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 OF MEMBERS OF CONGRESS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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## TABLE OF CONTENTS

# TABLE OF AUTHORITIES

## CASES

STATUTES

LEGISLATIVE MATERIALS

OTHER AUTHORITIES

## INTEREST OF *AMICI CURIAE*[1]

*Amici curiae* are members of Congress who are familiar with the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*, and its careful protection of asylum seekers. Many of *Amici* have been involved in bipartisan negotiations over asylum and border policy legislation. *Amici* have a strong interest in courts interpreting the INA consistent with the intent of Congress. *Amici* are well suited to provide the Court with insights concerning that intent, as well as the conflict between that intent and the Executive Branch interpretation challenged in this litigation.

A complete list of amici is set forth in the appendix to this brief.

## SUMMARY OF ARGUMENT

For decades, Congress has used its plenary power over immigration to protect those fleeing persecution. After the Holocaust, the United States joined the international community in committing to protect refugees first by acceding to the 1967 Protocol then codifying that commitment domestically through the Refugee Act of 1980, which created a statutory asylum system available to noncitizens present in the United States or at its borders. When Congress enacted IIRIRA in 1996, it tightened asylum procedures to address conditions at the border while consistently

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[1] Pursuant to Rule 37.6, counsel for *amici curiae* state that no counsel for a party authored this brief in whole or in part, and no person or entity other than *amici* or their counsel has made a monetary contribution to the preparation or submission of this brief.

preserving the right of individuals who reach the borders to apply for asylum. The statute's text, structure, and legislative history all confirm that asylum is available to individuals who arrive at the border, not only to those already physically present inside the United States. This Court has consistently read the statute the same way.

The canon against surplusage requires giving "arrives in the United States" independent meaning. Respondents' interpretation gives effect to every phrase in the statute, while Petitioners' reading renders "arrives in" entirely superfluous. None of Petitioners' attempts to explain away the surplusage succeed: their interpretation would not only frustrate the intent behind the text Congress wrote, but would also strip an entire statutory phrase of any independent meaning.

Petitioners' interpretation also effectively transfers legislative power from Congress to the Executive. Congress has repeatedly considered and rejected legislation that would limit asylum to only those arriving at ports of entry or require applications from abroad. Petitioners ask this Court to adopt through statutory construction the limitations Congress has declined to enact. Compounding the problem, the Executive Branch adopted a policy of metering—physically blocking asylum seekers from reaching the border—and now argues that those who have not crossed the border fall outside the statute's reach. The Court should not endorse an interpretation that rewards the Executive for manufacturing the conditions on which its preferred reading depends.

Finally, Petitioners' warnings of operational crisis at the border cannot justify rewriting the statute. Congress has plenary authority over immigration, closely monitors border conditions, and has demonstrated its willingness to act—including by funding enforcement efforts at historically high levels. If the asylum laws require revision, that decision belongs to Congress alone.

The Ninth Circuit properly interpreted the relevant statutory provisions, giving effect to every phrase Congress wrote and respecting Congress's authority over our Nation's immigration laws. This Court should affirm.

## ARGUMENT

### I. Congress Intentionally Drafted Section 1158 to Permit Persons Who Arrive at the Border to Apply for Asylum.

#### A. Congress Intended to Protect Asylum Seekers in the INA and Preserved Those Protections in IIRIRA.

The formulation of "[p]olicies pertaining to the entry of aliens and their right to remain . . . is entrusted exclusively to Congress." *Galvan v. Press*, 347 U.S. 522, 531 (1954). That fact is "as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government." *Id.*; *see also Kleindienst v. Mandel*, 408 U.S. 753, 769-70 (1972) ("[P]lenary congressional power to make policies and rules for exclusion of aliens has long been firmly established.").

In exercising this plenary power, Congress has consistently chosen to protect asylum. Asylum ensures "the United States lives up to its ideals and its treaty obligations." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 106 (2020). And Congress has long recognized that refugee protection serves not only humanitarian values but also the national interest: the Refugee Act of 1980 declares that "it is the historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands" and "to encourage all nations to provide assistance and resettlement opportunities to refugees to the fullest extent possible." Pub. L. No. 96-212, § 101(a), 94 Stat. 102, 102. But Congress's commitment to protecting those fleeing persecution at our borders long predates the 1980 Refugee Act. Even the 1952 Immigration and Nationality Act allowed noncitizens seeking to avoid persecution to apply for relief from deportation regardless of whether they had entered the United States. ch. 477, § 243(h), 66 Stat. 163, 214 (1952). From the outset, Congress understood that protection from persecution must be available to those arriving at our borders, not only to those who had already entered.

Welcoming refugees has strengthened American credibility abroad, facilitated cooperation with military and diplomatic partners, and reinforced the United States' role as a leader in the international order. *See* H.R. Rep. No. 104-469, pt. 1, at 110 (1996) ("H. Rep.") (describing the United States as an "island of freedom" with a "singular interest that its immigration laws encourage the admission of persons who will enrich our society" (quoting in part President Reagan)).

Following World War II, the United States joined with nations from across the world to formally express a commitment that those fleeing persecution would be protected; this was initially done by treaty. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 436-37 (1987). Congress then codified these protections in the Refugee Act of 1980, which for the first time established an "asylum procedure . . . mandated in our immigration law." 126 Cong. Rec. 4,500 (1980) (statement of Rep. Holtzman). It replaced what had been an "ad hoc," "inadequate," and "discriminatory" administrative process, 125 Cong. Rec. 23,232 (1979) (statement of Sen. Kennedy), with a formal asylum application process for any noncitizen "physically present in the United States or at a land border or port of entry, irrespective of such alien's status," Refugee Act of 1980 § 208(a), 94 Stat. at 105. As Senator Kennedy explained, "[t]he refugees of tomorrow, like the refugees of today, will continue to look to the United States for safe haven and resettlement opportunities—and our Government will continue to be called upon to help." 126 Cong. Rec. 3,757 (1980) (statement of Sen. Kennedy).

In 1996, Congress reaffirmed this commitment while at the same time addressing a perceived rise in undocumented immigration and meritless asylum claims. *See, e.g.*, *Thuraissigiam*, 591 U.S. at 106. Through the bipartisan Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Congress tightened asylum procedures in multiple respects. For example, it introduced a one-year filing deadline for asylum applicants, Pub. L. No. 104-208, Div. C, tit. VI, § 604(a), 110 Stat. 3009, 3009-690 to -691

(codified at 8 U.S.C. § 1158(a)(2)(B)), and created an expedited removal system under which an immigration officer "shall order the alien removed from the United States without further hearing or review" if the individual does not demonstrate "a credible fear of persecution," *id.* § 302, 110 Stat. 3009-580 to -581 (codified at 8 U.S.C. § 1225(b)(1)(A), (B)).

But critically, Congress tightened the *process* for seeking asylum without eliminating *access* to it. Even after IIRIRA, persons may apply for asylum through multiple pathways. *See* Holly Straut-Eppsteiner, Cong. Rsch. Serv., R47504, *Asylum Process in Immigration Courts and Selected Trends* (updated Dec. 2025). Every applicant for admission to the United States must be allowed to seek asylum protection, even if that individual is otherwise inadmissible or subject to expedited removal proceedings at the border. If an individual subject to expedited removal expresses a fear of persecution, they are referred for a credible fear interview, which can lead to asylum proceedings. 8 U.S.C. § 1225(a)(2), (b)(1)(A)(ii), (B). Individuals in regular, non-expedited removal proceedings can seek asylum as a ground for relief from removal. 8 U.S.C. § 1229a(b)(4). Individuals subject to a removal order may seek to reopen removal proceedings based on changed country conditions that make them eligible for asylum. *Id.* § 1229a(c)(7). And individuals present in the United States who are not in removal proceedings may affirmatively seek asylum. 8 U.S.C. § 1158(a)(1), (b)(1); *see* 8 C.F.R. §§ 208.2, 208.14 (describing different paths for asylum applications depending on pendency of removal proceedings).

IIRIRA was bipartisan legislation born of significant compromise: it calibrated asylum procedure to conditions at the border while retaining Congress's foundational commitment to a system that provides access to asylum for those with a credible fear of persecution.

### B. Congress Intended Section 1158 to Preserve Asylum for Persons Who Arrive at the Border, Not Just for Persons Physically Present in the United States.

Congress has never understood asylum protections to extend only to persons physically present in the United States. The statute's text, its structural relationship to other provisions of the INA, and this Court's own precedent all confirm that § 1158 reaches individuals who arrive at the border.

#### 1. The Text and Structure of Section 1158—and this Court's Precedents Considering It—Confirm that Congress Preserved Asylum for Persons Who Arrive at the Border.

First, the text. Before IIRIRA, the INA used the term "entry" to describe a noncitizen's arrival into the country. This language created a harsh result, where those who were attempting to come to the United States lawfully often received fewer protections than those who had come to the United States through unlawful means. *See Landon v. Plasencia*, 459 U.S. 21, 25-26 (1982). IIRIRA replaced "entry" with "admission" throughout the statute—a global transition that required

conforming amendments across numerous provisions, including those relating to asylum. *See* IIRIRA § 308(d)(4)(D), 110 Stat. at 3009-617 to -618. As part of that transition, Congress revised § 1158 to provide that "[a]ny 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)" may "apply for asylum." 8 U.S.C. § 1158(a)(1).

IIRIRA's replacement of 'entry' with 'admission' was designed to expand protections for those arriving lawfully, ensuring they would not receive harsher treatment than those who entered unlawfully. Before IIRIRA, the concept of 'entry' created perverse results where lawful arrivals were sometimes treated worse than those who had unlawfully entered. *See Landon*, 459 U.S. at 25-26. Against this backdrop, the notion that IIRIRA would simultaneously narrow asylum eligibility for arriving noncitizens defies logic and history. Congress would not have undertaken a global statutory revision to eliminate unfair treatment of lawful arrivals while simultaneously making asylum unavailable to people seeking to present themselves at official ports of entry.

The authoring committee's contemporaneous explanation of this language confirms that it was meant to preserve—not narrow—asylum access for those arriving at the border. The committee explained that the revised statute "provides that any alien who is physically present in the United States or at the border of the United States" may apply for asylum. H. Rep. at

259. In other words, when Congress wrote "arrives in the United States," it understood that phrase to mean "at the border of the United States." *Id.* Just as before IIRIRA, Congress intended asylum seekers to be able to apply both when present in the United States and when at its borders.

Second, the broader statutory structure confirms this reading. Congress used materially identical language in 8 U.S.C. § 1225(a) to define who qualifies as an applicant for admission: "[a]n 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)." Every such applicant for admission "shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3). This parallel is significant. Since the United States first restricted immigration into the country, Congress has required immigration officers to inspect arriving noncitizens. *See Matter of Kolk*, 11 I. & N. Dec. 103, 104 (B.I.A. 1965) (citing the Page Act of 1875, ch. 141, 18 Stat. 477) ("The immigration laws have provided for the inspection of aliens entering the United States since the Act of March 3, 1875."); Immigration Act of 1917, ch. 29, § 15, 39 Stat. 874, 885. Section 1225(a) is the latest iteration of that requirement. Congress's inspection mandate reflects its judgment that, as a matter of national security, the United States must know who is at its borders and why they seek to come in. If "arrives in the United States" meant the same thing as "physically present in the United States," the inspection mandate in § 1225(a)

would not reach noncitizens who present themselves at the border but have not yet crossed it—precisely the individuals Congress most clearly intended to subject to inspection.

Third, this Court has consistently recognized that individuals at the border are eligible to apply for asylum. When the Refugee Act of 1980 created separate provisions for refugee admissions from abroad (§ 207, now codified at 8 U.S.C. § 1157) and asylum (§ 208, now codified at 8 U.S.C. § 1158), the Court described the new § 208(a) as "direct[ing] the Attorney General to establish procedures permitting aliens either in the United States or at our borders to apply for 'asylum.'" *INS v. Stevic*, 467 U.S. 407, 423 n.18 (1984); *see also Cardoza-Fonseca*, 480 U.S. at 427, 433 (describing § 207 as governing refugees "who seek admission from foreign countries," distinct from the asylum provision which applied for those "physically present . . . or at a land border or port of entry" (internal quotation marks omitted)). The Court's own description confirms what Congress intended and has always understood: that persons at our borders are eligible to apply for asylum.

Subsequent decisions confirm the same understanding. In *Sale v. Haitian Centers Council, Inc.*, the Court explained that "[t]he INA offers [asylum] only to aliens who reside in or have arrived at the border of the United States." 509 U.S. 155, 160 (1993). Throughout *Sale*, the Court treated persons "arriving at the border" as a distinct class from those intercepted on the high seas and prevented from "from reaching our shores." *Id.* at 158, 160. The Court drew a clear line between those who were "at the border"—and thus eligible to apply for

asylum protections, even if they could still be ultimately excluded from the United States—and those "beyond the territorial waters of the United States." *Id.* at 177.

Similarly, in *Jennings v. Rodriguez*, the Court identified two distinct groups of noncitizens: those "who have arrived at an official 'port of entry' (e.g., an international airport or border crossing) or who have been apprehended trying to enter the country at an unauthorized location," and separately, those "who are already present inside the country." 583 U.S. 281, 285 (2018). The Court explained that those present "at the Nation's borders and ports of entry" are applicants for admission. *Id.* at 287. Those applicants for admission must be allowed to apply for asylum. *See id.*; 8 U.S.C. § 1225(b)(1).

Petitioners correctly note that "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*." Pet. Br. at 32. And as members of Congress, we further agree with the Court's presumption that "when Congress enacts statutes, it is aware of this Court's relevant precedents." *Id.* (quoting *Bartenwerfer v. Buckley*, 598 U.S. 69, 80 (2023)). Yet those principles compel the opposite conclusion from the one Petitioners draw. *Sale* confirmed that the INA offers immigrants the opportunity to apply for asylum once they reach our border. 509 U.S. at 160. Legislating against that backdrop, Congress enacted the 1996 amendments to ensure the same would remain true—providing explicitly that even "an alien who is brought to the United States after having been interdicted in

international or United States waters" must be allowed to apply for asylum. 8 U.S.C. § 1158(a)(1).

### 2. The Canon Against Surplusage Confirms that "Arrives In" Has Independent Meaning in Both §§ 1158 and 1225(a).

The canon against surplusage confirms what the text, structure, and precedent already establish. It is a "cardinal rule of statutory interpretation" that "no provision should be construed to be entirely redundant." *Kungys v. United States*, 485 U.S. 759, 778 (1988); *see also Fischer v. United States*, 603 U.S. 480, 496 (2024) ("[S]urplusage is . . . disfavored," and a "construction that creates substantially less of it is better than a construction that creates substantially more." (quotation marks omitted)); *Bowe v. United States*, No. 24-5438, 2026 WL 70342, at *14-15 (U.S. Jan. 9, 2026) (rejecting construction that would make the inclusion of another phrase "mere surplusage"). Indeed, the Court has stated that it is duty-bound "to give effect, if possible, to every clause and word of a statute." *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (quotation marks omitted).

Where, as here, a statute has been amended, the canon against surplusage carries even greater weight. Though the Court is "reluctant to treat statutory terms as surplusage in any setting," "[its] reluctance increases when Congress amends a statute." *Bufkin v. Collins*, 604 U.S. 369, 386 (2025) (quotation marks omitted). "[W]hen Congress [amends a statute], it intends its amendment to have real and substantial effect." *Id.* (internal quotation marks omitted). For § 1158

specifically, that effect was to continue to allow asylees to apply at any border, regardless of whether they had "entered" (under the pre-IIRIRA language) or been "admitted" (under the new language). *See* H. Rep. at 259; 8 U.S.C. § 1158(a)(1).

Respondents' reading gives independent meaning to both phrases in the statute, as Congress intended. "Physically present in the United States" refers to individuals who have crossed the border. "Arrives in the United States" refers to those at the border, including those presenting themselves for inspection by immigration officials at ports of entry. The reading urged by Petitioners, by contrast, collapses the two phrases into one, rendering "arrives in" entirely superfluous.

The rare circumstances in which the Court has sometimes tolerated surplusage are not present here. In *Bufkin v. Collins*, the canon against surplusage could not do any tiebreaking work because *neither* side's interpretation avoided the redundancy. *See* 604 U.S. at 387 (canon "does not apply" where "competing interpretation would [not] avoid superfluity"). And in *Barton v. Barr*, 590 U.S. 222 (2020), both the majority and dissent acknowledged "that under either side's interpretation" there was "redundant surplusage." *Id.* at 239 (Kavanaugh, J.); *id.* at 253 (Sotomayor, J. dissenting). With that backdrop, the Court's observation that "[s]ometimes the better overall reading of the statute contains some redundancy," *id.* at 239 (quotation marks omitted), carries little weight here, where only one side's reading creates surplusage. Here, the situation is the opposite: Respondents' interpretation

gives independent meaning to every phrase in the statute, while Petitioners' reading alone renders "arrives in the United States" superfluous. This is precisely the circumstance where the canon has its greatest force. Nor can Petitioners find refuge in *Rimini St., Inc. v. Oracle USA, Inc.*, which involved a statute addressing costs where some "redundancy is hardly unusual." 586 U.S. 334, 346 (2019) (quotation marks omitted).

Recognizing the force of the surplusage problem, Petitioners and their amici offer several theories for why "arrives in" adds nothing to "physically present" without creating redundancy. None succeeds.

First, several Congressmen claim the redundancy is purposeful. According to them, "Congress said not once—but twice—that to seek asylum, the alien must be 'in the United States.'" Br. for Ted Cruz et al. as Amici Curiae Supporting Pet'rs. at 8. To be sure, Congress did repeat that phrase twice. But the statute's repetition of "in the United States" is preceded by two different phrases—the very phrases at the heart of this case: the asylum seeker must be "physically present in the United States or [one] who arrives in the United States." 8 U.S.C. § 1158(a)(1). The senators' argument simply ignores these distinct terms. "Whenever a reading arbitrarily ignores linguistic components or inadequately accounts for them, the reading may be presumed improbable." *Feliciano v. Dep't of Transp.*, 605 U.S. 38, 51-52 (2025) (quotation marks omitted).

Next, Petitioners and their amici contend that "arrives in" is necessary to prevent courts from using the entry fiction—the concept that someone physically

within the United States may be "treated as if stopped at the border," *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953), *superseded by statute as stated in Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020)—to exclude arriving noncitizens from the category of those "physically present." Pet. Br. at 21-22. But this turns the entry fiction on its head. The entry fiction provides that certain individuals who are *undisputedly physically present* in the United States are not treated as having *legally* entered. *See, e.g.*, *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (collecting cases). The fiction operates on the legal concept of entry, not on physical location. Because § 1158(a)(1) refers to "physical[] presen[ce]"—not entry or admission—the entry fiction would pose no interpretive difficulty. The statute's plain language already resolves the concern Petitioners raise.

Finally, a group of Congressmen offer a different theory: "arrives in" distinguishes noncitizens who would arrive *after* the statute's passage from those "physically present" when it was enacted. Br. for Ted Cruz et al. as Amici Curiae Supporting Pet'rs. at 8. But this argument defies basic principles of statutory interpretation. A "statute is presumed to speak from the time of its enactment" and "embraces all such persons or things as subsequently fall within its scope." *De Lima v. Bidwell*, 182 U.S. 174, 197 (1901). Section 1158 applies to those who are physically present in the United States today, and it will apply tomorrow to those who are physically present tomorrow. The statute's language does not freeze its scope at the moment of enactment.

IIRIRA's text further undercuts this temporal theory. Where Congress was concerned about the temporal scope of particular provisions in IIRIRA, it said so expressly. A separate section of the statute set forth detailed transitional rules clarifying how specific provisions applied to noncitizens already in immigration proceedings versus those who would enter proceedings in the future. *See* IIRIRA § 309(c), 110 Stat. at 3009-625 to -627 (codified at 8 U.S.C. § 1101 note). Congress knew how to draw temporal distinctions when it wanted to. Its decision not to do so in § 1158(a)(1) is telling.

## II. The Petitioners' Statutory Interpretation Would Impermissibly Allow the Executive and Courts to Usurp Legislative Power.

This Court has long recognized "that Congress has plenary power to create immigration law." *Zadvydas*, 533 U.S. at 695. Other members of Congress frame the Ninth Circuit's decision as a separation of powers violation and judicial aggrandizement. But their argument presupposes that Petitioners' interpretation is correct and overlooks the separation of powers problem it in fact creates. The courts' role in immigration cases is to "ensure, . . . that the Executive Branch acts within the confines of the Constitution and federal statutes." *Noem v. Vasquez Perdomo*, 146 S. Ct. 1, 6 (2025) (Kavanaugh, J. concurring in the grant of the application for stay). That role is implicated here because Petitioners' proposed reading of §§ 1158 and 1225(a)(1) would effectively transfer legislative power from Congress to the Executive.

### A. Petitioners Ask this Court to Adopt a Limitation Congress Repeatedly Declined to Enact.

Congress's commitment to preserving asylum access at the border is demonstrated not only by what it has enacted, but also by what it has declined to enact. Over the last decade, numerous bills have been introduced that would have curtailed asylum eligibility. Time and again, Congress has declined to enact them. *See, e.g.*, H.R. 2, 118th Cong. (2023) (not enacted) (proposed limiting asylum to those arriving at ports of entry); H.R. 2022, 117th Cong. (2021) (not enacted) (proposed requiring asylum interviews abroad before entering the United States). Most recently, bipartisan border negotiations in 2024 again considered but declined to limit asylum to those arriving at ports of entry, demonstrating continued congressional commitment to preserving border asylum access even in the face of operational challenges. These proposals were considered and rejected through the ordinary legislative process—the "single, finely wrought and exhaustively considered, procedure" the Framers prescribed. *INS v. Chadha*, 462 U.S. 919, 951 (1983).

Petitioners now ask this Court to accomplish through statutory interpretation what Congress has repeatedly declined to do through legislation: restrict who may access asylum, including those at our borders. But the "decision whether to" narrow a statute's reach "lies with [the Congressional] body, not this one." *Stanley v. City of Sanford*, 606 U.S. 46, 59 (2025); *see also Neal v. United States*, 516 U.S. 284, 296 (1996) ("Congress, not this Court, has the responsibility for revising its statutes.").

Adopting Petitioners' interpretation would do precisely what Congress has repeatedly chosen not to do—and would do so without any of the deliberation, compromise, or democratic accountability that the legislative process demands.

### B. The Executive May Not Use Operational Choices to Rewrite the Statute's Eligibility Criteria.

The separation-of-powers concern here is not merely theoretical. The record in this case demonstrates that the Executive Branch adopted a policy of "metering"—physically preventing asylum seekers from reaching the United States' side of the border—and now argues that those who have not crossed the border are ineligible to apply for asylum. *See, e.g.*, Pet. App. 4a–5a; Pet. Br. 9–10. In other words, the Executive used operational choices to prevent individuals from satisfying a purported statutory condition and now invokes their failure to satisfy that condition as a basis for denying them access to relief.

Petitioners' interpretation creates an intolerable separation-of-powers problem: it would allow the Executive to eliminate a statutory right through operational decisions. By implementing a metering policy that physically prevented asylum seekers from 'arriving in' the United States under Petitioners' preferred definition, the Executive effectively nullified § 1158's requirements. The Executive then points to its own obstruction as proof that asylum seekers failed to satisfy statutory requirements. This Court should not endorse an interpretation that rewards the Executive for manufacturing the conditions on which its preferred

reading depends. "The power of executing the laws . . . does not include a power to revise clear statutory terms that turn out not to work in practice." *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 327 (2014). Still less does it include the power to render statutory protections inaccessible through enforcement decisions and then cite that inaccessibility to justify a narrower reading of the statute. Congress provided that individuals who "arriv[e] in the United States" may apply for asylum. 8 U.S.C. § 1158(a)(1). As the committee report confirms, that phrase encompasses those "at the border of the United States." H. Rep. at 259. The Executive cannot nullify that protection by ensuring no one reaches the border and then arguing the statute does not apply to them.

As always, "policy concerns cannot trump the best interpretation of the statutory text." *Patel v. Garland*, 596 U.S. 328, 346 (2022). Petitioners emphasize the need for Executive authority to manage the border, but the Framers entrusted the "legislative power of the Federal government" to Congress, not the President. *Chadha*, 462 U.S. at 951. If the Executive believes current asylum procedures are inadequate, the remedy is to seek legislation—not to adopt a statutory reading that effectively rewrites the statute Congress enacted.

### C. Congress Alone Has The Authority to Revise the Asylum Laws.

If the law needs to be updated to address changed circumstances, "Congress alone has the institutional competence, democratic legitimacy, and (most importantly) constitutional authority to revise statutes in light of new social problems and preferences." *Wis.*

*Cent. Ltd. v. United States*, 585 U.S. 274, 284 (2018). Where there is a legitimate concern that "the security of our borders will be compromised" by the Court's interpretation of an immigration statute, "Congress can attend to it." *Clark v. Martinez*, 543 U.S. 371, 386 (2005). And Congress has historically demonstrated its capacity to do exactly that. *See id.* at 386 n.8 (observing that Congress passed legislation to overturn the Court's interpretation of an immigration statute less than four months after the decision).

This principle carries particular weight at a moment when the boundary between executive and legislative power in immigration is under significant strain. Courts across the country have been called upon to assess whether Executive action has exceeded statutory authority in a range of contexts. *See, e.g.*, *V.O.S. Selections, Inc. v. Trump*, 149 F.4th 1312, 1318-19 (Fed. Cir.), *cert. granted*, 146 S. Ct. 73 (2025); *Am. Foreign Serv. Ass'n v. Trump*, 792 F. Supp. 3d 116, 123-24 (D.D.C. 2025), *appeal docketed*, No. 25-5290 (D.C. Cir. Aug. 13, 2025). The Court's vigilance in ensuring that the Executive operates within statutory bounds is essential to preserving the constitutional structure—and nowhere more so than in the immigration context, where Congress's plenary authority is well established and the consequences of executive overreach fall on some of the most vulnerable individuals within the legal system.

If Congress wishes to reform the United States' asylum laws, it may do so. But Congress alone may take that step. *Wis. Cent.*, 585 U.S. at 284.

## III. Operational Concerns at the Border Are for Congress to Address.

Petitioners and their amici warn of operational difficulties at the border if the Ninth Circuit's decision is allowed to stand. Pet. Br. at 35–36; Br. for Ted Cruz et al. as Amici Curiae Supporting Pet'rs. at 10–15. But these policy arguments lack foundation and, in any event, cannot justify rewriting the statute. As members of Congress, amici can confirm that Congress is both aware of conditions at the border and capable of responding to them through legislation.

As an initial matter, refusing to allow noncitizens to apply for asylum at ports of entry along the border creates its own operational difficulties, by potentially "incentiviz[ing people] to attempt to cross into the United States illegally, between ports of entry." J.A. 399. When last reforming the INA, Congress made clear it did not intend noncitizens arriving lawfully to suffer harsher treatment than those arriving through unlawful means. But allowing those present in the United States—with or without authorization—to apply for asylum while those at the border cannot would create precisely that disparate treatment.

Additionally, this Court has squarely held that "policy concerns cannot trump the best interpretation of the statutory text." *Patel*, 596 U.S. at 346. Where a party argues that "the security of our borders will be compromised" by the Court's reading of an immigration statute, the answer is not to adopt a different reading—it is to recognize that "Congress can attend to it." *Clark*, 543 U.S. at 386. Even accepting that managing the border presents genuine challenges, the remedy is

legislative action, not judicial reinterpretation. The Court should not distort the meaning of § 1158 to solve a problem that Congress has the authority—and the responsibility—to address.

Nor should the Court credit the premise that Congress is unable or unwilling to act. Congress has plenary authority over immigration and has exercised it repeatedly to adjust the statutory framework in response to changing conditions at the border. IIRIRA itself was precisely such an adjustment—a comprehensive, bipartisan response to a perceived increase in undocumented immigration that tightened asylum procedures while preserving access. *See supra* Section I.A. And Congress has continued to demonstrate its capacity to act: when the Executive Branch identified a need for additional enforcement resources, Congress responded by funding immigration enforcement efforts at historically high levels. *See, e.g.*, One Big, Beautiful Bill Act, Pub. L. No. 119-21, 139 Stat. 72, 385-89 (2025).

Congress has also closely monitored conditions at the border through hearings, investigations, and member visits. *See, e.g.*, *Unaccompanied Children at the Border: Stakeholder Perspectives on the Way Forward: Hearing Before the Subcomm. On Border Sec., Facilitation, & Operations of the H. Comm. on the Judiciary*, 117th Cong. 1-3 (2021); *The U.S. Immigration System: The Need for Bold Reforms: Hearing Before the Subcomm. on Immigr. & Citizenship of the H. Comm. on the Judiciary*, 117th Cong. (2021); *The Way Forward on Border Security: Hearing Before the H. Comm. On Homeland Sec.*, 116th Cong. (2019); *Oversight of the Trump Administration's Border Policies and the*

*Relationship Between Anti-Immigrant Rhetoric and Domestic Terrorism: Hearing Before the Subcomm. on Immigr. & Citizenship of the H. Comm. on the Judiciary*, 116th Cong. (2019); *Ranking Member Thompson Leads Homeland Security Committee Democrats on Southwest Border Visit*, Committee on Homeland Security Democrats (Apr. 20, 2023), https://democrats-homeland.house.gov/news/media-advisories/ranking-member-thompson-leads-homeland-security-committee-democrats-on-southwest-border-visit. Amici are well aware of the operational realities at the border and the tools available to address them. Indeed, even without the unlawful practice of metering there are numerous tools available to create an orderly process at the border, many of which were used during prior administrations. To the extent those tools prove insufficient, it is Congress's prerogative to craft new ones—through the deliberative legislative process, not through executive fait accompli ratified by judicial reinterpretation.

There is also a deeper problem with crediting Petitioners' operational arguments. As discussed in Section II.B, the Executive Branch's own policy of metering—physically preventing asylum seekers from reaching the border—is a significant contributor to the conditions Petitioners now cite as justification for their preferred reading. Endorsing that reading would create a perverse incentive: it would reward the Executive for creating operational difficulties and then invoking those difficulties to justify a statutory interpretation that Congress never intended. The Court should decline that invitation.

If Congress determines that the asylum laws require revision—whether to address operational concerns, security considerations, or any other policy objective—it has the constitutional authority and institutional capacity to do so. But that decision belongs to Congress. It cannot be made by the Executive through enforcement policy, nor ratified by the Court through statutory reinterpretation.

## CONCLUSION

For the foregoing reasons, *amici curiae* respectfully request that this Court affirm the decisions below.

February 17, 2026

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# APPENDIX

## TABLE OF CONTENTS

# APPENDIX

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