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 CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS**

ELIZABETH B. WYDRA
BRIANNE J. GOROD*
SMITA GHOSH
CONSTITUTIONAL ACCOUNTABILITY CENTER
1730 Rhode Island Ave. NW
Suite 1200
Washington, D.C. 20036
(202) 296-6889
brianne@theusconstitution.org

*Counsel for Amicus Curiae*

* Counsel of Record

February 17, 2026

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Page(s)**

Cases

**TABLE OF AUTHORITIES – cont'd**

**Page(s)**

**TABLE OF AUTHORITIES – cont'd**

**Page(s)**



Statutes and Legislative Material

**TABLE OF AUTHORITIES – cont'd**

**Page(s)**

**TABLE OF AUTHORITIES – cont'd**

**Page(s)**



Books, Articles, and Other Authorities

**TABLE OF AUTHORITIES – cont'd**

**Page(s)**

## INTEREST OF *AMICUS CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC also has an interest in ensuring that important federal statutes are interpreted in a manner consistent with their text and history and accordingly has an interest in this case.

## INTRODUCTION AND SUMMARY OF ARGUMENT

Since Congress enacted the Refugee Act of 1980, which affirmed the "historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands" and conformed U.S. law to international instruments protecting refugees, the Immigration and Nationality Act (INA) has provided that noncitizens who arrive at ports of entry may apply for asylum protection. Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102; *INS v. Cardoza-Fonseca*, 480 U.S. 421, 436-37 (1987). This guarantee is now reflected in a statutory mandate 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

[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund its preparation or submission. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

U.S.C. § 1225(a)(1), (3), and allow such persons to apply for asylum, *id.* § 1158(a)(1).

Petitioners seek to avoid the natural reading of this text by invoking the presumption against extraterritoriality, a canon of statutory construction that provides that "federal laws will be construed to have only domestic application" "[a]bsent clearly expressed congressional intent to the contrary." *RJR Nabisco v. Eur. Cmty.*, 579 U.S. 325, 335 (2016). That presumption serves to "avoid the international discord that can result when U.S. law is applied to conduct in foreign countries," and reflects the "commonsense notion that Congress generally legislates with domestic concerns in mind." *Id.* at 335-36 (internal quotation marks omitted).

Invoking this presumption, Petitioners advance a novel reading of "arrive[] in the United States," 8 U.S.C. § 1225(a), and argue that 8 U.S.C. § 1158 and 8 U.S.C. § 1225 do not apply to noncitizens who arrive at a port of entry but are prevented from entering the country by immigration officers just before they step over the border. Petitioners urge this Court to rely on the presumption—however "unhelpful" it is at resolving the meaning of the statutory text in this case, Pet'rs Br. 31—to hold that border officials can block asylum-seekers who are at a port of entry, but not yet on American soil, from physically entering the country and applying for asylum because those asylum-seekers are not included among those who "arrive[] in the United States," *id.* at 30 (internal quotation marks omitted). This is true, they say, even when the government officials' conduct—which occurs entirely on U.S. territory—is the only reason why those individuals cannot reach U.S. soil. Pet'rs Br. 3 ("A person does not 'arrive in the United States' if he is stopped in Mexico.").

Petitioners' argument fundamentally misunderstands the role the presumption against extraterritoriality plays in the interpretation of federal laws. The presumption developed from this Court's insistence that lawmakers operate only within their own jurisdiction. While jurisdiction is often synonymous with the physical territory a country governs, that is far from always the case. Indeed, as the history of the presumption makes clear, determining whether a particular statutory provision is extraterritorial is deeply intertwined with the breadth of Congress's authority—or "right to legislate," *Rose v. Himely*, 8 U.S. 241, 274 (1808), *overruled in part by Hudson v. Guestier,* 10 U.S. 281 (1810)—rather than simply the formal extent of the country's borders.

In fact, early in this nation's history, courts described the presumption against extraterritoriality as a "presumption" that "the legislature intended to legislate only on cases within the scope of [its] power," *United States v. Furlong*, 18 U.S. 184, 196 (1820), and permitted Congress to exercise jurisdiction outside of U.S. territory when it had the "power" to operate there, *id.* at 196. Relatedly, when considering statutes implementing international law, courts applied the presumption with reference to Congress's authority and obligations under that body of law, which at times occasioned an extension of jurisdiction beyond territorial borders. *Id.*

While this Court has shifted its description of the presumption in recent years, confirming that it applies in "all cases," it has not eroded these foundations. *See Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 261 (2010). The presumption still exists to ensure fidelity to "congressional intent" and to limit extraterritorial application when the "focus of congressional concern" is domestic. *Id.* at 266 (internal quotation marks

omitted). And it still permits application of federal laws to places where the United States has the authority to act, no matter the focus of Congress's concern.

For those reasons, the presumption does not bar application of §§ 1158 and 1225 at ports of entry. Petitioners do not dispute that the United States has authority and control over border officials' interactions with asylum-seekers—nor could they, given that this case involves a government agency's instructions to U.S. officials to "establish and operate physical access controls at the borderline," Pet. App. 5a. Nor do they dispute that §§ 1158 and 1225 implement international agreements regarding the treatment of refugees and asylees—which means that Congress's authority under *those* instruments should help to determine the provisions' reach. Indeed, failing to consult these sources when applying the presumption against extraterritoriality would jeopardize the country's international treaty responsibilities, subverting congressional intent. S*ee* Anthony J. Colangelo, *A Unified Approach to Extraterritoriality*, 97 Va. L. Rev. 1019, 1061 (2011) (describing the "danger of using the presumption against extraterritoriality to construe statutes that implement international law, resulting in a failure to fulfill international legal responsibilities contrary to congressional intent"). And as Respondents explain, and this Court has previously recognized, the 1967 United Nations Protocol Relating to the Status of Refugees, which Congress implemented in §§ 1158 and 1225, clearly prohibits contracting states from taking "defensive acts[]" against asylum-seekers at the border, as well as within the country. *Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 182 (1993)); Resps. Br. 34-39.

Furthermore, applying §§ 1158 and 1225 to officials encountering asylum-seekers at ports of entry is

consistent with the text and history of those provisions, which make clear that asylum-seekers at ports of entry "arrive[] in the United States" within the meaning of those provisions.

This Court should reject Petitioners' mangled reading of statutory text—and their invocation of the presumption against extraterritoriality—and hold that §§ 1158 and 1225 prevent border officials from physically blocking asylum-seekers at ports of entry from crossing the border.

## ARGUMENT

### I. As Its History Demonstrates, the Presumption Against Extraterritoriality Is Primarily Concerned with Ensuring that Statutes Do Not Reach Beyond the Authority of the United States.

**A.** As this Court has long held, legislative enactments, however "general and comprehensive" they sound, must be "restricted in construction, to places and persons, upon whom the Legislature have authority and jurisdiction." *The Apollon*, 22 U.S. 362, 370 (1824). This principle is today reflected in the presumption against extraterritoriality. But as that language suggests, and the presumption's history makes clear, so long as the nation has authority over an area, there is no reason to presume that the nation's laws do not apply there.

The presumption against extraterritoriality grew out of the canon of statutory construction that holds that an "act of Congress ought never to be construed to violate the law of nations" if another possible construction remains. *See Murray v. Schooner Charming Betsy*, 6 U.S. 64, 118 (1804); *see also Lauritzen v. Larsen*, 345 U.S. 571, 578 (1953) (noting

the presumption's lineage). Because international law discourages it, one nation's statutes are generally construed not to apply where that nation does not have authority to act. *See* Colangelo, *supra*, at 1060-61. When the presumption was first articulated, the law of nations viewed the measure of a government's jurisdiction as first and foremost territorial. Joseph Story, *Commentaries on the Conflict of Laws* § 18 (1834) ("every nation possesses an exclusive sovereignty and jurisdiction within its own territory"). But when a nation's jurisdiction and authority extended beyond the strict boundaries of its territories, the presumption shifted accordingly.

Indeed, when this Court described the principles underlying the presumption against extraterritoriality in early cases, it often emphasized jurisdiction, authority, and control, rather than physical borders. For example, in *Rose v. Himely*, this Court considered a judgment of condemnation from a French prize court sitting in Santo Domingo. 8 U.S. at 268. The judgment, which concerned an American vessel that traded with Haitian revolutionaries and was captured outside of French waters, reached U.S. courts after the ship's cargo was taken to the United States. *Id.* at 241-43. This Court refused to give effect to the prize judgment, holding that the French court lacked jurisdiction and noting that the "strictly territorial regulations" that it enforced only authorized seizures "within those limits over which the *sovereign claimed a right to legislate*." *Id.* (emphasis added); *United States v. Klintock*, 18 U.S. 144, 151-52 (1820) ("general words" of piracy statute "ought to be restricted to offences committed by persons who . . . were within the ordinary jurisdiction of the United States"); *Brown v. Duchesne*, 60 U.S. 183, 195 (1856) (patent law did not apply extraterritorially

because Congress's patent power is "domestic in its character" and "it ought not lightly to be presumed that [Congress] intended to go beyond it").[2]

This Court first hashed out the contours of what would become the presumption against extraterritoriality in nineteenth century cases interpreting a federal law that, among other things, criminalized piracy committed by "any person or persons" on the "high seas" and "out of the jurisdiction of any particular state." An Act for the Punishment of Certain Crimes Against the United States, ch. 9, § 8, 1 Stat. 112, 113 (1790). In *Palmer v. United States*, 16 U.S. 610 (1818), this Court considered whether this provision reached a high seas robbery committed by foreigners on a Spanish ship, *id.* at 630, and concluded that while the terms of the statute were "broad enough to comprehend every human being," Congress clearly intended to punish only those "owing permanent or temporary allegiance to the United States," *id.* at 631. "It cannot be supposed," this Court explained, that "the legislature intended to punish a seaman on board a ship sailing under a foreign flag, under the jurisdiction of a foreign government"—those would be "offences against the nation under whose flag the vessel sails, and within whose particular jurisdiction all on board the vessel are." *Id.* at 632.

---

[2] This Court later overruled *Rose*, holding in a similar case that U.S. courts could not "review [the] proceedings" of foreign prize courts, even when objections to the jurisdiction of a foreign tribunal were made, and observing that a French seizure was likely lawful even if it extended beyond the nation's territorial limits. *Hudson*, 10 U.S. at 284-85. In that case, too, this Court emphasized the role of "authority"—rather than territory—in understanding the legitimacy of a nation's actions. *Id.* at 284 (emphasizing that France had "authority" over the high seas and that the seizure "interfered with the jurisdiction of no other nation").

This Court's opinion in *Palmer* was "roundly criticized by contemporaries" for improperly limiting the scope of the 1790 statute. Colangelo, *supra*, at 1063 (quoting G. Edward White, *The Marshall Court and International Law: The Piracy Case*s, 83 Am. J. In'tl L. 727, 731 (1989)). Indeed, this Court limited the reach of the decision the very next year, confirming that the law could be used to punish those who "acknowledg[ed] obedience to no government whatever" while committing applicable crimes on the high seas, no matter their formal citizenship. *Klintock*, 18 U.S. at 152; *see also Furlong*, 18 U.S. at 198-99 (noting disagreement with *Palmer* because "it never could have been the intention of Congress" to provide "a secure asylum" to pirates).

Congress quickly responded to *Palmer* by clarifying that the piracy prohibitions should apply abroad. It enacted a new piracy statute that punished "any person or persons whatsoever" who "shall, on the high seas, commit the crime of piracy as defined by the law of nations." Act of Mar. 3, 1819, ch. 77, § 5, 3 Stat. 510, 513-14. By tying the statute to the law of nations, in which piracy was a "universal jurisdiction crime," the 1820 statute confirmed Congress's intent to apply the law beyond its territorial jurisdiction. *See United States v. Dire*, 680 F.3d 446, 454 (4th Cir. 2012).

Congress's reaction to *Palmer* illustrates the relationship between legislative authority, international law, and the presumption against extraterritoriality. Because the presumption rested on the assumption that Congress would not intend to intrude on the "jurisdiction of a foreign government" by legislating outside of its own jurisdiction, *Palmer*, 16 U.S. at 632, courts did not disturb the extraterritorial application of U.S. law when international instruments gave Congress broader

authority to legislate. In *United States v. Furlong*, for example, this Court described the principle of universal jurisdiction over "robbery on the seas," which was "considered as an offence within the criminal jurisdiction of all nations." 18 U.S. at 197. Because countries had universal jurisdiction over piracy under the law of nations, punishing piracy—even when committed "in the vessel of another nation"—was "within the acknowledged reach of the punishing power of Congress." *Id.* Conversely, when Congress punished other crimes, such as murder on the high seas, its jurisdiction would not be presumed to extend to offenses committed on foreign ships because the law of nations supplied no universal jurisdiction over such crimes and therefore deprived Congress of the "right" to punish them. *Id.* The presumption of extraterritoriality was, in essence, a rule of jurisdiction, a "reasonable presumption" that "the legislature intended to legislate only on cases within the scope of [its] power." *Id.* at 196.

For this reason, in interpreting piracy prohibitions, courts distinguished between governmental acts based on the law of nations and "municipal" laws grounded in domestic concerns when making presumptions about Congress's extraterritorial aspirations. *United States v. Smith*, 18 U.S. 153, 162 (1820). For example, Congress often punished piracy as an "offence against the law of nations," *id.*, while simultaneously using municipal laws to punish crimes that "did not constitute piracy under the law of nations but . . . [that it] wished to condemn with equal force," Colangelo, *supra*, at 1070 (describing "piracy by statute" (emphasis omitted)). There were jurisdictional implications to this distinction: laws punishing piracy under the law of nations were presumably extraterritorial because

Congress had universal jurisdiction over these offenses, but municipal laws punishing "piracy by statute" were presumptively limited to the nation's "territorial jurisdiction," *id.* at 1071 (quoting Henry Wheaton, *Elements of International Law* § 124, at 164 (George Grafton Wilson ed., Oxford Univ. Press 1936) (1866)); *see also The Antelope*, 23 U.S. 66, 123-24 (1825) (applying the presumption to hold that a U.S. law, the Slave Trade Act, was a municipal law rather than one based on the law of nations and therefore inapplicable to foreign vessels); *Rose*, 8 U.S. at 274 (noting that a law based on "municipal" concerns rather than the law of nations was presumed to apply "only within those limits over which the sovereign claimed a right to legislate").

But even in the case of municipal laws, the relevant question was Congress's "right to legislate," *id.*, and that question could not always be answered with reference to strict territorial lines. The doctrine enforced the principle that general terms in "municipal laws . . . must always be restricted in construction, to places and persons, upon whom the Legislature have authority and jurisdiction." *The Apollon*, 22 U.S. at 370. As this Court summarized in *The Apollon*, the relevant test to determine whether a U.S. customs law should apply to a boat on a river over which the United States had shared jurisdiction with Spain was whether American officials had "power" over the boat—not whether the boat was technically within U.S. territory. *Id.* at 371. Indeed, in that case this Court did not even consider whether the boat was on the Spanish or American side of the river, *id.* at 369 (noting the existence of the boundary line "running through the middle thereof"), even though that would have been an easy way to resolve the case if the applicability of the presumption turned merely on

territorial lines. Rather, it announced a rule based on authority and control: Because the United States had jurisdiction over only those boats traveling to U.S. ports, the Act would apply only to those vessels, regardless of which side of the boundary line they were on. *Id.* at 370 (noting that "the sense of the Legislature" was to "compel an entry of all vessels coming into our waters, being *bound to our* ports" (emphasis added)).

**B.** By the twentieth century, this Court began to apply the presumption as a type of "comity of nations," *Am. Banana Co. v. United Fruit Co.*, 213 U.S. 347, 356 (1909), *overruled on other grounds by Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690 (1962)—that is, as a way of showing the "respect sovereign nations afford each other by limiting the reach of their laws," *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 817 (1993) (Scalia, J., dissenting). Even as the theoretical basis for the presumption shifted, it continued to rest on the familiar principle that Congress should be presumed not to legislate "*outside the jurisdiction of the United States* and within that of other states." *Am. Banana*, 213 U.S. at 357 (emphasis added); *Old Dominion S.S. Co. v. Gilmore (The Hamilton)*, 207 U.S. 398, 403, 405 (1907) ("[T]he bare fact of the parties being outside the [state's] territory in a place belonging to no other sovereign would not limit the authority of the State, . . . . [W]e construe the statute as intended to govern all cases which it is competent to govern."). And this Court continued to apply the presumption to ensure that U.S. law did not apply to places or people beyond the authority and control of the United States.

In *Foley Brothers*, for instance, this Court held that a law regulating labor conditions—typically a domestic concern—did not apply abroad in places

where the United States exercised no sovereignty or control. *Foley Bros. v. Filardo*, 336 U.S. 281, 281 (1949). An American contractor, hired to work on an American project in Iraq and Iran, sued after he was forced to work overtime without proper compensation. *Id.* at 283. Because the United States had no "sovereignty" or "measure of legislative control" in either country, the Court explained that applying its labor laws would inescapably clash with local working conditions that were "known to be wholly dissimilar" and were really the "primary concern of [those] foreign countr[ies]." *Id.* at 285-86. And the law's history attested to the fact that it was really, to use the terms of an earlier century, a municipal regulation: the concerns that drove Congress "were domestic unemployment, the influx of cheap foreign labor, and the need for improved labor conditions in this country." *Id.* at 287.

Conversely, this Court limited the use of the presumption when Congress exercised its jurisdiction over people and places where the United States did have authority and control. For example, in *United States v. Bowman*, 260 U.S. 94 (1922), this Court considered whether the presumption limited the reach of a statute criminalizing fraud against the U.S. government. *Id.* at 96-97. The criminal defendants there argued that the presumption placed the fraud they committed abroad beyond the reach of the Act. *Id.* This Court disagreed. *Id.* at 98. Acknowledging that Congress had not specifically stated that the statute applied extraterritorially, this Court explained that a statute's "locus, when not specially defined, depends upon the purpose of Congress as evinced by the description and nature of the crime and upon the territorial limitations upon the power and jurisdiction of a government to punish crime under the law of

nations." *Id*. at 97-98. While "crimes against private individuals or their property . . . must, of course, be committed within the territorial jurisdiction of the government," the "same rule of interpretation," the Court held, "should not be applied to criminal statutes which are, as a class, not logically dependent on their locality for the government's jurisdiction." *Id*. at 98. Because the fraud offense was against the United States itself and therefore in violation of international law, "Congress ha[d] not thought it necessary to make specific provision in the law that the locus shall include the high seas and foreign countries, but allows it to be inferred from the nature of the offense." *Id*.

Authority and control were similarly important in *Vermilya-Brown Co. v. Connell*, 335 U.S. 377 (1948). There, this Court considered whether the Fair Labor Standards Act (FLSA), which covers commerce in "any [t]erritory or possession of the United States," applied to a military base in Bermuda leased by the federal government from the British government. *Id*. at 379. Though the Court acknowledged that the leased area was still "under the sovereignty of Great Britain and that it is not territory of the United States in a political sense, that is, a part of its national domain," by its text the FLSA still applied to it "even if aliens may be involved, where the incidents regulated occur on areas under the control, though not within the territorial jurisdiction or sovereignty, of the nation enacting the legislation." *Id*. at 381.

Similarly, in *Rasul v. Bush*, this Court held the presumption did not apply in determining whether the federal habeas statute applied at Guantanamo Naval Base. 542 U.S. 466, 472 (2004) (interpreting 28 U.S.C. § 2241). "Whatever traction the presumption against extraterritoriality might have in other contexts, it certainly has no application to the operation of the

habeas statute with respect to persons detained within 'the territorial jurisdiction' of the United States." *Id.* at 480 (quoting *Foley Bros.*, 336 U.S. at 285). And the United States, through its agreements with Cuba, exercises "complete jurisdiction and control" over Guantanamo. *Id*. at 480 (internal citation omitted); *see also Boumediene v. Bush*, 553 U.S. 723, 755 (2008) (reiterating, as it did in *Rasul*, that it would "take notice of the obvious and uncontested fact that the United States, by virtue of its complete jurisdiction and control over the base, maintains *de facto* sovereignty over this territory").

Authority and control were also instrumental in *Sale*, a case on which Petitioners rely heavily. *See* Pet'rs Br. 31-34. In that case, this Court considered whether the Coast Guard, operating "beyond the territorial seas of the United States," could interdict Haitian migrants pursuant to a presidential declaration without regard to the INA's provision for "withholding of deportation" of noncitizens fearing persecution. 509 U.S. at 158, 158 n.2 (referencing 8 U.S.C. § 1253(h) (1988 ed.)). This Court held that neither § 1253(h) nor Article 33 of the United Nations Protocol Relating to the Status of Refugees, on which the provision was based, applied "to action taken by the Coast Guard on the high seas." *Id.* at 159. In analyzing the statutory text, the Court first reasoned that § 1253(h) did not constrain the President or the Coast Guard, which conducted the interdiction program, *see id.* at 172 n.28, because it "refer[red] only to the Attorney General" and applied only to that official's "normal responsibilities under the INA." *Id.* at 171-73.

Applying the provision to the Haitian interdiction program, this Court reasoned, would require the Attorney General to take "actions in geographic areas

where she ha[d] not been authorized to conduct" them. *Id*. at 173. Indeed, this Court left open the possibility that § 1253(h) *could* bind the Attorney General extraterritorially if she were to exercise her "normal responsibilities under the INA" outside of U.S. territory. *See id.* at 173, 172 n.28 (emphasizing that even if the Attorney General were involved in the interdiction program, she would be "carrying out an executive, rather than a legislative command, and therefore would not necessarily have been bound" by § 1253(h)).

**C.** Seeking a "stable background against which Congress can legislate with predictable effects," this Court in *Morrison* announced a new "two-step framework" applicable when the presumption against extraterritoriality arises. *RJR Nabisco*, 579 U.S. at 337-38 (asking whether there is a clear indication of a statute's geographic reach and, if not, whether the "case involves a domestic application of the statute"). But *Morrison*'s new test did not displace the presumption's old preoccupations, including the fundamental premise that a statute's extraterritorial reach is informed by Congress's authority to legislate. *See Morrison*, 561 U.S. at 267 (emphasizing that Congress did not "ha[ve] the power to" regulate foreign exchanges when concluding that a securities-law provision focused only on domestic securities transactions); *cf. Hartford Fire*, 509 U.S. at 813-14 (Scalia, J., dissenting) (noting that Congress's "legislative jurisdiction," or "authority . . . to make its law applicable to persons or activities," is "relevant to determining the extraterritorial reach of a statute" (quoting *Aramco*, 499 U.S. at 253)).

Furthermore, even in these more recent cases, this Court has continued to insist that the presumption "serves to protect against unintended clashes between

our laws and those of other nations which could result in international discord," *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 115 (2013) (internal citation omitted), and rests on the "perception that Congress ordinarily legislates with respect to domestic, not foreign, matters," *Morrison*, 561 U.S. at 255. Both principles are applied to ensure Congress's plan in enacting a statute is faithfully followed. *Id*. at 265; *see also Yegiazaryan v. Smagin*, 599 U.S. 533, 547-48 (2023) (noting the presumption's "distinctive concerns for [international] comity and discerning congressional meaning").

* * *

"By usage as old as the Nation," this Court has construed statutes "to apply only to areas and transactions in which American law would be considered operative under prevalent doctrines of international law." *Lauritzen*, 345 U.S. at 577. Because American law is operative here—at a "port of entry" that is completely under the government's "jurisdiction"—the presumption does not apply, as the next Section discusses.

## II. The Presumption Has No Role to Play When Sections 1158 and 1225 Are Applied to Activities over Which the United States Has Authority and Control.

As the history of the presumption against extraterritoriality makes clear, this case is a paradigmatic example of when the presumption should not limit a statute's reach. After all, §§ 1158 and 1225 do not extend beyond the "punishing power of Congress," *Furlong*, 18 U.S. at 197, regardless of their precise territorial scope. Moreover, they implement an international law provision that gives Congress the authority to regulate officials who

engage with asylum-seekers arriving at ports of entry.

**A.** As an initial matter, Petitioners' argument about the presumption against extraterritoriality ignores that presumption's roots in the view that Congress "intended to legislate only on cases within the scope of [its] power." *Id.* at 196. "Whatever traction the presumption against extraterritoriality might have in other contexts," it has no role to play in places where the United States exercises "complete jurisdiction and control." *Rasul*, 542 U.S. at 480 (internal quotations omitted).

And the allegedly extraterritorial application of §§ 1158 and 1225 does not extend the legislature beyond its "jurisdiction and control." *Id.* This case involves an application of U.S. law to interactions between border officials standing on U.S. soil and asylum-seekers at ports of entry—interactions clearly within the scope of the United States's authority. No one, after all, disputes that Congress has jurisdiction over border officials—who are, under § 1225, required to inspect all "applicant[s] for admission," including anyone "present in the United States . . . or who arrives in the United States (whether or not at a designated port of arrival)." 8 U.S.C. § 1225(a)(1). Nor is there any dispute that ports of entry are within the United States's jurisdiction: they are defined by regulation as "geographical area[s]" that are "under the jurisdiction" of U.S. Customs and Border Protection, 19 C.F.R. § 101.1, as they were in 1996 when Congress drafted the relevant "arrives in" language, *see* 19 C.F.R. 100.1(m) (1995 ed.). Furthermore, the executive has for decades exercised authority and control over not only asylum-seekers within the country, but also those "*attempting to come* into the United States at a port-of-entry." *See Amendment of the Regulatory Definition of Arriving*

*Alien*, 63 Fed. Reg. 19382, 19383 (1998) (defining "applicant for admission" (emphasis added)); 8 C.F.R. § 1.1; *see also* 8 U.S.C. § 1101(a)(15)(T)(i)(II) (providing that certain people "physically present in the United States . . . or at a port of entry thereto" can be admitted as nonimmigrants).

Indeed, when Congress added the "arrives in the United States" language to § 1158(a), immigration statutes had long used the phrase "arriving in the United States" to refer to the *process* of examination and inspection at a port of entry, *see, e.g.*, 8 U.S.C. §§ 1284-86 (1995 ed.) (providing for regulations relating to crewmen on "any vessel or aircraft arriving in the United States"), which often occurred outside of the port of entry itself, *Matter of Dejong,* 16 I. & N. Dec. 552, 553 (B.I.A. 1978) (describing immigration inspections of crewmen aboard a ship); *Matter of Pierre*, 14 I. & N. Dec. 467, 469 (B.I.A. 1973) (describing examination of asylum-seekers who "arrived at port but did not land"); Resps. Br. 30-31 (citing, for example, *Kwong Hai Chew v. Colding*, 344 U.S. 590, 595, 596 n.4 (1953)). And agencies did not understand their authority to conduct inspections to be territorially-dependent. S*ee* 9 Immigration Law Service 2d (1996) (reprinting INS General Counsel's 1996 Opinion concluding that "[n]othing in the law prevents the Service from conducting inspections of person traveling by car or on foot at shared facilities in Canada," and noting earlier opinions concluding that they had authority to conduct inspections for admission in foreign countries). As in *The Apollon*, this Court should evaluate the reach of §§ 1158 and 1225 by considering whether they project authority beyond people or places where Congress has the "power" to operate, regardless of their position on the international boundary line. *See* 22 U.S. at 371.

**B.** Moreover, § 1158, and the components of § 1225 relating to asylum-seekers, were initially enacted in response to "foreign," not "domestic . . . matters." *Cf. Morrison*, 561 U.S. at 255 (noting that normally it is the other way around). Congress first created a statutory requirement to process asylum applications in the Refugee Act of 1980, which sought to align U.S. law with the 1967 United Nations Protocol Relating to the Status of Refugees, which the United States ratified in 1968. *See* S. Exec. Journal, 90th Cong., 2d Sess. 448, 449 (1968); Refugee Act of 1980, Pub. L. No. 96-212, § 208(a), 94 Stat. 102, 105 (requiring the Attorney General to create a "procedure for an alien physically present in the United States or at a land border or port of entry, irrespective of such alien's status, to apply for asylum").

The credible fear provisions of the Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), now codified in 8 U.S.C. § 1225, also stemmed from the country's international-law obligations toward asylum-seekers. In that Act, Congress revised the procedures set out in § 1225 for "inspection" of "applicants for admission" to permit the government to expedite the removal of certain categories of noncitizens, but also to obligate border inspectors to refer anyone who "indicates either an intention to apply for asylum . . . or a fear of persecution" for an interview by an "asylum officer" to determine whether they had "credible" fear of persecution under the Refugee Act. *See* IIRIRA, Pub. L. No. 104-208, § 302, 110 Stat. 3009-546, 3009-580. Lawmakers framed these provisions as ensuring consistency with "international law," H.R. Rep. No. 104-469, at 131 (1996), thereby guaranteeing that individuals with potentially-valid asylum claims would not be summarily removed to countries where

they could be persecuted, *id.* at 13 ("[These] procedures protect those aliens who present credible claims for asylum by giving them an opportunity for a full hearing on their claims.").

While Petitioners never address the international-law roots of §§ 1158 and 1225, this Court's early cases make clear that these roots form an important part of the "context" that it must evaluate to determine the reach of the relevant statute. *Morrison*, 561 U.S. at 255 (internal citation omitted). As this Court has observed, when statutes stem from Congress's authority under the law of nations, the scope of those statutes should be determined based on the "scope of [Congress's] power" under international law. *Furlong*, 18 U.S. at 196. That is why this Court long ago observed that Congress could be presumed to punish law-of-nations piracy extraterritorially, because it had universal jurisdiction over piracy under international law. *Id.* at 197.

Of course, the Protocol Relating to the Status of Refugees does not provide Congress with "universal" authority to legislate relating to asylum-seekers. *See Sale*, 509 U.S. at 189 (holding that Article 33 of the Protocol does not apply on the "high seas"). But as this Court has recognized, it does empower—and even obligate—Congress to provide processes by which people can seek asylum "at a border." *Id.* at 181.

In *Sale*, this Court held that neither § 1253(h) nor Article 33 of the Protocol, on which the provision was based, applied "to action taken by the Coast Guard on the high seas." *Id.* at 159. But when analyzing the Protocol, it explained that Article 33 would prohibit the "repuls[ion]" or "exclu[sion]" of asylum-seekers "at a border"—a category that would include people stopped at ports of entry. *Id.* at 181-82 (internal quotation marks omitted); *see also id.* at 182 n.40

(discussing commentators describing the application of the "promise of *non-refoulement*" to people "at the border . . . of a Contracting State"); Resps. Br. 34-39 (adding that "[t]he government's abandoned turnback policy fits the *Sale* Court's definition of 'return' to a tee").

While Petitioners invoke *Sale* repeatedly, Pet'rs Br. 31-34, they ignore entirely that case's recognition that the extraterritorial reach of statutes based on the Protocol should be assessed with reference to the Protocol itself. *See Sale*, 509 U.S. at 177 (noting that a finding that the Protocol created "extraterritorial obligations" could give the statute "a correspondingly extraterritorial effect"). There, it echoed cases like *Furlong* and *Bowman* in recognizing that presumptions about the territorial reach of statutes depend on the government's "power and jurisdiction . . . under the law of nations." *Bowman*, 260 U.S. at 97-98.

## III. Applying Sections 1158 and 1225 to Officials Encountering Asylum-Seekers at Ports of Entry Is Consistent with the Text and History of those Provisions.

At the end of the day, the presumption against extraterritoriality is a canon of statutory construction used to determine the proper reach of a statute and fulfill "congressional intent." *Aramco*, 499 U.S. at 255. But "canons of construction are no more than rules of thumb that help courts determine the meaning of legislation." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253 (1992). As this Court has "stated time and again," "courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" *Id.* (quoting *Rubin v.*

*United States*, 449 U.S. 424, 430 (1981)).

Here, the text of the statute, as well as its history, makes clear that §§ 1158 and 1225 regulate the interactions of U.S. officials and asylum-seekers at ports of entry. Thus, to the extent that these interactions involve some de minimis extraterritorial application, that is clearly consistent with Congress's plan in passing those provisions. Resps. Br. 47-48.

Start with the text of these provisions, not cherry-picked phrases within them. Section 1158 states that an "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)" can apply for asylum. 8 U.S.C. § 1158(a)(1) (emphasis added). Section 1225 similarly requires inspection of all "applicant[s] for admission," and defines that term as someone either "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) (emphasis added). Both provisions explicitly state that "alien[s]" "arrives in the United States" when they reach "a designated port of arrival." *Id*. § 1158(a)(1); *accord* § 1225(a)(1).

The history and "context" of these enactments explain why that is. *RJR Nabisco*, 579 U.S. at 340. In both the Refugee Act and IIRIRA, Congress provided that asylum-seekers encountering officials at ports of entry could not be prevented from applying for asylum, no matter what side of the border they stood on during the encounter.

Since 1917, Congress required border officials to inspect noncitizens who arrived at ports of entry, a process that was, again, always understood to begin when people presented themselves at ports, no matter whether they stood on U.S. soil. *See* Resps. Br. 30-31; *see also supra* at 18-19. In the Refugee Act, Congress incorporated the right to apply for asylum into the port-inspection process. That statute created the first statutory provision recognizing that right, specifically extending it to people "physically present in the United States or at a land border or port of entry." Refugee Act § 208(a), 94 Stat. at 105. The reference to ports of entry was intentional. Although executive branch agencies had previously promulgated regulations that provided for the granting of asylum and withholding of deportation at ports of entry, *see, e.g.*, Staff of H. Subcomm. Immig., Citizenship, & Int'l L., 94th Cong., Report on Haitian Emigration 20-22 (Comm. Print 1976) (quoting 8 C.F.R. § 108(a), INS Operations Instructions 108.1(a))—regulations that required the consideration of asylum claims at "land border port[s]," "seaports," "airports," or "ports of entry," and "within the United States"—they sought a "specific statutory basis" for these policies to "insure the rights of those it [sought] to protect," H.R. Rep. No. 96-608, at 17-18; *see also* 126 Cong. Rec. 3757 (Feb. 26, 1980) (Sen. Kennedy) ("[p]resent regulations and procedures now used by the Immigration Service simply do not conform to . . . the spirit [of the Refugee Act]").

As they debated the Refugee Act's provisions, lawmakers were explicit that the statutory obligations concerning border officials' treatment of asylum-seekers extended to people who arrived at ports of entry—no matter whether they had literally crossed the border. For example, Senator Kennedy, one of the

Refugee Act's sponsors, described the desire for "a uniform procedure for the treatment of asylum claims filed in the United States *or at our ports of entry*." 126 Cong. Rec. 3757 (Feb. 26, 1980) (Sen. Kennedy) (emphasis added); *see, e.g.*, *id.* (emphasizing the desire to provide asylum status "to persons within the United States, or to persons reaching our shores"); H.R. Rep. No. 96-608, at 17 ("[t]he Committee Amendment . . . requires the Attorney General to establish . . . [a] procedure under which an alien either in the United States *or* seeking entry can apply for asylum"). Indeed, months after the Act's passage, the INS promulgated regulations that allowed asylum-seekers to "request asylum . . . at a port of entry" *or* "in the United States." *See* 45 Fed. Reg. 37392, 37394 (June 2, 1980).

When Congress passed IIRIRA, it replaced the earlier statute's reference to the inspection of noncitizens "at a land border or port of entry" with the text "arrives in the United States." IIRIRA, § 302, 110 Stat. at 3009-579. This change aligned the description of those eligible to apply for asylum with the statute's definition of "applicants for admission." *Id.* § 302(a), 110 Stat. at 3009-579. This made sense in the larger context of the Act, which required border officials to "inspect[]" each "applicant for admission" arriving at a port of entry and refer for further processing those who expressed an intention to seek asylum or a fear of persecution. *Id.* Indeed, IIRIRA clarified that nonciti zens subject to expedited removal could request asylum and be referred for a credible fear interview "either *at a port of entry* or at such other place designated by the Attorney General." *Id.* § 302(a), 110 Stat. at 3009-581.

IIRIRA's history makes doubly clear that Congress planned for the system it put in place to

apply at ports of entry. A principal feature of IIRIRA was the creation of the expedited removal system, which permitted immigration officers to order the removal of certain applicants for admission without further administrative or judicial proceedings. *See generally* David A. Martin, *Two Cheers for Expedited Removal in the New Immigration Laws*, 40 Va. J. Int'l L. 673, 678-80 (2000). These provisions stemmed from proposals "drawn up in reaction to abuses by persons claiming asylum upon arrival at a port of entry" or when encountering U.S. officials after their boats were "detected along U.S. coasts." *Id.* at 674-76; *Justice Department Considering Summary Exclusion Bill*, 69 Interpreter Releases (No. 8) 251 (1992) ("The draft legislation, tentatively titled the "Port of Entry Inspections Improvement Act of 1992," stems in part from the INS' concern over . . . aliens arriving at U.S. airports without valid travel documents.").

As these proposals developed, lawmakers and executive branch officials deliberated about whether expedited removal would be available in the "ordinary course at the ports of entry" or only "in times of mass influx," and whether it should be an option only at ports of entry or "in the interior" as well. Martin, *supra*, at 677, 679. But all of these conversations operated on the premise that expedited removal and the credible-fear screening process could be used at ports of entry—even if they involved people who had not yet physically crossed into U.S. territory. *Senate Committee Approves Important Exclusion Bill*, 71 Interpreter Releases 1053, 1055 (1994) ("the [bill's] procedures seem designed to address any situation where large numbers of people attempt to reach the U.S., whether by boat, plane or on foot"); H.R. Rep. No. 104-469, at 158 (describing expedited removal's application to noncitizens who arrive "at airports

. . . and attempt to . . . enter the U.S."). And Congress emphasized that the credible fear screening component of expedited removal would apply to any individuals subject to expedited removal at the "border of the United States," as well as those physically present in the country. *Id.* at 259.

Almost immediately after IIRIRA's passage, the INS applied its inspection procedures to anyone "seek[ing] admission to or transit through the United States, . . . at a port-of-entry," *Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10312, 10330 (1997), a definition that the agency would soon change to make even clearer that the group included those at a port of entry who had not necessarily crossed a land border. Indeed, by 1998—as today—the executive defined an "applicant for admission" to include anyone "coming or *attempting to come* into the United States at a port-of-entry." *See* 63 Fed. Reg. 19382, 19383 (1998) (internal quotation marks omitted); 8 C.F.R. § 1.2.

In other words, Petitioners' reading of "arrives in" would shrink the government's authority, restricting its control over people and areas that it previously regulated. And in doing so, it would pervert the central aim of the presumption against extraterritoriality, which historically allowed the application of legislation to "places and persons, upon whom the Legislature have authority and jurisdiction," *The Apollon*, 22 U.S. at 370, and was developed—above all—to ensure fidelity to congressional intent.

* * *

Petitioners advance a reading of §§ 1158 and 1225 that contradicts not only clear statutory text, but also decades of administrative practice. If adopted, this

reading would undercut the international instruments that those provisions were enacted to implement and contradict how they have been implemented for decades. The presumption against extraterritoriality provides no support for this unprecedented effort. Even under Respondents' allegedly extraterritorial reading of §§ 1158 and 1225, those provisions clearly regulate activities within the country's authority and control. And applying §§ 1158 and 1225 to officials encountering asylum-seekers at ports of entry is entirely consistent with the text and history of those provisions.

## CONCLUSION

For the foregoing reasons, this Court should affirm.

Respectfully submitted,

ELIZABETH B. WYDRA
BRIANNE J. GOROD*
SMITA GHOSH
CONSTITUTIONAL
ACCOUNTABILITY CENTER
1730 Rhode Island Ave. NW
Suite 1200
Washington, D.C. 20036
(202) 296-6889
brianne@theusconstitution.org

*Counsel for Amicus Curiae*

February 17, 2026 * Counsel of Record