No. 25-5

IN THE
Supreme Court of the United States

KRISTI NOEM, SECRETARY OF HOMELAND SECURITY, ET AL.,
Petitioners,
v.
AL OTRO LADO, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENTS

Melissa Crow
CENTER FOR GENDER & REFUGEE STUDIES
1901 Pennsylvania Ave. NW Suite 900, PMB 228
Washington, DC 20006

Rebecca Cassler
Suchita Mathur
AMERICAN IMMIGRATION COUNCIL
2001 L St. NW
Suite 500, PMB 2026
Washington, DC 20036

Kelsi Brown Corkran
Counsel of Record
Jonathan L. Backer
Samuel P. Siegel
INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION,
GEORGETOWN LAW
600 New Jersey Ave. NW
Washington, DC 20001
(202) 661-6728
kbc74@georgetown.edu

Counsel for Respondents
[Additional Counsel Listed on Inside Cover]

Sarah M. Rich
DEMOCRACY FORWARD FOUNDATION
P.O. Box 34553
Washington, DC 20043

Robert Pauw
CENTER FOR GENDER & REFUGEE STUDIES
c/o Gibbs Houston Pauw
1000 2nd Ave.
Suite 1600
Seattle, WA 98104

Baher Azmy
Angelo Guisado
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, NY 10012

QUESTION PRESENTED

The Immigration and Nationality Act of 1952 requires immigration officers to inspect certain noncitizens who are "present in the United States" or "arrive in the United States … at a designated port of arrival" and allow them access to the asylum process. 8 U.S.C. § 1225(a)(1), (a)(3); *id.* § 1158. The question presented is whether immigration officers may circumvent these inspection and asylum-processing mandates by physically blocking noncitizens attempting to come into the United States at ports of entry just before they step across the border.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CASES—Continued

CASES—Continued

CASES—Continued

CASES—Continued

STATUTES

STATUTES—Continued

STATUTES—Continued

REGULATIONS

REGULATIONS—Continued

TREATIES

CONSTITUTIONAL PROVISIONS

OTHER AUTHORITIES

OTHER AUTHORITIES—Continued

INTRODUCTION

Since 1917, Congress has required immigration officers to inspect all noncitizens attempting to come into the United States at ports of entry. Since 1980, immigration law has, consistent with the United States' international treaty obligations, required immigration officers to allow all noncitizens fleeing persecution to seek protection at ports of entry.

In 2016, the U.S. Department of Homeland Security ("DHS") abruptly departed from these longstanding requirements. It adopted a turnback policy under which immigration officers physically and indefinitely blocked noncitizens from presenting themselves at ports of entry to seek asylum. Respondents—a nonprofit immigrant rights organization and thirteen asylum seekers—brought suit, arguing that the turnback policy violated the statutory mandates that immigration officers "shall … inspect[]" certain noncitizens who are "present in the United States … or who arrive[] in the United States … at a designated port of arrival," 8 U.S.C. § 1225(a)(1), (3), and allow such persons to apply for asylum, *id.* § 1158(a)(1). In response, the government defendants (petitioners here) made the novel argument that these statutes do not apply to people attempting to come into the United States at a port of entry but who are blocked by immigration officers just before they step onto U.S. soil.

Ordinary tools of statutory interpretation foreclose petitioners' position. Petitioners zero in on a single preposition—the word "in"— to urge an interpretation that renders the rest of the statutory text non-

sensical. Petitioners' reading deprives the phrase "arrives in the United States" of any meaning not already covered by "present in the United States," and it transforms the statutes' inspection and processing mandates into mere suggestions that immigration officers can ignore at their discretion. There is nothing "[c]ommon," Petrs' Br. 15, about a usage that produces such an untenable result. Petitioners' reading is also contrary to the government's own decades-old regulations and more than a century of practice. And it ignores Congress's intent to implement the United States' non-refoulement commitments under the 1967 Protocol Relating to the Status of Refugees.

Petitioners ultimately fall back on policy arguments that greatly exaggerate the impact of the Ninth Circuit's decision on border management. Petitioners abandoned the challenged turnback policy more than four years ago and only sought this Court's review on the off chance they might want to revive it in the future. The decision below, moreover, holds only that §§ 1225 and 1158 do not permit petitioners to *withhold* inspection and asylum processing from noncitizens who arrive at ports of entry; it does not foreclose reasonable delays in inspection and processing, nor does it bear on other statutory authorities for addressing specific scenarios at the border. In any event, if petitioners object to §§ 1225 and 1158's inspection and processing mandates, their recourse is with Congress, not this Court.

STATEMENT

I. Legal Background

The formulation of "[p]olicies pertaining to the entry of [noncitizens] and their right to remain" in the

United States "is entrusted exclusively to Congress"; this principle is "as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government." *Galvan v. Press*, 347 U.S. 522, 531 (1954). At issue in this case are two statutory provisions setting forth the government's obligations to noncitizens who seek protection from persecution. The first, 8 U.S.C. § 1225(a), provides that "[a]ll aliens … who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers." *Id.* § 1225(a)(3). It further "deem[s]" an "applicant for admission" to be any "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)." *Id.* § 1225(a)(1). The second statute, 8 U.S.C. § 1158(a)(1), provides that noncitizens "physically present in the United States or who arrive[] 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) … may apply for asylum." Each of these statutory provisions incorporates longstanding principles of immigration law.

1. Since the first statute restricting immigration into the United States was passed in 1875, Congress has effectuated its chosen policies by directing immigration officers to "inspect" certain noncitizens seeking to come into the country through ports of entry—the designated places for noncitizens to request such permission. 8 C.F.R. §§ 100.4, 235.1(a). *See Matter of*

Kolk, 11 I. & N. Dec. 103, 104 (BIA 1965) (citing the Page Act of 1875, 18 Stat. 477). Since 1917, Congress has expansively required inspection of *all* noncitizens seeking to come into the United States at ports of entry, traditionally referred to as "arriving" noncitizens. *See* Immigration Act of 1917, Pub. L. No. 64-301, § 15, 39 Stat. 874, 885-86; *see also* Immigration and Nationality Act of 1952 ("INA"), Pub. L. No. 82-414, § 235(a), 66 Stat. 163, 198-99. Today, that mandate is codified at 8 U.S.C. § 1225(a)(3).

With respect to land ports, the inspection mandate has long been understood to require arriving noncitizens to approach an inspection station located on U.S. soil, where they must be inspected before proceeding through the port. *See United States v. Aldana*, 878 F.3d 877, 880-82 (9th Cir. 2017). During inspection, immigration officers determine whether an arriving noncitizen is entitled to "admission" to the United States by applying the criteria set forth by Congress. *See* 8 U.S.C. §§ 1101(a)(13), 1182(a), 1225(b)(1)-(2), (c); 8 C.F.R. § 235.1(f)(1). If the noncitizen appears inadmissible, the statute specifies further procedures that may ultimately result in their removal. *See* 8 U.S.C. §§ 1182(d)(5), 1225(a)-(c), 1229a.

2. "Since its foundation, the United States has offered freedom and opportunity to refugees fleeing the world's most dangerous and desperate situations."[1] George Washington expressed a view shared by many Founders when he wrote that he "hoped that this land

---

[1] U.S. Dep't of State, Bureau of Population, Refugees, and Migration, *History of U.S. Refugee Resettlement* (last modified Jan. 20, 2017), https://bit.ly/4a8KA72.

might become a safe & agreeable Asylum to the virtuous & persecuted part of mankind, to whatever nation they might belong."[2]

The United States has not, however, consistently fulfilled this aspiration. In 1939, more than 900 Jewish refugees fled Nazi Germany aboard the *MS St. Louis* to seek safety.[3] After Cuba, the United States, and Canada turned them away, the ship returned to Europe, where over 250 of the passengers perished in the Holocaust.[4]

In the worldwide moral reckoning following the Holocaust, dozens of nations, including the United States, vowed to never again force fleeing people to return to persecution. Subsequent negotiations among world leaders culminated in the 1951 Convention Relating to the Status of Refugees ("Convention"), 189 U.N.T.S. 137 (July 28, 1951), establishing the legal rights of people fleeing persecution and governments' corresponding obligations to protect them.

While the Convention focused on European refugees in the immediate aftermath of World War II, the 1967 Protocol Relating to the Status of Refugees ("Protocol"), 19 U.S.T. 6223 (Jan. 31, 1967), expanded the scope of those rights and obligations. *Id.* art. 1(3), 19 U.S.T. at 6225. The Protocol binds State Parties to

---

[2] George Washington to Francis Adrian Van der Kemp (May 28, 1788), https://perma.cc/NY58-3YU3.

[3] United States Holocaust Memorial Museum, *Voyage of the St. Louis*, https://perma.cc/S9V3-MAMW.

[4] *Id.*

comply with Articles 2 through 34 of the Convention with respect to anyone who is unable or unwilling to return to their home country because of a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion." *INS v. Stevic*, 467 U.S. 407, 416 (1984) (quoting Protocol, 19 U.S.T. at 6225, 6261). To date, 149 countries have ratified the Convention or the Protocol.[5] The United States acceded to the Protocol in 1968. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 436-37 (1987). A core principle of the Protocol is non-refoulement, which dictates that refugees may not be returned to countries where they face persecution. Convention, art. 33(1), 19 U.S.T. at 6276; Protocol, art. 1(1), 19 U.S.T. at 6264.

Congress implemented the United States' Protocol obligations through the Refugee Act of 1980 ("Refugee Act"), Pub. L. No. 96-212, 94 Stat. 102, which amended the INA. *See Cardoza-Fonseca*, 480 U.S. at 436. The Refugee Act established that noncitizens either "physically present in the United States" or "at a land border or port of entry" may apply for asylum. Refugee Act § 201(b), 94 Stat. at 105 (codified at 8 U.S.C. § 1158(a)). To be eligible for asylum, a noncitizen had to demonstrate a well-founded fear of persecution in their home country due to their race, religion, nationality, membership in a particular social group, or political opinion. *Id.* § 201(a)-(b), 94 Stat. at

---

[5] United Nations High Commissioner for Refugees, *Refugee Treaty and Legislation Dashboard: 1951 Convention Relating to the Status of Refugees (1951 Convention) and Its 1967 Protocol*, https://bit.ly/4cjbHO2 (follow "1951 Convention/1967 Protocol" hyperlink).

102, 105 (codified at 8 U.S.C. § 1158(a)). The Attorney General retained "discretion" to grant or deny asylum. *Id.* § 201(b), 94 Stat. at 105 (codified at 8 U.S.C. § 1158(a)). Separately, the Act prohibited the removal of noncitizens to countries where their life or freedom would be threatened based on the same grounds; that non-discretionary process is known today as withholding of removal. *Id.* § 203(e), 94 Stat. at 107 (currently codified as amended at 8 U.S.C. § 1231(b)(3)).

3. Congress again amended the INA with a set of omnibus reforms in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 3009–546. Among other things, IIRIRA sought to fix an incongruity between certain rights afforded to noncitizens who attempted to come into the United States through lawful means and those who did not. Prior to IIRIRA, individuals arriving in the United States at ports were inspected and then put in "exclusion" proceedings if not granted admission. *See Landon v. Plasencia*, 459 U.S. 21, 25-26 (1982). But individuals who avoided inspection by entering the United States between ports were placed in "deportation" proceedings, which afforded them more robust rights. *Id.*

To put these categories of noncitizens on more equal footing, IIRIRA created a "unified procedure, known as a 'removal proceeding,' for exclusions and deportations alike." *Judulang v. Holder*, 565 U.S. 42, 46 (2011); 8 U.S.C. § 1229a(a)(2). In effectuating this change, Congress shifted its prior focus on whether noncitizens had "entered" the United States to whether they had been "admitted." *See Vartelas v. Holder*, 566 U.S. 257, 261 (2012); *see also supra* p. 4. (discussing admission). It did so in part by deeming a

noncitizen who is "present in the United States [but not] … admitted or who arrives in the United States" an "applicant for admission." 8 U.S.C. § 1225(a)(1). And it provided that more generous substantive and procedural standards would apply in determining the removability of those who had been admitted as compared to "applicants for admission." *Id.* §§ 1182(a), 1227, 1229a(c)(2).

IIRIRA also retained the port inspection mandate. The INA previously required inspection of all noncitizens "seeking admission or readmission to or the privilege of passing through the United States," and specifically provided that "[a]ll aliens arriving at ports of the United States shall be examined by one or more immigration officers." 8 U.S.C. § 1225(a) (1994). In lieu of that language, Congress enacted the current language of § 1225(a)(3), which provides that all noncitizens "who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers."

IIRIRA made other important changes to the immigration system. Relevant here, it created a new process called expedited removal, which allows for the rapid removal of certain inadmissible noncitizens "arriving in the United States" at ports. *Id.* § 1225(b)(1)(A)(i)-(ii). IIRIRA's changes also advanced the "equally important goal" of "ensuring that individuals with valid asylum claims are not returned to countries where they could face persecution." *Grace v. Barr*, 965 F.3d 883, 902 (D.C. Cir. 2020). It adopted provisions mandating that even those asylum seekers who are inspected at ports and are placed in expedited removal, rather than being paroled or placed in

regular removal proceedings, be given access to the asylum process. *See* 8 U.S.C. § 1225(a)(2), (b)(1). It also changed § 1158(a) to mirror the language in the new § 1225(a)(1). As noted, § 1158(a) had required the Attorney General to establish a procedure to allow noncitizens "physically present in the United States or at a land border or port of entry … to apply for asylum." *Id.* § 1158(a) (1994). As amended, § 1158(a)(1) provides that a noncitizen "who is physically present in the United States or who arrives in the United States" must be allowed to apply for asylum "in accordance with this section or, where applicable, § 1225(b)."

Section 1225(b), in turn, created a specific—but rapid—pathway for noncitizens placed in expedited removal to seek asylum. A noncitizen in that circumstance who indicates an intent to apply for asylum or a fear of persecution must be referred to an "asylum officer" for a "credible fear" interview. *Id.* § 1225(b)(1)(A)(ii). If the asylum officer determines that the noncitizen does not have a credible fear of persecution and a supervisor approves that determination, the officer "shall order" the person "removed from the United States." *Id.* § 1225(b)(1)(B)(iii)(I). The noncitizen may seek review of an adverse determination by an immigration judge, who must conduct the review "as expeditiously as possible, to the maximum extent practicable within 24 hours." *Id.* § 1225(b)(1)(B)(iii)(III). If the immigration judge agrees that the noncitizen does not have a credible fear of persecution, the person is subject to removal without further review. *Id.* §§ 1225(b)(1)(C), 1252(a)(2)(A).

II. Factual Background

For decades, the government fulfilled its statutory duty to inspect and process asylum seekers at designated ports of entry. Pet. App. 364a-365a. Pedestrians arriving at ports on the U.S.-Mexico border were generally subject to the same process: They crossed a bridge or otherwise approached the port on foot and presented themselves to U.S. Customs and Border Protection ("CBP") officers, who inspected them and referred asylum seekers for further processing. *Id.*; J.A. 194-96.

In May 2016, one of the country's busiest ports, San Ysidro in southern California, experienced an increase in arrivals of Haitian migrants. Pet. App. 365a; J.A. 197, 385. Ports have contingency plans to manage ebbs and flows in migration, and the port initially managed the arrivals by opening temporary holding rooms, adding additional staff, and taking other measures to expand capacity. Pet. App. 365a; J.A. 170-71, 192. On May 27, the government switched course and ordered CBP officers to turn arriving migrants back to Mexico. Appellees' C.A. 2-SER-270. CBP officers were instructed to "hold the line to prevent any [migrants] from entering" the port. Pet. App. 384a (citation omitted).

DHS subsequently developed plans to increase capacity at ports and process all arriving noncitizens. Pet. App. 366a. But after the November 2016 presidential election, those plans were cancelled. Pet. App. 366a. Even though the number of arriving noncitizens at the border reached "historic lows" in 2017, J.A. 204, CBP expanded its turnback policy to

all ports on the U.S.-Mexico border, J.A. 61-65, 150-51, 199-203; Appellees' C.A. 1-SER-200.

In April 2018, DHS formalized the policy in a "Metering Guidance" memorandum that was distributed to all southern border ports. Pet. App. 368a; J.A. 122-23. "Metering" was a euphemism for a policy under which CBP officers would stand on the U.S. side of the border, identify likely asylum seekers arriving at the port, and physically prevent them from stepping onto U.S. soil. *See* Pet. App. 365a-367a, 386a; J.A. 206-07. CBP officers did at times permit some asylum seekers to cross the border for inspection at ports, Pet. App. 5a-6a; J.A. 209-12, 336-37, but the Metering Guidance did not establish any process for keeping track of those who were turned away or otherwise ensuring they would be inspected as capacity permitted, J.A. 122-23.

Although petitioners publicly asserted that turnbacks were based on port capacity, their own records belied that claim. Until 2018, CBP measured capacity using objective measures of "detention capacity," which is the number of persons who can be held at a port. J.A. 403, 408. According to CBP's daily data, ports routinely operated below capacity. For example, at the time the Metering Guidance was adopted in April 2018, the San Ysidro port had excess detention capacity. C.A. 2-SER-395-96, 401-02, 406-07; *see generally* J.A.191-92, 217-20, 221 (chart of capacity in 2018-2019 for southern border ports).

Consistent with the evidentiary record in this case, DHS's Office of Inspector General ("OIG") issued a report in 2020 concluding that CBP invoked capacity "reasons regardless of the port's actual capacity

and capability." J.A. 408. OIG found that CBP "took deliberate steps to limit the number of undocumented aliens who could be processed each day at Southwest Border land ports of entry," J.A. 394, leaving detention cells empty while CBP officers continued to turn back asylum seekers. J.A. 388. A CBP whistleblower confirmed this finding when he testified under oath that he observed his superiors falsely telling arriving asylum seekers that they were being turned away because the port was at capacity even though it was not. J.A. 158-59.

Some ports even intentionally manufactured capacity problems: As one example, petitioners note that "[a]n official reported that 'every seat' ... was taken" at the Hidalgo port. Petrs' Br. 5. But discovery showed that officials later "intentionally removed seats" at Hidalgo to further reduce the number of asylum seekers who could be processed there. J.A. 176. The Nogales port also stopped using available detention space in 2018. J.A. 405. And at seven ports, CBP changed the categories of noncitizens it would process to exclude asylum seekers. J.A. 388. When asylum seekers approached these ports, CBP officers redirected them (including some who had already reached U.S. soil) to other ports, some of which were more than 30 miles away. J.A. 388.

The turnback policy quickly created a humanitarian crisis in Mexico. As CBP continued to refuse to inspect or process asylum seekers, many of those turned away found themselves living in makeshift camps on the Mexican side of the border. Pet. App. 6a. The growing bottleneck of asylum seekers turned back by CBP waited near the ports for weeks and then months without reliable food sources, shelter, or safety. *See*

id. ("Some were murdered in Mexico while waiting for an opportunity to be processed by U.S. officials."); J.A. 233, 363-64 (asylum seekers were extorted, assaulted, raped, and murdered after they were turned back); J.A. 214, 233-36 (documenting average wait time per POE and severe consequences). Faced with these dire circumstances, some attempted instead to enter the United States between ports and died while crossing the Rio Grande or the Sonoran Desert. C.A. 2-SER-482, 498-500, 503; J.A. 399 (OIG report concluding that "creating barriers to entry at ports of entry may incentivize undocumented aliens to attempt to cross into the United States illegally, between ports of entry").

III. Proceedings Below

Respondents brought the present class action in the U.S. District Court for the Southern District of California. *See* Pet. App. 6a-7a. Among other claims, they argued that the turnback policy violated the Administrative Procedure Act, 5 U.S.C. § 706(1), by unlawfully withholding or unreasonably delaying inspection and processing of asylum seekers arriving at ports of entry. *See* Pet. App. 7a.

As relevant here, the district court granted summary judgment to respondents on their § 706(1) claim and issued declaratory relief stating that "absent any independent, express, and lawful statutory authority, [petitioners'] denial of inspection or asylum processing to [noncitizens] 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." Pet. App. 251a-256a. In November 2021—after

the district court's summary judgment order but before final judgment—the government rescinded the Metering Guidance. Pet. App. 10a.

The government appealed, and the U.S. Court of Appeals for the Ninth Circuit largely affirmed the district court in a 2-1 decision. Pet. App. 137a-178a. After sua sponte ordering briefing on whether the appeal should be reheard en banc, the court of appeals voted against rehearing. Pet. App. 2a. An amended panel opinion and an amended dissent accompanied the rehearing denial. Pet. App. 1a-134a.

The panel explained that the government acknowledged that 8 U.S.C. §§ 1158(a)(1) and 1225 impose "a mandatory duty [on immigration officers] to process noncitizens, including allowing them to apply for asylum," but contended that the turnback policy was lawful because that duty does not extend to noncitizens whom immigration officers block from stepping over the border. Pet. App. 12a.

The panel rejected the government's position as contrary to the "cardinal principle of statutory construction" that courts "must give effect, if possible, to every clause and word of a statute." Pet. App. 13a (quoting *Williams v. Taylor*, 529 U.S. 362, 404 (2000)). Because § 1158(a)(1) states that a noncitizen "who is physically present in the United States or who arrives in the United States" may apply for asylum, that principle requires "endeavor[ing] to give the phrase 'arrives in the United States' a meaning that is not completely subsumed within the phrase 'physically present in the United States.'" Pet. App. 14a. The panel concluded that it was possible "to give nonredundant meaning" to both phrases: "The phrase 'physically

present in the United States' encompasses noncitizens within our borders, and 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.

The panel observed that this reading of the statutory text is further supported by the parenthetical specifying that the phrase "arrives in the United States" includes those "at a designated port of arrival." Pet. App. 16a. A noncitizen "who presents herself to a border official at a port of entry" has thus "'arrive[d] in the United States … at a designated port of arrival,' whether she is standing just at the edge of the port of entry or somewhere within it." *Id.*

The panel noted that under the government's contrary reading, a noncitizen seeking asylum would be better off "circumventing the official channels for entering the United States" and instead "surreptitiously cross[ing] the border," at which point she would be able to apply for asylum under § 1158(a)(1). Pet. App.17a. The panel's construction of the statutory text thus avoided the creation of "perverse incentive[s] to enter at an unlawful rather than a lawful location." *Id.* (quoting *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020)).

The panel then turned to the government's duty to inspect and process such "applicant[s] for admission" under § 1225. Pet. App. 23a. Because the language describing who is deemed an "applicant for admission" in § 1225(a)(1) "is nearly identical to the language of § 1158(a)(1)," the same reasoning applied: Class members approaching ports of entry who are "stopped

by officials at the border" are "applicants for admission" who must be inspected and processed under § 1225. *Id.* This conclusion aligned with the government's own definition of "arriving alien" as an "applicant for admission coming *or attempting to come* into the United States at a port-of entry." Pet. App. 24a (quoting 8 C.F.R. § 1.2).

The panel also rejected the government's alternative argument that respondents' § 706(1) claim failed because the turnback policy merely delayed inspection and processing under §§ 1158 and 1225 for a reasonable period of time. *See* Pet. App. 27a. The panel explained that under the policy, "border officials turned away noncitizens without taking any steps to keep track of who was being turned away or otherwise allowing them to open asylum applications." Pet. App. 31a. This "wholesale refusal to carry out a mandatory duty" constituted unlawful withholding under § 706(1). *Id.*

Judge R. Nelson dissented from the panel decision, *see* Pet. App. 43a-77a, and Judge Bress filed an opinion dissenting from the denial of rehearing en banc, joined by Judge R. Nelson and ten other judges, *see* Pet. App. 114a-133a.

SUMMARY OF ARGUMENT

The INA provides that immigration officers "shall … inspect[]" any asylum seeker who is an "applicant[] for admission or otherwise seeking admission or readmission to or transit through the United States." 8 U.S.C. §§ 1225(a)(3). It also deems any noncitizen who is "present in the United States who has not been admitted or who arrives in the United States … at a designated port of arrival"

to be an applicant for admission. *Id.* § 1225(a)(1). And it provides that any noncitizen who is "physically present in the United States" or who "arrives in the United States ... at a designated port of arrival ... may apply for asylum." *Id.* § 1158(a)(1). The Ninth Circuit correctly rejected petitioners' claim that immigration officers may evade these statutory mandates by physically blocking noncitizens from stepping across the border at a port.

Text, ordinary tools of statutory interpretation, and the government's own regulations and practice establish that petitioners' position is wrong. Sections 1225(a)(1) and 1158(a) encompass any noncitizen who "arrives in the United States." Verb tense is significant in construing statutes, and here Congress's use of the present tense—as well as the present progressive "arriving" in nearby provisions—demonstrates that it intended §§ 1158's and 1225's mandates to apply not only to those who have arrived, but also to those who are attempting to step over the border. Petitioners' interpretation also violates several fundamental canons of statutory interpretation, the requirement to read statutes as a whole, the requirement to give every word of a statute meaning, and the prohibition on reading statutes to be self-defeating.

Indeed, petitioners' cramped reading of the text would deprive the phrase "present in the United States" of any independent meaning, in violation of the surplusage canon. It would also give immigration officers limitless discretion to abandon §§ 1158's and 1225's inspection and asylum-processing mandates—a result Congress could not have intended. And it would create a perverse incentive to cross the border between ports of entry by affording people who do so

greater rights—the exact result Congress sought to avoid when it adopted IIRIRA.

If more confirmation were needed, the government's longstanding regulations and practice provide it. The language at issue here was enacted in 1996. Shortly thereafter, the government promulgated regulations providing that those "attempting to come into the United States at a port-of-entry" are "arriving" for purposes of § 1225. 8 C.F.R. §§ 1.2, 1001.1(q). Those regulations remain the Executive Branch's interpretation of the statute to this day. That understanding is consistent with longstanding practice: Since 1917, immigration law has been understood as requiring federal officials to inspect all noncitizens who present themselves at ports of entry, whether or not they yet have a foot on U.S. soil.

Moreover, petitioners' interpretation of §§ 1158 and 1225 is at odds with the United States' non-refoulement obligation under the 1967 Protocol, which prohibits State Parties from returning refugees to countries where they face persecution. When Congress implemented its obligations under the Protocol, it did so in terms that unmistakably required asylum processing "at a land border or port of entry." Refugee Act, § 201(b), 94 Stat. at 105 (codified at 8 U.S.C. § 1158(a)). While Congress amended that statutory language in 1996, it reaffirmed the United States' international obligations, including by incorporating explicit non-refoulement safeguards in the newly-created expedited removal process.

Petitioners' contrary arguments are easily dismissed. The Ninth Circuit's reading does not, as petitioners urge, collapse the distinction between § 1158

and § 1157, which governs refugee admissions from other countries. The point of § 1158 is to provide an additional route for noncitizens who do not secure one of the limited number of admission slots available under § 1157 to obtain humanitarian relief. Petitioners' reliance on the presumption against extraterritoriality is also misplaced, as § 1158 and § 1225 govern immigration officers' conduct on U.S. soil.

Petitioners conclude with a policy argument, asserting that the Ninth Circuit's decision interferes with their ability to manage the border. But petitioners abandoned the turnback policy years ago and have sought review of the decision below only "to retain the option of reviving the practice" in the future. Petrs' Br. 7. The relief entered by the district court, moreover—a declaratory judgment that metering was agency action "unlawfully withheld" under 5 U.S.C. § 706(1)—only prevents petitioners from completely dispensing with their inspection and asylum-processing mandates. Petitioners retain a host of tools under that decision, including "implementing and following a waitlist system" for those seeking asylum at ports of entry. Pet. App. 32a. And there are several other statutes that petitioners may rely on to address specific, exigent scenarios at the border. Regardless, if petitioners disagree with the course set by Congress, their solution is to urge that co-equal branch of government to amend the law.

ARGUMENT

I. Petitioners May Not Circumvent Their Inspection and Asylum-Processing Obligations by Blocking Noncitizens Arriving at Ports from Stepping Across the Border.

Sections 1158 and 1225 of Title 8 of the U.S. Code mandate that immigration officers inspect all noncitizens attempting to come into the United States at ports of entry, and process those not entitled to admission—including people seeking asylum—in accordance with detailed procedures delineated by Congress. Petitioners ask this Court to hold that those mandatory duties are discretionary, such that immigration officers may evade them simply by physically blocking noncitizens from stepping across the border at a port. This Court should reject petitioners' interpretation of §§ 1158 and 1225 because it is irreconcilable with the statutory text, the government's own regulations and practice, and the treaty obligations that Congress intended the statutes to fulfill.

A. The Government's Position Is Irreconcilable with the Statutory Text and Its Own Regulations and Practice.

Section 1225(a)(3) provides that immigration officers "shall … inspect[]" all noncitizens arriving at ports of entry. Section 1158(a)(1) provides that such noncitizens "may apply for asylum." The Ninth Circuit correctly concluded that petitioners may not refuse to carry out these mandatory inspection and asylum-processing obligations by physically blocking asylum seekers arriving at ports of entry from stepping over the border.

1. "We begin, as always, with the text." *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 391 (2017). The government's inspection obligations apply to any noncitizen who is an "applicant[] for admission or otherwise seeking admission or readmission to or transit through the United States." 8 U.S.C. § 1225(a)(3). Those deemed "applicant[s] for admission" include a noncitizen "present in the United States who has not been admitted or who arrives in the United States … at a designated port of arrival." *Id.* § 1225(a)(1). Similarly, all noncitizens who are "physically present in the United States or who arrive[] in the United States … at a designated port of arrival" are entitled to apply for asylum. *Id.* § 1158(a)(1). Verb tense "is significant in construing statutes," *United States v. Wilson*, 503 U.S. 329, 333 (1992), and here Congress used the present tense "arrives." A person who approaches a port and then attempts to step over the border is naturally understood to be "arriv[ing]" in the United States. *See Zheng v. Gonzales*, 422 F.3d 98, 110 (3d Cir. 2005) ("an intuitive reading of the term 'arriving alien'" includes those "attempting to come into the United States at a port-of-entry"). If Congress wanted the law to cover only noncitizens who *had arrived*, it would have said so.

Various parts of § 1225 support this view: § 1225(b)(1)(A)(i) and (ii) provide that when immigration officers inspect a noncitizen who "is arriving in the United States," the officers must allow those placed in expedited removal who "indicate[] either an intention to apply for asylum under [§ 1158] or a fear of persecution" to present those claims to an "asylum officer." Congress's choice of the present progressive

tense further supports the view that the statute applies to those attempting to come into the United States, as well as those who are still being processed: As the government conceded below, the word "arriving" "plausibly denotes a process of arrival." Gov't Opening Br. 29, No. 22-55988 (9th Cir. Dec. 20, 2022).

Petitioners assert that the phrase "arrives in the United States" requires reading §§ 1158 and 1225 to apply only to those who "cross[] the border and actually enter[] the United States." Petrs' Br. 14. But as just explained, the word "arrives" cuts against petitioners' preferred reading. So they instead rest their argument on the pairing of "arrives" with "in." According to petitioners, "[c]ommon usage confirms that English speakers use 'arrive in' to mean entering a specified location, not just coming close to it." Petrs' Br. 15.

That argument is wrong for several reasons. As an initial matter, "in" is the correct preposition when specifying a geographic area where arrival takes place: "In ordinary English," Petrs' Br. 2, it would make no sense to say someone arrives "at the United States" or "upon the United States."

More importantly, "this Court has a 'duty to construe statutes, not isolated provisions,'" *Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264, 275 (2023) (citation omitted)—and certainly not isolated words within provisions. Petitioners' common usage argument falls apart immediately upon zooming out: Even accepting petitioners' claims about what "arrives in the United States" means in isolation to English speakers, here those speakers must figure out

what it means to be an asylum seeker who is "physically present in the United States or who arrives in the United States," where an asylum seeker "who arrives in the United States" includes someone who arrives "at a designated port of arrival." 8 U.S.C. § 1158(a)(1).

Indeed, the list of instances of various texts using the words "arrives in" appended to Judge R. Nelson's dissent below confirm this understanding. *See* Pet. App. 47a-49a, 78a-113a. Add the words "present in the United States or" and "at a designated port of arrival" to any one of his examples and the meaning to a typical English speaker would change: The common usage of "or" would require giving "arrives in" a different meaning than "physically present in," and the inclusion of someone "at" a particular location would cast doubt on whether the person must be inside the location or might instead be at its threshold. Petitioners "have not identified a single example of when 'arrives in,'" Petrs' Br. 15 (citation omitted), has the meaning they advocate when immediately surrounded by these context clues indicating it means something else. Add on top that petitioners' reading of "arrives in" would render the provisions at issue here self-defeating, *see infra* pp. 32-34, and the typical English speaker would have no trouble rejecting it.

2. This reading of the statutory text is confirmed by the cardinal principle of statutory construction that courts are "obliged to give effect, if possible, to every word Congress used." *Nat'l Ass'n of Mfrs. v. Dep't of Defense*, 583 U.S. 109, 128-29 (2018). Sections 1158(a)(1) and 1225(a)(1) each describe two categories of noncitizens: those "present in the United States" and those who "arrive[] in the United States." If, as

petitioners contend, noncitizens "arrive[] in" the United States only when they are "present" in the United States, the "arrives in" category is pure surplusage. As the Ninth Circuit recognized, Pet. App. 13a-15a, to avoid construing these statutes as containing "superfluous, void, or insignificant" language, *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001), the term "arrives in" must apply to at least some noncitizens who are not already geographically "present in" the country. Respondents' reading does so by understanding "arrives in the United States" to include persons who are attempting to come into the United States at ports of entry but are prevented from doing so by immigration officers.

Petitioners' surplusage problem is particularly egregious in this case. The statutes use the disjunctive "or," which indicates that "the words it connects are to be given separate meanings." *Loughrin v. United States*, 573 U.S. 351, 357 (2014) (citation omitted). In *Loughrin*, this Court rejected an interpretation of a statute that would have rendered the second clause of a statute "a mere subset of its first," *id.*—exactly what petitioners' preferred reading would do. Petitioners' interpretation would also "render superfluous another part of the same statutory scheme," a context in which this Court has made clear that "[t]he canon against surplusage is strongest." *City of Chicago v. Fulton*, 592 U.S. 154, 159 (2021) (citation omitted).

To be sure, under the Ninth Circuit's reading, "[t]he two categories overlap." Pet. App. 15a. For example, a person who has landed at an airport and is awaiting inspection at customs would be "physically present" in the United States—i.e., "standing on U.S.

soil," *id.*—but still in the process of arriving in the country. But construing the term "arrives in the United States" to encompass people arriving at ports who would be "present in the United States" but for immigration officers blocking their way is necessary to ensure that "each category includes people not included in the other." *Id.*

Petitioners' only response to their surplusage problem is a vague argument involving the so-called entry fiction doctrine. Petrs' Br. 21-22. Under that doctrine, certain noncitizens who are physically present in the United States are treated for some purposes as though they have been stopped at the border—and thus have not "entered"—as a matter of law. *See DHS v. Thuraissigiam*, 591 U.S. 103, 138-39 (2020). Petitioners posit that the statutory language "'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." Petrs' Br. 22 (citation omitted).[6]

Petitioners' hypothesis is wrong twice over. First, if "present in the United States" referred only to those who have entered the United States through *lawful* admission, § 1225(a)(1) would be nonsensical. That statute deems to be "applicant[s] for admission" noncitizens "present in the United States *who ha*[*ve*]

---

[6] Although not directly relevant here, petitioners' suggestion that the entry doctrine turns on whether an entry was lawful or not is incorrect. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (explaining that "entry," whether accomplished lawfully or unlawfully, is the historic distinction that "runs through immigration law").

not been admitted." 8 U.S.C. § 1225(a)(1) (emphasis added). By definition, a noncitizen "who has not been admitted," *id.*, cannot have "'effected an entry' through lawful admission," Petrs' Br. 21 (citations omitted); *see also* 8 U.S.C. § 1101(a)(13)(A) (defining "admission" as the "lawful entry of the alien into the United States after inspection and authorization by an immigration officer"). And if, as petitioners suggest, Congress intended the phrase "present in the United States" to refer to persons "lawfully admitted," there would be no reason for Congress to deem such individuals "*applicants* for admission."

Second, petitioners' reliance on the entry fiction does not actually solve their surplusage problem. Petitioners speculate that Congress included the words "arrives in the United States" out of a concern that courts "might have held" that §§ 1158(a)(1) and 1225(a)(1) would not cover a noncitizen who had not "'entered the country,' even though he 'is on U.S. soil.'" Petrs' Br. 21-22 (citation omitted). But Congress's choice of the words "present in the United States" makes clear that these statutes apply to those who have not "entered" as a legal matter: For decades, this Court and others have established that a person is "present in the United States" *regardless* of whether they have effected an entry. Physical presence is a "state of being," not a legal status "conferred by an immigration officer or a governmental agency." *Barrios v. Holder*, 581 F.3d 849, 863 (9th Cir. 2009), *abrogated on other grounds, Hernandez-Rodriguez v. Barr*, 776 F. App'x 477, 478 (9th Cir. 2019); *see also, e.g.*, *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (summarizing *Shaughnessy v. United States ex rel.*

Mezei, 345 U.S. 206 (1953), as holding that a noncitizen's "presence" on U.S. soil at Ellis Island—a port of entry—"did not count as entry"); *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (explaining that a paroled noncitizen's "physical presence" in the United States did not amount to "entry").[7] In other words, it is the phrase "present in the United States"—not "arrives in the United States"—that makes clear that §§ 1158(a)(1) and 1225(a)(1) describe any noncitizen "on U.S. soil," whether or not they have "effected an entry." Petrs' Br. 21 (citations omitted).

IIRIRA confirms this point. It deems noncitizens to be "unlawfully present" if they are "present in the United States without being … paroled," 8 U.S.C. § 1182(a)(9)(B)(ii); and provides that a noncitizen may not be placed in expedited removal if they are "present" after having been "paroled," *id.* § 1225(b)(1)(A)(iii)(II). But as this Court has long held, a grant of parole "does not legally constitute an entry." *Leng May Ma*, 357 U.S. at 188. IIRIRA's use of the term "present" to describe people granted parole makes clear that term refers to being on U.S. soil, not to "entry."

Petitioners also observe that § 1225(a)(2), (b)(1)(A), and (c)(1) prescribe "special rules" for certain "arriving" noncitizens who are stowaways, subject to expedited removal, or suspected of being inad-

---

[7] *Accord Matter of K-H-C-*, 5 I. & N. Dec. 312, 317 & n.8 (BIA 1953) (explaining that a noncitizen may be "physically present" without having "entered" and collecting cases on "entry" predating the INA).

missible on certain security-related grounds as evidence that noncitizens who arrive in the United States are a "distinct legal subcategory." Petrs' Br. 22-23. But the fact that Congress prescribed specific processing requirements for certain arriving noncitizens does not give any independent meaning to the phrase "present in the United States" in § 1225(a)(1), let alone § 1158(a)(1). Rather, these provisions require the government to inspect all noncitizens who are "arriving" to determine whether they are, in fact, subject to expedited removal, stowaways, or inadmissible for security reasons.

Trapped in their own circular logic, petitioners ultimately throw up their hands and conclude that "redundancies are common in statutory drafting." Petrs' Br. 23 (quoting *Barton v. Barr*, 590 U.S. 222, 239 (2020)). To be sure, Congress sometimes repeats itself in statutes to be "doubly sure," out of a "lack of foresight," or "because of the shortcomings of human communication." *Barton*, 590 U.S. at 239. But the "problem here is no odd word or stray phrase, which might have escaped Congress's notice." *Pulsifer v. United States*, 601 U.S. 124, 143 (2024). The words "arrives in the United States" are "designed to serve a concrete function," *id.*—to ensure that noncitizens attempting to come into the United States at ports of entry are inspected and able to seek asylum. *See infra* pp. 38-39.

3. Petitioners' argument is also at odds with their own longstanding regulations recognizing that noncitizens attempting to come into the United States at ports of entry are "arriving" in the United States under § 1225(b)(1)(A)(i), and therefore are among those who "arrive" for purposes of §§ 1158(a)(1) and

1225(a)(1). In March 1997—less than six months after IIRIRA became law—the government promulgated a regulation that defined an "arriving alien" as any noncitizen "who seeks admission to or transit through the United States … at a port-of-entry," or who is interdicted in international or U.S. waters and "brought into the United States by any means." 62 Fed. Reg. 10312, 10330 (Mar. 6, 1997). As the government explained in its rulemaking, noncitizens "who have not yet established physical presence on land in the United States cannot be considered as anything other than arriving aliens." *Id.* at 10313. In 1998, the government modified the regulation to define an "arriving alien" as an "applicant for admission coming or attempting to come into the United States at a port-of-entry" (or who is interdicted and brought to the United States). 8 C.F.R. § 1.2. That definition remains the Executive Branch's interpretation of the phrase "arriving in the United States" as it is used in § 1225 to this day. *See* 8 C.F.R. §§ 1.2, 1001.1(q).

These regulations further confirm that immigration officers must inspect and process asylum seekers who attempt to come into the United States at ports of entry. As this Court recently explained, while "courts must exercise independent judgment in determining the meaning of statutory provisions," in exercising that judgment they may "seek aid from the interpretations of those responsible for implementing particular statutes." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024). Interpretations "issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's

meaning." *Id.* Both criteria are met here: The government promulgated its understanding of the term "arriving alien" just months after Congress adopted IIRIRA. And with only minor changes adopted a year later—and not relevant here—the government's understanding of the statutory language has remained the same ever since.

Petitioners assert that there is no conflict between the regulation and their litigating position here because the regulation requires an "arriving alien" to be an "applicant for admission," and § 1225(a)(1) deems only a noncitizen who is "present" or "who arrives in the United States" to be an applicant for admission. Petrs' Br. 27. They then repeat their statutory argument that a noncitizen "stopped in Mexico" is neither present nor arriving in the United States. *Id.* That argument is circular: It assumes that a person attempting to come into the United States at a port of entry does not "arrive[] in the United States." For the reasons explained above, *supra* pp. 20-28, that is wrong. It also makes no sense, as someone who has already arrived in the United States cannot be "*attempting* to come into the United States." 8 C.F.R. § 1.2 (emphasis added). Petitioners' argument reads that phrase out of the regulation.

The government's regulatory definition of "arriving" is reinforced by its longstanding practice at ports. The port-inspection mandate—a feature of U.S. law since 1917, *see supra* pp. 3-4—has always been understood to attach when people are in the process of presenting themselves at ports, even if not yet on U.S. soil. *See Hernandez v. Casillas*, 520 F. Supp. 389, 394 n.2 (S.D. Tex. 1981) (the "law is settled" that a noncitizen may "obtain" statutory proceedings flowing from

inspection by merely "presenting [them]self at the international bridge" (citing *Matter of Rangel-Cantu*, 12 I. & N. Dec. 73, 74 (BIA 1967))); *accord Kwong Hai Chew v. Colding*, 344 U.S. 590, 595, 596 n.4 (1953) (a noncitizen outside of the United States but attempting to come in at a port was subject to inspection and placement in exclusion proceedings, where "exclusion" meant "preventing someone from entering the United States who *is actually outside of the United States* or is treated as being so" (emphasis added)). And while Congress amended § 1225(a)'s port inspection mandate in IIRIRA, nothing about that legislation suggests that Congress meant to depart from this then-nearly 80-year-old practice. *See infra* pp. 38-39.

4. As the Ninth Circuit observed, petitioners' interpretation is also untenable because it inverts the statute to "creat[e] a 'perverse incentive to enter at an unlawful rather than a lawful location.'" Pet. App. 17a (quoting *Thuraissigiam*, 591 U.S. at 140). If the government can simply turn back asylum seekers—or any other arriving noncitizens—from ports of entry whenever it chooses, asylum seekers are "better off circumventing the official channels for entering the United States" and instead "surreptitiously cross[ing] the border," *id.*, at which point they would be entitled to apply for asylum under § 1158(a)(1)'s "physically present in the United States" prong.[8] That reading of the statute is not only illogical on its own terms; it is

---

[8] Indeed, that was the "likely" effect of petitioners' turnback policy. Off. of Inspector Gen., DHS, OIG-18-84, *Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy* 6 (Sept. 2018), https://perma.cc/LZG3-5FSE.

the exact result that Congress sought to avoid when it adopted IIRIRA. As detailed above, one of IIRIRA's principal purposes was to lessen certain advantages afforded to noncitizens who avoided inspection compared to those who went through the statutorily-prescribed inspection process. *See supra* p. 7-8. Petitioners' reading would partially recreate this disparity by allowing only those who circumvented the inspection process to seek asylum.

5. Most damning of all, petitioners' position would give immigration officers discretion to entirely abandon §§ 1158 and 1225's inspection and processing mandates at ports of entry. Congress characterized the obligations both to inspect and to provide asylum access at ports in mandatory terms: All noncitizens who are "applicants for admission or otherwise seeking admission" to the United States—including those who "arrive[] in the United States"—"shall be inspected," 8 U.S.C. § 1225(a)(1), (3). And noncitizens who "arrive[] in the United States" have a statutory right to seek asylum. *Id.* § 1158(a)(1); *see also id.* § 1225(b)(1)(A)(ii), (B)(i) (noncitizens "arriving in the United States" who are processed through expedited removal and indicate an intent to apply for asylum or a fear of persecution "shall [be] refer[red]" by an immigration officer "for an interview by an asylum officer," who "shall" conduct a credible fear interview). It described in detail how immigration officers must implement these mandates. *See generally id.* §§ 1158, 1225. And Congress couched the inspection mandate in especially broad terms, requiring inspection of any noncitizen who is "seeking admission or readmission to or transit through the United States," *even if* they

are not deemed "applicants for admission." *Id.* § 1225(a)(1), (3).

Yet under petitioners' theory, immigration officers may render both statutes a nullity by simply physically turning back arriving noncitizens before they set foot on U.S. soil. Such a reading is incompatible with the "discretionless obligations" that Congress used the word "shall" to create. *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 661 (2007) (quoting *Lopez v. Davis*, 531 U.S. 230, 241 (2001)). It would be illogical for Congress to mandate inspection and go to such great lengths to specify the minimum required asylum-processing procedures while at the same time empowering immigration officers to evade them so easily—especially because these statutes implement the United States' treaty obligations. *See infra* pp. 34-39. The "evident purpose of what a text seeks to achieve is an essential element of context that gives meaning to words." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Text* 20 (2012). This Court should reject petitioners' contention that "Congress enacted a self-defeating statute," *Quarles v. United States*, 587 U.S. 645, 654 (2019), by empowering immigration officers to turn back noncitizens arriving at ports of entry. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 485 (2001) (an agency "may not construe the statute in a way that completely nullifies textually applicable provisions meant to limit its discretion").

Indeed, if petitioners were correct, immigration officers would have no meaningful obligation to comply with § 1225(a)(3)'s inspection requirement for *any* noncitizen arriving at a port, including people with visas or green cards. And they could refuse to comply

with the inspection requirement based on a noncitizen's hair color, height, or for no reason at all. The necessary consequence of petitioners' position is that turning back *any* noncitizen for *any* reason would be consistent with § 1225(a)(3). This is not a "reasonable" reading of the statute; it opens a gaping "loophole allowing easy evasion of the statutory provision's basic purposes." *Cnty. of Maui v. Haw. Wildlife Fund*, 590 U.S. 165, 180 (2020).

B. The Government's Interpretation of §§ 1158 and 1225 Defies Congress's Intent to Comply with the United States' Treaty Obligation to Refrain from Refoulement of Refugees.

Beyond its irreconcilability with the text of §§ 1158 and 1225 and their own regulations, petitioners' interpretation of those provisions cannot be squared with the United States' non-refoulement obligation under the 1967 Protocol, which, as a binding treaty, is "the supreme Law of the Land." U.S. Const. art. VI, cl. 2. Because the INA's inspection and asylum-processing duties are *the* procedural route to access non-refoulement protection at the border, they must be understood to cover noncitizens arriving at ports who are seeking asylum. Congress therefore expressly mandated those protections at the border when it implemented the United States' obligations under the Protocol in the 1980 Refugee Act. And nothing in IIRIRA's amendments to §§ 1158 and 1225 in 1996 indicates that Congress intended to abandon the United States' commitment to uphold its non-refoulement obligation at the border. On the contrary, IIRIRA made non-refoulement protections more explicit.

1. Article 33 of the 1951 Refugee Convention provides: "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." Convention, art. 33(1), 19 U.S.T. at 6276. Although petitioners argue at length that *Sale v. Haitian Centers Council, Inc.*, 509 U.S. 155 (1993), supports their interpretation of §§ 1225 and 1158, *see* Petrs' Br. 31-35, the opposite is true. The *Sale* Court unanimously agreed that Article 33's plain language governs the conduct of State Parties at their borders.

In *Sale*, this Court held that Article 33 does not prohibit forced repatriation of refugees on the high seas. 509 U.S. at 159. But the eight-justice majority also construed that provision to prohibit "the exclusion of aliens who are … '*on the threshold of initial entry*.'" *Id.* at 180 (emphasis added) (quoting *Leng May Ma*, 357 U.S. at 187). The Court reached that conclusion based on the ordinary meaning of the term "refouler," observing that English translations of that French term "include words like 'repulse,' 'repel,' 'drive back.'" *Id.* at 181; *see also Larousse Modern French-English Dictionary* 631 (1981). Informed by those translations, the Court read "refouler" to mean "a defensive act of resistance or exclusion *at a border*." *Sale*, 509 U.S. at 182 (emphasis added). Justice Blackmun agreed with the majority that the United States' non-refoulement obligation at the very least extends to "refugees who have *reached the border*." *Id.* at 196 (Blackmun, J., dissenting) (emphasis added).

The government's abandoned turnback policy fits the *Sale* Court's definition of "return" to a tee: Immigration officers "repulse[d]," "repel[led]," and "dr[o]ve back" individuals seeking refuge at ports of entry, forcing them to remain on the Mexican side of the border. *Sale*, 509 U.S. at 181. The policy therefore amounted to the very sort of "defensive act of resistance or exclusion at [the] border" that the *Sale* Court found the term "return" to capture. *Id.* at 182.

Article 33's applicability at State Parties' borders is further established by the provision's broad scope. Under Article 33, a contracting state may not "expel or return ('refouler')" a refugee "*in any manner whatsoever*." Convention, art. 33(1), 19 U.S.T. at 6276 (emphasis added). Turning away a refugee at the border is one potential "manner" of refoulement because the refugee could face persecution as a result.

That Article 33 applies at State Parties' borders is confirmed by the provision's prohibition against both "expel[ling]" and "return[ing]" refugees to states where they have a well-founded fear of persecution. Convention, art. 33(1), 19 U.S.T. at 6276. An interpretation of Article 33 that bars only repatriation of refugees within a state's territory (i.e., expulsion) would render the term "return ('refouler')" surplusage. *See Itel Containers Int'l Corp. v. Huddleston*, 507 U.S. 60, 65-66 (1993) (rejecting an interpretation of a treaty that would render some of its terms "superfluous"). And other provisions of the Convention contain express territorial limitations. *See, e.g.*, Convention, art. 26, 19 U.S.T. at 6273 (requiring State Parties to accord refugees "*in [their] territory*" the right to pursue employment no less favorable that that accorded

to "aliens generally in the same circumstances" (emphasis added)); *id.* art. 31(1), 19 U.S.T. at 6275 (prohibiting State Parties from "impos[ing] penalties, on account of their illegal entry or presence, on refugees who … *enter or are present in their territory* without authorization" (emphasis added)). The absence of such limiting language in Article 33 confirms that the treaty's drafters intended the non-refoulement obligation to apply at State Parties' borders.

2. To be sure, the Protocol is not a self-executing treaty. *See INS v. Stevic*, 467 U.S. 407, 428 n.22 (1984). But there is no question that Congress has in fact executed it. Indeed, "one of Congress' primary purposes" in enacting the Refugee Act in 1980 "was to bring United States refugee law into conformance with" the Protocol, including Article 33. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 436 (1987). In so doing, Congress expressly provided the right to apply for asylum to noncitizens "at a land border or port of entry." Refugee Act, § 201(b), 94 Stat. at 105 (codified at 8 U.S.C. § 1158(a)). Significantly, the Act paired asylum with what is known today as withholding of removal, *see id.* § 203(e), 94 Stat. at 107 (currently codified as amended at 8 U.S.C. § 1231(b)(3)), the mandatory form of relief that this Court has held implements Article 33's non-refoulement obligation, *see Cardoza-Fonseca*, 480 U.S. at 440. Although the two forms of relief have distinctions, *see id.* at 423-24, 441, a noncitizen generally accesses both through the same application—as petitioners acknowledge, *see* Petrs' Br. 32; *accord* 8 C.F.R. § 208.3(b) (an asylum application shall be "construed as an application for withholding of removal"); 45 Fed. Reg. 37392, 37394 (June 2, 1980) (similar). Thus, by requiring asylum

access for noncitizens "at a land border or port of entry," § 201(b), 94 Stat. at 105 (codified at 8 U.S.C. § 1158(a)), Congress ensured that such noncitizens could request protection against refoulement.

3. IIRIRA's amendments to §§ 1225 and 1158 do not alter the analysis. Petitioners' contrary view, *see* Petrs' Br. 31-33, violates yet another canon of interpretation: "[A]n act of Congress ought never to be construed to violate the law of nations if any other possible construction remains." *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804); *see also Sale*, 509 U.S. at 178 & n.35 (acknowledging that the *Charming Betsy* canon requires ambiguity in United States immigration statutes to be construed consistent with Article 33 where it imposes "clear" obligations).

Nothing in IIRIRA evinces a congressional intent to abandon the United States' non-refoulement obligation at the border that Congress implemented in the Refugee Act. IIRIRA amended §§ 1225 and 1158, adopting the current versions, as part of the broader changes it made to the immigration system. *See* § 604(a), 110 Stat. at 3009–690-94. As discussed above, *supra* pp. 7-8, these amendments addressed concerns about the INA's differential treatment of "excludable" noncitizens requesting permission to come in at ports and "deportable" noncitizens who entered unlawfully by evading inspection, which had the counterintuitive effect of affording greater procedural and substantive rights to the latter group. To address this inequity, Congress de-emphasized the importance of "entry" by "deem[ing]" all noncitizens who had not been admitted "applicants for admission," 8

U.S.C. § 1225(a)(1), thereby making them all subject to the same "inadmissibility" standards and high burden of proof in removal proceeding, *id.* §§ 1182, 1225(a)-(b), 1229a(c)(2). Congress also made other changes to the immigration system, including creating a new expedited removal process. *See supra* pp. 8-10.

Had Congress intended to eliminate petitioners' inspection and asylum-processing obligations—an act that would have abandoned the United States' non-refoulement obligation—we would "expect more than simple statutory silence." *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 465 (2017). And Congress was not simply silent here. Instead, it carried forward § 1225's mandatory language, providing that all noncitizens who are "applicants for admission or otherwise seeking admission or readmission to or transit through the United States *shall* be inspected by immigration officers." 8 U.S.C. § 1225(a)(3) (emphasis added).

Congress also preserved the ability of those attempting to come into the United States at ports to apply for asylum. It amended § 1158 to mirror § 1225, providing that a noncitizen "physically present in the United States or who arrives in the United States … may apply for asylum in accordance with this section or, where applicable, section 1225(b)." *Id.* § 1158(a)(1). Section 1225(b), in turn, created another pathway for individuals placed in expedited removal to seek asylum, i.e., through a "credible fear" interview. *Id.* § 1225(b)(1)(A)(ii), (B)(ii). These amendments make plain that Congress intended to continue its commitment to allowing those attempting to come into our country at ports of entry to seek asylum.

II. Petitioners' Remaining Arguments Are Wrong.

1. Petitioners' remaining arguments are easily dismissed. Petitioners point out, *see* Petrs' Br. 25, that Congress specified in a parenthetical that a noncitizen who "arrives in the United States" "includ[es]" one "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). Invoking the *expressio unius est exclusio alterius* canon, petitioners assert that the "express inclusion" of such noncitizens "implies the exclusion of other aliens who are stopped before reaching U.S. soil and *not* brought to the United States." Petrs' Br. 25-26. But of course, use of the word "including" makes clear that the "examples enumerated in the text are intended to be illustrative, not exhaustive." *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 162 (2012); *see also* Scalia & Garner, *Reading Law*, 132-33 ("*include* does not ordinarily introduce an exhaustive list" but "introduces examples"). And here, the rest of the language in the parenthetical demonstrates that those who are "at a designated port of arrival" *also* "arrive[] in the United States" and must be inspected and allowed to apply for asylum accordingly. 8 U.S.C. §§ 1158(a)(1), 1225(a)(1), (3).

Petitioners attempt to downplay the "at a designated port of arrival" language in the parenthetical as an "'aside' or 'afterthought.'" Petrs' Br. 25 (citation omitted). But courts construe statutes to give meaning to every word. *See Nat'l Ass'n of Mfrs.*, 583 U.S. at 128-29. Respondents' reading does so by understanding this language to mean that the INA's inspection and asylum-processing mandates apply to persons

who present themselves to an immigration officer at a port of entry, even if they are "standing just at [its] edge." Pet. App. 16a; *see also Becerra v. Empire Health Found.*, 597 U.S. 424, 448 (2022) (Kavanaugh, J., dissenting) (refusing to "brush aside" parentheticals, which "can be important, as the Constitution itself makes clear"). Petitioners are also wrong that the words "whether or not" in the parenthetical support their position here. Petrs' Br. 24. That language simply makes clear that people who arrive in the United States somewhere other than a port of arrival, *in addition to* those arriving at ports, may access asylum and are among those deemed applicants for admission.

2. Petitioners next argue that the Ninth Circuit's reading of the statute "collapses th[e] distinction[]" between § 1158 and its neighbor, 8 U.S.C. § 1157. Petrs' Br. 17. That is wrong. Section 1157 allows for the admission of refugees who are in other countries if the President determines they are "of special humanitarian concern to the United States" (among other things). 8 U.S.C. § 1157(c)(1). Petitioners argue that reading § 1158 to entitle noncitizens who are attempting to come into the United States at ports of entry to apply for asylum would "bypass" § 1157's strictures, including its numerical cap. Petrs' Br. 17.

Petitioners' position lacks statutory support. Nothing in the text suggests that § 1157 is the required route for noncitizens arriving at ports to apply for humanitarian relief. And petitioners' "bypass" concern badly misses the point. The whole purpose of § 1158 is to provide an additional route for noncitizens who do not secure one of the limited number of

admission slots available under § 1157 to obtain humanitarian relief. Indeed, Congress adopted § 1158 in the Refugee Act in part because the exclusive statutory avenue for humanitarian relief under the pre-1980 INA provided "'conditional entry' to [only] a certain number of refugees," similar to the role that § 1157 plays today. *Cardoza-Fonseca*, 480 U.S. at 433-34 (citation omitted). The Ninth Circuit's holding does not infringe on the § 1157 authority, but rather recognizes that in § 1158, Congress provided an additional route to protection, available for people who arrive at ports of entry without having established refugee status. And the Ninth Circuit's reading of § 1158 does not give a noncitizen access to any of the benefits available to refugees admitted under § 1157. Petitioners may wish Congress had limited the right to seek asylum in the same way it did refugee admissions. But Congress instead made access to the asylum process widely available to all noncitizens who fall within the terms of § 1158(a)(1). The only dispute is whether § 1158(a)(1) covers noncitizens in the process of arriving at ports of entry. It does.

Nor do the general descriptions of §§ 1157 and 1158 by this Court and others support petitioners' reading. *See* Petrs' Br. 16-17. As the Ninth Circuit explained, this Court's decision in *INS v. Cardoza-Fonseca*, 480 U.S. 421, its own decision in *Yang v. INS*, 79 F.3d 932 (9th Cir. 1996), and the Fourth Circuit's decision in *Cela v. Garland*, 75 F.4th 355, 361 (4th Cir. 2023), *cert. denied*, 144 S. Ct. 2657 (2024), did not "concern[] people presenting themselves at the border." Pet. App. 22a & n.10. Instead, the sentences seized on by petitioners were "general background summaries" of the statutes. *Id.* Nothing about these

opinions suggests that this Court, the Ninth Circuit, or the Fourth Circuit were "trying to define which statute would apply to someone seeking protection at the border." *Id.* The same is true of the D.C. Circuit's decision in *Kiyemba v. Obama*. *See* 555 F.3d 1022, 1030 (2009), *vacated on other grounds*, 559 U.S. 131 (2010) (per curiam).

Petitioners' invocation of other subsections of § 1225 is equally unpersuasive. *See* Petrs' Br. 17-20. Respondents do not dispute that the "steps that Section 1225 requires—such as inspection, detention, and removal"—take place in the United States. Petrs' Br. 17-19 (citing § 1225(a)(3), (a)(4), (a)(5), (b)(1)(A)-(B)). But it does not follow that the government may refuse to take those steps by blocking those attempting to access an inspection station at a port from crossing the U.S.-Mexico border. Rather, §§ 1158 and 1225 make clear that the government has a mandatory duty to inspect all such arriving noncitizens and allow them to seek asylum. And the fact that arriving at a port triggers inspection and processing duties that occur on U.S. soil is strong evidence that § 1225 does not leave room for the government to block access to U.S. soil at ports of entry.

The last provision that petitioners rely upon, 8 U.S.C. § 1103(a)(10), is even further afield. That statute authorizes the government (with a state's consent) to deputize state law-enforcement officers to respond to an influx of noncitizens "arriving off the coast of the United States, or near a land border." Respondents agree that this statute demonstrates that "Congress knows how to refer to [noncitizens] who have drawn near the United States." Petrs' Br. 15. But it does not speak to how Congress wanted to treat

those who are actually attempting to come into the United States at ports of entry and seek asylum there. For that situation, it prescribed specific rules (the inspection mandate) and created a specific right (to apply for asylum). *See* 8 U.S.C. §§ 1158(a)(1), 1225(a)(3).[9]

3. Finally, petitioners invoke the presumption against extraterritoriality. Petrs' Br. 28-31. But there is no dispute that the immigration officers to whom §§ 1225's and 1158's inspection and processing obligations attach are themselves on the U.S. side of the border at all relevant times. The question presented is whether the provisions permit immigration officers *on U.S. soil* to circumvent those obligations by turning away noncitizens just before they cross the border at ports of entry. Because that is a domestic application of the provisions, the Ninth Circuit correctly held that the presumption "has no role to play" in this case. Pet. App. 26a.

---

[9] Petitioners also cobble together phrases from four of this Court's decisions to suggest that their position here is consistent with a "traditional form of border control." Petrs' Br. 12-13, 19-20. But those cases do nothing to support their view that they may ignore the INA's inspection and asylum-processing mandates. Instead, they support respondents' argument that the Executive Branch must act consistently with congressional authorization at the border, *see Shaughnessy*, 345 U.S. at 215; *United States ex rel. Polymeris v. Trudell*, 284 U.S. 279, 280 (1932); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 538, 543 (1950); and that the process of inspection enables immigration officers to determine whether someone has a statutory right to come into the United States, *Carroll v. United States,* 267 U.S. 132, 154 (1925).

It makes no difference that the noncitizens are arriving from another country. As this Court explained in *Pasquantino v. United States*, 544 U.S. 349, 371 (2005), although the government's domestic activities sometimes have foreign effects, that does not mean that those activities involve an extraterritorial application of the underlying statute; rather, it is the "domestic element" of the officers' actions that the statutes regulate. *See id.* (application of statute to wire fraud scheme executed inside the United States did not have extraterritorial application, even though the scheme defrauded a foreign sovereign).

Petitioners resist this straightforward understanding of §§ 1158(a)(1) and 1225(a)(3) by arguing that the "focus of the statute[s]" is noncitizens, not border officials. Petrs' Br. 30 (quoting *Abitron Austria GmbH v. Hetronic Int'l, Inc.*, 600 U.S. 412, 418 [(2023)). In particular, petitioners note that § 1158(a)(1) does not mention border officials, while § 1225(a)(3) does so using "passive voice." Petrs' Br. 30-31. That analysis misses the mark several times over.

First, petitioners focus exclusively on the "parties … [the provisions] 'seek[] to "protect."'" *Abitron*, 600 U.S. at 418 (citation omitted). But *Abitron* also states that the statutory-focus assessment "include[s] the conduct [the statute] 'seeks to "regulate."'" *Id.* (citation omitted). Sections 1225(a)(3) and 1158(a)(1) impose mandatory duties on immigration officers—duties that petitioners themselves insist can be carried out only on U.S. territory. Petrs' Br. 16-19. The Ninth Circuit's reading is not to the contrary; if immigration officers do not unlawfully block asylum seek-

ers at ports of entry, they will be able to cross the border for inspection and processing in the port on U.S. soil.

Second, petitioners once again improperly read §§ 1158(a)(1) and 1225(a)(3) "in a vacuum." *WesternGeco LLC v. ION Geophysical Corp.*, 585 U.S. 407, 414 (2018). These two provisions "work[] in tandem with other[s]" that set forth a detailed framework for inspecting noncitizens and processing those seeking asylum. *Id.*; *see generally* 8 U.S.C. §§ 1158, 1225(a)-(c). Read as a whole, the unmistakable focus of §§ 1158(a)(1) and 1225(a)(3) is to provide a finely reticulated set of procedures for immigration officers operating on U.S. soil.

Third, petitioners' parsing of § 1225(a)(3)'s grammar, *see* Petrs' Br. 30-31, fails to recognize that passive voice can be used to "focus[] on an event that occurs," placing the emphasis on "whether something happened." *Dean v. United States*, 556 U.S. 568, 572 (2009). That is precisely how Congress deployed passive voice in § 1225(a)(3), keeping the "focus[]" on "whether" noncitizens are inspected. *Id.* In that way, § 1225(a)(3) is similar to other statutory mandates set forth using passive voice. For example, Title II of the Americans with Disabilities Act provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity." 42 U.S.C. § 12132. Title II's use of passive voice "reinforces t[he] conclusion" that the statute "impose[s] an affirmative obligation on covered entities to provide reasonable accommodations." *A.J.T. ex rel. A.T. v. Osseo Area*

Schs., 605 U.S. 335, 357-58 (2025) (Sotomayor, J., concurring). Section 1225(a)(3)'s use of passive voice likewise underscores that immigration officers have an obligation to inspect noncitizens who are attempting to come into the United States.

Petitioners' heavy reliance on *Sale*, *see* Petrs' Br. 31-35, is misplaced for similar reasons. The question presented in that case was whether a previous version of the INA's withholding-of-deportation statute applied to noncitizens interdicted on the high seas. 509 U.S. at 158-59. There was thus no question that the plaintiffs sought extraterritorial application of the statute, which *Sale* held Congress did not intend. *Id.* at 177. Here, as discussed, §§ 1225(a)(3) and 1158(a)(1) apply domestically.

But even if application of §§ 1225(a)(3) and 1158(a)(1) to noncitizens in the process of arriving at ports of entry required some de minimis extraterritorial effect (and they do not), that is consistent with Congress's "clearly expressed" intent. *RJR Nabisco v. European Cmty.*, 579 U.S. 325, 335 (2016). As discussed, Congress clearly intended to implement the United States' non-refoulement obligation under the Refugee Protocol, a commitment that Congress has never abandoned. *See supra* pp. 34-39. *Sale* itself recognized that where Article 33 imposes clear extraterritorial obligations, Congress's amendment of the INA to "harmonize" it with the treaty gives the statute "correspondingly extraterritorial effect." 509 U.S. at 178. And even if Article 33 "established an extraterritorial obligation which the statute does not," "under the Supremacy Clause, that broader treaty obligation might then provide the controlling rule of law." *Id.*

As the *Sale* Court unanimously recognized, Article 33's plain language requires State Parties to provide protection against refoulement "at the border." 509 U.S. at 182 & n.40; *see also id.* at 196 (Blackmun, J., dissenting). In implementing Article 33, Congress therefore clearly intended any de minimis extraterritorial application necessary to meet that obligation. *Sale* is not to the contrary, despite the mélange of dicta on which petitioners rely. That case concerned the analytically distinct question of Article 33's application on the high seas, which are literally and figuratively a gulf away from the U.S.-Mexico border.

III. Petitioners' Policy Arguments Are Irrelevant and Wrong.

Petitioners end their brief predicting dire consequences at the border if turnbacks are not blessed by this Court as a legitimate "tool" to use as they see fit. Petrs' Br. 35-36. But of course, in our system of government, petitioners must execute the law as Congress enacted it. Congress has given petitioners specific tools to use in specific situations; the toolkit does not include turnbacks at ports of entry. Ultimately, if the Executive Branch "doesn't like Congress's ... policy choices, it must take its complaints there." *Azar v. Allina Health Servs.*, 587 U.S. 566, 581 (2019).[10]

In any event, the "government's policy arguments don't carry much force even on their own terms." *Id.*

---

[10] Petitioners gesture at broad sources of authority to manage the border. Petrs' Br. 12-13, 35. But this case does not turn on those authorities. Instead, at issue are the specific, mandatory duties Congress imposed on petitioners by §§ 1158(a)(1) and 1225(a)(3).

Petitioners rescinded the turnback policy at issue here more than four years ago and seek this Court's reversal only "to retain the option of reviving the practice" in the future. Petrs' Br. 7. If they do so, the Ninth Circuit's decision leaves them with plenty of options. Its holding was limited: Immigration officers may not "wholesale" "turn[] away noncitizens" at ports of entry "without taking any steps to keep track of who was being turned away or otherwise allowing them to open asylum applications." Pet. App. 31a (citing 5 U.S.C. § 706(1)). If petitioners took "[e]ven minimal steps," "such as implementing and following a waitlist system or initiating the asylum process," they would comply with the relief entered by the district court here. *Id.* at 32a.

Congress has also provided other options for managing the border. For example, expedited removal "lives up to its name," *Make the Road New York v. Wolf*, 962 F.3d 612, 619 (D.C. Cir. 2020): It allows petitioners to process noncitizens arriving at ports and formally remove those who are inadmissible and lack a credible fear of persecution in less than 24 hours, *see supra* p. 9. Petitioners may also return certain noncitizens "arriving on land … from a foreign territory contiguous to the United States" to that territory pending removal proceedings. 8 U.S.C. § 1225(b)(2)(C). And if "an actual or imminent mass influx of [noncitizens] arriving off the coast of the United States, or near a land border, presents urgent circumstances requiring an immediate Federal response," petitioners may deputize state and local law enforcement officers as DHS agents. *Id.* § 1103(a)(10). Administrations of both parties have employed these

tools over the past decade. *See, e.g.*, 90 Fed. Reg. 8399 (Jan. 29, 2025).

In short, the government maintains significant latitude to operate ports, manage the border, and regulate admission—so long as it does so within the bounds of the laws Congress wrote. While circumstances on the southern border have shifted in the decades since the Refugee Act's and IIRIRA's enactments, Congress has not changed the statutory framework of either asylum or inspection at ports. The political branches are free to change the law through constitutional processes, but courts may only read and interpret existing law. *See Bostock v. Clayton Cnty.*, 590 U.S. 644, 680-81 (2020) ("The place to make new legislation, or address unwanted consequences of old legislation, lies in Congress."). The Ninth Circuit correctly did so here.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted,

Melissa Crow
CENTER FOR GENDER & REFUGEE STUDIES
1901 Pennsylvania Ave. NW Suite 900, PMB 228
Washington, DC 20006

Rebecca Cassler
Suchita Mathur
AMERICAN IMMIGRATION COUNCIL
2001 L St. NW
Suite 500, PMB 2026
Washington, DC 20036

Sarah M. Rich
DEMOCRACY FORWARD FOUNDATION
P.O. Box 34553
Washington, DC 20043

Robert Pauw
CENTER FOR GENDER & REFUGEE STUDIES
c/o Gibbs Houston Pauw
1000 2nd Ave., Suite 1600
Seattle, WA 98104

Kelsi Brown Corkran
Counsel of Record
Jonathan L. Backer
Samuel P. Siegel
INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION,
GEORGETOWN LAW
600 New Jersey Ave. NW
Washington, DC 20001
(202) 661-6728
kbc74@georgetown.edu

Baher Azmy
Angelo Guisado
CENTER FOR CONSTITUTIONAL RIGHTS,
666 Broadway, 7th Floor
New York, NY 10012

FEBRUARY 10, 2026