

No. 26-239

In the
Supreme Court of the United States

MARKWAYNE MULLIN, SECRETARY OF HOMELAND
SECURITY, ET AL.,
Petitioners,

v.

REFUGEE AND IMMIGRANT CENTER FOR EDUCATION
AND LEGAL SERVICES, ET AL.,
Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the D.C. Circuit**

**BRIEF OF AMERICA FIRST LEGAL FOUNDATION
AS *AMICUS CURIAE* IN SUPPORT OF
PETITIONERS**

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INTEREST OF *AMICUS CURIAE*¹

Amicus curiae America First Legal Foundation (“AFL”) is a 501(c)(3) non-profit organization headquartered in Washington, D.C. AFL is dedicated to defending the constitutional separation of powers and the faithful enforcement of the Nation’s immigration laws. AFL accordingly has a strong interest in judicial interpretations that correctly apply the text of the Immigration and Nationality Act, and in protecting and preserving the Executive’s constitutional and statutory prerogatives over the entry of aliens.

¹ Counsel for *amicus curiae* timely provided notice to all parties of intent to file this brief. No party’s counsel authored this brief in whole or in part, and no person or entity other than *amicus* or its counsel made a monetary contribution intended to fund its preparation or submission.

SUMMARY OF ARGUMENT

In the first week of his second term, President Trump issued Proclamation No. 10888 in response to the escalating crisis at the southern border of the United States. *See* Proclamation No. 10888, *Guaranteeing the States Protection Against Invasion*, §§ 2–3, 90 Fed. Reg. 8,333 (Jan. 29, 2025). Invoking his authority under the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*, and Article II, the President suspended the entry of aliens crossing the southern border outside designated ports of entry and prohibited aliens who violate that suspension from invoking INA provisions that would allow their continued presence, including asylum, 8 U.S.C. § 1158. *See* 90 Fed. Reg. at 8,335. Guidance implementing this Proclamation directs immigration officers not to accept asylum applications from such aliens. Joint Appendix (“J.A.”), *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem*, No. 25-5243, Dkt. No. 1208769239, at 101–02. The Proclamation thus does two things: it exercises the President’s express statutory power under the INA to suspend entry, and it exercises the President’s discretion under that statute to deny asylum—and thus the need for an opportunity to apply for asylum—to those who enter in defiance of that suspension.

Both actions are lawful, and the policy judgments behind them are not for courts to second-guess. Review is warranted because the D.C. Circuit’s decision conflicts with this Court’s asylum precedents and dismantles the policy that ended the border crisis. Because of the very expansive scope of the D.C. Circuit’s injunction, moreover, there is unlikely to be

any further percolation of the issue for the foreseeable future.

For decades, this Court has repeatedly affirmed that the INA commits the ultimate decision whether to grant asylum to the Executive’s discretion. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 428 n.6 (1987) (“[T]here is no entitlement to asylum, it is only granted to eligible refugees pursuant to the Attorney General’s discretion.”); *see also INS v. Aguirre-Aguirre*, 526 U.S. 415, 420 (1999); *Moncrieffe v. Holder*, 569 U.S. 184, 187 (2013); *DHS v. Thuraissigiam*, 591 U.S. 103, 110 n.4 (2020); 8 U.S.C. §§ 1158(a)(1), (b)(1)(A). And Congress has repeatedly legislated to preserve that discretion.

Because the Executive may deny asylum to aliens who violate the suspension, and has done so here, those aliens have no legally protected interest in filing applications whose outcome has already been lawfully determined. After all, as a prior D.C. Circuit panel aptly put it, “if the asylum decision has already been made,” subsequent hoop-jumping through the application “procedures would be futile.” *Huisha-Huisha v. Mayorkas*, 27 F.4th 718, 731 (D.C. Cir. 2022). Section 1158(a)(1) permits an alien to apply “in accordance with this section”—a section that makes the grant of asylum discretionary. 8 U.S.C. § 1158(a)(1). It confers no right to years of presence in the United States while an application makes its way through overburdened immigration courts on its way to the inevitable denial that the Proclamation requires.

A panel of the D.C. Circuit partially stayed the district court’s injunction on exactly this reasoning,

concluding that the President likely could deny asylum categorically and thus decline to accept futile applications. *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem*, No. 25-5243, 2025 WL 5144253, at *16–17 (D.C. Cir. Aug. 1, 2025) (“*Noem*”) (Millett, J., concurring); *id.* at *24 (Katsas, J., concurring in part and dissenting in part).

But the merits panel disagreed. Over a partial dissent by Judge Walker, it held that (1) “the INA does not support categorical, *ex ante* denial of asylum” but the Executive’s discretion “must be exercised on an ‘individualized’ basis”; and (2) even if categorical denial were permitted, futility “is not a sufficient reason” to deny aliens the right to apply. *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Mullin*, 174 F.4th 81, 107–08 (D.C. Cir. 2026) (“*RAICES*”).

That decision was incorrect on both points. Nothing in the INA requires the Executive to exercise its discretion one applicant at a time. This Court has long held that discretion of this kind may be exercised through general policy. Nor is the panel right that refusing futile applications would justify refusing applications from aliens who are statutorily ineligible for asylum. That analogy fails on the statute’s own terms. Each ineligibility ground turns on a determination about the particular applicant, so the application is the means by which ineligibility is found. An alien’s coverage under the Proclamation, by contrast, turns on facts an officer can determine at the

moment of encounter, and the discretionary denial has already been made.²

Article II confirms that § 1182(f) of the INA means what it says. That provision “exudes deference to the President in every clause.” *Trump v. Hawaii*, 585 U.S. 667, 684 (2018). When Congress legislates on the admission of aliens, “[i]t is implementing an inherent executive power.” *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950). Founding-era sources treated an alien’s admission as a revocable permission, not a vested right. Courts should read the INA against that backdrop, and should not presume that Congress created an enforceable entitlement to an individualized process that would render such suspensions ineffective for aliens who enter in defiance of a presidential suspension of entry.

The panel presumed exactly that, reallocating to the judiciary a power the Constitution and the INA commit to the President. Moreover, given the unbounded, ill-defined class the panel sustained, no alien subject to the Proclamation is likely to bring another suit, and the only other conceivable plaintiffs,

² The panel also affirmed a sweeping injunction that “raises serious constitutional problems,” because even as modified by the stay panel, it reaches uninjured aliens (and aspiring aliens) anywhere in the world who may someday fall within the Proclamation. *Noem*, 2025 WL 5144253, at *25 (Katsas, J., concurring in part and dissenting in part). Article III forecloses such relief, “class action or not.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021) (citation omitted); *see also Trump v. CASA, Inc.*, 606 U.S. 831, 868 (2025) (Alito, J., concurring) (warning that “the universal injunction will return from the grave under the guise of ‘nationwide class relief’”).

advocacy organizations and States, have no incentive to challenge a nationwide ruling whose benefit they already enjoy. A circuit split is therefore unlikely to develop while the decision below takes effect and dismantles the policy that has reversed the border crisis. This Court should grant review now to definitively resolve these questions of national importance.

The harmful consequences that will follow from the decision below are difficult to overstate. In the years before the Proclamation, the asylum application process was weaponized into a procedural tool for obtaining years of presence in the U.S. That drew record numbers of aliens to the southern border—where smugglers and cartels preyed upon them—because filing an application meant release into the interior and years of presence regardless of the claim’s merit.

The Proclamation closed that loophole with immediate and substantial effects, while still ensuring that meritorious asylum claims are processed for those who seek to come to the U.S. lawfully via its ports of entry. Border apprehensions fell more than 85%, with a concomitant drop in border-crossing deaths, human and drug trafficking, and crimes against Americans who live near the border. Asylum filings dropped by more than two-thirds, and the immigration courts began, for the first time in nearly two decades, to reduce their pending asylum caseload, restoring our immigration and asylum system to Congress’s design. The panel’s rule that the government must accept and adjudicate

applications it has already lawfully denied will undo the Proclamation’s success.

“[F]ederal courts generally lack the institutional expertise and constitutional authority to oversee foreign policy and national security, and should be wary of straying where they do not belong.” *Jesner v. Arab Bank, PLC*, 584 U.S. 241, 292 (2018) (Gorsuch, J., concurring in part and concurring in the judgment). The panel below strayed beyond its constitutional role to second-guess the wisdom of the Executive’s immigration policy. This Court should grant the petition for certiorari and reverse.

ARGUMENT

I. Congress Made Asylum A Discretionary Benefit, Not A Judicially Enforceable Pathway For Illegal Entry

The panel acknowledged that “asylum decisions are ultimately discretionary,” yet imposed a litany of procedural limits, none of which appear in the INA. *RAICES*, 174 F.4th at 107. The statute’s text and history commit the asylum decision to the Executive; nothing in the statute requires that decision to be made individually; and aliens subject to a lawful categorical denial have no legally protected interest in filing futile applications.

A. The INA Commits The Asylum Decision Entirely To Executive Discretion

Asylum is a “form[] of discretionary relief.” *Moncrieffe*, 569 U.S. at 187. Section 1158(a)(1) of the INA provides that any alien physically present in the United States “*may* apply for asylum.” 8 U.S.C.

§ 1158(a)(1) (emphasis added). As this Court has recognized, that language is permissive and confers no right to asylum; instead, “the decision whether asylum should be granted to an eligible alien is committed to the Attorney General’s discretion.” *Aguirre-Aguirre*, 526 U.S. at 420; *Cardoza-Fonseca*, 480 U.S. at 428 nn.5–6; see 8 U.S.C. § 1158(b)(1)(A) (“The Secretary of Homeland Security or the Attorney General may grant asylum”).

Statutory history confirms that Congress intended to give the Executive sweeping authority over asylum decisions. As originally enacted in 1952, the INA did not contain an asylum provision. Andorra Bruno, Cong. Rsch. Serv., R48802, *Development of the U.S. Asylum System: In Brief* 1 (2026). Congress did not address the subject until 1965, when it amended the INA to allow only the “conditional entry” of aliens “because of persecution or fear of persecution on account of race, religion, or political opinion.” Act of Oct. 3, 1965, Pub. L. No. 89-236, § 3, 79 Stat. 911, 912–13. But that limited asylum was subject to “such regulations as [the Attorney General] may prescribe.” *Id.*

When Congress created a formal asylum regime in 1980, it again committed the ultimate decision whether to grant asylum to the Executive. See Refugee Act of 1980, Pub. L. No. 96-212, § 201(b), 94 Stat. 102, 105. The Refugee Act provided that “[t]he Attorney General shall establish a procedure for an alien physically present in the United States or at a land border or port of entry, irrespective of such alien’s status, to apply for asylum, and the alien may be granted asylum in the discretion of the Attorney

General if the Attorney General determines that such alien is a refugee.” *Id.*

Congress revisited asylum again with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”). Pub. L. No. 104-208, div. C, § 604, 110 Stat. 3009-546, 3009-690 to 3009-694. “A major objective of IIRIRA was to protect the Executive’s discretion from undue interference by the courts; indeed, that can fairly be said to be the theme of the legislation.” *Thuraissigiam*, 591 U.S. at 112 (cleaned up).

That theme was expressed in three ways. First, the IIRIRA codified the six ineligibility conditions the Executive had promulgated by regulation after the Refugee Act. *See* 8 U.S.C. § 1158(b)(2)(A)(i)–(vi). Second, the IIRIRA expressly authorized the Executive to “establish additional limitations and conditions, consistent with [§ 1158], under which an alien shall be ineligible for asylum.” *Id.* § 1158(b)(2)(C). And third, the statute reworked the application process itself, in an attempt to ensure that filing an application would not itself become a means of remaining in the country. Congress barred work authorization for at least 180 days after filing, *id.* § 1158(d)(2); required that applications be adjudicated within 180 days, *id.* § 1158(d)(5)(A)(iii); imposed permanent ineligibility for any immigration benefit on aliens who knowingly file frivolous applications, *id.* § 1158(d)(6); and provided that nothing in the application procedures “shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States,” *id.* § 1158(d)(7). In short,

Congress restricted asylum, empowered the Executive to narrow it further, and made clear that the application process exists to serve the asylum decision, not to confer benefits of its own.

The statute’s text and its history thus establish that asylum is a benefit the Executive may grant, and the discretion to withhold it is the Executive’s alone.

B. The INA Permits The Executive To Exercise Its Asylum Discretion Categorically

The Proclamation is an exercise of that discretion. It identifies the asylum statute and prohibits aliens who violate the entry suspension from “invoking” it in a way that would “permit their continued presence in the United States.” 90 Fed. Reg. at 8,335. The implementing guidance directs that those aliens “are not permitted to apply for asylum.” J.A. 101, 107. Two judges of the stay panel read those directives as “an upfront, categorical discretionary denial of asylum,” *Noem*, 2025 WL 5144253, at *1, *16–17 (Millett, J., concurring); *id.* at *24 (Katsas, J., concurring in part and dissenting in part), and Judge Walker agreed in his merits-stage opinion, *RAICES*, 174 F.4th at 128–29 (Walker, J., concurring in part and dissenting in part).

The merits panel did not dispute that the Executive may weigh an alien’s defiance of a suspension of entry in deciding whether to grant asylum in any individual case. Instead, it held that the Executive may not make that decision for all such aliens at once, because it said that the INA requires discretion to be exercised “on an ‘individualized’ basis.” *Id.* at 107.

The statute imposes no such requirement. Section 1158(b)(1)(A) says the Secretary or the Attorney General “may grant asylum.” 8 U.S.C. § 1158(b)(1)(A). It does not limit the factors the Executive may consider or the form its decision must take. This Court has read similarly phrased language in the INA to confer “unfettered discretion,” and has explained that an agency holding such discretion may “announce[] and follow[]—by rule or by settled course of adjudication—a general policy by which its exercise of discretion will be governed.” *INS v. Yueh-Shaio Yang*, 519 U.S. 26, 30, 32 (1996).

Moreover, where Congress wanted discretion under the INA exercised individually, it said so. *See* 8 U.S.C. § 1182(d)(5)(A) (parole “only on a case-by-case basis”). It said nothing of the kind in § 1158(b)(1)(A). And even where a statute does require individualized determinations, an agency may resolve recurring questions by categorical rule. *See* Petition for a Writ of Certiorari (“Pet.”) 19, *Mullin v. Refugee & Immigrant Ctr. for Educ. & Legal Servs.*, No. 26-239 (U.S. filed Aug. 24, 2026) (citing *Am. Hosp. Ass’n v. NLRB*, 499 U.S. 606, 612 (1991), and *Heckler v. Campbell*, 461 U.S. 458, 467 (1983)).

The panel’s remaining evidence of “Congress’s expectation of individualized consideration,” *RAICES*, 174 F.4th at 107, fares no better. The procedures in § 1158(d)(5)(A) and the credible-fear provisions of § 1225(b)(1) govern how applications are processed once they exist, and are thus “inapplicable if there are no asylum applications to consider.” *Id.* at 133 (Walker, J., concurring in part and dissenting in part).

Lacking a statutory hook, the panel drew its individualized-exercise requirement from *Cardoza-Fonseca*'s observation that Congress assigned the Attorney General "the task of making these hard individualized decisions" about "which, if any, eligible refugees should be denied asylum." 480 U.S. at 444–45; see *RAICES*, 174 F.4th at 107. But the Court there was explaining why the breadth of the refugee definition was tolerable—because the Attorney General retains discretion to deny asylum even to those who meet it. See *Cardoza-Fonseca*, 480 U.S. at 443–44, 428 n.5. It was identifying where the discretion resides, not prescribing how it must be exercised. No question about categorical exercise was before it.

C. Having Categorically Denied Asylum, The Executive Need Not Accept Futile Applications

Because the Executive may deny asylum categorically, the remaining question is whether it must nonetheless accept applications it has already refused. The panel said yes, reasoning that futility cannot justify refusing applications, because "the same could be said about individuals who are ineligible for asylum by statute or regulation, and no one disputes that they have a right to apply." *RAICES*, 174 F.4th at 108.

The analogy fails. Every statutory ineligibility ground applies only "if the Attorney General determines" a fact about the particular applicant—that he "participated in the persecution of any person," was convicted of a "particularly serious crime," or presents "reasonable grounds for regarding"

him as “a danger to the security of the United States.” 8 U.S.C. § 1158(b)(2)(A). Those facts can be found only through an application and an adjudication. For an alien ineligible for asylum under these statutory criteria, then, the application serves a function: it is the means by which ineligibility is determined.

An alien covered by the Proclamation stands in a different position. His coverage turns on facts an officer can determine at the moment of encounter without any formal asylum application—when and where he crossed, and whether he falls within one of the Proclamation’s enumerated exceptions—and the discretionary decision that follows from those facts has already been made. Nothing about the merits of his asylum claim remains for an application to determine or balance.

Nor does the text of § 1158(a)(1) cut the other way. The panel read its parenthetical—extending the right to apply to aliens arriving “whether or not at a designated port of arrival”—as a deliberate choice to protect those who cross between ports. *RAICES*, 174 F.4th at 106. But the phrase is not a grant of solicitude; it is a term of coverage, and Congress used it twice in IIRIRA to the same end. The parenthetical confirms only that manner of entry itself does not bar the Executive from considering an application; it remains a legitimate consideration in the discretionary decision that follows. In § 1225(a)(1), the identical parenthetical—down to the clause on aliens interdicted at sea—deems such an alien “an applicant for admission.” 8 U.S.C. § 1225(a)(1). The phrase therefore identifies the class of aliens Congress placed at the threshold of entry, who possess “only

those rights regarding admission that Congress has provided by statute” even when apprehended inside the border. *Thuraissigiam*, 591 U.S. at 139–40. It does not mark out illegal entrants for special protection. An alien who crosses between ports in defiance of a suspension of entry is thus not a person with a vested claim to process, but an applicant for admission whose application the Executive has already resolved.

Stripped of any claim to a different outcome, Respondents argued below that the process has value independent of the outcome it produces. But § 1158(a)(1) permits an alien to apply only “in accordance with this section,” and “this section” makes the grant of asylum discretionary. *See* 8 U.S.C. § 1158(b)(1)(A). The right conferred is a right to seek a discretionary benefit under the procedures the Executive establishes, not a right to a particular outcome. And Congress has disclaimed any “procedural right or benefit that is legally enforceable” arising from those procedures. *Id.* § 1158(d)(7).

Where the substantive benefit has already been lawfully withheld, “there is no such interest for process to protect.” *Olim v. Wakinekona*, 461 U.S. 238, 250 (1983); *see also Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016) (explaining that a “bare procedural violation, divorced from any concrete harm,” is not a cognizable injury); Pet. 17–18. That conclusion follows from first principles. “Process is not an end in itself”; its “purpose is to protect a substantive interest to which the individual has a legitimate claim of entitlement.” *Olim*, 461 U.S. at 250.

More fundamentally, the panel’s holding ignores the logical consequences of its own premise. If “asylum

decisions are ultimately discretionary,” *RAICES*, 174 F.4th at 107, then it follows that the President may foreclose both the “grant of asylum” and “the statutorily mandated procedures that aliens use to apply for asylum.” *Huisha-Huisha*, 27 F.4th at 731. “[T]hose procedures would be futile,” because the President has “already ... made” the asylum decision. *Id.* Requiring the Executive to receive and adjudicate applications he has already lawfully refused would therefore transform a discretionary benefit into a procedural entitlement to be told “no” in a very time-consuming and costly manner.

As three judges on the D.C. Circuit concluded, “the same reasoning” clearly “extends to aliens covered by [the] proclamation suspending entry.” *Noem*, 2025 WL 5144253, at *24 (Katsas, J., concurring in part and dissenting in part); *see also id.* at *16–17 (Millet, J., concurring); *RAICES*, 174 F.4th at 128–29 (Walker, J., concurring in part and dissenting in part). “[T]he Executive—and our country—need not suffer an influx of frivolous asylum claims when the Executive has already exercised his discretion to deny all of them.” *RAICES*, 174 F.4th at 133 (Walker, J., concurring in part and dissenting in part). This Court should reach the same conclusion.

II. Article II Confirms The Breadth Of Section 1182(f)

Section 1182(f) authorizes the President, whenever he “finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States,” to “suspend the entry of all aliens or any class of aliens” and to “impose on the entry of aliens any restrictions

he may deem to be appropriate.” 8 U.S.C. § 1182(f). As this Court has recognized, that provision leaves to the President “whether and when to suspend entry,” “whose entry to suspend,” “for how long,” and “on what conditions.” *Hawaii*, 585 U.S. at 684. Language of that kind “fairly exudes deference” and “forecloses the application of any meaningful judicial standard of review” to the judgments it commits to the Executive. *Webster v. Doe*, 486 U.S. 592, 600 (1988). The President’s determination that a suspension of entry cannot be effective unless those who violate it are denied the discretionary benefit of asylum is such a judgment.

That reading follows from the constitutional background against which Congress created § 1182(f). “Under our Constitution, the ‘executive Power’—all of it—is ‘vested in a President.’” *Seila Law LLC v. CFPB*, 591 U.S. 197, 203 (2020) (quoting U.S. Const. art. II, § 1, cl. 1). Inherent in that power is the President’s “vast share of responsibility for the conduct of our foreign relations,” *Am. Ins. Ass’n v. Garamendi*, 539 U.S. 396, 414 (2003) (citation omitted), including immigration, *Knauff*, 338 U.S. at 542. Thus, “[w]hen Congress prescribes a procedure concerning the admissibility of aliens, it is not dealing alone with a legislative power. It is implementing an inherent executive power.” *Id.* For that reason, when Congress delegates authority over the entry of aliens, it “must of necessity paint with a brush broader than that it customarily wields in domestic areas,” *Zemel v. Rusk*, 381 U.S. 1, 17 (1965), and courts “have neither the ability nor the authority to assess and countermand” the Executive’s policy choices in this area. *Mullin v. Al Otro Lado*, 146 S. Ct. 2079, 2088 n.5 (2026).

Founding-era understandings of the executive power point the same way. Blackstone placed “foreign concerns” first among executive prerogatives, and specified that the Crown could send alien friends “home whenever the king sees occasion,” grant “safe conduct” to aliens of hostile nations, and make an alien a “denizen.”¹ William Blackstone, *Commentaries on the Laws of England* *245, *251–252, *362 (1765); *see also* Saikrishna B. Prakash & Michael D. Ramsey, *The Executive Power over Foreign Affairs*, 111 *Yale L.J.* 231, 269 n.161 (2001) (summarizing Blackstone’s list of the Executive’s “foreign affairs prerogatives that relate to aliens”). Many of the Federalists understood the President to hold that same prerogative. *See Sessions v. Dimaya*, 584 U.S. 148, 217–18 (2018) (Thomas, J., dissenting) (collecting sources); *see also Al Otro Lado*, 146 S. Ct. at 2099 (Thomas, J., concurring). As the Virginia minority’s defense of the Alien Friends Act, attributed to John Marshall, put it: “the right of remaining in our country is vested in no alien; he enters and remains by the courtesy of the sovereign power, and that courtesy may at pleasure be withdrawn.” Address of the Minority in the Virginia Legislature to the People of that State 9–10 (1799).

Courts should interpret the INA against this background. “Congress legislates against the backdrop of certain unexpressed presumptions.” *Bond v. United States*, 572 U.S. 844, 857 (2014) (cleaned up). Unless “a statutory purpose to the contrary is evident,” courts should not lightly discard “long-established and familiar principles.” *United States v. Texas*, 507 U.S. 529, 534 (1993) (cleaned up).

Consistent with that principle, this Court has maintained a “customary policy of deference to the President in matters of foreign affairs” such as “[r]emoval decisions,” which “require consideration of changing political and economic circumstances.” *Jama v. Immigr. & Customs Enft*, 543 U.S. 335, 348 (2005) (internal quotation marks omitted). That deference extends to the President’s decisions regarding asylum, which, like other “discretionary decisions” in immigration law, turn on “policy choices that bear on this Nation’s international relations.” *Arizona v. United States*, 567 U.S. 387, 396 (2012); *Noem*, 2025 WL 5144253, at *3 (Millett, J., concurring) (acknowledging the President’s “constitutional role in immigration law”).

Article II therefore reinforces the President’s prerogative over immigration and counsels reading the INA’s asylum provisions to preserve, not constrain, his discretion.

III. Review Is Warranted Because The Decision Below Would Undo The Proclamation’s Success In Restoring The Process Congress Designed

This case is exceptionally important and warrants this Court’s review. *See* Sup. Ct. R. 10(c). Left in place, the ruling below will dismantle the most effective response to a yearslong border crisis that eroded the Nation’s sovereignty and produced a humanitarian catastrophe. That alone is sufficient reason to grant review, as this Court has recognized by repeatedly granting review, without waiting for a circuit split, where a lower court has blocked a major Executive-branch immigration policy. *See, e.g., Trump v. Int’l*

Refugee Assistance Project, 582 U.S. 571 (2017) (per curiam); *Trump v. Hawaii*, 585 U.S. 667 (2018); *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1 (2020); *Biden v. Texas*, 597 U.S. 785 (2022).³

Nor is any conflict likely to develop, because the amorphous and universal class sustained below effectively precludes any alien subject to the Proclamation from bringing another suit, and organizations and States have no incentive to challenge a nationwide ruling whose outcome they favor. This is likely the Court’s only opportunity to address the questions presented.

And getting those questions right matters because the stakes are high. Until the Proclamation, the southern border was in a profound operational crisis. In the four years before the President issued the order, border officials encountered more than 8.7 million aliens at the southern border, Majority Staff of H. Comm. on Homeland Sec., *Border Crisis Startling Stats* (Oct. 22, 2024) (“2024 Border Crisis Report”), <https://perma.cc/B82W-SK8V>. At least two million more evaded detection entirely. *See id.* The volume of aliens overwhelmed the immigration system, and “rendered many of the INA’s provisions ineffective.” 90 Fed. Reg. at 8,334.

³ Indeed, this Court has summarily reversed for less. *See Margolin v. Nat’l Ass’n of Immigr. Judges*, 608 U.S. 339 (2026) (per curiam) (reversing the Fourth Circuit’s revival of a challenge to an internal speech-approval policy for immigration judges); *Gonzales v. Thomas*, 547 U.S. 183 (2006) (per curiam) (reversing the Ninth Circuit’s resolution, in the first instance, of a single asylum applicant’s “particular social group” claim); *INS v. Orlando Ventura*, 537 U.S. 12 (2002) (per curiam) (similar).

Over a million of these aliens filed asylum applications during this time period. See U.S. Dep’t of Justice, Exec. Office for Immigration Review, *Workload and Adjudication Statistics*, Total Asylum Applications (data generated July 24, 2026), <https://perma.cc/V68S-6P8S> (“EOIR Asylum Statistics”). Although the vast majority of asylum claims failed even under the Biden Administration, final decisions took, on average, almost four years. Nat’l Immigration Forum, *Explainer: Asylum Backlogs* (Jan. 23, 2024), <https://perma.cc/P3CW-T2SU>; Luis Ferré-Sadurní, *What to Know About the Migrant Crisis in New York City*, N.Y. Times (Aug. 19, 2024), <https://www.nytimes.com/article/nyc-migrant-crisis-explained.html>. Filing an application therefore became a way to postpone removal, regardless of the claim’s merit. See Miriam Jordan, *The Real Reasons Migrants Are Coming in Droves: They Believe They Can Stay*, N.Y. Times (Jan. 31, 2024), <https://www.nytimes.com/2024/01/31/us/us-immigration-asylum-border.html> (describing this delay tactic and explaining that “even when” asylum claims are rejected, “applicants are highly unlikely to be deported”).

Aliens, and those who traffic in them, recognized this “key loophole” and exploited it. David Luhnnow, Alicia A. Caldwell & Juan Forero, *The Explosion of Asylum Claims Driving the Global Migrant Crisis*, Wall St. J. (Apr. 8, 2024), <https://www.wsj.com/us-news/asylum-claims-driving-migrant-crisis-ebdffc6b>. From 2019 to 2024, asylum applications rose nearly 320%, from 217,505 to 912,717. EOIR Asylum Statistics, *supra*.

Immigration courts could not absorb the volume of applications. By 2024, more than 2.5 million asylum applications were pending, up from 868,911 in 2020, EOIR Asylum Statistics, *supra*, and the average caseload for each immigration judge climbed to an astounding 5,286 cases, USAFacts, *Are Immigration Judges Keeping Up with Rising Caseloads?* (Nov. 6, 2025), <https://perma.cc/DM9E-DSU2>. Even before that peak, analysts had estimated that clearing the backlog, with hundreds of additional judges, would take until 2032. Holly Straut-Eppsteiner, Cong. Rsch. Serv., R47637, *Immigration Judge Hiring and Projected Impact on the Immigration Courts Backlog* (2023).

But perhaps the heaviest costs of that cycle fell on the aliens themselves, who, incentivized by the backlogged asylum system, risked their lives on the dangerous journey to the southern border to claim asylum. Julia Preston, *The Real Origins of the Border Crisis*, Foreign Affs. (July/Aug. 2023), <https://www.foreignaffairs.com/united-states/origins-immigration-border-crisis-asylum-biden>. Human smugglers capitalized on the influx, charging aliens thousands of dollars for unsafe passage across Mexico and holding them for ransom in stash houses on the border. Will Freeman, *Tough New Immigration Rules Risk Empowering the Cartels*, Council on Foreign Rels. (Jan. 16, 2024), <https://perma.cc/H9XF-VWNN>; Luis Chaparro, *Cartel Human Smuggling Business Is Turning Entire Border Towns into War Zones*, Fox News (Jan. 21, 2024), <https://perma.cc/5NQM-MUXM>. Tens of thousands of aliens encamped on the Mexican side of the border, where drug cartels preyed

on them through extortion, kidnapping, and sexual assault. Preston, *supra*.

Recognizing “[t]he public safety and national security risks” the border crisis posed, President Trump issued the Proclamation immediately upon beginning his second term. 90 Fed. Reg. at 8,333. It has been a resounding success. Southern border apprehensions dropped from an average of 1.86 million in the previous four fiscal years to 237,565 in 2025—an 87% decline, and the lowest level in more than half a century. Press Release, DHS, *Lowest Fiscal Year for Border Patrol Apprehensions Since 1970* (Oct. 7, 2025), <https://perma.cc/QY3Q-QQXX>. “The Border Patrol figure is on track to make 2026 the lowest year for migrant apprehensions since 1967” Adam Isacson, *U.S.-Mexico Border Update*, Wash. Off. on Latin Am. (Apr. 17, 2026), <https://www.wola.org/2026/04/u-s-mexico-border-update-border-data-reconciliation-bill-dhs-transition-ice-detention-wall-migration-route/>. Controlling the southern border has significantly curtailed the human rights abuses and exploitation that once ran unchecked.

The number of meritless asylum applications has likewise plummeted. In the first nine months of the fiscal year following the Proclamation, only 199,069 applications were filed—an annualized rate of about 265,000, a 71% reduction from the 912,717 filed during the previous administration’s last full year. EOIR Asylum Statistics, *supra*. That reduction has allowed immigration courts, for the first time in nearly two decades, to begin clearing away the immense logjam of asylum cases, ensuring that those who come to the U.S. through lawful ports of entry are

not stuck in procedural purgatory. Pending asylum applications in U.S. immigration courts fell from 2,530,933 at the end of fiscal year 2024 to 2,508,982 at the end of fiscal year 2025. *Id.*

These results should come as no surprise because the Proclamation targets the perverse incentive that produced the surge rather than its symptoms. The Proclamation’s benefits extend well beyond the immigration system. Resources once consumed by processing volume are now available to combat trafficking in humans, drugs, and weapons. *Oversight Hearing—U.S. Customs & Border Protection: Hearing Before the Subcomm. on Homeland Sec. of the H. Comm. on Appropriations*, 119th Cong. (2025) (testimony of Pete R. Flores, Acting Comm’r, U.S. Customs & Border Prot.), <https://perma.cc/9AW4-4WPV>.

The Proclamation’s success thus vindicates the Founders’ choice to entrust the Executive Branch, not courts, with immigration decisions, which necessarily turn on policy judgments courts are not well-equipped to make. Putting the D.C. Circuit in charge of the immigration system in the way it has asserted here would undermine all this progress.

But whether one views this as progress or not, at the end of the day, “[t]he wisdom of the policy ... is not before” this Court. *Al Otro Lado*, 146 S. Ct. at 2096. Instead, this Court’s role is to decide whether the Proclamation is consistent with the INA. The answer is yes. This Court should grant review and reverse.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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