No. 25-5

In the Supreme Court of the United States

KRISTI NOEM, SECRETARY OF HOMELAND SECURITY, ET AL., PETITIONERS

v.

AL OTRO LADO, A CALIFORNIA CORPORATION, ET AL.

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

BRIEF FOR THE PETITIONERS

D. JOHN SAUER
Solicitor General
Counsel of Record
BRETT A. SHUMATE
Assistant Attorney General
CURTIS E. GANNON
Deputy Solicitor General
DREW ENSIGN
Deputy Assistant Attorney General
VIVEK SURI
Assistant to the Solicitor General
KATHERINE SHINNERS
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

The Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.*, provides that an alien who "arrives in the United States" may apply for asylum and must be inspected by an immigration officer. 8 U.S.C. 1158(b)(1)(A), 1225(a)(1) and (3). The question presented is whether an alien who is stopped on the Mexican side of the U.S.–Mexico border "arrives in the United States" within the meaning of those provisions.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases: Page

Cases—Continued: Page

Constitution, statutes, and regulations: Page

Statutes and regulations—Continued: Page

In the Supreme Court of the United States

No. 25-5

KRISTI NOEM, SECRETARY OF HOMELAND SECURITY, ET AL., PETITIONERS

v.

AL OTRO LADO, A CALIFORNIA CORPORATION, ET AL.

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

BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The court of appeals' order and amended opinion (Pet. App. 1a-134a) are reported at 138 F.4th 1102. The court of appeals' original opinion (Pet. App. 137a-250a) is reported at 120 F.4th 606. The district court's final judgment (Pet. App. 251a-256a) is available at 2022 WL 3970755. The district court's opinion granting declaratory relief (Pet. App. 257a-295a) is reported at 619 F. Supp. 3d 1029; its order granting injunctive relief (Pet. App. 296a-361a) is available at 2022 WL 3142610; its order resolving the motions for summary judgment (Pet. App. 362a-423a) is available at 2021 WL 3931890; and its order resolving the motion to dismiss (Pet. App. 424a-523a) is reported at 394 F. Supp. 3d 1168.

JURISDICTION

The judgment of the court of appeals was entered on October 23, 2024. On January 8, 2025, the court *sua sponte* directed the parties to file briefs addressing whether the case should be reheard en banc (Pet. App. 135a-136a). On May 14, 2025, the court amended its opinion and denied rehearing (Pet. App. 2a). The petition for a writ of certiorari was filed on July 1, 2025, and granted on November 17, 2025. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reprinted in the appendix to this brief. App., *infra*, 1a-24a.

INTRODUCTION

In 2016, border surges led to severe overcrowding at ports of entry along the U.S.–Mexico border, straining the ports' capacity to process aliens. The Department of Homeland Security (DHS) responded by adopting "metering," a practice under which port officials would stand along the border and temporarily prevent aliens without valid travel documents from crossing into the United States, generally telling them that they would need to return to the port of entry later, when there were sufficient resources to process them. In the decision below, the Ninth Circuit held that metering violates 8 U.S.C. 1158(a)(1) and 1225(a), which provide that an alien "who arrives in the United States" may apply for asylum and must be inspected by immigration officers. It reasoned that "the phrase 'arrives in the United States' encompasses those who encounter officials at the border, whichever side of the border they are standing on." Pet. App. 15a (citation omitted).

That decision is incorrect. In ordinary English, a person "arrives in" a country only when he comes within

its borders. A person does not "arrive in the United States" if he is stopped in Mexico. The court of appeals effectively replaced the statutory text ("arrives in the United States," 8 U.S.C. 1158(a)(1), 1225(a)(1)), with alternative text of its own ("presents herself to an official at the border," Pet. App. 16a). Under the presumption against extraterritoriality, moreover, statutes apply only in the United States unless they clearly indicate that they apply abroad. But "arrives in the United States" does not plausibly, much less clearly, mean "stopped in Mexico." Further, this Court held in *Sale* v. *Haitian Centers Council, Inc.*, 509 U.S. 155 (1993), that the immigration laws' protections do not extend to refugees who have been interdicted at sea en route to the United States. *Sale*'s logic confirms that the immigration laws at issue here likewise do not protect aliens who are stopped on land before reaching U.S. soil.

Fifteen members of the Ninth Circuit wrote or joined opinions disagreeing with the panel majority's reading of the statute. See Pet. App. 43a (R. Nelson, J., dissenting); *id.* at 114a (Bress, J., dissenting); *id.* at 134a (statement of Bea, J.). Administrations of both major parties have opposed the decision, which deprives the Executive Branch of a critical tool for addressing border surges and preventing overcrowding at ports of entry. This Court should reverse.

STATEMENT

A. Legal Background

The Immigration and Nationality Act (INA or Act), 8 U.S.C. 1101 *et seq.*, governs aliens' admission to and removal from the United States. This case concerns two provisions of the INA—8 U.S.C. 1158 and 1225—that were adopted in substantially their current form as part of the Illegal Immigration Reform and Immigrant Re-

sponsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, 110 Stat. 3009-546.

Section 1158 addresses asylum, a form of relief generally available to aliens facing persecution in their home countries because of race, religion, nationality, membership in a particular social group, or political opinion. See 8 U.S.C. 1101(a)(42)(A), 1158(b)(1)(A). An "alien who is physically present in the United States or who arrives in the United States" "may apply for asylum." 8 U.S.C. 1158(a)(1). The Attorney General or Secretary of Homeland Security "may," in her discretion, grant asylum to an alien who satisfies the eligibility criteria. 8 U.S.C. 1158(b)(1)(A). An asylum recipient may lawfully live and work here, see 8 U.S.C. 1158(c)(1), and the alien's spouse and children may obtain derivative immigration benefits, see 8 U.S.C. 1158(b)(3)(A).

Section 1225 addresses the processing of aliens applying for admission to the United States. An "alien present in the United States who has not been admitted or who arrives in the United States" is deemed "an applicant for admission." 8 U.S.C. 1225(a)(1). Such an alien "shall be inspected by immigration officers." 8 U.S.C. 1225(a)(3). If the alien lacks valid travel documents, the immigration officer generally "shall order the alien removed from the United States" without further review. 8 U.S.C. 1225(b)(1)(A)(i). But if the alien expresses an intention to seek asylum or a fear of persecution, the immigration officer must instead refer him to an asylum officer for an interview. See 8 U.S.C. 1225(b)(1)(A)(ii). The asylum officer must then assess whether the alien has a credible fear of persecution. If so, the alien "shall be detained for further consideration of the application for asylum," 8 U.S.C. 1225(b)(1)(B)(ii); if not, the officer "shall order the alien removed from the United States," 8 U.S.C. 1225(b)(1)(B)(iii)(I). An asylum officer's deter-

mination that an alien lacks a credible fear of persecution is subject to review by an immigration judge. See 8 U.S.C. 1225(b)(1)(B)(iii)(III).

B. Factual Background

In 2016, U.S. Customs and Border Protection (CBP) faced a surge of aliens seeking admission at ports of entry along the U.S.–Mexico border. C.A. E.R. 344-345. Those ports encountered more than 150,000 aliens in Fiscal Year 2016, a 70% increase over Fiscal Year 2014. *Id.* at 620. The "significant volume" of aliens "surpassed" the ports' "physical capacity," imposing a "tremendous strain" on CBP's personnel and resources. D. Ct. Doc. 308-3, at 2 (Oct. 15, 2019). Overcrowding "seriously compromised" the ports' "ability to safely and humanely care" for those in their custody. *Ibid.* The record includes examples of the problems CBP faced:

- The Brownsville Port of Entry in Texas was "[w]ell short of the needed space" and had to start holding people "throughout administrative spaces of the port." C.A. E.R. 584.
- An official reported that "every seat" at the Hidalgo Port of Entry in Texas was taken. C.A. E.R. 594. "[W]e keep processing as fast as possible," she explained, "but they keep arriving." *Ibid.* She wrote to other CBP officials: "We got hit hard with arrivals yesterday[.] * * * [N]ow bed space [is] not available[.] * * * HELP!" *Id.* at 589.
- The El Paso Port of Entry in Texas had to provide "up to 1,000 meals per day using microwaves," a "volume" for which it was "not equipped." C.A. E.R. 582.
- Overcrowding led to "unsafe" and "unhealthy" conditions at the San Luis Port of Entry in Ari-

zona; some aliens had been in its custody "for days," "had not been medically screened," and "were sleeping outside the port." C.A. E.R. 732.

- The San Ysidro Port of Entry in California was "severely over" its capacity, and aliens awaiting processing formed a queue stretching from the port "clear south into Mexico." C.A. E.R. 751-752.
- The San Diego Field Office (which encompasses ports along the California–Mexico border) reached 155% of its detention capacity, and the Tucson Field Office (which encompasses ports along the Arizona–Mexico border) reached 231% of its capacity. C.A. E.R. 353.

In November 2016, during the Obama Administration, DHS responded by adopting "metering," a practice that allowed CBP to prevent aliens without valid travel documents from entering the United States. See Pet. App. 5a. To implement metering, CBP officers would stand on the U.S. side of the border and stop aliens from crossing into the United States. See *ibid.* DHS gave ports flexibility to apply metering based on "what worked best operationally and whether it was required on any given day or at any specific location." *Ibid.* (brackets omitted).

In 2018, during the first Trump Administration, the Executive Assistant Commissioner for CBP's Office of Field Operations issued a memorandum formalizing that policy. J.A. 122-123. The memorandum stated that CBP officers "may elect to meter the flow of travelers" when appropriate to ensure "security," "safe and sanitary conditions," and "orderly processing." J.A. 122. It directed officers to inform travelers that CBP will permit travelers "to enter the port once [it has] sufficient space and resources to process them," and it acknowl-

edged that an alien who is "in the United States" "must be fully processed." J.A. 122-123.

The Secretary of Homeland Security then issued a memorandum reiterating that policy. J.A. 124-129. She observed that CBP's core mission includes protecting the country from "security threats," intercepting "illicit narcotics," enforcing "trade laws," and "managing flow of people and goods" at the border. J.A. 128-129. She noted that the processing of aliens without valid travel documents "dr[ew] resources away" from those responsibilities, impeding "legitimate trade and travel." J.A. 125, 127. To address those concerns, she authorized CBP to "establish and operate physical access controls at the borderline"—*i.e.*, to use metering—as appropriate based on "the availability of resources and holding capacity" at the relevant port. J.A. 129.

In November 2021, during the Biden Administration, DHS rescinded those memoranda. J.A. 135-139. Though DHS has not adopted a new policy on metering in the current Administration, it considers metering a critical tool for addressing border surges when they occur, and it seeks to retain the option of reviving the practice.

C. Proceedings Below

1. In 2017, the immigrant-rights organization Al Otro Lado and 13 asylum seekers (respondents) sued the government in the U.S. District Court for the Southern District of California. Pet. App. 6a. They claimed that the INA requires CBP to inspect, and to process asylum claims from, aliens who reach the Mexican side of the U.S.–Mexico border, and that CBP had unlawfully withheld that action, in violation of the Administrative Procedure Act, 5 U.S.C. 706(1). Pet. App. 7a. As the petition for a writ of certiorari elaborates (at 6-7), respondents also raised other claims that are not directly

at issue here, including a challenge to a regulation setting new asylum-eligibility criteria.

The district court granted in part and denied in part the government's motion to dismiss. Pet. App. 424a-523a. It concluded that respondents had stated a valid claim that CBP, through metering, had unlawfully withheld agency action required by the INA. *Id.* at 465a-479a. It reasoned that, under Sections 1158 and 1225, an alien may apply for asylum and must be inspected if he is "in the process of arriving," even if he is stopped outside the United States. *Id.* at 469a.

The district court later certified a class consisting of "all noncitizens who seek or will seek to access the U.S. asylum process by presenting themselves at a Class A port of entry on the U.S.-Mexico border, and were or will be denied access to the U.S. asylum process by or at the instruction of CBP officials on or after January 1, 2016." Pet. App. 9a (brackets omitted). It then granted respondents summary judgment on the claim that CBP, through metering, had unlawfully withheld inspection and processing of asylum applications from aliens who had reached the Mexican side of the U.S.–Mexico border. *Id.* at 379a-407a.

The district court entered a final judgment granting injunctive and declaratory relief to respondents. Pet. App. 251a-256a. The court granted a named plaintiff, Beatrice Doe, an injunction requiring the government to "facilitate [her] entry into the United States" and to "ensure her inspection and asylum processing upon arrival." *Id.* at 253a. The court also issued a class-wide declaration that, "absent any independent, express, and lawful statutory authority," the "denial of inspection or asylum processing to Class Members who have not been admitted or paroled, and who are in the process of arriving in the United States at Class A Ports of Entry, is

unlawful regardless of the purported justification for doing so." *Ibid.*

2. A divided panel of the court of appeals affirmed in part and vacated in part. Pet. App. 137a-250a. After the parties responded to the court's *sua sponte* request for briefs about whether the case should be reheard en banc, see *id.* at 135a-136a, the court issued amended opinions, with the majority rewriting a section addressing the presumption against extraterritoriality and making minor changes to other sections. *Id.* at 1a-42a (majority opinion); *id.* at 43a-113a (Nelson, J., dissenting). Except where otherwise indicated, this brief cites and discusses the amended opinions.

The court of appeals affirmed the grant of summary judgment to respondents on their challenge to metering. Pet. App. 11a-32a. It observed that, under Section 1158, an alien may apply for asylum if he "is physically present in the United States" or if he "arrives in the United States." *Id.* at 13a (quoting 8 U.S.C. 1158(a)(1)). It concluded that those terms would be redundant if the "arrives in" category encompassed only aliens in the United States. See *id.* at 13a-14a. To avoid redundancy, the court interpreted the term "'arrives in the United States'" to include aliens "at the border, whichever side of the border they are standing on." *Id.* at 15a (citation omitted). It stated that "[t]o 'arrive' means 'to reach a destination'" and that, for an asylum seeker, "the relevant destination is the U.S. border." *Id.* at 16a.

The court of appeals then observed that Section 1225 requires an immigration officer to inspect an applicant for admission—*i.e.*, an alien "present in the United States who has not been admitted or who arrives in the United States." Pet. App. 23a (quoting 8 U.S.C. 1225(a)(1)). Section 1158(a)(1) and Section 1225's definition of "'applicant for admission,'" the court noted, use "nearly

identical" language. *Ibid.* For "the same reasons" that the court had articulated in interpreting Section 1158(a)(1), it concluded that "a noncitizen stopped by officials at the border is an 'applicant for admission' under § 1225(a)(1)." *Ibid.*

The court of appeals rejected the government's reliance on the presumption against extraterritoriality. In its original opinion, the court concluded that Sections 1158 and 1225 clearly indicate their extraterritorial reach. Pet. App. 160a-162a. In its amended opinion, it abandoned that rationale, instead concluding that the presumption does not apply because "the conduct at issue" is "domestic." *Id.* at 26a; see *id.* at 25a-26a.

Judge Ryan Nelson dissented. Pet. App. 43a-113a. He concluded that "an alien 'arrives in the United States' only when she crosses the border." *Id.* at 66a. In his view, the court of appeals' contrary reading of the statute conflicts with "[t]ext, history, precedent, and common sense." *Id.* at 45a; see *id.* at 45a-65a.

3. The court of appeals, on its own motion, called for briefs addressing whether the case should be reheard en banc. Pet. App. 135a-136a. After briefing, the court denied rehearing. *Id.* at 2a.

Judge Bress, joined by eleven other judges, dissented from the denial of rehearing. Pet. App. 114a-133a. He opined that the panel opinion was "gravely wrong," was inconsistent with "clear statutory text and precedent," and "will seriously harm our country's ability to manage its borders." *Id.* at 133a. Judge Bea, joined by two other senior judges, issued a statement respecting the denial of rehearing. *Id.* at 134a. Although they could not "vote on calls for rehearing en banc or formally join a dissent from a failure to rehear en banc," they explained that they "agree[d] with Judge Bress's dissent." *Id.* at 134a & n.1.

SUMMARY OF ARGUMENT

An alien stopped in Mexico is not entitled to apply for asylum under 8 U.S.C. 1158(a)(1) or to be inspected by immigration officers under 8 U.S.C. 1225(a).

A. Sections 1158(a)(1) and 1225(a)(1) provide that an alien who "arrives in the United States" may apply for asylum and must be inspected by immigration officers. See 8 U.S.C. 1158(a)(1), 1225(a)(1) and (3). The ordinary meaning of "arrives in" refers to entering a specified place, not just coming close to it. An alien who is stopped in Mexico does not arrive in the United States.

Section 1158(a)(1)'s context confirms that only aliens in the United States may apply for asylum. The INA distinguishes between asylum under Section 1158 and refugee admission under 8 U.S.C. 1157. Whereas Section 1157 governs the admission of refugees "from foreign countries," Section 1158 governs the granting of asylum to aliens "currently in the United States." *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 433 (1987). The court of appeals' decision effectively conflates those provisions.

Section 1225(a)(1)'s context leads to the same result. Under Section 1225, aliens who arrive in the United States must be inspected by immigration officers and, in some circumstances, interviewed by asylum officers. But Section 1225 also requires the detention and removal of certain aliens who arrive in the United States. Those provisions can sensibly apply only to aliens who are already in the country. The court of appeals did not explain how officials in the United States could inspect, interview, detain, and remove aliens who are in Mexico.

B. The presumption against extraterritoriality confirms that Sections 1158(a)(1) and 1225(a)(1) extend only to aliens in the United States. That longstanding

principle requires courts to presume that federal statutes apply only within the United States unless they clearly provide otherwise. The phrase "arrives in the United States" does not even plausibly, much less clearly, cover aliens in Mexico.

C. The court of appeals' decision also conflicts with this Court's decision in *Sale* v. *Haitian Centers Council, Inc.*, 509 U.S. 155 (1993). There, a military coup in Haiti led tens of thousands of Haitians to flee the country by boat. The United States interdicted many of them at sea, preventing them from reaching American soil and claiming the protections of American immigration laws. This Court upheld those actions, relying on the presumption against extraterritoriality to hold that the statutory provision at issue there applied "only within United States territory." *Id.* at 173. Congress acted against the backdrop of that decision when it enacted the current language of Sections 1158(a)(1) and 1225(a)(1) in 1996. Even putting aside Congress's presumed knowledge of *Sale*, that decision's reasoning confirms that Sections 1158(a)(1) and 1225(a)(1) do not apply to aliens who are "outside our borders." *Id.* at 173.

D. The court of appeals' decision undermines the Executive Branch's authority to manage the United States' border with Mexico. Administrations of both parties have opposed the court's reading of the INA, warning that it impairs the government's ability to ensure the safe and orderly processing of aliens at the southern border.

ARGUMENT

Under Article II, "the power of exclusion of aliens" is "inherent in the executive department," as part of "the executive power to control the foreign affairs of the nation." *United States ex rel. Knauff* v. *Shaughnessy*, 338

U.S. 537, 542-543 (1950). Federal statutes also empower DHS and CBP to manage the Nation's borders and ports of entry. See, *e.g.*, 6 U.S.C. 111(b)(1), 202, 211(c), 211(g)(3). Exercising that constitutional and statutory authority, CBP has previously used metering to ensure the safe and orderly processing of aliens at ports of entry.

The court of appeals nonetheless held that metering violates 8 U.S.C. 1158 and 1225, reasoning that an alien who is stopped on the Mexican side of the U.S.–Mexico border "arrives in the United States" and so is entitled to apply for asylum and to be inspected. That reading defies the INA's plain text, the presumption against extraterritoriality, and this Court's decision in *Sale* v. *Haitian Centers Council, Inc.*, 509 U.S. 155 (1993).

A. The Plain Terms Of Sections 1158 And 1225 Encompass Only Aliens Actually In The United States

The court of appeals' interpretation conflicts with the applicable statutory text, read in context.

1. An alien who is stopped in Mexico does not "arrive in the United States"

Sections 1158 and 1225 provide as follows:

> Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.

8 U.S.C. 1158(a)(1).

> An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

8 U.S.C. 1225(a)(1).

The INA's general definitional section further provides that, except where the statute "specifically" provides otherwise, "[t]he term 'United States', * * * when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands." 8 U.S.C. 1101(a)(38).

Under Sections 1158 and 1225, an alien who "arrives in the United States" may apply for asylum and is an applicant for admission (and so must be inspected by an immigration officer). Contrary to the court of appeals' view, an alien "arrives in the United States" only when he crosses the border and actually enters the United States. An alien who is stopped in Mexico does not arrive in the United States.

That conclusion follows from the plain text. The verb "arrive" means "[t]o come to the end of a journey, to a destination, or to some definite place." 1 *The Oxford English Dictionary* 462 (2d ed. 1989) (def. 5.a); see *American Heritage Dictionary* 102 (3d ed. 1996) (def. 1) ("[t]o reach a destination"). And the preposition "in" means "[w]ithin the limits or bounds of." 7 *The Oxford English Dictionary* 125 (def. 1.a); see *American Heritage Dictionary* 910 (def. 1) ("[w]ithin the limits, bounds, or area of"). An alien therefore "arrives in the United

States" only when he comes within the limits or bounds of the United States. An alien on the Mexican side of the border is close to the United States, but he does not arrive *in* the United States.

Common usage confirms that English speakers use "arrive in" to mean entering a specified location, not just coming close to it. The Greeks did not "arrive in" Troy while camped outside its walls. A letter does not "arrive in" the mailbox while still in the postal worker's satchel. And a running back does not "arrive in" the end zone when he is stopped at the one-yard line. Respondents "have not identified a single example of when 'arrives in' means anything besides physically reaching a destination." Pet. App. 43a (Nelson, J., dissenting).

Congress knows how to refer to aliens who have drawn near the United States without entering it. A separate section of the INA provides that the government may, with a State's consent, deputize state law-enforcement officers to respond to a "mass influx of aliens *arriving off the coast of the United States, or near a land border*." 8 U.S.C. 1103(a)(10) (emphasis added). Sections 1158 and 1225, by contrast, refer to aliens who arrive "in the United States," not aliens who arrive "near a land border." That "material variation in terms suggests a variation in meaning." Antonin Scalia & Bryan A. Garner, *Reading Law* § 25, at 170 (2012); see *DHS* v. *MacLean*, 574 U.S. 383, 391 (2015).

It makes no difference that an alien stopped on the Mexican side of the border has come close to arriving in the United States. "Whenever the law draws a line there will be cases very near each other on opposite sides." *United States* v. *Wurzbach*, 280 U.S. 396, 399 (1930). The "very meaning of a line in the law" is the distinction between those who get "close to the line" and those who cross it. *Louisville & Nashville R.R.* v.

United States, 242 U.S. 60, 74 (1916). Sections 1158 and 1225 draw a clear line at the border, and aliens on the Mexican side of that line are entitled neither to apply for asylum nor to be inspected.

2. Section 1158(a)(1)'s context confirms that aliens outside the United States may not apply for asylum

The INA distinguishes between asylum under Section 1158 and refugee admission under 8 U.S.C. 1157. Both provisions offer protection to "refugees" facing persecution based on protected traits. See 8 U.S.C. 1101(a)(42), 1157(c)(1), 1158(b)(1)(A). But Section 1157 governs "admission to the United States" for refugees outside the country, 8 U.S.C. 1157(c)(3), while Section 1158 governs asylum for aliens already "in the United States," 8 U.S.C. 1158(a)(1). In fact, Congress added Section 1158 in 1980 precisely because the INA previously addressed only refugees seeking "admission from foreign countries," leaving "no statutory basis for granting asylum to aliens who applied from within the United States." *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 433 (1987); see Refugee Act of 1980, Pub. L. No. 96-212, § 201(b), 94 Stat. 105 (adding Section 208 of the INA, to be codified as 8 U.S.C. 1158).

Courts have previously recognized that there is a fundamental difference between asylum and refugee admission. This Court has explained that Section 1157 "governs the admission of refugees who seek admission from foreign countries," while Section 1158 "sets out the process by which refugees currently in the United States may be granted asylum." *Cardoza-Fonseca*, 480 U.S. at 433. The Ninth Circuit previously recognized that Section 1157 "establishes the procedure by which an alien *not* present in the United States may apply for entry as a refugee," while Section 1158 "sets out proce-

dures for granting asylum to refugees *within* the United States." *Yang* v. *INS*, 79 F.3d 932, 938, cert. denied, 519 U.S. 824 (1996). The Fourth Circuit has stated that, "[u]nlike aliens granted asylum," "aliens admitted as refugees seek admission to the United States from foreign countries." *Cela* v. *Garland*, 75 F.4th 355, 362 n.9 (2023), cert. denied, 144 S. Ct. 2657 (2024). And the D.C. Circuit has stated that "refugees apply from abroad; asylum applicants apply when already here." *Kiyemba* v. *Obama*, 555 F.3d 1022, 1030 (2009), vacated on other grounds, 559 U.S. 131 (2010) (per curiam).

That distinction matters because refugee admission is subject to stricter limits than asylum. For example, Section 1157 caps the number of refugees whom the Executive Branch may admit each year. See 8 U.S.C. 1157(a). And unlike Section 1158, Section 1157 is limited to refugees "of special humanitarian concern to the United States." 8 U.S.C. 1157(c)(1).

The court of appeals' interpretation collapses those distinctions. It allows aliens outside the United States to bypass Section 1157's provisions for the admission of refugees "from foreign countries" and to invoke Section 1158's provisions for granting asylum to refugees "currently in the United States." *Cardoza-Fonseca*, 480 U.S. at 433; see Pet. App. 54a-55a (Nelson, J., dissenting). That provides a further clue that its reading of Section 1158 is wrong.

3. Section 1225(a)(1)'s context confirms that aliens outside the United States need not be inspected

After deeming aliens who arrive in the United States to be applicants for admission, Section 1225 prescribes how the government must process such applicants. The steps that Section 1225 requires—such as inspection,

detention, and removal—make sense only for aliens who are already in the United States.

To start, Section 1225 provides that an applicant for admission "shall be inspected" by an immigration officer, 8 U.S.C. 1225(a)(3), who may require the applicant to answer questions "under oath," 8 U.S.C. 1225(a)(5). In certain circumstances, if the alien expresses a fear of persecution, an asylum officer interviews him and assesses the credibility of that fear. See 8 U.S.C. 1225(b)(1)(A)(ii) and (B)(i). An asylum officer's determination that the alien does not have a credible fear of persecution is subject to review by an immigration judge, including "an opportunity for the alien to be heard and questioned." 8 U.S.C. 1225(b)(1)(B)(iii)(III). It is implausible that Section 1225 instructs immigration officers, asylum officers, and immigration judges on one side of the border to inspect, interview, and question aliens who remain on the other side of the border.

Section 1225 also directs the government to detain applicants for admission in specified circumstances. If an immigration officer refers an alien to an asylum officer for a credible-fear interview, the alien "shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." 8 U.S.C. 1225(b)(1)(B)(iii)(IV). And if the asylum officer finds that the alien has a credible fear of persecution, "the alien shall be detained for further consideration of the application for asylum." 8 U.S.C. 1225(b)(1)(B)(ii). The court of appeals did not explain how the United States could detain aliens located in Mexico.

Other provisions of Section 1225 presuppose that the alien undergoing inspection or interviews is already in the United States. If an immigration officer determines in an inspection that the alien is inadmissible, the officer

generally must "order" that the alien be "removed from the United States." 8 U.S.C. 1225(b)(1)(A)(i). Similarly, if an asylum officer concludes in an interview that the alien lacks a credible fear of persecution, the officer must "order" that the alien be "removed from the United States." 8 U.S.C. 1225(b)(1)(B)(iii)(I). An applicant for admission may, with the government's permission, withdraw the application and "depart immediately from the United States." 8 U.S.C. 1225(a)(4). Further, if the alien is "arriving on land * * * from a foreign territory contiguous to the United States," the government may in certain circumstances "return the alien to that territory" pending a removal proceeding. 8 U.S.C. 1225(b)(1)(C). In each of those instances, an alien can be removed from the United States, depart from the United States, or be returned to a foreign country only if he is "*in* the United States in the first place." Pet. App. 118a (Bress, J., dissenting).

Because Section 1225's procedures cannot sensibly be applied to aliens outside the United States, the court of appeals' reading effectively entitles any alien who reaches the border to enter the United States so that the government can apply those procedures. Indeed, the district court awarded respondent Beatrice Doe, an alien subjected to metering, an injunction requiring the government to "facilitate [her] entry into the United States" so that she could be inspected and receive asylum processing "upon arrival." Pet. App. 253a. But aliens who reach the foreign side of the border do not thereby acquire a right to proceed into the United States. To the contrary, it has long been established that aliens "have no right to enter the United States unless it has been given to them by the United States," *United States ex rel. Polymeris* v. *Trudell*, 284 U.S. 279, 280 (1932); that an alien may be "stopped in crossing an

international boundary" and required "to identify himself as entitled to come in," *Carroll* v. *United States*, 267 U.S. 132, 154 (1925); and that an alien with no legal right to enter "from contiguous lands obviously can be turned back at the border without more," *Shaughnessy* v. *United States ex rel. Mezei*, 345 U.S. 206, 215 (1953). Yet, under the court of appeals' erroneous reading, the INA would incongruously deprive the government of that traditional form of border control.

4. The court of appeals' textual analysis was flawed

The court of appeals identified several reasons for interpreting "arrives in the United States" to include aliens who are outside the territory of the United States but within hailing distance of it. None of those reasons is sound.

The relevant destination. The court of appeals reasoned that "[t]o 'arrive' means 'to reach a destination'" and that, for an asylum seeker, "the relevant destination is the U.S. border, where she can speak with a border official." Pet. App. 16a. It concluded that an alien "who presents herself to an official at the border" has "reached her destination—she has 'arrive[d].'" *Ibid.* But Sections 1158 and 1225 use the entire phrase "arrives in the United States," not just the word "arrives." The alien must therefore arrive *in* the United States, not at some other destination that happens to be close.

The court of appeals' rationale fails on its own terms. The "relevant destination" for an asylum seeker is not "the U.S. border." Pet. App. 16a. Asylum seekers do not trek to the border so that they can camp on the Mexican side of it. The relevant destination is instead the United States itself, and an asylum seeker who is still in Mexico does not arrive in the United States.

The court of appeals' interpretation—which turns on whether the alien "can speak with a border official," Pet. App. 16a—requires drawing distinctions that have no textual basis. On that theory, an alien arrives in the United States if he is "stopped by U.S. officials" with whom he might speak but not if he is stopped by a natural or artificial barrier (such as the Rio Grande or a fence). *Id.* at 23a. The court did not explain why the phrase "arrives in the United States" distinguishes between an alien stopped by U.S. officials before crossing the border and one who is stopped instead by a border barrier.

Putative surplusage. The court of appeals observed that Section 1158 refers to an "alien who is physically present in the United States or who arrives in the United States," 8 U.S.C. 1158(a)(1), and that Section 1225 refers to an "alien present in the United States who has not been admitted or who arrives in the United States," 8 U.S.C. 1225(a)(1). See Pet. App. 13a, 23a. The court objected that the government's interpretation makes the phrase "arrives in the United States" redundant with the phrase "present in the United States." See *id.* at 13a-14a. That objection is unsound.

Under the government's reading, the phrase "arrives in the United States" does meaningful work. Federal immigration law has historically distinguished between an alien who "arrives at a port of entry" and one who has "'effected an entry'" through lawful admission. *DHS* v. *Thuraissigiam*, 591 U.S. 103, 139-140 (2020) (citation omitted); see *Landon* v. *Plasencia*, 459 U.S. 21, 32 (1982) (noting the change in status "once an alien gains admission to our country"). In general, "an arriving alien" "is not considered to have entered the country," even though he "is on U.S. soil." *Thuraissigiam*, 591 U.S. at 139. Applying that doctrine, this Court has

held that an alien who was detained for deportation for five years after her arrival at Ellis Island was not covered by a statute that referred to "any alien who shall have entered or who shall be found in the United States." *Kaplan* v. *Tod*, 267 U.S. 228, 230-231 (1925) (citation omitted). Instead, "while she was at Ellis Island she was to be regarded as stopped at the boundary line and kept there" and therefore as having "gained no foothold in the United States." *Id.* at 230. Nearly thirty years later, the Court reiterated that "harborage at Ellis Island is not an entry into the United States" because an alien who is permitted to move "from ship to shore" is still "treated as if stopped at the border." *Mezei*, 345 U.S. at 213, 215. In another case, the Court held that an alien who had "arrived in this country" and was "seeking admission" was, despite being held in custody for more than a year and later paroled, not covered by a statute that authorized the Attorney General to withhold deportation of aliens "within the United States." *Leng May Ma* v. *Barber*, 357 U.S. 185, 186 (1958).

If Sections 1158 and 1225 referred only to aliens who are "present in the United States," then courts might have held that arriving aliens fall outside their scope. The term "arrives in the United States" clarifies that the statutes apply to aliens who cross the border, regardless of whether they have "'effected an entry'" through lawful admission. *Thuraissigiam*, 591 U.S. at 140. See Pet. App. 55a-56a (Nelson, J., dissenting); *id.* at 123a (Bress, J., dissenting).

Furthermore, aliens who arrive in the United States are subject to special rules that do not necessarily apply to other aliens. For instance, certain aliens who are "arriving in the United States" are automatically subject to expedited removal (a fast-track process that enables an alien's removal without a hearing before an immigration

judge). See 8 U.S.C. 1225(b)(1)(A)(i). By contrast, other aliens generally are subject to expedited removal only if they are designated by the Attorney General and satisfy specified conditions. See 8 U.S.C. 1225(b)(1)(A)(iii). Section 1225 also bars an "arriving alien who is a stowaway" from applying for admission, 8 U.S.C. 1225(a)(2); prescribes the process for interviewing an alien "who is arriving in the United States," 8 U.S.C. 1225(b)(1)(A)(i)-(ii); and establishes a special removal procedure for an "arriving alien" who is suspected of being inadmissible on certain security-related grounds, 8 U.S.C. 1225(c)(1). Because aliens who arrive in the United States form a distinct legal subcategory, it makes sense that the INA would refer to them separately, despite potential overlap with aliens "present in the United States."

In any event, "redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication." *Barton* v. *Barr*, 590 U.S. 222, 239 (2020). As a result, "[s]ometimes the better overall reading of the statute contains some redundancy," *Rimini Street, Inc.* v. *Oracle USA, Inc.*, 586 U.S. 334, 346 (2019), and this Court recognizes that the canon against surplusage "does not require [courts] to favor 'an unusual meaning that will avoid surplusage' over a more natural one," *Stanley* v. *City of Sanford*, 606 U.S. 46, 56 (2025) (quoting Scalia & Garner § 26, at 176). Many of the Court's recent decisions adopt interpretations containing redundancy. See, *e.g.*, *Bufkin* v. *Collins*, 604 U.S. 369, 386-387 (2025); *Feliciano* v. *Department of Transportation*, 605 U.S. 38, 53 n.5 (2025); *Pugin* v. *Garland*, 599 U.S. 600, 609-610 (2023); *Guam* v. *United States*, 593 U.S. 310, 320

(2021); *Atlantic Richfield Co.* v. *Christian*, 590 U.S. 1, 14 n.5 (2020).

The parenthetical reference to a port of entry. The court of appeals observed that Sections 1158 and 1225 refer to an alien "who arrives in the United States (*whether or not at a designated port of arrival* and including an alien who is brought to the United States after having been interdicted in international or United States waters)." 8 U.S.C. 1158(a)(1), 1225(a)(1) (emphasis added). It read the parenthetical to mean that the statute "covers those 'at a designated port of arrival.'" Pet. App. 16a.

That argument is incorrect. Just as the phrase "tragedies (whether or not by Shakespeare)" excludes comedies, even if by Shakespeare, the phrase "in the United States (whether or not at a designated port of arrival)" excludes aliens outside the United States, even if at a port of arrival. The parenthetical clarifies that Sections 1158 and 1225 cover not only those aliens who arrive in the United States at ports of arrival but also those who arrive elsewhere in the United States. Either way, though, the aliens must still arrive "in the United States," and aliens who are stopped in Mexico have yet to arrive. See Pet. App. 50a-51a (Nelson, J., dissenting); *id.* at 124a (Bress, J., dissenting).

Underscoring the point, the first clause in the parenthetical uses the phrase "*whether or not* at a designated port of arrival." The very meaning of "whether or not" is that it is irrelevant whether the alien is at a port of arrival. What matters is whether he arrives "in the United States."

Moreover, the court of appeals erred in assuming that an alien "arrives at" a port while still outside it. English speakers generally use "arrive in" to describe entering a "large" place (*e.g.*, "they arrived in Denver"),

but "arrive at" to describe entering a "small" place (*e.g.*, "the group arrived at the park"). Gordon J. Loberger & Kate Shoup, *Webster's New World English Grammar Handbook* 113 (2001) (capitalization altered). So even if the statute referred to an alien who "arrives at a designated port"—rather than one who "arrives in the United States (whether or not at a designated port)"—it still would not cover someone who has been prevented from leaving Mexico and crossing into the port.

Further undercutting the court of appeals' rationale, the language it invoked is in a parenthetical. A parenthetical "is typically used to convey an 'aside' or 'afterthought.'" *Boechler, P.C.* v. *Commissioner*, 596 U.S. 199, 206 (2022) (quoting Bryan A. Garner, *Modern English Usage* 1020 (4th ed. 2016)). Congress usually "'does not alter the fundamentals' of a statutory scheme * * * in parentheticals." *Becerra* v. *Empire Health Foundation*, 597 U.S. 424, 440 (2022) (brackets and citation omitted). And a parenthetical phrase cannot justify "rewriting" "unambiguous" "language outside the parenthetical," *Chickasaw Nation* v. *United States*, 534 U.S. 84, 89 (2001)—here, the phrase "arrives in the United States."

Finally, the court of appeals ignored a portion of the parenthetical that confirms the government's reading: the clause "including an alien who is brought to the United States after having been interdicted in international or United States waters." 8 U.S.C. 1158(a)(1), 1225(a)(1). That clause matters given the interpretive rule known as *expressio unius est exclusio alterius*—"expressing one item of an associated group or series excludes another left unmentioned." *Esteras* v. *United States*, 606 U.S. 185, 195 (2025) (brackets and citation omitted). The express inclusion of aliens who are interdicted at sea and then brought to the United States implies the exclusion of other aliens who are stopped be-

fore reaching U.S. soil and *not* brought to the United States. In addition, the parenthetical makes clear that the statutes do not even cover aliens who are interdicted in "United States waters" (unless they are later "brought to the United States"). 8 U.S.C. 1158(a)(1), 1225(a)(1). It is improbable that Congress excluded aliens stopped in the United States' own waters and yet sought to include aliens stopped in Mexico.

The history of Section 1158. The court of appeals observed that, as originally enacted in 1980, Section 1158 provided that "an alien physically present in the United States or at a land border or port of entry" may apply for asylum. Pet. App. 19a (quoting 8 U.S.C. 1158(a) (Supp. IV 1980)). The court reasoned that "the current 'arrives in' category" has "essentially the same scope as the previous 'at a land border' category," which the court understood to encompass individuals in Mexico. *Id.* at 20a. That line of reasoning is flawed.

To begin, even the 1980 statute applied only to aliens who were already in the United States. Before 1980, refugees could seek admission to the United States "from foreign countries," but "there was no statutory basis for granting asylum to aliens who applied from within the United States." *Cardoza-Fonseca*, 480 U.S. at 433. The 1980 statute established a "process by which refugees *currently in the United States* may be granted asylum." *Ibid.* (emphasis added). The court of appeals cited no evidence that anyone understood the new process as also applying to aliens outside the country.

More fundamentally, a court must ultimately interpret "the existing statutory text," "not the predecessor statutes." *Lamie* v. *United States Trustee*, 540 U.S. 526, 534 (2004). Here, the existing text asks whether the alien "arrives in the United States," 8 U.S.C. 1158(a)(1), not whether he is "at a land border or port

of entry," 8 U.S.C. 1158(a) (Supp. IV 1980). Even assuming that the 1980 statute covered aliens in Mexico, the court of appeals erred in presuming that the current statute has "the same scope." Pet. App. 20a. "When Congress amends legislation," this Court presumes that Congress "intends the change to have real and substantial effect." *Van Buren* v. *United States*, 593 U.S. 374, 393 (2021) (citation omitted). That principle applies with added force here because Congress adopted Section 1158's current text in a provision titled "Asylum Reform," IIRIRA § 604(a), 110 Stat. 3009-690, and as part of a "comprehensive immigration reform Act," *Esquivel-Quintana* v. *Sessions*, 581 U.S. 385, 391 (2017).

Regulatory definitions. The court of appeals wrongly claimed that the government's position conflicts with the regulatory definition of "arriving alien." See Pet. App. 24a. The current regulations define "arriving alien" to include "an applicant for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. 1.2, 1001.1(q). The court suggested that aliens stopped in Mexico satisfy that definition because they are "attempting to come into the United States." See Pet. App. 24a. But the definition encompasses only an "applicant for admission" who is attempting to come into the United States, not *any* alien who is attempting to do so. 8 C.F.R. 1.2, 1001.1(q). An applicant, in turn, is "[a]n *alien present in the United States* who has not been admitted *or who arrives in the United States*." 8 U.S.C. 1225(a)(1) (emphases added); see 8 C.F.R. 1001.1(a) (incorporating statutory definition). Because aliens stopped in Mexico are not present in the United States and do not arrive in the United States, they are not applicants for admission, and, notwithstanding their attempts to come into the United States, are not arriving aliens under the regulations.

Legislative history. The court of appeals also relied on "legislative history," Pet. App. 21a n.9, which "is not the law," *Azar* v. *Allina Health Services*, 587 U.S. 566, 579 (2019) (citation omitted). The court cited a committee report that described Section 1158 as providing that "any alien who is physically present in the United States *or at the border of the United States*" may apply for asylum. Pet. App. 21a n.9 (quoting H.R. Rep. No. 469, 104th Cong., 2d Sess. Pt. 1, at 259 (1996)) (emphasis added). But the phrase "at the border" is at best ambiguous; as discussed above, the 1980 version of Section 1158, which referred to aliens "at a land border," was understood to reach only aliens in the United States. See p. 26, *supra*. Such "ambiguous legislative history" cannot "muddy clear statutory language." *Milner* v. *Department of the Navy*, 562 U.S. 562, 572 (2011).

B. Applying Sections 1158 And 1225 To Aliens Outside The United States Violates The Presumption Against Extraterritoriality

Courts generally presume that federal statutes apply "only within the territorial jurisdiction of the United States." *Morrison* v. *National Australia Bank Ltd.*, 561 U.S. 247, 255 (2010) (citation omitted). That "'longstanding principle,'" known as the presumption against extraterritoriality, reflects the understanding that "Congress ordinarily legislates with respect to domestic, not foreign, matters." *Ibid.* (citation omitted). It also helps ensure that courts do not "erroneously adopt an interpretation of U.S. law that carries foreign policy consequences not clearly intended by the political branches." *Kiobel* v. *Royal Dutch Petroleum Co.*, 569 U.S. 108, 116 (2013).

A court must ascertain a statute's territorial scope by applying a "two-step framework." *RJR Nabisco,*

Inc. v. *European Community*, 579 U.S. 325, 337 (2016). First, the court must decide whether the statute is extraterritorial by asking whether it provides "a clear, affirmative indication" that it applies outside the United States. *Ibid.* Then, if the statute is not extraterritorial, the court must determine whether the suit seeks a permissible domestic application or a forbidden foreign application of the statute. See *ibid.*

Under that framework, Sections 1158 and 1225 do not entitle aliens outside the United States to apply for asylum or to be inspected. Neither provision is extraterritorial because neither includes a clear, affirmative indication that Congress meant the provision to apply outside the United States. And this suit seeks an extraterritorial application—namely, the application of Sections 1158 and 1225 to aliens in Mexico.

The court of appeals' contrary reasoning lacks merit. In its original opinion, the court discounted the presumption against extraterritoriality because Sections 1158 and 1225 address conduct, the arrival of aliens in the United States, that "originates outside the United States." Pet. App. 162a (citation omitted). But the presumption applies "in all cases," *Morrison*, 561 U.S. at 261—including cases involving immigration statutes, as illustrated by this Court's opinion in *Sale*, see 509 U.S. at 173-174. That approach preserves "a stable background against which Congress can legislate with predictable effects." *Morrison*, 561 U.S. at 261. But the approach in the court of appeals' original opinion "would effectively exempt all immigration laws from the presumption against extraterritoriality, a remarkable proposition with no basis in law." Pet. App. 125a (Bress, J., dissenting); see *id.* at 198a (Nelson, J., dissenting).

The court of appeals' original opinion also stated that Sections 1158 and 1225 overcome the presumption

against extraterritoriality. Pet. App. 161a. But a statute overcomes the presumption only if it provides a "'clear,'" "'affirmative,'" and "unmistakable" indication that it applies outside the United States. *Abitron Austria GmbH* v. *Hetronic International, Inc.*, 600 U.S. 412, 418-419 (2023) (citation omitted). Sections 1158 and 1225 do not come close to satisfying that standard. To the contrary, by using the phrase "in the United States," 8 U.S.C. 1158(a)(1), 1225(a)(1), they indicate that they apply only in the United States, not outside its territory.

The court of appeals abandoned those rationales in its amended opinion, which instead reasoned that this case involves a domestic rather than foreign application because it involves "U.S. officials' conduct of standing on the U.S. side of the border." Pet. App. 26a. But that new rationale fares no better. To prove that a claim involves a domestic application of a statute, a plaintiff must show that "the conduct relevant to the statute's focus occurred in the United States." *Abitron*, 600 U.S. at 418 (citation and emphasis omitted). "The focus of a statute is the object of its solicitude, which can include the conduct it seeks to regulate, as well as the parties and interests it seeks to protect or vindicate." *Ibid.* (citation and internal quotation marks omitted).

The focus of Sections 1158 and 1225—the object of their solicitude—is the alien. Section 1158(a)(1) provides that an "alien * * * who arrives in the United States * * * may apply for asylum," 8 U.S.C. 1158(a)(1), while Section 1225(a)(1) provides that an "alien * * * who arrives in the United States * * * [is] an applicant for admission," 8 U.S.C. 1225(a)(1). Neither provision even mentions border officials. And while Section 1225(a)(3) refers to immigration officers, it uses the passive voice: "All aliens (including alien crewmen) who

are applicants for admission * * * shall be inspected by immigration officers." 8 U.S.C. 1225(a)(3). The passive voice signifies that "the actor" (the immigration officer) "is unimportant" and that "the focus of the passage is on the [person] being acted upon" (the alien). Bryan A. Garner, *A Dictionary of Modern American Usage* 484 (1998); see *Bartenwerfer* v. *Buckley*, 598 U.S. 69, 75-76 (2023). Thus, when considered from the perspective of the individuals at issue in the provision (*i.e.*, the aliens, who are in Mexico), the application of Sections 1158 and 1225 would be extraterritorial, not domestic.

Finally, the court of appeals stated that the presumption against extraterritoriality "does not help" resolve whether an alien stopped in Mexico has "'arrived in the United States.'" Pet. App. 26a (brackets omitted). But the presumption often "help[s]" a court "determin[e] the scope of [a] statutory phrase." *Small* v. *United States*, 544 U.S. 385, 388 (2005). And because the presumption applies "across the board," *RJR Nabisco*, 579 U.S. at 336, a court should not dismiss the presumption as unhelpful in construing a given phrase. See Pet. App. 126a-127a (Bress, J., dissenting).

C. *Sale* Confirms That Aliens Who Are Stopped Outside The United States Fall Outside Sections 1158 And 1225

On top of rewriting the statutory text and violating the presumption against extraterritoriality, the court of appeals' decision conflicts with this Court's decision in *Sale*. That case arose after a coup d'état in Haiti prompted tens of thousands of people to flee the country by sea. See *Sale*, 509 U.S. at 162-163. In response, President George H.W. Bush adopted, and President Clinton maintained, an Executive Order directing the Coast Guard "to intercept vessels illegally transporting passengers from Haiti to the United States and to re-

turn those passengers to Haiti without first determining whether they may qualify" for protection under the INA. *Id.* at 158; see *id.* at 164-165.

The challengers in *Sale* argued that the interdiction program violated the provision of the INA addressing statutory withholding of deportation (today known as statutory withholding of removal). See *Sale*, 509 U.S. at 166-167. At the time of *Sale*, that provision stated that "[t]he Attorney General shall not deport or return any alien * * * to a country if the Attorney General determines that such alien's life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. 1253(h)(1) (Supp. IV 1988). The version of that statute in effect today uses materially similar language. See 8 U.S.C. 1231(b)(3)(A).

This Court rejected that challenge, holding that the withholding statute applied "only within United States territory." *Sale*, 509 U.S. at 173. The Court reasoned in part that the statute's text "implie[d] an exclusively territorial application," *id.* at 174, and in part that statutes "do not have extraterritorial application unless such an intent is clearly manifested," *id.* at 188.

Congress enacted the current text of Sections 1158(a)(1) and 1225(a)(1) as part of IIRIRA in 1996, three years after the decision in *Sale*. This Court usually presumes that, "when Congress enacts statutes, it is aware of this Court's relevant precedents." *Bartenwerfer*, 598 U.S. at 80 (citation omitted). That presumption is especially apt here because asylum and withholding are closely related; under longstanding agency practice, every application for asylum is deemed to include a request for withholding. See 8 C.F.R. 208.3(b), 1208.3(b); *In re Castellon*, 17 I. & N. Dec. 616, 620 (B.I.A. 1981). Indeed, the parenthesized portions of

Sections 1158 and 1225—which refer to aliens who were "interdicted in international or United States waters," 8 U.S.C. 1158(a)(1), 1225(a)(1)—clearly confirm that IIRIRA's drafters were thinking about *Sale*. If Congress meant to depart from *Sale*'s territorial approach and to protect aliens outside the United States, it could have said so. It did not.

Even putting aside Congress's awareness of the decision, much of *Sale*'s reasoning applies equally here. For example, *Sale* discussed "the deportation and exclusion hearings" (now known as removal proceedings) "in which requests for asylum or for withholding" "are ordinarily advanced." *Sale*, 509 U.S. at 173. It explained that "there is no provision in the statute for the conduct of such proceedings outside the United States" and that the INA's provisions "obviously contemplate that such proceedings would be held in th[is] country." *Ibid.* The Court stated that the withholding statute "cannot reasonably" be construed to apply "in geographic areas where [the Attorney General] has not been authorized to conduct such proceedings." *Ibid.* So too for the asylum statute.

Sale's reasoning concerning the presumption against extraterritoriality likewise applies to this case. As in *Sale*, statutes "normally do not have extraterritorial application unless such an intent is clearly manifested." 509 U.S. at 188. As in *Sale*, that presumption applies to provisions of the INA no less than to other statutes. See *id.* at 173-174. And as in *Sale*, the applicable statutory provisions provide no "affirmative evidence of intended extraterritorial application." *Id.* at 176.

Sale also answers respondent's argument (Br. in Opp. 32) that it would be "absurd" to allow government officials to "render the INA's inspection and asylum processing requirements inoperable * * * by simply

blocking asylum seekers from stepping on U.S. soil." The Court found it "perfectly clear" in *Sale* that the government could lawfully "establish a naval blockade" that would "deny illegal Haitian migrants the ability to disembark on our shores." 509 U.S. at 187. And it upheld an interdiction program that "prevented Haitians * * * from reaching our shores and invoking [the INA's] protections" for refugees. *Id.* at 160. So also, it is plainly lawful for the government to erect physical barriers along the southern border to prevent aliens from arriving in the United States. Just as the government may use blockades, interdiction, or physical barriers to prevent aliens from entering the United States, it may use metering to the same end.

This case is, if anything, even easier than *Sale*. The statutory text in *Sale* merely "implie[d] an exclusively territorial application." 509 U.S. at 174. The statutory text here, by contrast, is explicitly limited to aliens who arrive "in the United States." 8 U.S.C. 1158(a)(1), 1225(a)(1). The interdiction program in *Sale*, moreover, involved the "forced repatriation" of people to Haiti, where, after a military coup, "hundreds of Haitians ha[d] been killed, tortured, detained without a warrant, or subjected to violence and the destruction of their property because of their political beliefs.'" 509 U.S. at 162 (citation omitted). Under metering, by contrast, CBP merely prevents aliens from stepping across the border into the United States, requiring them to remain in Mexico.

The court of appeals' amended opinion did not address *Sale*, but its original opinion distinguished that case on the ground that the aliens there were stopped "on the high seas," while the aliens here were stopped at the U.S.–Mexico border. Pet. App. 162a n.11. That distinction makes no difference. "This Court has gen-

erally treated the high seas the same as foreign soil for purposes of the presumption against extraterritorial application." *Kiobel*, 569 U.S. at 121 (citing *Sale*, 509 U.S. at 173-174); see *Argentine Republic* v. *Amerada Hess Shipping Corp.*, 488 U.S. 428, 440 (1989) ("When it desires to do so, Congress knows how to place the high seas within the jurisdictional reach of a statute.").

D. The Court Of Appeals' Decision Improperly Impairs The Executive Branch's Authority To Manage The Border

Article II entrusts the Executive Branch with "the difficult and important task of policing the border" in accordance with federal law. *Hernández* v. *Mesa*, 589 U.S. 93, 105 (2020). Congress has vested that function in CBP, directing the agency to "facilitate * * * the flow of legitimate travelers and trade," "ensure the interdiction of persons and goods illegally entering or exiting the United States," and "administer all immigration laws." 6 U.S.C. 211(c)(2), (3), and (8). Performing those duties along the United States' 1900-mile-long border with Mexico "is a daunting task," *Hernández*, 589 U.S. at 107, and that task becomes even more arduous during a border surge. See pp. 5-6, *supra*.

The court of appeals' decision "will seriously harm our country's ability to manage its borders" and "has already resulted in years of unwarranted disruption of Executive Branch border operations." Pet. App. 133a (Bress, J., dissenting). For example, the decision prevents CBP from using metering, a policy that Administrations of both parties have used and defended. The Obama Administration began using metering in 2016 after border surges overwhelmed ports of entry along the southern border. See p. 6, *supra*. The first Trump Administration continued to use metering because the processing of aliens without valid travel documents had

"draw[n] resources away" from other responsibilities, delaying "legitimate trade and travel." J.A. 125, 127. The Biden Administration made a policy decision to rescind earlier metering guidance, but it continued to defend the practice in litigation, warning that the district court's judgment in this case "impairs the Executive's ability to ensure that its processing of noncitizens is conducted in an orderly and safe manner." Gov't C.A. Br. 3. The current Administration, too, considers metering a critical tool for managing the border.

"This lawsuit has now foiled border operations for years." Pet. App. 131a (Bress, J., dissenting). The Court should reverse the court of appeals' judgment and end this "interference with valid Executive Branch efforts to manage the border and limit the entry of undocumented aliens into the United States." *Id.* at 133a.

CONCLUSION

This Court should reverse the judgment of the court of appeals.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
BRETT A. SHUMATE
Assistant Attorney General
CURTIS E. GANNON
Deputy Solicitor General
DREW ENSIGN
Deputy Assistant Attorney General
VIVEK SURI
Assistant to the Solicitor General
KATHERINE SHINNERS
Attorney

JANUARY 2026

APPENDIX

TABLE OF CONTENTS

APPENDIX

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

Asylum

(a) Authority to apply for asylum

(1) In general

Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.

(2) Exceptions

(A) Safe third country

Paragraph (1) shall not apply to an alien if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.

(B) Time limit

Subject to subparagraph (D), paragraph (1) shall not apply to an alien unless the alien demonstrates by clear and convincing evidence that the application has been filed within 1 year after the date of the alien's arrival in the United States.

(C) Previous asylum applications

Subject to subparagraph (D), paragraph (1) shall not apply to an alien if the alien has previously applied for asylum and had such application denied.

(D) Changed circumstances

An application for asylum of an alien may be considered, notwithstanding subparagraphs (B) and (C), if the alien demonstrates to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing an application within the period specified in subparagraph (B).

(E) Applicability

Subparagraphs (A) and (B) shall not apply to an unaccompanied alien child (as defined in section 279(g) of title 6).

(3) Limitation on judicial review

No court shall have jurisdiction to review any determination of the Attorney General under paragraph (2).

(b) Conditions for granting asylum

(1) In general

(A) Eligibility

The Secretary of Homeland Security or the Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Secretary of Homeland Security or the Attorney General under this section if the Secretary of Homeland Security or the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title.

(B) Burden of proof

(i) In general

The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of section 1101(a)(42)(A) of this title. To establish that the applicant is a refugee within the meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant.

(ii) Sustaining burden

The testimony of the applicant may be sufficient to sustain the applicant's burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the appli-

cant is a refugee. In determining whether the applicant has met the applicant's burden, the trier of fact may weigh the credible testimony along with other evidence of record. Where the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.

(iii) Credibility determination

Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor. There is no presumption of credibility, however, if no adverse credibility determination is explicitly made, the applicant or

witness shall have a rebuttable presumption of credibility on appeal.

(2) Exceptions

(A) In general

Paragraph (1) shall not apply to an alien if the Attorney General determines that—

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

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

(iii) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;

(iv) there are reasonable grounds for regarding the alien as a danger to the security of the United States;

(v) the alien is described in subclause (I), (II), (III), (IV), or (VI) of section 1182(a)(3)(B)(i) of this title or section 1227(a)(4)(B) of this title (relating to terrorist activity), unless, in the case only of an alien described in subclause (IV) of section 1182(a)(3)(B)(i) of this title, the Attorney General determines, in the Attorney General's discretion, that there are not reasonable

grounds for regarding the alien as a danger to the security of the United States; or

(vi) the alien was firmly resettled in another country prior to arriving in the United States.

(B) Special rules

(i) Conviction of aggravated felony

For purposes of clause (ii) of subparagraph (A), an alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.

(ii) Offenses

The Attorney General may designate by regulation offenses that will be considered to be a crime described in clause (ii) or (iii) of subparagraph (A).

(C) Additional limitations

The Attorney General may by regulation establish additional limitations and conditions, consistent with this section, under which an alien shall be ineligible for asylum under paragraph (1).

(D) No judicial review

There shall be no judicial review of a determination of the Attorney General under subparagraph (A)(v).

(3) Treatment of spouse and children

(A) In general

A spouse or child (as defined in section 1101(b)(1)(A), (B), (C), (D), or (E) of this title) of an alien who is granted asylum under this subsec-

tion may, if not otherwise eligible for asylum under this section, be granted the same status as the alien if accompanying, or following to join, such alien.

(B) Continued classification of certain aliens as children

An unmarried alien who seeks to accompany, or follow to join, a parent granted asylum under this subsection, and who was under 21 years of age on the date on which such parent applied for asylum under this section, shall continue to be classified as a child for purposes of this paragraph and section 1159(b)(3) of this title, if the alien attained 21 years of age after such application was filed but while it was pending.

(C) Initial jurisdiction

An asylum officer (as defined in section 1225(b)(1)(E) of this title) shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child (as defined in section 279(g) of title 6), regardless of whether filed in accordance with this section or section 1225(b) of this title.

(c) Asylum status

(1) In general

In the case of an alien granted asylum under subsection (b), the Attorney General—

(A) shall not remove or return the alien to the alien's country of nationality or, in the case of a person having no nationality, the country of the alien's last habitual residence;

(B) shall authorize the alien to engage in employment in the United States and provide the alien with appropriate endorsement of that authorization; and

(C) may allow the alien to travel abroad with the prior consent of the Attorney General.

(2) Termination of asylum

Asylum granted under subsection (b) does not convey a right to remain permanently in the United States, and may be terminated if the Attorney General determines that—

(A) the alien no longer meets the conditions described in subsection (b)(1) owing to a fundamental change in circumstances;

(B) the alien meets a condition described in subsection (b)(2);

(C) the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien is eligible to receive asylum or equivalent temporary protection;

(D) the alien has voluntarily availed himself or herself of the protection of the alien's country of nationality or, in the case of an alien having no nationality, the alien's country of last habitual residence, by returning to such country with perma-

nent resident status or the reasonable possibility of obtaining such status with the same rights and obligations pertaining to other permanent residents of that country; or

(E) the alien has acquired a new nationality and enjoys the protection of the country of his or her new nationality.

(3) Removal when asylum is terminated

An alien described in paragraph (2) is subject to any applicable grounds of inadmissibility or deportability under section[1] 1182(a) and 1227(a) of this title, and the alien's removal or return shall be directed by the Attorney General in accordance with sections 1229a and 1231 of this title.

(d) Asylum procedure

(1) Applications

The Attorney General shall establish a procedure for the consideration of asylum applications filed under subsection (a). The Attorney General may require applicants to submit fingerprints and a photograph at such time and in such manner to be determined by regulation by the Attorney General.

(2) Employment

An applicant for asylum is not entitled to employment authorization, but such authorization may be provided under regulation by the Attorney General. An applicant who is not otherwise eligible for employment authorization shall not be granted such author-

---

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

ization prior to 180 days after the date of filing of the application for asylum.

(3) Fees

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

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

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

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

(B) provide the alien a list of persons (updated not less often than quarterly) who have indicated their availability to represent aliens in asylum proceedings on a pro bono basis.

(5) Consideration of asylum applications

(A) Procedures

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

(i) asylum cannot be granted until the identity of the applicant has been checked against all appropriate records or databases main-

tained by the Attorney General and by the Secretary of State, including the Automated Visa Lookout System, to determine any grounds on which the alien may be inadmissible to or deportable from the United States, or ineligible to apply for or be granted asylum;

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

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

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

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

(B) Additional regulatory conditions

The Attorney General may provide by regulation for any other conditions or limitations on the

consideration of an application for asylum not inconsistent with this chapter.

(6) Frivolous applications

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

(7) No private right of action

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

(e) Commonwealth of the Northern Mariana Islands

The provisions of this section and section 1159(b) of this title shall apply to persons physically present in the Commonwealth of the Northern Mariana Islands or arriving in the Commonwealth (whether or not at a designated port of arrival and including persons who are brought to the Commonwealth after having been interdicted in international or United States waters) only on or after January 1, 2014.

2. 8 U.S.C. 1225 provides:

Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing

(a) Inspection

(1) Aliens treated as applicants for admission

An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

(2) Stowaways

An arriving alien who is a stowaway is not eligible to apply for admission or to be admitted and shall be ordered removed upon inspection by an immigration officer. Upon such inspection if the alien indicates an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview under subsection (b)(1)(B). A stowaway may apply for asylum only if the stowaway is found to have a credible fear of persecution under subsection (b)(1)(B). In no case may a stowaway be considered an applicant for admission or eligible for a hearing under section 1229a of this title.

(3) Inspection

All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.

(4) Withdrawal of application for admission

An alien applying for admission may, in the discretion of the Attorney General and at any time, be permitted to withdraw the application for admission and depart immediately from the United States.

(5) Statements

An applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the applicant in seeking admission to the United States, including the applicant's intended length of stay and whether the applicant intends to remain permanently or become a United States citizen, and whether the applicant is inadmissible.

(b) Inspection of applicants for admission

(1) Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled

(A) Screening

(i) In general

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution.

(ii) Claims for asylum

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title and the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B).

(iii) Application to certain other aliens

(I) In general

The Attorney General may apply clauses (i) and (ii) of this subparagraph to any or all aliens described in subclause (II) as designated by the Attorney General. Such designation shall be in the sole and unreviewable discretion of the Attorney General and may be modified at any time.

(II) Aliens described

An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.

(B) Asylum interviews

(i) Conduct by asylum officers

An asylum officer shall conduct interviews of aliens referred under subparagraph (A)(ii), either at a port of entry or at such other place designated by the Attorney General.

(ii) Referral of certain aliens

If the officer determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum.

(iii) Removal without further review if no credible fear of persecution

(I) In general

Subject to subclause (III), if the officer determines that an alien does not have a credible fear of persecution, the officer shall order the alien removed from the United States without further hearing or review.

(II) Record of determination

The officer shall prepare a written record of a determination under subclause (I). Such record shall include a summary of the material facts as stated by the applicant, such additional facts (if any) relied upon by the officer, and the officer's analysis of why, in the light of such facts, the alien has not established a credible fear of persecution. A

copy of the officer's interview notes shall be attached to the written summary.

(III) Review of determination

The Attorney General shall provide by regulation and upon the alien's request for prompt review by an immigration judge of a determination under subclause (I) that the alien does not have a credible fear of persecution. Such review shall include an opportunity for the alien to be heard and questioned by the immigration judge, either in person or by telephonic or video connection. Review shall be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date of the determination under subclause (I).

(IV) Mandatory detention

Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.

(iv) Information about interviews

The Attorney General shall provide information concerning the asylum interview described in this subparagraph to aliens who may be eligible. An alien who is eligible for such interview may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, according to regulations prescribed by the Attorney General. Such con-

sultation shall be at no expense to the Government and shall not unreasonably delay the process.

(v) "Credible fear of persecution" defined

For purposes of this subparagraph, the term "credible fear of persecution" means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 1158 of this title.

(C) Limitation on administrative review

Except as provided in subparagraph (B)(iii)(III), a removal order entered in accordance with subparagraph (A)(i) or (B)(iii)(I) is not subject to administrative appeal, except that the Attorney General shall provide by regulation for prompt review of such an order under subparagraph (A)(i) against an alien who claims under oath, or as permitted under penalty of perjury under section 1746 of title 28, after having been warned of the penalties for falsely making such claim under such conditions, to have been lawfully admitted for permanent residence, to have been admitted as a refugee under section 1157 of this title, or to have been granted asylum under section 1158 of this title.

(D) Limit on collateral attacks

In any action brought against an alien under section 1325(a) of this title or section 1326 of this title, the court shall not have jurisdiction to hear any claim attacking the validity of an order of re-

moval entered under subparagraph (A)(i) or (B)(iii).

(E) "Asylum officer" defined

As used in this paragraph, the term "asylum officer" means an immigration officer who—

(i) has had professional training in country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators of applications under section 1158 of this title, and

(ii) is supervised by an officer who meets the condition described in clause (i) and has had substantial experience adjudicating asylum applications.

(F) Exception

Subparagraph (A) shall not apply to an alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry.

(G) Commonwealth of the Northern Mariana Islands

Nothing in this subsection shall be construed to authorize or require any person described in section 1158(e) of this title to be permitted to apply for asylum under section 1158 of this title at any time before January 1, 2014.

(2) Inspection of other aliens

(A) In general

Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

(B) Exception

Subparagraph (A) shall not apply to an alien—

(i) who is a crewman,

(ii) to whom paragraph (1) applies, or

(iii) who is a stowaway.

(C) Treatment of aliens arriving from contiguous territory

In the case of an alien described in subparagraph (A) who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under section 1229a of this title.

(3) Enforcement by attorney general of a state

The attorney general of a State, or other authorized State officer, alleging a violation of the detention and removal requirements under paragraph (1) or (2) that harms such State or its residents shall have standing to bring an action against the Secretary of

Homeland Security on behalf of such State or the residents of such State in an appropriate district court of the United States to obtain appropriate injunctive relief. The court shall advance on the docket and expedite the disposition of a civil action filed under this paragraph to the greatest extent practicable. For purposes of this paragraph, a State or its residents shall be considered to have been harmed if the State or its residents experience harm, including financial harm in excess of $100.

(4) Challenge of decision

The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien whose privilege to be admitted is so challenged, before an immigration judge for a proceeding under section 1229a of this title.

(c) Removal of aliens inadmissible on security and related grounds

(1) Removal without further hearing

If an immigration officer or an immigration judge suspects that an arriving alien may be inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 1182(a)(3) of this title, the officer or judge shall—

(A) order the alien removed, subject to review under paragraph (2);

(B) report the order of removal to the Attorney General; and

(C) not conduct any further inquiry or hearing until ordered by the Attorney General.

(2) Review of order

(A) The Attorney General shall review orders issued under paragraph (1).

(B) If the Attorney General—

(i) is satisfied on the basis of confidential information that the alien is inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 1182(a)(3) of this title, and

(ii) after consulting with appropriate security agencies of the United States Government, concludes that disclosure of the information would be prejudicial to the public interest, safety, or security,

the Attorney General may order the alien removed without further inquiry or hearing by an immigration judge.

(C) If the Attorney General does not order the removal of the alien under subparagraph (B), the Attorney General shall specify the further inquiry or hearing that shall be conducted in the case.

(3) Submission of statement and information

The alien or the alien's representative may submit a written statement and additional information for consideration by the Attorney General.

(d) Authority relating to inspections

(1) Authority to search conveyances

Immigration officers are authorized to board and search any vessel, aircraft, railway car, or other conveyance or vehicle in which they believe aliens are being brought into the United States.

(2) Authority to order detention and delivery of arriving aliens

Immigration officers are authorized to order an owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft bringing an alien (except an alien crewmember) to the United States—

(A) to detain the alien on the vessel or at the airport of arrival, and

(B) to deliver the alien to an immigration officer for inspection or to a medical officer for examination.

(3) Administration of oath and consideration of evidence

The Attorney General and any immigration officer shall have power to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, transit through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this chapter and the administration of the Service.

(4) Subpoena authority

(A) The Attorney General and any immigration officer shall have power to require by subpoena the attendance and testimony of witnesses before immigration officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this chapter and the administration of the Service, and to that end may invoke the aid of any court of the United States.

(B) Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer may, in the event of neglect or refusal to respond to a subpoena issued under this paragraph or refusal to testify before an immigration officer, issue an order requiring such persons to appear before an immigration officer, produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a contempt thereof.