.S.C. §§ 1255(c)(2), 1255b(a), 1229b(b)(1). Section 1159(b) is not. And when Congress means to exclude unlawful status, it says so. *E.g.*, *id.* § 1255(c)(2).

The government next says Congress "manifestly knows how to provide aliens with immigration benefits that are not conditioned on present status," highlighting 8 U.S.C. § 1158(a)(1) and 8 U.S.C. § 1255(a). Resp. Br. 13-14. But Section 1255(a) looks just like Section 1159(b): it gives the Attorney General discretion to adjust "[t]he status of an alien who was inspected and admitted or paroled into the United States" into that "of an alien lawfully admitted for permanent residence." The only difference is Section 1255(a) identifies "threshold eligibility," Resp. Br. 14, as those "inspected and admitted or paroled into the United States," and Section 1159(b) identifies it as those "granted asylum." Neither dictates what the starting "status" needs to be. And adding "irrespective of such alien's status," 8 U.S.C. § 1158(a)(1), to Section 1159(b) would at best be superfluous and at worst be inaccurate—after all, the noncitizen must "continue[] to be a refugee," *id.* § 1159(b)(3).

By contrast, Congress manifestly does know how to say the *opposite*: that eligibility *is* conditioned on a

specific, present status. Section 1255a refers to temporary residents "such status not having changed," *id.* § 1255a(h)(3)(A)(iii); *cf. id.* § 1101(a)(20) (same, for "lawfully admitted for permanent residence"); Section 1252(e)(2)(C) asks whether a noncitizen "has been granted asylum … such status not having been terminated," *id.* § 1252(e)(2)(C); and a litany of provisions require that the noncitizen "maintain" a specific "status," *see supra* at 6. If termination of asylum status were a bar, or maintenance of such status a requirement, Congress would have said that.

In the end, "any alien granted asylum" simply describes a "category of eligible aliens." Resp. Br. 24. And "the status of" naturally refers to whatever status the members of that category currently hold.

C. The Statutory History Reinforces That Contextual Reading

1. The government does not contest the history of the general adjustment provision, 8 U.S.C. § 1255. Resp. Br. 30; *see* Pet'rs Br. 27-28, 30-31. It argues that history does not prove "Congress uses only a limited set of phrases to convey a continuing requirement." Resp. Br. 30. The point is not that Congress has a limited vocabulary. It is that the phrasing Congress used in Section 1159(b)—"any alien granted asylum"—differs in kind from that historical precedent and from the Section 1159 provisions setting forth continuing conditions. *See supra* at 4-6. And while the government deems it "exceedingly unlikely" the 1980 Congress had the 1952 statute in mind, there are reasons to think otherwise. *E.g.*, H.R. Rep. No. 96-608, at 2-5 (1979)

(referring to the "origin quotas of the 1952 immigration law").

2. The government also seeks to marginalize the statutory history of Sections 1158 and 1159.

As explained, the 1980 Act contained a single ground for terminating refugee status and a single ground for terminating asylum status; the adjustment provision tracked the termination provision; and Section 1159(b) dealt with criminal conduct through admissibility and waiver. Pet'rs Br. 29-30. In 1996, Congress expanded the statutory grounds for terminating asylum, but it did not change the language in Section 1159(b)'s introductory clause. *Id.* at 31-32. From that, petitioners argued, in 1980, "a continuing asylum status requirement would have done no work and served no purpose." *Id.* at 30. The government says that is "incorrect" (at 31) and identifies three purposes. The first two rely on regulatory provisions that postdate and conflict with the statute, and the third is makeweight.

First, the government notes that a regulation adopted to "implement[]" Section 1158 allowed for termination based on "'conviction of a serious crime.'" Resp. Br. 34 (quoting 8 C.F.R. § 208.15(a)(2) (1981)). But as the government sheepishly acknowledges, that regulation may not have been "consistent with the statutory language." *Id.* It was not: The 1980 Act provided a single ground for terminating asylum, with limited authority to make a "determin[ation] that the alien is no longer a refugee" "pursuant to" prescribed regulations. Pub. L. No. 96-212, § 201(b), 94 Stat. 102, 105 (1980) (adding § 208(b)). So the conclusion stands: under the 1980 Act, noncitizens with criminal convictions would not have been

categorically barred from adjusting to LPR status. Pet'rs Br. 30.

Second, the government relies on the same "implementing" regulation to argue that asylum could be terminated if the asylee was not "eligible for asylum when it was granted." Resp. Br. 32 (citing 8 C.F.R. § 208.15(a)(3) (1981)). That too appears at odds with the statute. And perhaps more to the point, the 1980 Congress chose to address potential fraud in another way—the same way it addressed criminal convictions—through inadmissibility. At that time, the inadmissibility statute provided that "seek[ing] to procure … a visa or other documentation, or seek[ing] to enter the United States[] by fraud or by willfully misrepresenting a material fact," was grounds to "be excluded from admission into the United States." 8 U.S.C. § 1182(a)(19) (1982). So a noncitizen who committed fraud in applying for asylum would not have been "admissible … at the time of examination for adjustment" under Section 1159(b)(5), but would have been eligible for a Section 1159(c) waiver.

Third, the government says a continuing asylum requirement would have allowed it to avoid answering the continuing refugee question twice—first to terminate asylum, and then to bar adjustment under (b)(3). Resp. Br. 31. That concern appears to be hypothetical at best—especially because, in practice, the two decisions are often made at roughly the same time. There is no reason to think Congress adopted a categorical bar that would do so little work.

The government's other arguments are nonresponsive. It contends Section 1159(b)(3) was not superfluous (at 33), but superfluity was never petitioners' argument. It argues that Congress did not need to add any "additional words" to Section

1159(b) in 1996 because current asylum status was already a "threshold condition." *Id.* at 33-34. But that assumes the conclusion. The better understanding is the 1980 Congress did not include a continuing asylum requirement because it did not need a continuing asylum requirement—and Section 1159(b) looks the same today as it did then.

3. The government relies heavily on the statutory note added by the 1990 Act. As the government concedes, that Act was meant to solve a specific problem facing noncitizens who no longer qualified as refugees following the Cold War. *Id.* at 25-26. The government nevertheless contends the Act "operate[d] on the assumption" that only current asylees could adjust under Section 1159(b). *Id.* at 17-19, 25-29. The only text the government points to cannot bear the weight the government places on it.

The first "provision" (at 18) the government cites is, in fact, just a title. The government reads the title of Section 104(c), "Waiver of Numerical Limitation for Certain Current Asylees," to mean that Congress considered only current asylees to be valid applicants for adjustment. *Id.* at 18-19. But Section 104(c) also waives the numerical limitation for "an alien described in subsection (d)," that is, *former* asylees. 1990 Act, Pub. L. No. 101-649, § 104(c)-(d), 104 Stat. 4978, 4985. A "Current Asylees" title for a statutory provision that expressly covers former asylees just underscores why a title "cannot substitute for the operative text of the statute." *Piccadilly Cafeterias, Inc.*, 554 U.S. at 47.

The second provision is Section 104(d). Petitioners already addressed the parenthetical (at 34-35), and the government accepts it served a "clarifying" purpose—at least as to Section 104(d)(1)(A), Resp. Br.

27. But the bright line the government seeks to draw between "the phrasing of Section 104(d)(1)(A)" and "Section 1159(b) itself," *id.*, does not hold up. The only difference between them is the addition of the auxiliary verb "was." Congress needed to include "was" in Section 104(d)(1)(A) because it keys the grant of asylum to a particular date. Section 1159(b) does not. And while Section 1159(b) does not say "was," it also does not say the opposite. The question is what auxiliary verb (or other words) to read in. Section 104(d)(1)(A) does not answer that question, and the government agrees the parenthetical is clarifying if the answer is "was."

Section 104(d)(1)(C) points to petitioners' reading. It provides for adjustment if a noncitizen "was (or would be) qualified … but for paragraphs (2) and (3)" of Section 1159(b). 1990 Act § 104(d)(1)(C), 104 Stat. at 4985-86. If the 1990 Act operated on the assumption that continuing asylum status was a condition for adjustment under Section 1159(b)'s introductory clause, it would have excepted that condition too. That it did not is at least as indicative of Congress's understanding as (A)'s parenthetical.

The legislative history the government cites is not to the contrary. As the government notes, the statement was about an unenacted, proposed amendment that would have eliminated the "continues to be a refugee" requirement. Resp. Br. 27. That history does not reveal the basis for that one Representative's view; whether others shared it; or whether the concerns were deemed unfounded. It instead exemplifies why "failed legislative proposals"—or, worse, legislative history about failed legislative proposals—"are 'a particularly dangerous ground on which to rest an interpretation of a prior

statute.'" *United States v. Craft*, 535 U.S. 274, 287 (2002) (citation omitted); *see United States v. Estate of Romani*, 523 U.S. 517, 536 (1998) (Scalia, J., concurring in part and concurring in the judgment).

Finally, congressional intent a decade later cannot shed meaningful light on the 1980 Act. The government argues otherwise based on *Watson v. Republican National Committee*, 609 U.S. 672 (2026). But *Watson* stands for a more limited proposition: a later-enacted statute can inform the interpretation of an earlier, ambiguous statute when the two are "at odds with" each other and the later statute otherwise would "make little sense." *Id.* at 684, 690. That's not this case. The 1980 Act and the 1990 statutory note are not "at odds" under either interpretation, and the latter is fully operative under petitioners'. This is instead a situation where a statute "enacted" a decade "after the fact" should not be "probative of th[e] meaning" of the earlier-enacted statute "at the time it became law." *Id.* at 711 (Alito, J., dissenting); *see O'Gilvie v. United States*, 519 U.S. 79, 89-90 (1996).[3]

D. The Government's Reading Does Nothing To Further Congressional Purpose

The government has nothing affirmative to say about Congress's purposes. It never once argues that

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[3] Contrary to the government's assertion (at 29), the "tax year" had nothing to do with why *O'Gilvie* "declined to rely on" a later amendment to interpret the original statute. The argument was that Congress would not have enacted the later provision (removing punitive damages in nonphysical injury cases) unless it believed the existing law included punitive damages. 519 U.S. at 88-89. And *Bostock v. Clayton County*, 590 U.S. 644, 670 (2020), was also about other "enacted" statutes, not just congressional inaction. *Contra* Resp. Br. 29.

petitioners' reading contravenes any such purpose, focusing instead on why its reading doesn't either.

As petitioners argued (at 35-38) and amici explained (NIJC Br. 4-25; Profs. Br. 16-19), Congress had many reasons to let the Attorney General adjust the status of refugees whose asylum had been terminated. The government *agrees*—with one twist. It acknowledges that noncitizens can lose asylum for reasons outside their control, or for relatively minor crimes, and that there may be other "sympathetic circumstances." Resp. Br. 35-38. It just says the Attorney General's discretion must be exercised *before* termination. That's no answer for reasons already explained. *See supra* at 6-8. And if the end result is the same, why did Congress draw such a bright temporal line in such an oblique way? The government does not say.

And while the government notes that refugees and asylees are treated differently in some respects (at 37), it does not explain why they would be treated differently in *this* respect. Take a refugee and an asylee with the same conviction. The refugee may seek adjustment and a waiver; under the government's reading, the asylee (who still fears persecution) may not. That asymmetry defies Congress's plan to give asylees a status "equivalent in most respects" to refugees. S. Rep. No. 96-256, at 9 (1979), *reprinted in* 1980 U.S.C.C.A.N. 141, 149; *see Robleto-Pastora v. Holder*, 591 F.3d 1051, 1061 (9th Cir. 2010).

E. Any Ambiguity Favors Petitioners

The government would confine the immigration rule of lenity to "deportation statute[s]." Resp. Br. 38-40. But it cites no case imposing that limit. Nor can

such a limit be squared with the rule's rationale: because deportation is "a drastic measure," the Court "will not assume that Congress meant to trench on [a noncitizen's] freedom beyond that which is required by the narrowest of the several possible meanings." *Id.* at 38 (alteration in original) (quoting *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948)). That rationale turns on the result of the interpretation, not the provision's label.

The government does not dispute that *INS v. Errico*, 385 U.S. 214 (1966), *INS v. St. Cyr*, 533 U.S. 289 (2001), and *Dada v. Mukasey*, 554 U.S. 1 (2008), applied lenity to relief provisions that were not "deportation statutes." It argues only that they were more "directly connected" to removal. Resp. Br. 39. But that's a different line than "deportation statutes." And they were no closer to removal than this one. Pet'rs Br. 43; Profs. Br. 15-16, 20-22. Indeed, *INS v. Cardoza-Fonseca*, 480 U.S. 421, 449-50 (1987), construed the asylum standard itself. And the government does not dispute that once asylum is terminated, removal follows. Pet'rs Br. 42.

The government's only contrary authorities—*Swan & Finch Co. v. United States*, 190 U.S. 143 (1903), and *United States v. Manzi*, 276 U.S. 463 (1928)—predate *Fong Haw Tan* and did not involve removal. Resp. Br. 38-39. *Swan* concerned a commercial customs privilege, 190 U.S. at 145-46, while *Manzi* concerned citizenship, a "high privilege," 276 U.S. at 467.

Finally, the government would require "grievous" ambiguity to invoke lenity. Resp. Br. 40 (quoting *Pugin v. Garland*, 599 U.S. 600, 610 (2023)). *Pugin* adopted no such threshold; it found the statute clear. 599 U.S. at 610. And this Court has applied

immigration lenity to "lingering ambiguities," *Cardoza-Fonseca*, 480 U.S. at 449; *St. Cyr*, 533 U.S. at 320, and where there was "some doubt," *Errico*, 385 U.S. at 225. Even in criminal cases, the "grievous" formulation lacks a settled pedigree. *See Wooden v. United States*, 595 U.S. 360, 392-93 (2022) (Gorsuch, J., concurring in the judgment); *Moskal v. United States*, 498 U.S. 103, 108 (1990) (asking whether "reasonable doubt persists").

Regardless, if there is ambiguity here, it is grievous: the circuits are divided, the judges on both the Second and Fourth Circuit panels were divided, and the BIA found Section 1159(b) ambiguous. *Matter of T-C-A-*, 28 I. & N. Dec. 472, 475-76 (B.I.A. 2022). Any ambiguity should be construed in petitioners' favor.

CONCLUSION

The judgments of the court of appeals should be reversed.

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