

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 DISTRICT OF COLUMBIA CIRCUIT

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

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INTEREST OF *AMICUS CURIAE*

Amicus curiae Federation for American Immigration Reform (FAIR) is a nonprofit membership organization founded in 1979 and headquartered in Washington, D.C. FAIR advocates for immigration policies that serve America's best interests. Since 1980, FAIR has participated in more than 100 cases, as either a party or *amicus curiae*, to advance that mission.¹

At issue in his case is whether a statute authorizing the President to suspend the entry of aliens in the national interest—by which Congress implemented the President's inherent constitutional authority to exclude aliens—allows the President both to suspend the physical entry of aliens and to enforce such suspensions, and whether the President's authority under this statute must yield to the asylum statute when the two conflict. FAIR has a substantial interest in preserving the practical force of the President's suspension authority, especially in matters of border security.

1. In accordance with Rule 37.2, counsel for *amicus* timely notified counsel of record for both Petitioner and Respondents of its intent to file this brief. Also, pursuant to Rule 37.6, 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*, its members, or its counsel—contributed monetarily to its preparation or submission.

INTRODUCTION AND SUMMARY OF ARGUMENT

On January 20, 2025, President Trump issued Proclamation 10888, *Guaranteeing the States Protection Against Invasion*, 90 Fed. Reg. 8333 (Jan. 29, 2025). He declared that “an invasion is ongoing at the southern border,” requiring the Federal Government to fulfill its constitutional duty to “protect each of [the States] against Invasion.” *Id.* at 8334; U.S. CONST. art. IV, § 4. Invoking his “express and inherent powers in Article II,” including authority over foreign affairs, the President suspended “the physical entry of any alien engaged in the invasion across the southern border” until he finds that the invasion has ceased. 90 Fed. Reg. at 8335–36 (Proclamation § 4).

The President also invoked section 212(f) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1182(f), to suspend the entry of aliens “engaged in the invasion across the southern border.” 90 Fed. Reg. at 8335 (Proclamation § 1). Section 1182(f) provides, in relevant part:

Whenever the President 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, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.

The President found that the entry of those invading aliens “is detrimental to the interests of the United States.” 90 Fed. Reg. at 8335 (Proclamation § 1). He also barred them “from invoking provisions of the INA that would permit their continued presence in the United States,” including asylum under 8 U.S.C. § 1158. *Id.* (Proclamation § 2).

The court below held that the Proclamation and its implementing Guidance unlawfully “circumvent Congress’s carefully crafted removal procedures and cast aside federal laws” allowing aliens physically present in the United States to seek asylum and withholding of removal. Pet. App. 63a. It further held that, because section 1182(f) “addresses entry and not removal,” the President may not expel aliens who violate the Proclamation’s entry suspension. *Id.* at 24a. The court thus concluded that such aliens may be removed only through the INA’s ordinary removal procedures. *Id.* at 26a (citing 8 U.S.C. §§ 1225(b)(1), 1229a).

By holding that the government may implement the Proclamation only through the INA’s ordinary removal procedures, which allow applications for asylum-type protections, the court disrupted the Constitution’s allocation of authority over invasion, foreign affairs, and alien exclusion. The ruling deprives the Proclamation of practical effect by allowing covered aliens to obtain, through prohibited entry, the physical presence required for asylum. The court thus misread sections 1182(f) and 1158. Section 1158 generally permits physically present aliens to apply for asylum, while section 1182(f) authorizes the President both to suspend entry and to impose “any restrictions” on it. The question is whether section 1182(f)

permits the President to restrict asylum applications from aliens whose physical presence depends on physical entry the President validly suspended.

Section 1182(f) does allow this restriction. The President's authority under that statute, because of its unrestricted use of "entry," includes the power to suspend physical entry. And such a power would be severely compromised if the President lacked an implied power to remedy violations of a Proclamation suspending physical entry by physical expulsion or repatriation. The President would lack that implied power in its fulness if physical expulsion or repatriation could not immediately and efficiently take place, but regular removal procedures, including asylum applications, had to be followed. The President's resulting inability to remedy violations of his constitutional and statutory power to suspend physical entry obviously would work a substantial erosion of that power.

In these circumstances, section 1182(f) and the asylum statute must be read in harmony, and, to the extent they threaten to conflict, the specific over the general canon counsels that the asylum statute not be read to negate the President's sweeping suspension powers when conditions call for them to be employed.

This Court should grant certiorari and reverse.

ARGUMENT

I. Section 1182(f) Authorizes the President to Suspend the Physical Entry of Covered Aliens and to Remedy Violations of That Suspension.

“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). And “[t]he exclusion of aliens is a fundamental act of sovereignty”; the authority “stems not alone from legislative power but is inherent in the executive power to control the foreign affairs of the nation.” *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950). Section 1182(f) gives express statutory form to that exclusion authority when the conditions Congress prescribed are met. Accordingly, as this Court has recognized, section 1182(f) “exudes deference to the President in every clause,” granting him “ample power to impose entry restrictions in addition to those elsewhere enumerated in the INA.” *Trump v. Hawaii*, 585 U.S. 667, 684 (2018).

In the Proclamation here, the President properly exercises section 1182(f) authority by identifying the covered class, finding its entry detrimental, suspending its physical entry, and defining the suspension’s duration. 90 Fed. Reg. at 8335–36 (Proclamation §§ 1, 4). Section 1182(f) also authorizes the President to impose “any restrictions” on entry that he deems appropriate. And here, the President barred violators from invoking INA

provisions that would permit their continued presence, including asylum under 8 U.S.C. § 1158, until he finds that the invasion has ceased. 90 Fed. Reg. at 8335 (Proclamation § 2). The President’s restriction thus aims to prevent further violation of his suspension of physical entry. The Proclamation also directs officials to “repel, repatriate, or remove” covered aliens. *Id.* at 8336 (Proclamation §§ 4–5). Officials may therefore remedy a prohibited crossing through summary repatriation or removal.

This Court’s precedents support this repatriation authority. “The power to exclude aliens and the power to expel them rest upon one foundation, are derived from one source, are supported by the same reasons, and are in truth but parts of one and the same power.” *Fong Yue Ting v. United States*, 149 U.S. 698, 713 (1893). An alien stopped shortly after entering without inspection is, for constitutional purposes, “at the threshold of initial entry,” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139–40 (2020), and remains so if detained. Thus, the President, if he has the power to exclude the physical entry of aliens, has the power to expel those aliens who have physically entered in defiance of his exclusion, especially if, in a legal sense, they remain “at the threshold of initial entry.”

“Read naturally,” moreover, “the word ‘any’ has an expansive meaning, that is, ‘one or some indiscriminately of whatever kind.’” *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (quoting Webster’s Third New International Dictionary 97 (1976)). Here, the President barred covered aliens “from invoking provisions of the INA that would permit their continued presence in the United States,” including asylum. 90 Fed. Reg. at 8335 (Proclamation § 2).

Since that is a restriction on entry, Section 1182(f) should be read to authorize it.

II. Section 1182(f)’s Authorization to Impose Any Restriction on Entry Can Be Reconciled with Section 1158 and Controls to the Extent of Any Conflict.

Section 1158 permits a physically present alien to apply for asylum “whether or not at a designated port of arrival” and “irrespective of such alien’s status.” 8 U.S.C. § 1158(a)(1). On its face, then, section 1158 seems to impinge on the President’s power, under section 1182(f), to remedy violations of his suspension authority by restricting those who violate it from applying for asylum.

Sections 1182(f) and 1158 can be reconciled, however. Specific terms ordinarily control general ones. “However inclusive may be the general language of a statute, it will not be held to apply to a matter specifically dealt with in another part of the same enactment.” *Fourco Glass Co. v. Transmirra Products Corp.*, 353 U.S. 222, 228 (1957) (citation omitted). The same rule applies when “a general authorization and a more limited, specific authorization exist side-by-side.” *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012). *See also Morton v. Mancari*, 417 U.S. 535, 550–51 (1974):

The courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective. “When there are two

acts upon the same subject, the rule is to give effect to both if possible.”

Mancari, 417 U.S. at 551 (quoting *United States v. Borden Co.*, 308 U.S. 188, 198 (1939)).

Here, this specific-over-general canon resolves the apparent conflict. Both provisions retain effect if section 1158 applies generally while section 1182(f) permits the President, for the class and period covered by a valid suspension, to remedy violations of his suspension authority through summary expulsion unencumbered by regular removal procedures. Section 1158 generally governs asylum applications by physically present aliens. Section 1182(f) addresses the exceptional circumstance in which the President makes the prescribed finding, identifies a class whose entry would be detrimental, and imposes a restriction on that class.

Because section 1182(f) authorizes “any” restriction on entry, moreover, the President may bar covered violators from leveraging their presence obtained through prohibited entry to satisfy asylum’s physical-presence requirement. That targeted restriction can coexist with section 1158; within the Proclamation’s defined class and period, any conflict is governed by section 1182(f) as the more specific provision.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be granted.

Dated: September 23, 2026

Respectfully submitted,

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