

**In the
Supreme Court of the United States**

TAMER S. WASSILY, ET AL.,
Petitioners,

v.

TODD BLANCHE, ACTING ATTORNEY GENERAL,
Respondent.

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

**BRIEF OF THE AMERICAN IMMIGRATION
LAWYERS ASSOCIATION AS *AMICUS CURIAE* IN
SUPPORT OF PETITIONERS**

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**BRIEF OF THE AMERICAN IMMIGRATION
LAWYERS ASSOCIATION AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS**

INTEREST OF *AMICUS CURIAE*¹

The American Immigration Lawyers Association (AILA), founded in 1946, is a national, non-partisan, non-profit association with more than 18,000 members throughout the United States and abroad, including lawyers and law school professors who practice and teach in the field of immigration and nationality law. AILA seeks to promote justice, advocate for fair and reasonable immigration law and policy, and advance the quality of immigration and nationality law and practice. AILA's members practice regularly before the Department of Homeland Security, immigration courts, and the Board of Immigration Appeals, as well as before the U. S. Courts of Appeals and the Supreme Court.

SUMMARY OF ARGUMENT

Congress set out five conditions that must be met for the Secretary of Homeland Security or the Attorney General to “adjust . . . the status of” “any alien granted asylum” to that of one “lawfully admitted for permanent residence.” 8 U.S.C. § 1159(b). But, the Board of Immigration Appeals (BIA) added a sixth condition: an applicant for adjustment under Section 1159(b) must additionally possess current asylum status, according to *Matter of T-C-A-*, 28 I. & N. Dec. 472 (2022). *Id.*, at 476 (holding that terminated asylum status renders one ineligible for

¹ *Amicus Curiae* states that no counsel for a party authored this brief in whole or in part, and that no person other than amicus, its members, or its counsel made a monetary contribution to its preparation or submission.

adjustment under § 1159(b)). The Fourth and Second Circuit Courts of Appeals have agreed with the BIA based, in part, on its understanding of the ordinary meaning of the words “adjust” and “adjustment of status.” *Wassily v. Bondi*, 150 F.4th 100, 106–107, and n. 11 (CA2 2025); *Cela v. Garland*, 75 F.4th 355, 364 (CA4 2023); but see *Siwe v. Holder*, 742 F.3d 603, 608 (CA5 2014) (refusing to read in an “unwritten requirement” of continuing asylum status into the text of the adjustment statute).

Amicus Curiae argues that Congress has imbued the terms “adjust” and “adjustment of status” with specialized meaning in the immigration context, such that the Court must look to more than just their ordinary meaning. As such, an “ordinary legal meaning is to be expected, which often differs from common meaning,” and courts must take care to not “overlook technical senses of ordinary words.” A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 73–74 (2012).

This brief will focus on that specialized meaning. A review of the statutory history (as opposed to the post-enactment history relied on in *Wassily*),² will show that the Second and Fourth Circuits misunderstood the meaning of those terms as used in 8 U. S. C. § 1159(b). In sum, there is nothing about the concept of “adjustment of status” that inherently or impliedly requires one to possess current asylum status in order to be eligible for lawful permanent resident status under § 1159(b).

² See *Wassily*, 150 F.4th, at 108–109 (analyzing § 104(d), Immigration Act of 1990, 104 Stat. 4985–4986, to discern the meaning of text first enacted by § 201(b), Refugee Act of 1980, 94 Stat. 105–106, 8 U. S. C. § 1159); cf. *Bruesewitz v. Wyeth LLC*, 562 U. S. 223, 241–242 (2011) (explaining that “[p]ost-enactment legislative history (a contradiction in terms) is not a legitimate tool of statutory interpretation”).

ARGUMENT

I. The Statutory History Demonstrates that the Concept of Adjustment of Status Carries a Specialized Meaning

Among those who specialize in immigration law, “adjustment of status” is a term of art that has an understood and specific meaning. It refers to the process of seeking lawful permanent resident status from within the United States. Kurzban’s *Immigration Law Sourcebook* 1373–1400 (16th ed.). It contrasts with consular processing, which involves applying for permanent residence from outside the U.S. through a U.S. consular office. *Id.*, at 1368–1373. The variegated pathways to adjust status entail differing eligibility rules with varying sets of inadmissibility grounds and divergent fee requirements, all of which turn on a complex web of a statutory and regulatory scheme. Within that scheme, “adjustment” is a specialized term that has to be understood in context.

Yet, the majority opinion in *Cela* relied heavily on dictionary definitions of the words “adjustment of status,” in isolation, to resolve the question presented. The court reasoned:

[T]he word “adjust” . . . suggests a move from one current status to another. . . . And since *Cela* had no asylum status at the time he applied to become a lawful permanent resident, he had nothing from which he could adjust. It is hard to understand how an alien can adjust his or her status without a cognizable status in the first place. Thus, Congress’s use of “adjust” suggests a requirement of an existing status. In fact, were that not the case, Congress would have used verbs such as apply, petition or request instead of adjust.

75 F. 4th, at 365 (citation omitted). The *Wassily* majority reached the same conclusion based upon its understanding of the ordinary meaning of the word “status.” 150 F. 4th, at 106–107, and n. 11.

Such reasoning is erroneous. The Second and Fourth Circuit’s understandings of the words “adjust” and “status” fail to account for the long history of adjustment of status provisions that have embedded those terms with a specialized meaning. To “adjust status” merely means to be “lawfully accorded the privilege of residing permanently in the United States as an immigrant” without having to depart abroad for consular processing and admission with an immigrant visa. See 8 U.S.C. §§ 1101(a)(20) (defining the term “lawfully admitted for permanent residence”); 1101(a)(16) (defining “immigrant visa”), 1201, and 1202. It is a process to obtain the status of being “lawfully admitted for permanent residence” without having to go through an admission at the time of entry.

While some early iterations of the general adjustment statute explicitly required current lawful status as a condition for eligibility, as discussed in detail below, Congress amended that law several times, including a rejection of that categorical limitation via removal of statutory text requiring the maintenance of a lawful status. Additionally, the first law allowing for “displaced persons” to adjust, a predecessor to the asylum statute, never had any such requirement.

A. The Quota Acts

The first generally applicable statutory adjustment of status provision was § 245 of the Immigration and Nationality Act of 1952 (INA), 66 Stat. 217. Prior to the INA, the immigration system was primarily governed by the

Immigration Act of 1917 (1917 Act), ch. 29, 39 Stat. 874 (repealed 1952), and the Immigration Act of 1924 (1924 Act), ch. 190, 43 Stat. 153 (repealed 1952). The 1917 Act defined classes of people barred from entering the United States, including “idiots, imbeciles, feeble-minded persons, . . . [the] physically defective,” and most inhabitants of Asia. § 3, 39 Stat. 875–876.

The 1924 Act made permanent a fundamental change in the immigration system first introduced three years earlier on an emergency basis, limiting immigration based on a novel quota system.³ Emergency Quota Act of 1921 (1921 Act), ch. 8, 42 Stat. 5; 1924 Act, §§ 2–12, 43 Stat. 153–161. This fundamental change would eventually lead to the creation of “adjustment of status.”

To implement the quota provisions, the 1924 Act made issuance of a visa by a U. S. consulate a prerequisite for admission as either a temporary “nonimmigrant” or as an “immigrant lawfully admitted for permanent residence.” 1924 Act, §§ 2, 13, ch. 190, 43 Stat. 153, 161; see also Henry

³ The purpose of the quota system was to dramatically limit immigration from Eastern and Southern Europe. The House Committee on Immigration and Naturalization report regarding the 1924 Act explained its rationale: “With full recognition of the material progress which we owe to the races from southern and eastern Europe, we are conscious that the continued arrival of great numbers tends to upset our balance of population, to depress our standard of living, and to unduly charge our institutions for the care of the socially inadequate.” H. R. Rep. No. 68–350, pt. 1, pp. 13–14 (1924). An earlier minority report of the House Committee on Immigration and Naturalization, whose authors opposed the quota system, argued that it was based on “an unfounded anthropological theory that the nations which are favored are the progeny of fictitious and hitherto unsuspected Nordic ancestors, while those discriminated against are not classified as belonging to that mythical ancestral stock. No scientific evidence . . . was introduced to substantiate this pseudoscientific proposition.” H. R. Rep. No. 68–176, pt. 2, p. 3 (1924).

Pratt Fairchild,⁴ *The Immigration Law of 1924*, 38(4) Q.J. Econ. 653, 661–663 (1924) (describing a new system of adjudication by consular officers, who would manage the quota system and could refuse visas to those deemed inadmissible during the visa application process). In effect, the locus of the decision on who could come and stay in the United States moved from immigration officials sitting in U. S. ports to consular officers abroad.

Another critical change made by the 1921 and 1924 Acts was the creation of what a 1950 Senate Judiciary Committee Report described as being a “sharp distinction between immigrants and nonimmigrants.” S. Rep. No. 1515, 81st Cong., 2d Sess., pt. 1, p. 592 (1950) (1950 Senate Report). The 1924 Act defined immigrants as “any alien departing from any place outside the United States destined for the United States” excepting six categories of nonimmigrants, including foreign officials and various types of temporary visitors. § 3, ch. 190, 43 Stat. 154. “Immigrants” were further subdivided into quota immigrants, who counted against national quotas, and non-quota immigrants, who did not—including those coming from Western Hemisphere countries. § 4, *id.*, at 155.

This basic categorization was central to the 1924 Act. It was how the bureaucracy kept count of the number of immigrants from countries subject to a quota, so if the quota was met during a year, any further migration from the country could be stopped by ending the issuance of more immigrant visas. This distinction, although less

⁴ Professor Fairchild was a prominent sociologist who taught at Yale and New York University and was a proponent of population control, eugenics, and immigration restriction. He served as president of both Planned Parenthood and the American Eugenics Society and wrote twenty books and articles on these subjects. See Emory S. Bogardus, Obituary, Henry Pratt Fairchild, 21(6) *Am. Socio. Rev.* 783 (1956).

relevant with the end of the quota system, lives on today in 8 U.S.C. § 1101(a)(15) (defining immigrants as all noncitizens except categories of nonimmigrants which correspond to various classes of temporary visas/statuses).

In summary, the Acts of 1921 and 1924 created this sharp distinction between immigrants and nonimmigrants for the purpose of defining which persons admitted from abroad would be counted against the total ceiling allowed by the per country quotas. These were disjunctive categories that together included all noncitizens contemplated by immigration law—one was an immigrant, unless one was a nonimmigrant. And in the case of noncitizens wishing to obtain permanent resident status in the U. S., their only option for processing was to pursue their case outside the U. S. through consular processing, which imposed a burden on those already present in the U. S.

B. Alleviating the Burden Through the Implementation of Adjustment of Status

The problem of forced consular processing became far more salient after the quota laws because many noncitizens inside the U. S. wishing to obtain permanent resident status would have to travel abroad to their country of origin, most often by ship, to then apply for a visa before a U. S. consulate, and attempt reentry into the U. S. And they would have to do so with no guarantee of success.

Mechanisms to alleviate this burden, collectively known as “adjustment of status,” were created.⁵ The

⁵ In contrast to its contemporary meaning, adjustment of status was initially a way to record the entry of someone who did not have documentation of their lawful entry, so that they could be considered a lawful immigrant, and most importantly, so that they could someday naturalize. 1950 Senate Report, at pt. 1, p. 591 (discussing the plights of lawful entrants for which no record of their entry existed). Even

1950 Senate Report summarized that “[s]tatus may be adjusted by administrative procedure, treaty, registry, suspension of deportation, voluntary departure, or preexamination, change of status, or an act of Congress.” Pt. 1, p. 591.

The broadest exception to the rule requiring entry on a visa was “preexamination” which did not require prior legal status. President Truman’s Commission on Immigration and Naturalization explained that forcing a noncitizen to “return to his country of origin . . . was an expensive procedure which served no useful purpose either for the alien or the United States,” and so “authorities in 1935 devised a process known as preexamination” through regulation. Report of the President’s Commission on Immigration and Naturalization, *Whom Shall We Welcome* 209 (1953) (Truman Commission Report).⁶ Preexamination allowed noncitizens in the U.S. otherwise eligible for permanent residence to effectively apply for the immigrant visa in the U.S., and if successful, travel to a U.S. consulate in Canada to formally obtain the visa, knowing it would be issued and they could safely return. 8 CFR pt. 142 (1949).

In 1952, Congress supplanted this patchwork system with a generally applicable “adjustment of status” provision at § 245 of the INA, 66 Stat. 217, and preexamination was eliminated via regulation. 17 Fed. Reg. 11469 (1952)

before 1921 and the first quota law, various mechanisms existed by which certain noncitizens who had no record of their entry into the United States could apply to remedy that situation. For example, the 1950 Senate Report described early 20th century provisions related to entrants across the Mexican or Canadian borders who did not possess a record of their crossing. Pt. 1, pp. 591–592.

⁶ Online at <https://heinonline.org/HOL/P?h=hein.beal/whomwe0001&i=1> (as visited Aug. 24, 2026).

(eliminating pt. 142); *id.*, at 11506 (codifying a narrow version of preexamination at 8 CFR § 235.5 for when a Service office is outside of the continental United States). But in so doing, Congress expressly required one to have a maintained lawful status at the time of application:

The status of an alien who was lawfully admitted to the United States as a bona fide nonimmigrant and who is **continuing to maintain that status** may be adjusted by the Attorney General in his discretion (under such regulations as he may prescribe to insure the application of this paragraph solely to the cases of aliens who entered the United States in good faith as nonimmigrants) to that of an alien lawfully admitted for permanent residence

§ 245(a), 66 Stat. 217 (emphasis added).

As described in the Congressional record, “aliens lawfully in the United States in a temporary status may . . . have their status adjusted to that of permanent residency without the necessity of leaving the United States.” H. R. Conf. Rep. No. 2096, 82nd Cong., 2d Sess. (1952), reprinted in 1952 U. S. Code Cong. & Admin. News 1753, 1755. Specifically, one could adjust status from a valid “nonimmigrant” status to the status of “admitted for permanent residence.” § 245(a), 66 Stat. 217; see, *e. g.*, *Angelis v. Bouchard*, 181 F. Supp. 551, 551 (D.N.J. 1960) (“an adjustment of . . . status from that asserted to be a bona fide nonimmigrant to that of an alien lawfully admitted for permanent residence as a nonquota immigrant.”); *Chrysikos v. Comm’r of Immigr., Ellis Island, N.Y.*, 3 F.2d 372, 373 (CA2 1924) (describing a temporary visitor as “neither a quota nor a nonquota immigrant nor an immigrant at all . . .”).

However, with its express requirement of a maintained

lawful status at the time of application, the original 1952 adjustment statute was extremely narrow and poorly fit for its purpose. The Truman Commission Report, written months after the INA's passage, noted:

Congress, in eliminating preexamination, did not supply a satisfactory substitute. It introduced a new procedure called Adjustment of Status of Nonimmigrant. In one important respect this seems an improvement over former practices, since it allows adjustment of status in the United States without requiring a trip to Canada. But the act of 1952 surrounds the new procedure with conditions and limitations which apparently permit only a few to qualify and which therefore may be self-defeating.

Id., at 210–211; see also Exec. Order 10392, § 2, 17 Fed. Reg. 8061 (1952) (directing the Commission to “make recommendations to the President for such legislative, administrative, or other action as in its opinion may be desirable in the interest of the economy, security, and responsibilities of this country”).

Among other problems, there was a powerful disincentive to adjust: the filing of an adjustment application “terminate[d] [the applicant’s] nonimmigrant status,” INA, § 245(a), 66 Stat. 217, and the denial of an adjustment application led to the initiation of deportation proceedings, 8 CFR § 245.17(e) (1952). Moreover, nationals of Western Hemisphere countries were excluded from eligibility for adjustment of status. § 245(a), 66 Stat. 217 (excluding § 101(a)(27)(C) Western Hemisphere nationals from adjustment of status eligibility).

The Truman Commission Report’s criticism of the 1952 adjustment mechanism as “self-defeating” was

vindicated. Adjustment of status was underutilized and three years later, the Immigration and Naturalization Service resurrected preexamination via regulation. 20 Fed. Reg. 3496 (1955) (codifying preexamination as added at 8 CFR pt. 485); 20 Fed. Reg. 6380 (1955) (redesignating pt. 485 as pt. 235a). Preexamination was then widely used instead of adjustment. S. Rep. No. 2133, 85th Cong., 2nd Sess. (1958), reprinted 1958 U. S. Code Cong. & Admin. News 3698, 3699 (“During the fiscal year ending June 30, 1958, more than 7,000 aliens” successfully availed themselves of preexamination.). Shortly thereafter, Congress passed the first in a series of amendments relaxing the requirements for adjustment.

In 1958, Congress eliminated from Section 245(a) of the INA, 66 Stat. 217, the requirement that an applicant “continu[e] to maintain [a bona fide nonimmigrant] status” in order to adjust. Act of Aug. 21, 1958 (1958 Act), Pub. L. 85–700, § 1, 72 Stat. 699. This law also eliminated the provision that terminated one’s nonimmigrant status upon filing an application for adjustment. *Ibid.*; accord, *Matter of Hosseinpour*, 15 I. & N. Dec. 191, 192 (BIA 1975) (noting the removal of the requirement).

Thus, critically, after the amendments made by the 1958 Act, a noncitizen who was no longer in a current valid nonimmigrant status could apply to “be adjusted” from their then-lack of (or unlawful) “status” “to that of an alien lawfully admitted for permanent residence.” § 1, 72 Stat. 699. Indeed, even those who had fraudulently entered as a nonimmigrant (and were thus not actually a nonimmigrant and lacked status) were eligible to seek adjustment of status. *E. g.*, *Matter of Pon*, 13 I. & N. Dec. 446, 448 (1969) (granting motion to reopen proceedings for the purpose of applying for adjustment of status where the respondent “avoid[ed] inspection as an *immigrant*

alien” by fraudulently “enter[ing] as a nonimmigrant”) (emphasis in original).

Later amendments in 1960, 1965, 1976, and 1981, with minor exceptions, further loosened the requirements for adjustment. Act of July 14, 1960, § 10, 74 Stat. 505 (removing the bona fide nonimmigrant requirement, and making adjustment under 8 U. S. C. § 1255 available to parolees for the first time);⁷ Immigration and Nationality Act of 1965, §§ 2, 13(b), 79 Stat. 911, 919 (eliminating national origin quotas while requiring consular processing for natives of the Western Hemisphere); Immigration and Nationality Act Amendments of 1976, § 6, 90 Stat. 2705–2706 (eliminating bar to adjustment for natives of the Western Hemisphere while barring other narrow categories of applicants); Immigration and Nationality Act Amendments of 1981, § 5(d)(2), 95 Stat. 1614 (expanding the exception to 8 U. S. C. § 1255(c)(2)’s bar for applicants who were employed without authorization); see also Fogg, Adjustment of Status under Section 245 of the Immigration and Nationality Act, 20 San Diego L. Rev. 165 (1982).⁸

Thus, under the original INA there was a brief six-year period in the 1950s when statutory adjustment of status actually—and explicitly—required all applicants to be

⁷ Notably, parolees would have had no immigration status in the U. S. at all given that they were deemed as a matter of law to have not entered the country. *Leng May Ma v. Barber*, 357 U. S. 185, 190 (1958) (“The parole of aliens seeking admission is simply a device through which needless confinement is avoided while administrative proceedings are conducted. It was never intended to affect an alien’s status . . .”).

⁸ See, *infra*, n. 12, regarding the current structure of Section 245(c)(2) of the INA, 8 U. S. C. § 1255(c)(2), within the overall scheme. This demonstrates that, in order to make the maintenance of a lawful status (subject to certain broad exceptions) into an eligibility requirement, Congress had to do so expressly.

in a maintained lawful status in order to apply to have their “status” “adjusted” “to that of an alien lawfully admitted for permanent residence.” § 245(a), 66 Stat. 217. But that has not been the case for many decades, and it was not the case when Congress enacted the Section 201(b) of Refugee Act, 94 Stat. 105–106, in 1980.

With that statutory history in mind, the Fourth Circuit’s view that “adjust suggests a move from one current status to another,” *Cela*, 75 F. 4th, at 365, and the Second Circuit’s similar view that, “‘status’ signals a present condition,” *Wassily*, 150 F. 4th, at 106 (citation omitted), misconstrues Congress’ design. The statutory history (as well as the contemporary statutory text discussed below) demonstrates that when Congress wants an adjustment of status provision to require a maintained lawful status for eligibility, it uses language expressly doing so. See *Lackey v. Stinnie*, 604 U. S. 192, 205 (2025) (“Atextual judicial supplementation is particularly inappropriate when Congress has shown that it knows how to adopt the omitted language or provision.”) (cleaned up).

C. Adjustment of Status for Refugees

Although the 1950 Senate Report applied the term “adjust” to a range of different legal mechanisms, the only statute that used the phrase “adjustment of status” at that time was the Displaced Persons Act of 1948 (DPA), §§ 2(b), 4(a), 62 Stat. 1009, 1011, which resettled to the U. S. a limited number of narrowly defined World War II “displaced person[s] or refugee[s]” from Europe. Noncitizens already in the U. S. who met the Act’s definition of refugee or displaced person⁹ could “apply . . . for an

⁹ An applicant would also have to show that they were “displaced from the country of [their] birth, or nationality, or . . . last residence as a result of events subsequent to the out-break of World War II.”

adjustment of his immigration status.” § 4(a), *id.*, at 1011. Notably, there was no requirement that the applicant be in a current nonimmigrant or other lawful status.

The requirements for adjustment under the DPA were stringent—an applicant would first apply to the Attorney General, *ibid.*, which would trigger a hearing to determine eligibility. 8 CFR § 171.5 (1949) (describing hearing procedures). Should the application be granted, the case would then be transferred to Congress. DPA, § 4(a), *id.*, at 1011. Only upon passage of a concurrent resolution could the Attorney General then “record the admission of the alien for permanent residence.” *Ibid.*¹⁰

As arduous as these procedural hurdles were, they did not require that an applicant for adjustment to be in a current lawful status when they applied for adjustment. *Ibid.*; accord, 8 CFR § 171.1(a) (1949) (“an alien is eligible to be considered for adjustment of his immigration status as a displaced person residing in the United States to that of a permanent resident . . .”). Section 4(b) of the DPA, 62 Stat. 1011, required an applicant to establish their lawful entry into the U. S. as either a “non-immigrant” or an “immigrant student” as defined by Sections 3 and 4(e), respectively, of the 1924 Act, ch. 190, 43 Stat. 154, 155. Under the 1924 Act, those statuses were of limited duration, and would be lost upon overstay. § 15, *id.*, at 162–163 (requiring that the admission of non-immigrants under § 3 or immigrant students under § 4(e) “shall be for such time as may be by regulations prescribed, and under such conditions . . . to insure that, at the expiration of such time or upon failure to maintain the status under which admitted,

DPA, § 4(b), 62 Stat. 1011.

¹⁰ Such an arrangement would presumably be unconstitutional today. See *INS v. Chadha*, 462 U. S. 919 (1983).

he will depart from the United States”).

The operation of the DPA is illustrated by a D. C. Circuit case from 1957. *Brownell v. Stjepan Bozo Carija*, 254 F.2d 78. It involved a family fleeing communist Yugoslavia, who came to the United States in 1946 on non-immigrant transit visas, for the purpose of travelling on to Paraguay. *Id.*, at 79. The family, after initially being granted an extension, overstayed the time allotted to them by the visa, and was placed into deportation proceedings. *Ibid.* After the commencement of the proceedings, the DPA was passed, and they promptly applied to adjust status under the new law, arguing that they had been admitted as nonimmigrants, and were displaced persons. *Ibid.* The adjustment applications were initially denied based upon a finding that they had not lawfully entered the U. S. as non-immigrants due to their intent at the time of entry, despite their entry on non-immigrant visas. *Ibid.* In addition to reversing that determination, *id.*, at 80, the Court of Appeals’ opinion (as relevant here) demonstrated that, under the DPA, someone who entered the U. S. as a non-immigrant was eligible to adjust status even if they had overstayed the time allowed them, and thus lost their original status.

In short, the DPA required a lawful entry, but allowed those who had fallen out of lawful status to still adjust. The DPA adjustment provision was basically replicated in subsequent statutes which continued a U.S. policy of case-by-case responses to refugee crises. See Anker, *The Forty Year Crisis: A Legislative History of the Refugee Act of 1980*, 19 U. San Diego L. R. 9 (1981); see also, *e. g.*, Refugee Relief Act of 1953, § 6, Pub. L. 203, 67 Stat. 403 (allowing for adjustment of admitted nonimmigrants who are also refugees); Act of July 14, 1960, § 3, 74 Stat. 505 (allowing for the adjustment of refugee-escapee

parolees who have been in the U. S. for at least two years).

Against the backdrop of the DPA and INA § 245's evolution, Congress created the refugee- and asylee-specific adjustment provisions via § 201(b) of the Refugee Act of 1980. 94 Stat. 105–106 (adding § 209 of the Immigration and Nationality Act, 8 U. S. C. § 1159). The INA's new § 209 borrowed both structure and language from § 245, 8 U. S. C. § 1255, waiving some of § 245's requirements while adding others specific to refugees and asylees, and including a particularly generous waiver of inadmissibility at Section 209(c). Section 209 also comported with earlier (but now obsolete) provisions from the DPA and the Refugee Relief Act of 1953 allowing for those who had fled persecution to adjust status—even if they were not in a lawful status at the time of adjustment.

From this history, it is clear that the INA uses the concept of “adjustment of status” in a specialized manner simply to describe the granting of permanent resident status to a noncitizen who is already present within the United States.¹¹ It does not categorically require a valid status at the time of application unless other language in the applicable statutory text expressly states otherwise. See, *e. g.*, 8 U. S. C. § 1255(c)(2).

II. Current Law Likewise Demonstrates the Court of Appeals' Misapprehension of the Specialized Meaning of Adjustment of Status.

The various contemporary adjustment statutes contemplate several scenarios in which a noncitizen may move from any lawful or unlawful immigration status to

¹¹ See, *e. g.*, DPA, § 4(a), 62 Stat. 1011 (referring to “the grant of status of permanent residence to such alien as provided for in this section” without requiring maintenance of a status to apply “for an adjustment of [one's] immigration status”).

permanent resident status through the adjustment process. Thus, the idea that adjustment requires a pre-existing and maintained “status” amounting to a “present” “legal condition,” *Wassily v. Bondi*, 150 F.4th 100, 106–107, and n. 11 (CA2 2025) (citing, *inter alia*, *Cela v. Garland*, 75 F.4th 355, 364 (CA4 2023)), is simply incorrect, and incongruous with the specialized, context-specific meaning Congress has instilled into the concept.

For example, Congress has decided that, in contrast to lower preference categories of recognized relationships, beneficiaries of U. S. citizen-filed “immediate relative petitions” (as well as certain enumerated categories of “special immigrants”) are eligible to adjust status even if they are “in unlawful immigration status on the date of filing the application for adjustment of status.” 8 U.S.C. § 1255(c)(2); see also § 1151(b)(2)(A)(i) (defining “immediate relative” relationships).¹² Similarly, where the other applicable criteria have been satisfied, § 1255(i) permits adjustment for noncitizens who “entered the United States without inspection” (*i. e.*, individuals who never had any kind of lawful status), or fell out of status in cases involving non-immediate relative preference category petitions. §§ 1255(i)(1)(A)(i)–(ii).

The current, generally applicable adjustment statute is an evolved and highly reticulated scheme accounting for scenarios that sometimes require a legal status at the time

¹² Section 1255(a) states that “[t]he status of an alien . . . may be adjusted . . . to that of an alien lawfully admitted for permanent residence” as long as its requirements are met. In order to require a pre-existing valid status for eligibility, Congress had to expressly treat the failure to continuously maintain a lawful status as a disqualifying condition under § 1255(c)(2). In doing so, Congress carved out “immediate relatives” and “special immigrants” from § 1255(c)(2)’s bar in order to restore their eligibility under § 1255(a)’s text.

of application, and others that do not. See §§ 1255(a) (not requiring admission or parole for “a VAWA self-petitioner”), (c)(2) & (h) (deeming special immigrant juveniles paroled, and not requiring any lawful status),¹³ (k) (allowing adjustment for certain employment-based cases where the applicant has, among other things, fallen out of status). And Congress has demonstrated that it knows how to require a pre-existing and maintained lawful status as a condition for adjustment of status when it wishes to do so. See, *e. g.*, § 1255(c)(2) (providing in certain adjustment cases that the applicant is required “to maintain continuously a lawful status since entry into the United States”).¹⁴

Thus, Petitioners’ argument that the Court should give great weight to the plain text differences between Subsections (a)(1)(A) and (b) of the singular § 1159 is supported by Congress’s similar disparate choices between requiring a pre-existing status or not within § 1255. See

¹³ Although special immigrant juveniles SIJs are deemed to have been paroled, § 1255(h)(1), USCIS maintains that parole is not a formal admission into an immigration status. USCIS, Humanitarian or Significant Public Benefit Parole for Individuals Outside the U.S., online at https://www.uscis.gov/humanitarian/humanitarian_parole (“An individual who is paroled into the United States has not been formally admitted into the United States for purposes of immigration law.”) (as visited Aug. 25, 2026).

¹⁴ Further, Congress has also regularly enacted special adjustment laws, with some still in effect, that do not require a present lawful status in order for adjustment to be granted. Immigration and Nationality Act of 1957, § 13, 71 Stat. 642 (certain former diplomats and representatives of foreign governments); Cuban Refugee Adjustment Act of 1966, § 1, 80 Stat. 1161; Immigration Reform and Control Act of 1986, § 201, 100 Stat. 3394, 8 U. S. C. § 1255a (legalization of status); Nicaraguan and Central American Relief Act of 1997, Pub. L. 105–100, tit. II, § 202, 111 Stat. 2193; Haitian Refugee Immigration Fairness Act of 1998, § 902, 112 Stat. 2681–538.

Dep't of Homeland Sec. v. MacLean, 574 U.S. 383, 392 (2015) (“The interpretive canon that Congress acts intentionally when it omits language included elsewhere applies with particular force” where disparate language is “used . . . in close proximity,” and “repeatedly” so.).

In conclusion, immigration law does not use the terms “status,” “adjust,” “adjustment,” and combinations thereof in the way that the Second and Fourth Circuits did. These are legal terms of art which carry a rich and specialized meaning in the immigration context. The Second and Fourth Circuits’ bare reliance on dictionary definitions failed to account for this context.

CONCLUSION

The judgment of the Court of Appeals should be reversed.

Respectfully submitted.

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