No. 18-725

In the Supreme Court of the United States

ANDRE MARTELLO BARTON, PETITIONER

v.

WILLIAM P. BARR, ATTORNEY GENERAL

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

BRIEF FOR THE RESPONDENT

NOEL J. FRANCISCO
Solicitor General
Counsel of Record
JOSEPH H. HUNT
Assistant Attorney General
EDWIN S. KNEEDLER
Deputy Solicitor General
FREDERICK LIU
Assistant to the Solicitor General
DONALD E. KEENER
JOHN W. BLAKELEY
PATRICK J. GLEN
TIMOTHY G. HAYES
Attorneys

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

QUESTION PRESENTED

To be eligible for cancellation of removal, certain permanent residents must show, among other things, that they have "resided in the United States continuously for 7 years after having been admitted in any status." 8 U.S.C. 1229b(a)(2). Under the so-called stop-time rule, any period of continuous residence shall be deemed to end "when the alien has committed an offense referred to in section 1182(a)(2) of [Title 8] that renders the alien inadmissible to the United States under section 1182(a)(2) of [Title 8] or removable from the United States under section 1227(a)(2) or 1227(a)(4) of [Title 8]." 8 U.S.C. 1229b(d)(1)(B). The question presented is:

Whether petitioner, a lawfully admitted permanent resident who is not seeking admission to the United States, has committed "an offense referred to in section 1182(a)(2)" that "renders [him] inadmissible" and therefore triggers the stop-time rule.

ADDITIONAL RELATED PROCEEDINGS

United States Court of Appeals (11th Cir.):

Barton v. *Barr*, No. 17-13055 (Sept. 25, 2018)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Statutes and regulation:

Statutes and regulation—Continued: Page

Statutes and regulation—Continued: Page

Statutes and regulation—Continued: Page

Miscellaneous:

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-19a) is reported at 904 F.3d 1294. The decisions of the Board of Immigration Appeals (Pet. App. 20a-24a) and the immigration judge (Pet. App. 25a-36a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 25, 2018. The petition for a writ of certiorari was filed on December 4, 2018. The petition for a writ of certiorari was granted on April 22, 2019. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in an appendix to this brief. App., *infra*, 1a-39a.

STATEMENT

1. a. The Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, identifies various classes of aliens who are "inadmissible" to the United States. 8 U.S.C. 1182(a) (Supp. V 2017). Section 1182(a)(2) specifies what kinds of criminal offenses render an alien "inadmissible." 8 U.S.C. 1182(a)(2). Among those listed is a "crime involving moral turpitude." 8 U.S.C. 1182(a)(2)(A)(i)(I). In particular, Section 1182(a)(2) provides, subject to certain exceptions, that "any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of * * * a crime involving moral turpitude (other than a purely political offense) * * * is inadmissible." 8 U.S.C. 1182(a)(2)(A)(i).

An alien's status as "inadmissible" has various consequences under federal immigration law. Section 1182(a), for example, provides that "aliens who are inadmissible * * * are ineligible to receive visas and ineligible to be admitted to the United States." 8 U.S.C. 1182(a) (Supp. V 2017). Other provisions of the INA make admissibility a criterion for certain forms of relief or protection from removal. See, *e.g.*, 8 U.S.C. 1160(a)(1)(C) (temporary resident status for special agricultural workers); 8 U.S.C. 1255(a) (adjustment of status); 8 U.S.C. 1254a(c)(1)(A)(iii) (temporary protected status). And still another provision of the INA makes inadmissibility at the time of entry or adjustment of status grounds for removal. See 8 U.S.C. 1227(a)(1)(A).

b. The INA provides for a "removal proceeding" before an immigration judge (IJ) to determine whether an alien should be removed from the United States. *Judulang* v. *Holder*, 565 U.S. 42, 46 (2011); see 8 U.S.C. 1229a(a) and (c)(1)(A). That proceeding consists of two stages. At the first stage, the IJ determines whether

the alien is "removable." 8 U.S.C. 1229a(c)(1)(A); see 8 U.S.C. 1229a(c)(2) and (3). If the alien has not been "admitted" to the United States, 8 U.S.C. 1229a(e)(2)(A), he "may be charged with any applicable ground of inadmissibility under section 1182(a) of [Title 8]," 8 U.S.C. 1229a(a)(2). If the alien has been "admitted" to the United States, 8 U.S.C. 1229a(e)(2)(B), he may be charged with "any applicable ground of deportability under section 1227(a) of [Title 8]," 8 U.S.C. 1229a(a)(2). The INA defines "admitted" to mean, "with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. 1101(a)(13)(A).

At the second stage of a removal proceeding, the IJ adjudicates any applications for relief or protection from removal, including applications for cancellation of removal under 8 U.S.C. 1229b(a) and (b)(1). See 8 U.S.C. 1229a(c)(4). Those provisions grant the Attorney General the discretion to cancel the removal of an alien. 8 U.S.C. 1229b(a) and (b)(1). To obtain cancellation of removal, the alien bears the burden of demonstrating both that he is statutorily eligible for such relief and that he warrants a favorable exercise of discretion. 8 U.S.C. 1229a(c)(4)(A).

The INA makes certain classes of aliens categorically ineligible for cancellation of removal under Section 1229b(a) and (b)(1). 8 U.S.C. 1229b(c). It also requires otherwise-eligible aliens to meet certain criteria. 8 U.S.C. 1229b(a) and (b). Under Section 1229b(a), a lawful permanent resident must show (1) that he has "been an alien lawfully admitted for permanent residence for not less than 5 years"; (2) that he "has resided in the United States continuously for 7 years after having been admitted in any status"; and (3) that he "has

not been convicted of any aggravated felony." 8 U.S.C. 1229b(a). Under Section 1229b(b)(2), an alien must show (A) that he "has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application"; (B) that he "has been a person of good moral character during such period"; (C) that he "has not been convicted of an offense under section 1182(a)(2), 1227(a)(2), or 1227(a)(3) of [Title 8], subject to [8 U.S.C. 1229b(b)(5)]"; and (D) that "removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence." 8 U.S.C. 1229b(b)(1).

The continuous-residence and continuous-physical-presence requirements are subject to the "stop-time rule." *Pereira* v. *Sessions*, 138 S. Ct. 2105, 2110 (2018). That rule provides that:

> any period of continuous residence or continuous physical presence in the United States shall be deemed to end * * * when the alien has committed an offense referred to in section 1182(a)(2) of [Title 8] that renders the alien inadmissible to the United States under section 1182(a)(2) of [Title 8] or removable from the United States under section 1227(a)(2) or 1227(a)(4) of [Title 8].

8 U.S.C. 1229b(d)(1).

2. Petitioner is a native and citizen of Jamaica. Administrative Record (A.R.) 759. In May 1989, petitioner was admitted to the United States on a nonimmigrant tourist visa. *Ibid.*; Pet. App. 22a. Three years later, his status was adjusted to that of a lawful permanent resident. *Ibid.*

On January 23, 1996, petitioner was driving by his ex-girlfriend's house in Duluth, Georgia, when his friend—a passenger in the car—stood up through the sunroof and fired a gun at the house. A.R. 181-182, 212-214, 683-684. Three people were inside the house at the time. A.R. 683, 716. Petitioner was charged with three counts of aggravated assault, one count of first-degree criminal damage to property, and one count of possession of a firearm in the commission of a felony, all in violation of Georgia law. A.R. 682-684. Following a guilty plea in state court, petitioner was convicted on all counts. A.R. 680. More recently, in 2007 and 2008, petitioner was convicted of various controlled-substance offenses under Georgia law. A.R. 759.

3. In 2016, the Department of Homeland Security (DHS) served petitioner with a notice to appear for removal proceedings. A.R. 757-760. DHS charged petitioner with four grounds of deportability under Section 1227(a)(2), each relating to his criminal history. A.R. 759-760. Petitioner conceded his deportability on two of the grounds—namely, that he had been convicted of a violation of a law relating to a controlled substance, 8 U.S.C. 1227(a)(2)(B)(i); and that he had been convicted of unlawful possession of a firearm, 8 U.S.C. 1227(a)(2)(C). A.R. 87, 750. The IJ sustained those two grounds for removal, A.R. 87-88, and DHS eventually withdrew the other two, A.R. 734.

Petitioner applied for cancellation of removal under Section 1229b(a). A.R. 587-594. DHS argued that petitioner is statutorily ineligible for cancellation of removal because he cannot establish the necessary seven years of continuous residence in the United States following his admission in May 1989. A.R. 687, 738-739.

DHS contended that the aggravated assault that petitioner had committed in 1996 constitutes a crime involving moral turpitude that renders him "inadmissible" under Section 1182(a)(2). A.R. 105, 109, 123, 125, 127, 694. DHS therefore argued that, under the stop-time rule, petitioner's period of continuous residence terminated on the date he committed the crime—January 23, 1996. A.R. 688, 691.[1]

The IJ denied petitioner's application for cancellation of removal. Pet. App. 26a-36a. The IJ agreed with DHS that "because [petitioner] has been convicted of a [crime involving moral turpitude]," that crime "renders him inadmissible" under Section 1182(a)(2) and triggers the stop-time rule. *Id.* at 35a. The IJ therefore concluded that petitioner is statutorily ineligible for cancellation of removal. *Id.* at 36a.

The Board of Immigration Appeals (Board) dismissed petitioner's appeal. Pet. App. 20a-24a. The Board noted the absence of any dispute that the aggravated assault petitioner committed in 1996 is a "crime involving moral turpitude" and a "ground of inadmissibility" under Section 1182(a)(2). *Id.* at 23a. The Board therefore agreed with the IJ that the stop-time rule renders petitioner ineligible for cancellation of removal. *Ibid.*

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[1] DHS did not press the argument that petitioner's 1996 crimes rendered petitioner "removable" under 8 U.S.C. 1227(a)(2) or (a)(4). See Pet. App. 5a-6a (explaining that Section 1227(a)(2) "establishes removability, as relevant here, only for (i) a single crime involving moral turpitude committed *within five years* of an alien's admission or (ii) multiple crimes involving moral turpitude *not arising out of a single scheme*") (emphases added); A.R. 734 (withdrawing a charge of deportability under Section 1227(a)(2)(A)(ii), which had alleged that petitioner had been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct).

4. The court of appeals denied petitioner's petition for review. Pet. App. 1a-19a.

The court of appeals rejected petitioner's contention that, because he was not seeking admission to the United States, he could not be "render[ed] . . . inadmissible" for purposes of the stop-time rule. Pet. App. 8a (brackets in original); see *id.* at 7a-8a. The court reasoned that, as a matter of ordinary meaning, "the word 'render' can indicate the conferral of a particular condition, or 'state.'" *Id.* at 10a (citations omitted). The court found a "'state'-based understanding" to make "particularly good sense here, where the word that follows 'renders' is 'inadmissible.'" *Id.* at 11a. "By their very nature," the court explained, "'able' and 'ible' words connote a person's or thing's character, quality, or status—which * * * exists independent of any particular facts on the ground." *Ibid.* (footnote omitted). The court gave a number of examples: "A terminal illness renders its victim *untreatable* regardless of whether she is actively seeking treatment; rot renders a piece of fish *inedible* regardless of whether someone is trying to eat it; sheer weight renders a car *immovable* regardless of whether someone is trying to move it." *Id.* at 11a-12a. "So too here," the court concluded, "an alien can be rendered *inadmissible* regardless of whether he is actually seeking admission" at a particular time. *Id.* at 12a.

The court of appeals therefore found no "indication" in the text of the stop-time rule that, "in order to be 'render[ed] . . . inadmissible,'" "an alien *must* presently be seeking admission." Pet. App. 12a (brackets in original). Rather, the court explained, "'inadmissibi[ility]' is a *status* that an alien assumes by virtue of his having been convicted of a qualifying offense under

§ 1182(a)(2)." *Ibid.* (brackets in original). The court acknowledged that, "for an alien like [petitioner], who has already been admitted" and "isn't currently seeking admission," such status "might not immediately produce real-world admission-related consequences." *Ibid.* The court reasoned, however, that such status may become relevant "down the road"; even "an already-admitted lawful permanent resident," the court emphasized, might someday need to seek readmission to the United States. *Ibid.* Having concluded that the stop-time rule's "plain language forecloses" petitioner's interpretation, *id.* at 9a, the court found it unnecessary to determine whether the Board's "non-precedential single-member order" in this case "is entitled to *Chevron* deference," *id.* at 17a n.5; see *Chevron U.S.A. Inc.* v. *Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

SUMMARY OF ARGUMENT

The stop-time rule provides, in pertinent part, that an alien's period of continuous residence shall be deemed to end "when the alien has committed an offense referred to in section 1182(a)(2) * * * that renders the alien inadmissible to the United States under section 1182(a)(2) * * * or removable from the United States under section 1227(a)(2) or 1227(a)(4)." 8 U.S.C. 1229b(d)(1)(B). The court of appeals correctly concluded that petitioner has committed an offense referred to in Section 1182(a)(2) that renders him inadmissible under that Section and therefore triggers the stop-time rule.

A. A straightforward application of the statutory text shows why. Section 1182(a)(2) provides, subject to two specified exceptions, that "any alien convicted of * * * a crime involving moral turpitude (other than a purely political offense) * * * is inadmissible." 8 U.S.C.

1182(a)(2)(A)(i). Petitioner was convicted of a crime involving moral turpitude (other than a purely political offense), and neither of the specified exceptions applies. That crime therefore "renders [him] inadmissible * * * under section 1182(a)(2)" and triggers the stop-time rule. 8 U.S.C. 1229b(d)(1)(B).

B. It is immaterial that petitioner was not seeking admission to the United States when he was placed in removal proceedings. Throughout the INA, the word "inadmissible" refers to an alien's status. And Section 1182(a)(2) specifies how an alien acquires that status—among other ways, by being convicted of a crime involving moral turpitude. Nothing in Section 1182(a)(2) makes conferral of that status contingent upon the alien's seeking admission; nothing in the stop-time rule does either. Indeed, other provisions of the INA show that Congress knew how to tie an alien's inadmissibility to his seeking admission, and Congress chose not to do so in either Section 1182(a)(2) or the stop-time rule.

Statutory structure, history, and purpose reinforce the conclusion that an alien need not be seeking admission in order for an offense referred to in Section 1182(a)(2) to render him inadmissible. The statutory structure shows that the stop-time rule is hardly unique; various other provisions of the INA likewise turn on an alien's inadmissibility, independent of whether the alien is seeking admission. The statutory history shows that discrepancies had arisen in the treatment of "excludable" and "deportable" aliens under a predecessor law, and there is no valid reason to think that Congress intended to make such discrepancies a prominent feature of the current law. And finally, limiting the scope of the "renders * * * inadmissible" clause would undermine the statutory purpose of ensuring that aliens

do not receive credit for time spent in the United States after they have "abuse[d] the hospitality of this country." *In re Perez*, 22 I. & N. Dec. 689, 700 (B.I.A. 1999) (en banc).

C. Petitioner's alternative interpretations lack merit. He first argues (Br. 17-43) that an offense "renders" an alien "inadmissible" only when the alien is seeking admission and the offense is the reason that admission is denied. But the stop-time rule is not triggered by the commission of an offense that results in the *denial of admission*; rather, it is triggered by the commission of an offense that "renders the alien *inadmissible*." 8 U.S.C. 1229b(d)(1)(B) (emphasis added). In the alternative, petitioner argues (Br. 43-53) that an offense "renders" an alien "inadmissible" only when the alien is seeking admission, regardless of whether the offense is the reason that admission is denied. But inadmissibility is a status, and neither the stop-time rule nor Section 1182(a)(2) requires that an alien be seeking admission to acquire that status.

ARGUMENT

PETITIONER HAS COMMITTED AN OFFENSE REFERRED TO IN 8 U.S.C. 1182(a)(2) THAT RENDERS HIM INADMISSIBLE AND THAT THEREFORE TRIGGERS THE STOP-TIME RULE

Petitioner came to the country on a tourist visa in May 1989 and later became a lawful permanent resident. A.R. 759. In the years that followed, he was convicted of a number of criminal offenses. *Ibid.* Petitioner has never contested that two of those convictions—for a controlled-substance offense and for a firearm offense—are grounds for his removal. A.R. 87, 750, 759.

There is thus no dispute in this case that petitioner is removable from the United States. The only dispute

is over whether petitioner is statutorily eligible for cancellation of removal. Although the INA grants the Attorney General the discretion to cancel an alien's removal, it sets forth certain criteria that an alien must satisfy to be statutorily eligible for that discretionary relief. 8 U.S.C. 1229b(a) and (b). For certain permanent residents like petitioner, those criteria include showing that they have "resided in the United States continuously for 7 years after having been admitted in any status." 8 U.S.C. 1229b(a)(2). Under a statutory provision known as the stop-time rule, an alien's period of continuous residence shall be deemed to end "when the alien has committed an offense referred to in section 1182(a)(2) of [Title 8] that renders the alien inadmissible to the United States under section 1182(a)(2) of [Title 8] or removable from the United States under section 1227(a)(2) or 1227(a)(4) of [Title 8]." 8 U.S.C. 1229b(d)(1)(B).

The question in this case is whether petitioner's period of continuous residence shall be deemed to have ended—short of the necessary seven years—when he committed the offense of aggravated assault, a crime involving moral turpitude. See Pet. App. 5a-6a. Because such a crime is "an offense referred to in section 1182(a)(2) of [Title 8] that renders [petitioner] inadmissible," 8 U.S.C. 1229b(d)(1)(B), the answer is yes. The court of appeals therefore correctly concluded that petitioner is ineligible for cancellation of removal. Pet. App. 17a.

A. Under A Straightforward Application Of The Statutory Text, Petitioner Has Committed An Offense Referred To In Section 1182(a)(2) That Renders Him Inadmissible

When construing a statute, this Court "start[s] with the specific statutory language in dispute." *Murphy* v.

Smith, 138 S. Ct. 784, 787 (2018). When, as in this case, that language is "unambiguous," the Court's inquiry should "end[] there as well." *National Ass'n of Mfrs.* v. *Department of Defense*, 138 S. Ct. 617, 631 (2018) (citation omitted).

As noted, the stop-time rule provides that, for purposes of eligibility for cancellation of removal, an alien's period of continuous residence in the United States shall be deemed to end "when the alien has committed an offense referred to in section 1182(a)(2) of [Title 8] that renders the alien inadmissible to the United States under section 1182(a)(2) of [Title 8] or removable from the United States under section 1227(a)(2) or 1227(a)(4) of [Title 8]." 8 U.S.C. 1229b(d)(1)(B). It is uncontested that petitioner has committed a crime involving moral turpitude and that such a crime is "an offense referred to in section 1182(a)(2)"—specifically, Section 1182(a)(2)(A)(i)(I). *Ibid.*; see Pet. App. 23a; Pet. Br. 16. It is also uncontested that the offense in question does not "render[]" petitioner "removable from the United States under section 1227(a)(2) or 1227(a)(4)." See p. 6 n.1, *supra*. For purposes of the stop-time rule, then, the only question is whether that offense "renders [petitioner] inadmissible to the United States under section 1182(a)(2)." 8 U.S.C. 1229b(d)(1)(B).

Under a straightforward reading of the statutory text, it does. Section 1182(a)(2) specifies the conditions under which "a crime involving moral turpitude (other than a purely political offense)" renders an alien inadmissible. 8 U.S.C. 1182(a)(2)(A)(i). It provides, subject to two specified exceptions, that "any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of" such a crime "is inadmissible." *Ibid.* Petitioner was

convicted of the crime in question, A.R. 680, and neither of the two specified exceptions applies, see 8 U.S.C. 1182(a)(2)(A)(ii). That crime therefore "renders [petitioner] inadmissible * * * under section 1182(a)(2)." 8 U.S.C. 1229b(d)(1)(B). Thus, by the plain terms of the statutory text, his period of continuous residence shall be deemed to have ended in January 1996, "when [he] committed [the] offense." *Ibid.*; see A.R. 683.

B. An Alien Need Not Be Seeking Admission For An Offense Referred To In Section 1182(a)(2) To Render Him Inadmissible

Petitioner was not seeking admission to the United States when he was placed in removal proceedings, see A.R. 757, 759-760, but that is immaterial to the application of the stop-time rule for purposes of eligibility for cancellation of removal. The text, structure, history, and purposes of the relevant statutory provisions make clear that an alien need not be seeking admission for an offense referred to in Section 1182(a)(2) to render him inadmissible and trigger the stop-time rule.

1. The key language here is the phrase "renders * * * inadmissible." 8 U.S.C. 1229b(d)(1)(B). Neither part of that phrase—"renders" or "inadmissible"—requires that an alien be seeking admission in order for an offense referred to in Section 1182(a)(2) to render him inadmissible.

a. An alien can be "inadmissible" without having sought—or been denied—admission. That is because, as the court of appeals explained, "'inadmissib[ility]' is a *status* that an alien assumes" under Section 1182(a)(2). Pet. App. 12a (brackets in original). "By their very nature, 'able' and 'ible' words connote a person's or thing's character, quality, or status," "independent of any particular facts on the ground." *Id.* at

11a (footnote omitted). The word "inadmissible" is no exception. Just as a "terminal illness renders its victim *untreatable* regardless of whether she is actively seeking treatment," "rot renders a piece of fish *inedible* regardless of whether someone is trying to eat it," and "sheer weight renders a car *immovable* regardless of whether someone is trying to move it," *id.* at 11a-12a, "[s]o too here—an alien can be rendered *inadmissible* regardless of whether he is actually seeking admission," *id.* at 12a.

Section 1182(a)—paragraph (2) of which the stop-time rule cross-references, see 8 U.S.C. 1229b(d)(1)(B)—confirms that the word "inadmissible" refers to an alien's status. Section 1182(a) provides that "aliens who are inadmissible under the following paragraphs," including paragraph (2), are "*ineligible* to be admitted to the United States." 8 U.S.C. 1182(a) (Supp. V 2017) (emphasis added). Section 1182(a)'s use of the word "ineligible"—another "ible" word—makes clear that an alien need not be seeking admission to be "inadmissible." After all, an alien may be *ineligible* to be admitted, even when he is not seeking admission. Inadmissibility therefore is a status that an alien can have whether or not he is seeking admission.

b. The word "renders" likewise does not require that an alien be seeking admission for an offense to "render[] the alien inadmissible * * * under section 1182(a)(2)." 8 U.S.C. 1229b(d)(1)(B). Even though inadmissibility is a status, Congress conceivably could have specified that an alien does not acquire that status unless and until he seeks admission. But Congress did not do so here. The ordinary meaning of "render" is "'to cause to be or to become.'" Pet. App. 10a (citing, among other dictionaries, *Webster's Second New International Dictionary*

2109 (1944)). And the "word 'under,' as used in the stop-time rule," means "'in accordance with' or 'according to.'" *Pereira* v. *Sessions*, 138 S. Ct. 2105, 2117 (2018). Thus, an offense "renders the alien inadmissible to the United States under section 1182(a)(2)" when the offense causes the alien to be or to become inadmissible in accordance with, or according to, the requirements set forth in that Section. 8 U.S.C. 1229b(d)(1)(B).

Section 1182(a)(2), in turn, does not require that an alien be seeking admission for a crime involving moral turpitude to render him inadmissible. Rather, for a "crime involving moral turpitude (other than a purely political offense)" to render an alien inadmissible under Section 1182(a)(2), only two conditions must be met. 8 U.S.C. 1182(a)(2)(A)(i)(I). First, the alien must be "convicted of," "admit[] having committed," or "admit[] committing acts which constitute the essential elements of" that crime. 8 U.S.C. 1182(a)(2)(A)(i). Second, if the alien has "committed only one crime," the crime must not fall within one of two specified exceptions—one for juvenile offenses and the other for petty offenses. 8 U.S.C. 1182(a)(2)(A)(ii). Thus, so long as both conditions are satisfied, a crime involving moral turpitude (other than a purely political offense) renders the alien inadmissible under Section 1182(a)(2), even if the alien is not seeking admission.

By contrast, other provisions of Section 1182(a) do make conferral of inadmissibility contingent upon an alien's seeking admission. For example, Section 1182(a)(1) provides that any alien "who *seeks admission* as an immigrant * * * and who has failed to present documentation of having received vaccination against vaccine-preventable diseases * * * is inadmissible." 8 U.S.C.

1182(a)(1)(A) (emphasis added). Section 1182(a)(6) provides that any alien "who *seeks admission* to the United States within 5 years of" having departed the country following a failure to attend a removal proceeding "is inadmissible." 8 U.S.C. 1182(a)(6)(B) (emphasis added). Section 1182(a)(7) provides that "any immigrant *at the time of application for admission* * * * who is not in possession of a * * * valid entry document * * * is inadmissible." 8 U.S.C. 1182(a)(7)(A)(i) (emphasis added). And Section 1182(a)(9) provides that any alien "convicted of an aggravated felony" who "*seeks admission* * * * at any time" after having been previously removed "is inadmissible." 8 U.S.C. 1182(a)(9)(A)(i) (emphasis added).

As the foregoing examples show, Congress knew how to tie an alien's status as "inadmissible" to his seeking admission, such that the alien would not be deemed "inadmissible" unless and until he sought admission at a particular time, under particular circumstances. Congress could have written Section 1182(a)(2)(A)(i) in the same way; it could have provided, for instance, that any alien who *seeks admission* after having been convicted of (or having admitted to committing, or having admitted to committing acts which constitute the essential elements of) a crime involving moral turpitude is inadmissible.

Alternatively, Congress could have made clear in the stop-time rule itself that the "renders * * * inadmissible" clause applies only to aliens seeking admission. One way would have been to add, at the end of the clause, the qualifier "in the case of an alien seeking admission." Indeed, Congress used that phrase elsewhere in the INA to tie the application of certain clauses to

aliens seeking admission. See 8 U.S.C. 1182(d)(11) and (12)(B); 8 U.S.C. 1184(r)(2).

Congress thus could have limited the application of either Section 1182(a)(2) or the "renders * * * inadmissible" clause of the stop-time rule, 8 U.S.C. 1229b(d)(1)(B), to aliens seeking admission, but it chose not to do so in the text of either provision. Congress presumably acted "intentionally and purposefully" in making that choice. *Azar* v. *Allina Health Servs.*, 139 S. Ct. 1804, 1813 (2019) (citation omitted); see *Russello* v. *United States*, 464 U.S. 16, 23 (1983) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (brackets and citation omitted). Accordingly, under the plain text of the relevant statutory provisions, an alien need not be seeking admission for an offense referred to in Section 1182(a) to render him inadmissible and trigger the stop-time rule.

2. The structure of the INA reinforces that conclusion. See *Food Mktg. Inst.* v. *Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019) ("In statutory interpretation disputes, a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself."). The stop-time rule is no different from various other provisions throughout the statute, which likewise turn on an alien's inadmissibility, independent of whether the alien is seeking admission.

For example, under the INA, an alien who is inadmissible is ineligible to have his status adjusted to that of a lawful permanent resident. See 8 U.S.C. 1255(a) ("The status of an alien who was inspected and admitted or paroled into the United States * * * may be adjusted

by the Attorney General * * * to that of an alien lawfully admitted for permanent residence if * * * the alien is eligible to receive an immigrant visa and is *admissible* to the United States for permanent residence.") (emphasis added). That is so even if the alien has already been admitted to the United States and is not seeking admission at the time of his application for adjustment of status. *Ibid.*; see A.R. 759 (showing that petitioner himself had been "admitted to the United States" three years before his "status was adjusted to that of a lawful permanent resident"); see also 8 U.S.C. 1255(*l*)(2) (making "inadmissib[ility]" relevant to eligibility for adjustment of status to that of a lawful permanent resident for victims of trafficking who have already been admitted into the United States).

Moreover, admissibility is a criterion of eligibility for temporary protected status, a form of protection from removal. See 8 U.S.C. 1254a(a)(1)(A) and (c)(1)(A)(iii) (requiring that an alien be "admissible as an immigrant" to be eligible for temporary protected status). In the case of an alien granted temporary resident status under 8 U.S.C. 1160(a)(1) or 1255a(a), the commission of an act that "makes the alien inadmissible" is a ground for terminating the alien's temporary resident status. 8 U.S.C. 1160(a)(3)(B)(ii) and 1255a(b)(2)(B); see also 8 U.S.C. 1160(a)(1)(C) (requiring that an alien establish that he is "admissible to the United States as an immigrant" to be eligible for temporary resident status under Section 1160(a)(1)); 8 U.S.C. 1255a(a)(4) (requiring that an alien establish that he is "admissible to the United States as an immigrant" to be eligible for temporary resident status under Section 1255a(a)). And in the case of an alien who was inadmissible at the time of entry or adjustment of status—but who was admitted

or had his status adjusted erroneously—such inadmissibility is a ground for deportation. See 8 U.S.C. 1227(a)(1)(A) ("Any alien who at the time of entry or adjustment of status was within one or more of the classes of aliens inadmissible by the law existing at such time is deportable.").

Under the INA, an alien's inadmissibility thus has consequences well beyond the specific context of admission itself. Even after an alien has been admitted to the country, whether he is inadmissible—including whether he has committed an offense that renders him so—may bear on his eligibility for adjustment of status and other forms of relief or protection. The stop-time rule simply specifies one more consequence of being inadmissible, this one in the context of eligibility for cancellation of removal. In doing so, the rule works in the same way as many other provisions of the INA that make inadmissibility relevant even when an alien is not seeking admission.

3. The history of the statute also does not support reading the "renders * * * inadmissible" clause to apply only when an alien is seeking admission. Prior to 1996, Section 212(c) of the INA, 8 U.S.C. 1182(c) (1994), authorized the Attorney General to waive the exclusion of certain lawful permanent residents who "had lawfully resided in the United States for at least seven years before temporarily leaving the country, unless [they were] excludable on one of two specified grounds." *Judulang* v. *Holder*, 565 U.S. 42, 46 (2011). "[B]y its terms, § 212(c) did not apply when an alien was being deported." *Ibid.* A "discrepancy" therefore arose in "the ability of the Attorney General to grant an alien discretionary relief." *Id.* at 46-47. If a permanent resident convicted of a crime that "made him inadmissible" were

to travel abroad and return to the United States, he could be apprehended at the border by immigration officials and placed in an "exclusion proceeding," where he could apply for discretionary relief under Section 212(c). *Id.* at 47. But if that same permanent resident were permitted by mistake to enter the country and were later apprehended by immigration officials after he had already been admitted, he would be placed in a "deportation proceeding," where no Section 212(c) relief would be available. *Ibid.* The Attorney General and the Board resolved that "apparent anomaly" by permitting permanent residents in deportation proceedings to apply for the Section 212(c) relief that they could have sought if they had been denied admission following their travel abroad. *Ibid.*

In 1996, Congress repealed Section 212(c) and replaced it with cancellation of removal, a form of discretionary relief available to aliens subject to removal on exclusion and deportation grounds alike. 8 U.S.C. 1229b(a); see *Judulang*, 565 U.S. at 48. Given the history of Section 212(c), it would make little sense to construe that new, unified form of relief to resurrect discrepancies similar to those that had plagued the earlier law. Yet, if the stop-time rule required that an alien be seeking admission for an offense to render him inadmissible and thus trigger the rule, it would mean less favorable treatment for (1) aliens charged with inadmissibility upon their return from a trip abroad than (2) aliens who were likewise inadmissible upon their return from a trip abroad, but who were admitted by an immigration official erroneously and then charged with deportability after having already been admitted, see 8 U.S.C. 1227(a)(1)(A). There is no sound reason to believe that Congress intended such discrepancies.

4. The purpose of the stop-time rule confirms that application of the "renders * * * inadmissible" clause does not depend on whether the alien is seeking admission. Cancellation of removal is a matter of grace. See *INS* v. *Yueh-Shaio Yang*, 519 U.S. 26, 30 (1996) (describing discretionary suspension of deportation under a predecessor provision as "an act of grace," akin to "a judge's power to suspend the execution of a sentence, or the President's to pardon a convict") (citations omitted). Accordingly, Congress restricted eligibility for cancellation of removal to those aliens it believed had the greatest claim to it, based in part on how long they had continuously resided in the country (in the case of certain permanent residents) or how long they had continuously been physically present in the country (in the case of aliens generally). 8 U.S.C. 1229b(a)(2) and (b)(1)(A). At the same time, Congress evidently recognized that aliens should not continue receiving credit for time spent in the United States after they have "abuse[d] the hospitality of this country." *In re Perez*, 22 I. &. N. Dec. 689, 700 (B.I.A. 1999) (en banc). So Congress enacted the stop-time rule to ensure that any period of continuous residence or continuous physical presence ceased once an alien committed an offense that rose to that level. 8 U.S.C. 1229b(d)(1)(B).

Construing the "renders * * * inadmissible" clause to apply only to aliens seeking admission would be inconsistent with that purpose. Whether a crime rises to the level of an "abuse[] [of] the hospitality of this country," *Perez*, 22 I. &. N. Dec. at 700, does not depend on the reason that an alien is placed in removal proceedings. A crime involving moral turpitude, such as the aggravated assault in this case, is no less an abuse when committed by an alien who is later subject to removal

because he is deportable than by an alien who is later subject to removal because he is inadmissible. It therefore makes sense that Congress would regard an alien, like petitioner, who committed (and was then convicted of) such a crime as having forfeited the country's hospitality, regardless of whether he was seeking admission when placed in removal proceedings.

C. Neither Of Petitioner's Alternative Interpretations Has Merit

Petitioner offers two alternative interpretations of the stop-time rule. First, he argues (Br. 17-43) that an offense "renders" an alien "inadmissible" only when the alien is seeking admission and the offense is the reason that admission is denied. Second, and in the alternative, he argues (Br. 43-53) that an offense "renders" an alien "inadmissible" only when the alien is seeking admission, regardless of whether the offense is the reason that admission is denied. Neither of those interpretations has merit.

1. Petitioner's preferred interpretation lacks merit

Petitioner's lead argument (Br. 17-43) is that, for an offense to "render" an alien "inadmissible," not only must the alien be seeking admission, but the offense must be the reason that admission is denied. That interpretation—which petitioner did not advance below, see Pet. C.A. Br. 10 (describing, without challenging, Board precedent that an alien "may be charged with removability on one ground, and yet be ineligible for cancellation of removal on the basis of another ground"), and which no court has embraced—lacks support in the text, structure, history, and purpose of the statute.

a. The text of the "renders * * * inadmissible" clause does not require that an offense result in the denial of admission to an alien seeking to be admitted. Rather, it requires that the offense "render[] the alien inadmissible * * * under section 1182(a)(2)." 8 U.S.C. 1229b(d)(1)(B). The text of Section 1182(a)(2), in turn, provides that, for a "crime involving moral turpitude (other than a purely political offense)" to render an alien "inadmissible," the crime must not fall within one of two specified exceptions, and the alien must be convicted of the offense, admit to having committed it, or admit to having committed its essential elements. 8 U.S.C. 1182(a)(2)(A)(i). Because petitioner was convicted of such a crime here, and because neither exception applies, the offense "renders [petitioner] inadmissible * * * under section 1182(a)(2)" and therefore triggers the stop-time rule. 8 U.S.C. 1229b(d)(1)(B).

i. Contrary to petitioner's contention (Br. 12-15, 19-22, 26, 28-29, 36, 46, 49-50), there is nothing "hypothetical" about that determination. The government's position is not that petitioner's offense "*could* render a *hypothetical* alien inadmissible." Pet. Br. 12 (emphases added). Rather, the government's position is that the offense *does* render *petitioner* inadmissible. Again, Section 1182(a)(2) provides, with exceptions that are inapplicable here, that "*any alien* convicted of * * * a crime involving moral turpitude * * * *is* inadmissible." 8 U.S.C. 1182(a)(2)(A)(i) (emphases added). Because petitioner, who qualifies as "*any alien*," has been "convicted of" such an offense, he "*is* inadmissible." *Ibid.* (emphases added). The offense thus "renders" petitioner himself—not some hypothetical alien—"inadmissible." 8 U.S.C. 1229b(d)(1)(B).

Petitioner insists (Br. 12) that "[a]n offense 'renders the alien inadmissible' if the offense actually triggers an adjudication of inadmissibility during the alien's removal proceeding." But that description of the statute does not support his interpretation, because his offense *did* "actually trigger[] an adjudication of inadmissibility" here. *Ibid.* The IJ in this case conducted an adjudication and determined that, "because [petitioner] has been convicted of a [crime involving moral turpitude]," that offense "renders him inadmissible under Section [1182](a)(2)(A)(i)(I)." Pet. App. 35a.

That was an actual adjudication of inadmissibility, not a hypothetical one. And the fact that it took place outside the context of an alien seeking admission makes it no less real. As explained above, the stop-time rule is not unique; various other provisions of the INA call for an adjudication of admissibility outside the context of an alien seeking admission. See pp. 17-19, *supra*. The IJ's adjudication of inadmissibility in this case was no more hypothetical than any such adjudication under one of those other provisions.

ii. Petitioner likewise errs in contending (Br. 20-21, 25, 27) that an offense "renders" an alien "inadmissible" only when the offense results in one particular consequence: the denial of admission to an alien seeking to be admitted. As explained above, the word "inadmissible," as used throughout the INA, refers to an alien's status, independent of any particular consequence. See pp. 13-19, *supra*. Because an alien who is inadmissible is "ineligible to be admitted to the United States," 8 U.S.C. 1182(a) (Supp. V 2017), one consequence of that status is that, if the alien were to seek admission, he would be denied it. But the stop-time rule is not triggered by the commission of an offense that results in

the *denial of admission*; rather, it is triggered by the commission of an offense that "renders the alien *inadmissible*." 8 U.S.C. 1229b(d)(1)(B) (emphasis added). Congress thus tied the application of the stop-time rule to the alien's status, as opposed to a particular consequence of that status.

Invoking the canon of consistent usage, petitioner argues (Br. 34-38) that the word "inadmissible" should be given the same meaning in the stop-time rule as in 8 U.S.C. 1229a and 1229b(a). Section 1229a, entitled "Removal proceedings," provides that "[a]n immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien," 8 U.S.C. 1229a(a)(1) (emphasis omitted), and that "[a]n alien placed in proceedings under this section may be charged with any applicable ground of inadmissibility under section 1182(a) of [Title 8] or any applicable ground of deportability under section 1227(a) of [Title 8]," 8 U.S.C. 1229a(a)(2). Section 1229b(a) authorizes the Attorney General to "cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien" meets certain criteria. 8 U.S.C. 1229b(a).

Petitioner's argument fails, however, because the government's position does give the word "inadmissible" (or "inadmissibility") the same meaning across all of those provisions. Under the government's interpretation, the word consistently refers to the same thing: an alien's status as "inadmissible" under Section 1182(a). To be sure, the provisions pertain to different consequences of that status. Whereas Section 1229a makes inadmissibility a ground for removal, see 8 U.S.C. 1229a(a)(2) and (c)(1)(A), the stop-time rule makes inadmissibility relevant to a different consequence: the

termination of a period of continuous residence or continuous physical presence for purposes of eligibility for cancellation of removal. But while the consequences may be different, the meaning of the word is the same. As in various other provisions in which Congress attached consequences to an alien's inadmissibility, see pp. 17-19, *supra*, the word refers to an alien's status under Section 1182(a).

Petitioner observes (Br. 36) that, as grounds for removal, "inadmissibility and deportability are mutually exclusive categories." But that is only because of Congress's decision to make them separate grounds for removal. Congress thus defined "removable" to mean "(A) *in the case of an alien not admitted to the United States*, that the alien is inadmissible under section 1182 of [Title 8], or (B) *in the case of an alien admitted to the United States*, that the alien is deportable under section 1227 of [Title 8]." 8 U.S.C. 1229a(e)(2) (emphases added); see 8 U.S.C. 1229a(c)(1)(A) (providing that the IJ, at the conclusion of the removal proceeding, "shall decide whether an alien is removable from the United States"). As that definition makes clear, there is nothing inherently inconsistent about being both "inadmissible under section 1182" and "deportable under section 1227." 8 U.S.C. 1229a(e)(2). They are separate grounds for removal only because Congress expressly made them so, by specifying "inadmissib[ility]" as the applicable ground "in the case of an alien not admitted to the United States" and "deportab[ility]" as the applicable ground "in the case of an alien admitted to the United States." *Ibid.*

Congress, however, included no similar qualifying language in the stop-time rule. See pp. 16-17, *supra*. It did not say, for instance, that an alien's period of continuous

residence shall be deemed to end when the alien has committed an offense referred to in Section 1182(a)(2) that renders the alien inadmissible under Section 1182(a)(2) *in the case of an alien not admitted to the United States* or removable under Section 1227(a)(2) or (a)(4) *in the case of an alien admitted to the United States*. The absence of such qualifying language indicates that, for purposes of eligibility for cancellation of removal, Congress intended an alien's inadmissibility to matter even in the case of an alien previously admitted to the United States—just as it does in other contexts, such as adjustment of status. See pp. 17-19, *supra*.

iii. Petitioner contends (Br. 13) that, because consideration of an application for cancellation of removal follows a determination of whether the alien is removable, the stop-time rule should be read as "referring to the decision the immigration judge has just made," rather than calling on the IJ to make a new one. See also Pet. Br. 22-24, 25-26. But the suggestion that, in applying the stop-time rule, the IJ should be able to simply look to "*what just happened*," *id.* at 22, cannot be squared with the text of the stop-time rule itself. After all, the only offenses that can trigger the rule are "*offense*[*s*] *referred to in section 1182(a)(2)* * * * that render[] the alien inadmissible under section 1182(a)(2) * * * or removable * * * under section 1227(a)(2) or 1227(a)(4)." 8 U.S.C. 1229b(d)(1) (emphasis added). Thus, the IJ must apply the provisions of Section 1182(a)(2) in every case in which an offense triggers the rule—even cases in which Section 1182(a)(2) played no role in the IJ's determination of whether the alien is removable.

Indeed, the INA requires the IJ, in considering an alien's eligibility for cancellation of removal, to make a number of determinations that may be unrelated to the

ground for removal. See, *e.g.*, 8 U.S.C. 1229b(a)(3) (requiring the IJ to determine whether a permanent resident alien has "been convicted of any aggravated felony"); 8 U.S.C. 1101(a)(43) (providing a 21-part definition of "aggravated felony"). Many of those determinations similarly entail applying Section 1182(a)'s provisions, even in cases in which Section 1182(a) was not the ground for removal. Section 1229b(c), for instance, requires the IJ to determine whether the alien "is inadmissible under section 1182(a)(3)," 8 U.S.C. 1229b(c)(4)—*e.g.*, for having "engaged in a terrorist activity," 8 U.S.C. 1182(a)(3)(B)(i)(I). Section 1229b(b)(1)(B) requires an IJ to determine whether an alien "has been a person of good moral character" during his period of continuous physical presence, 8 U.S.C. 1229b(b)(1)(B)—an inquiry that entails determining whether he is "a member of one or more of the classes of persons, whether inadmissible or not, described in" specified paragraphs of Section 1182(a)(2), 8 U.S.C. 1101(f)(3). And Section 1229b(b)(1)(C) requires an IJ to determine whether an alien has "been convicted of an offense under section 1182(a)(2)." 8 U.S.C. 1229b(b)(1)(C).

There is thus no merit to petitioner's contention (Br. 26) that IJs would be "effectively restart[ing] removal proceedings from scratch" in applying the "renders * * * inadmissible" clause in cases in which Section 1182(a)(2) was not the ground for removal. Section 1182(a) pervades the INA's provisions governing eligibility for cancellation of removal, see pp. 27-28, *supra*, and IJs do not "effectively restart removal proceedings," Pet. Br. 26, each time they apply Section 1182(a) under those provisions.

If anything, it is petitioner's interpretation that would create "inefficien[cy]" in already overburdened

immigration courts. Pet. Br. 13. By limiting the offenses that may trigger the stop-time rule to those charged as grounds for removal, *id.* at 17, petitioner's interpretation would force DHS to bring, and IJs to address, additional charges merely for the sake of preserving them as stop-time-rule triggers, despite the fact that in most cases the alien has conceded his removability. See H.R. Rep. No. 469, 104th Cong., 2d Sess., Pt. 1, at 120 (1996) ("At most hearings, the issue of deportability is conceded: the alien essentially admits that he or she is here illegally, but seeks relief from deportation under one of the provisions of the INA."). It is often the case, moreover, that DHS does not even become aware of the full extent of the alien's criminal history until the alien submits his application for cancellation of removal, which requires him to disclose all prior arrests and convictions. See A.R. 591. Under petitioner's interpretation, DHS would be required at that point to bring new charges against the alien—"effectively restart[ing] [the] removal proceeding[]," Pet. Br. 26—if it wished to rely on offenses that the alien had newly disclosed. See 8 C.F.R. 1003.30.

iv. Petitioner's attempt (Br. 23-24) to analogize the stop-time rule to 8 U.S.C. 1252(a)(2)(C) likewise fails. Section 1252(a)(2)(C) provides that "no court shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed a criminal offense covered in section 1182(a)(2) or 1227(a)(2)(A)(iii), (B), (C), or (D) of [Title 8]." 8 U.S.C. 1252(a)(2)(C). Section 1252(a)(2) identifies "[m]atters not subject to judicial review." 8 U.S.C. 1252(a)(2) (emphasis omitted). So the phrase "removable by reason of having committed a [specified] criminal offense" is nat-

urally understood to refer to the subject matter, or basis, of a "final order of removal." 8 U.S.C. 1252(a)(2)(C). The text of the stop-time rule, by contrast, contains no reference to a "final order of removal" or the "matters" addressed therein. The text of the rule thus gives no indication that the offense that "renders the alien inadmissible," 8 U.S.C. 1229b(d)(1)(B), must also be the ground for his removal.

Petitioner's attempt (Br. 49-52) to analogize the stop-time rule to the mandatory-detention statute, 8 U.S.C. 1226(c), fares no better. As this Court has explained, Section 1226(c) "mandates detention 'pending a decision on whether the alien is to be removed from the United States.'" *Jennings* v. *Rodriguez*, 138 S. Ct. 830, 846 (2018) (quoting 8 U.S.C. 1226(a)); see *Nielsen* v. *Preap*, 139 S. Ct. 954, 966 (2019) (explaining that Section 1226(c)(1) "limits" the "discretion to arrest" conferred by Section 1226(a)). References to grounds of inadmissibility and deportability in Section 1226(c)(1), see 8 U.S.C. 1226(c)(1)(A)-(D), are thus naturally understood to be references to potential grounds for removal that would support a future "decision on whether the alien is to be removed," 8 U.S.C. 1226(a). The text of the stop-time rule, by contrast, contains no reference to any such removal decision and thus gives no indication that the offense that "renders the alien inadmissible," 8 U.S.C. 1229b(d)(1)(B), must also result in his removal. Indeed, the text, structure, history, and purposes of the stop-time rule and other relevant provisions foreclose such an interpretation. See pp. 11-22, *supra*.

b. Petitioner's reliance (Br. 26-34) on the structure of the stop-time rule is also misplaced. Contrary to petitioner's contention (*ibid.*), each part of the stop-time

rule has independent significance under the government's interpretation of the rule.

i. There are three parts of the stop-time rule at issue here: (1) the "referred to" clause, (2) the "renders * * * inadmissible" clause, and (3) the "renders * * * removable" clause. 8 U.S.C. 1229b(d)(1)(B). The "referred to" clause requires that any offense that triggers the rule be "an offense referred to in section 1182(a)(2)." *Ibid.* Section 1182(a)(2) refers to a number of different types of offenses—among them, "crime[s] involving moral turpitude (other than * * * purely political offense[s])" and "violation[s] of * * * any law * * * relating to a controlled substance (as defined in section 802 of Title 21)." 8 U.S.C. 1182(a)(2)(A)(i). The "referred to" clause requires that an offense be of one of those types to trigger the stop-time rule.

Not every offense that satisfies the "referred to" clause, however, "renders" an alien "inadmissible" under Section 1182(a)(2). 8 U.S.C. 1229b(d)(1)(B). Even if, for example, an alien has committed "a crime involving moral turpitude (other than a purely political offense)," that crime will not render him "inadmissible" under Section 1182(a)(2) unless he was "convicted of" the offense, "admits having committed" the offense, or "admits committing acts which constitute the essential elements of" the offense. 8 U.S.C. 1182(a)(2)(A)(i). And even then, the crime will not render the alien "inadmissible" if it falls into one of Section 1182(a)(2)(A)(ii)'s exceptions—one for juvenile offenses and the other for petty offenses. 8 U.S.C. 1182(a)(2)(A)(ii). The "renders * * * inadmissible" clause thus places independent limits on the universe of offenses that may trigger the stop-time rule.

The "renders * * * removable" clause likewise has its own role to play, covering certain offenses referred to in Section 1182(a)(2) that are not covered by the "renders * * * inadmissible" clause. Both Section 1227(a)(2) and Section 1182(a)(2), for example, refer to crimes involving moral turpitude. See 8 U.S.C. 1182(a)(2)(A)(i)(I); 8 U.S.C. 1227(a)(2)(A)(i). But Section 1227(a)(2) does not contain either of the exceptions found in Section 1182(a)(2). See 8 U.S.C. 1227(a)(2)(A)(i). Thus, an alien could be convicted of a crime involving moral turpitude that falls within Section 1182(a)(2)'s petty-offense exception (say, an offense punishable by a maximum of one year in prison, for which the alien was sentenced to only one month of imprisonment, see 8 U.S.C. 1182(a)(2)(A)(ii)(II)) but that renders the alien removable under Section 1227(a)(2) (because the crime was committed within five years after the date of the alien's admission and a sentence of at least one year could have been imposed, see 8 U.S.C. 1227(a)(2)(A)(i)). Similarly, an alien could be convicted of a crime involving moral turpitude that falls within Section 1182(a)(2)'s juvenile-offense exception, 8 U.S.C. 1182(a)(2)(A)(ii)(I), but that renders the alien removable under Section 1227(a)(2), which contains no such exception. Thus, under the government's interpretation of the stop-time rule, each of the three clauses has independent significance.

ii. Petitioner's counterarguments lack merit. Petitioner contrasts (Br. 29-30) the stop-time rule with Section 1101(f)(3), but that contrast only reinforces the government's interpretation of the rule. As noted above, see p. 28, *supra*, Section 1101(f)(3) provides that "[n]o person shall be regarded as, or found to be, a person of good moral character who, during the period for

which good moral character is required to be established," is or was "a member of one or more of the classes of persons, *whether inadmissible or not*, described in paragraphs (2)(D), (6)(E), and (10)(A) of section 1182(a) of [Title 8]; or subparagraphs (A) and (B) of section 1182(a)(2) of [Title 8] and subparagraph (C) * * * if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period." 8 U.S.C. 1101(f)(3) (emphasis added).

What the phrase "whether inadmissible or not" means is that, even if an alien falls within an exception to inadmissibility specified in Section 1182(a), he should still not be regarded as a "person of good moral character" if he is among the classes of persons "described in" one of the enumerated paragraphs. Thus, for example, Section 1182(a)(6)(E) provides that any alien who knowingly assisted another alien to enter the United States in violation of law is "inadmissible," 8 U.S.C. 1182(a)(6)(E)(i), while making an exception for certain aliens who knowingly assisted a family member to enter the country, 8 U.S.C. 1182(a)(6)(E)(ii). Although an alien who falls within that exception would not be "inadmissible," he would still be a member of the class of persons "described in" Section 1182(a)(6)(E)(i), and thus could not be regarded as a "person of good moral character" for purposes of Section 1101(f)(3). A comparison with Section 1101(f)(3) therefore highlights one of the purposes of the "renders * * * inadmissible" clause in the stop-time rule: to make clear that exceptions (like the petty-offense exception for certain crimes involving moral turpitude in Section 1182(a)(2)) should be taken into account in applying that part of the rule.

Petitioner also argues (Br. 30) that if the "renders * * * inadmissible" clause were meant to capture things like the fact of a prior conviction, it would not have been phrased in the present tense. The present-tense phrasing of the "renders * * * inadmissible" clause, however, simply mirrors the present-tense phrasing of the Section it cross-references, Section 1182(a)(2), which provides, as relevant here, that "any alien convicted of * * * a crime involving moral turpitude (other than a purely political offense) * * * *is* inadmissible." 8 U.S.C. 1182(a)(2)(A)(i) (emphasis added). The matching verb tense in the two provisions bolsters the conclusion that Section 1182(a)(2) should be understood as specifying the conditions under which an offense "renders" an alien "inadmissible."

Petitioner further argues (Br. 30-31) that the government's interpretation makes the "referred to" and "renders * * * removable" clauses superfluous, such that the operation of the stop-time rule would be the same if those clauses were crossed out. As explained above, however, each clause does independent work under the government's interpretation. See pp. 31-32, *supra*. So if the "renders * * * removable" clause were excised, an offense, for example, that falls within Section 1182(a)(2)'s petty-offense exception but that renders the alien removable under Section 1227(a)(2) would *not* trigger the stop-time rule (even though it otherwise would). And if the "referred to" clause were excised, a conviction for an offense described in Section 1227(a)(2) or (a)(4) but not referred to in Section 1182(a)(2)—such as an aggravated felony, 8 U.S.C. 1227(a)(2)(A)(iii)—*would* trigger the stop-time rule (even though it otherwise would not).

It is true that the government took a different position in its petition for rehearing en banc in *Nguyen* v. *Sessions*, 901 F.3d 1093 (9th Cir. 2018), in which it described the "renders * * * removable" clause as having "no apparent role to play." Gov't C.A. Pet. for Reh'g 13, *Nguyen*, *supra* (No. 17-70251). That position, however, rested on the premise that the Board's decision in *Matter of Garcia*, 25 I. & N. Dec. 332 (2010), was correct. In that decision, the Board construed the "referred to" clause to mean that an offense is not "referred to in section [1182](a)(2)" if the offense falls within an exception, such as the petty-offense exception to inadmissibility for certain crimes involving moral turpitude. *Id.* at 335-336; see *id.* at 335 (observing that the Board had similarly held in *In re Garcia-Hernandez*, 23 I. & N. Dec. 590, 593 (2003), that "an alien was not convicted of an offense 'described in' section [1182](a)(2)(A) for purposes of the good moral character definition in section [1101(f)(3)], where the crime was subject to the petty offense exception"). If that construction were correct, then the "referred to" clause would exclude offenses that the "renders * * * removable" clause would otherwise cover, depriving the latter clause of practical effect. As a matter of ordinary English, however, an offense (such as a crime involving moral turpitude) is still "referred to" in Section 1182(a)(2), even if an exception to inadmissibility based on that offense (such as the petty-offense exception) applies. Accordingly, the government now believes that the Board's interpretation of the "referred to" clause is contrary to the plain text of the statute. When the "referred to" clause is correctly construed so as not to incorporate exceptions to inadmissibility for certain offenses identified in Section

1182(a)(2), each part of the stop-time rule does independent work.

In any event, "[t]he canon against surplusage is not an absolute rule." *Marx* v. *General Revenue Corp.*, 568 U.S. 371, 385 (2013). When, as here, the text of the statute is "plain," it would be "inappropriate" to apply the canon to depart from that "plain meaning." *Lamie* v. *United States Trustee*, 540 U.S. 526, 536 (2004); see Pet. App. 15a. Indeed, it would be particularly inappropriate to do so when, as here, the text of the stop-time rule itself indicates that the possibility of surplusage did not trouble Congress. As petitioner acknowledges (Br. 32-33), Congress included a reference to "section 1227(a)(4)" in the "renders * * * removable" clause, even though Section 1182(a)(2) did not refer to any offenses in Section 1227(a)(4) in 1996, when the stop-time rule was enacted. 8 U.S.C. 1229b(d)(1)(B). The reference to "section 1227(a)(4)" thus did no work from the date it was enacted until at least 2004, when Congress amended Section 1227(a)(4) to cover severe violations of religious freedom referred to in Section 1182(a)(2)(G). Intelligence Reform and Terrorism Prevention Act of 2004, Pub L. No. 108-458, § 5502(b), 118 Stat. 3741 (8 U.S.C. 1227(a)(4)(E)). Given Congress's tolerance for surplusage in the stop-time rule, the canon against surplusage should not be controlling here. *Lamie*, 540 U.S. at 536.

c. Petitioner also asserts (Br. 25) that the government's interpretation does not make sense in light of "the point of the stop-time rule: to decide whether an alien is subject to mandatory removal." He finds (Br. 13) it "improbable" that Congress would have enacted a scheme under which "an offense could trigger *mandatory* deportation even though Congress decided it

should not be the basis for *non-mandatory* deportation."

Petitioner's premise is flawed. The stop-time rule is not a "mandatory removal" provision. It does not render any alien removable, let alone on a mandatory basis. By the time an IJ considers an alien's eligibility for cancellation of removal, the alien has already been found to be removable, and the only question is whether he should be granted discretionary relief. The stop-time rule addresses only a narrow aspect of that inquiry: whether the alien should be able to continue receiving credit for time spent in the United States after having committed a criminal offense. And it is hardly "irrational," Pet. Br. 13, for Congress to have concluded that, while the aggravated assault that petitioner committed was not serious enough to render him deportable, it was at least serious enough to cut off his period of continuous residence for purposes of eligibility for discretionary relief.

Moreover, petitioner's suggestion (Br. 25) that the circumstances that render an alien ineligible for discretionary relief must "[l]ogically" be narrower than the circumstances that render the alien removable in the first place finds no support in the statute. In fact, the statute does the opposite—making the range of relevant considerations broader for discretionary relief. Those considerations extend beyond particular grounds of inadmissibility or deportability. See generally 8 U.S.C. 1229b(a), (b)(1), and (c). And that is so even when it comes to an alien's criminal history. Thus, for example, a lawful permanent resident who is subject to removal on a ground of inadmissibility, see 8 U.S.C. 1101(a)(13)(C) (identifying circumstances in which a lawful permanent resident is regarded as seeking admission), is ineligible

for cancellation of removal if he has been convicted of an aggravated felony, see 8 U.S.C. 1229b(a)(3)—even though such a conviction is not a ground of inadmissibility. And a nonpermanent resident who is subject to removal on a ground of deportability is ineligible for cancellation of removal if he has "been convicted of an offense under section 1182(a)(2)," 8 U.S.C. 1229b(b)(1)(C)—even though such a conviction is not a ground of deportability. There is thus nothing anomalous about the fact that an offense under Section 1182(a)(2) is relevant to the application of the stop-time rule here.

d. Petitioner's attempt (Br. 38-39) to find support in the Board's decision in *Matter of Ching*, 12 I. & N. Dec. 710 (1968), is also unavailing. The issue in that case was whether an alien's eligibility for a form of discretionary relief known as suspension of deportation should be determined under paragraph (1) or paragraph (2) of the statute at issue. *Id.* at 711. Paragraph (1) set forth the eligibility criteria for an alien who "is deportable" under one set of provisions, and paragraph (2) set forth the eligibility criteria for an alien who "is deportable" under a different set of provisions. *Ibid.* (emphases omitted). The Board held that the phrase "is deportable" refers to "an alien who has been charged with and found deportable on" the basis of those provisions. *Id.* at 712.

In 1996, Congress rewrote the statute. See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, Tit. III, Subtit. A, sec. 304(a)(3), § 240A, 110 Stat. 3009-594 to 3009-596. It replaced the suspension-of-deportation scheme with cancellation-of-removal provisions that apply to aliens subject to removal on grounds of inadmissibility and deportability alike. See 8 U.S.C. 1229b(a) and (b); H.R. Rep. No. 828, 104th Cong., 2d Sess. 213 (1996). It dropped

use of the phrase "is deportable under." See 8 U.S.C. 1229b(a) and (b). And it added a new provision—the stop-time rule—which had no analogue in the pre-1996 scheme. See 8 U.S.C. 1229b(d)(1). Given how little resemblance the current statute bears to the old one, petitioner errs in asserting that "Congress revisit[ed] [the] statute * * * without pertinent change." Pet. Br. 39 (quoting *Commodity Futures Trading Comm'n* v. *Schor*, 478 U.S. 833, 846 (1986)). As the Board itself has concluded, its prior interpretation of the phrase "is deportable" does not shed light on Congress's use of "clearly different" language in the stop-time rule. *In re Jurado-Delgado*, 24 I. & N. Dec. 29, 31 (2006).[2]

2. Petitioner's fallback interpretation lacks merit

As a fallback argument, petitioner contends (Br. 43-53) that an offense "renders" an alien "inadmissible" only when the alien is seeking admission, regardless of whether the offense is the reason that admission is denied. As explained above, however, an alien need not be seeking admission for an offense referred to in Section 1182(a)(2) to render him inadmissible. See pp. 13-22, *supra*. That is because "'inadmissibi[ility]' is a *status*,"

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[2] Petitioner contends (Br. 39-42) that the Board's decision in *Jurado-Delgado* is not entitled to deference under *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). The government agrees with the court of appeals that the Board in *Jurado-Delgado* did not address the question "whether a lawful permanent resident who does not need to be admitted [can] nonetheless ha[ve] his period of continuous residence stopped by an offense rendering him inadmissible." Pet. App. 18a n.5 (citation omitted); see Br. in Opp. 12. The government therefore does not claim *Chevron* deference on the question presented. Rather, the government contends that its interpretation reflects the best reading of the statute, in light of all the traditional tools of statutory construction. See pp. 11-22, *supra*.

Pet. App. 12a, and nothing in either the stop-time rule or Section 1182(a)(2) makes the conferral of that status contingent upon whether an alien is seeking admission.

Petitioner contends (Br. 46) that "[e]ven if 'inadmissible' referred to a status, [he] never occupied that status because it was never legally possible for him to be charged with inadmissibility." That contention assumes, however, that an alien must be charged with inadmissibility as a ground for removal in order to be rendered inadmissible. That assumption is erroneous. As explained above, Section 1182(a)(2) specifies the conditions under which an offense renders an alien inadmissible, see p. 15, *supra*, and under that Section, petitioner is inadmissible "by virtue of his having been convicted of a qualifying offense," Pet. App. 12a. To be sure, the fact that petitioner had already been admitted to the country meant that, at least as things then stood, he could not be charged with inadmissibility as a ground for removal. See pp. 26-27, *supra*; Pet. App. 12a (explaining that petitioner could be regarded as seeking admission "down the road" under 8 U.S.C. 1101(a)(13)(C)). Removal, however, is just one possible consequence of being inadmissible; termination of a period of continuous residence for purposes of eligibility for cancellation of removal is another. The fact that petitioner was not seeking admission meant that he could not be removed on a ground of inadmissibility, but that is immaterial under the stop-time rule. See pp. 13-22, *supra*.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
JOSEPH H. HUNT
Assistant Attorney General
EDWIN S. KNEEDLER
Deputy Solicitor General
FREDERICK LIU
Assistant to the Solicitor General
DONALD E. KEENER
JOHN W. BLAKELEY
PATRICK J. GLEN
TIMOTHY G. HAYES
Attorneys

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APPENDIX

1. 8 U.S.C. 1182 (2012 & Supp. V 2017) provides in pertinent part:

(a) Classes of aliens ineligible for visas or admission

Except as otherwise provided in this chapter, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) Health-related grounds

(A) In general

Any alien—

(i) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance;[1]

(ii) except as provided in subparagraph (C), who seeks admission as an immigrant, or who seeks adjustment of status to the status of an alien lawfully admitted for permanent residence, and who has failed to present documentation of having received vaccination against vaccine-preventable diseases, which shall include at least the following diseases: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, influenza type B and hepatitis B, and any other

[1] So in original. The semicolon probably should be a comma.

vaccinations against vaccine-preventable diseases recommended by the Advisory Committee for Immunization Practices,

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General)—

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior, or

(iv) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict,

is inadmissible.

(B) Waiver authorized

For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g) of this section.

(C) Exception from immunization requirement for adopted children 10 years of age or younger

Clause (ii) of subparagraph (A) shall not apply to a child who—

(i) is 10 years of age or younger,

(ii) is described in subparagraph (F) or (G) of section 1101(b)(1) of this title;[1] and

(iii) is seeking an immigrant visa as an immediate relative under section 1151(b) of this title,

if, prior to the admission of the child, an adoptive parent or prospective adoptive parent of the child, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the provisions of subparagraph (A)(ii) and will ensure that, within 30 days of the child's admission, or at the earliest time that is medically appropriate, the child will receive the vaccinations identified in such subparagraph.

(2) Criminal and related grounds

(A) Conviction of certain crimes

(i) In general

Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—

(I) a crime involving moral turpitude (other than a purely political offense) or an

attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21),

is inadmissible.

(ii) Exception

Clause (i)(I) shall not apply to an alien who committed only one crime if—

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

(B) Multiple criminal convictions

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

(C) Controlled substance traffickers

Any alien who the consular officer or the Attorney General knows or has reason to believe—

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 802 of title 21), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or

(ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity,

is inadmissible.

(D) Prostitution and commercialized vice

Any alien who—

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or

(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution,

is inadmissible.

(E) Certain aliens involved in serious criminal activity who have asserted immunity from prosecution

Any alien—

(i) who has committed in the United States at any time a serious criminal offense (as defined in section 1101(h) of this title),

(ii) for whom immunity from criminal jurisdiction was exercised with respect to that offense,

(iii) who as a consequence of the offense and exercise of immunity has departed from the United States, and

(iv) who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense,

is inadmissible.

(F) Waiver authorized

For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h) of this section.

(G) Foreign government officials who have committed particularly severe violations of religious freedom

Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom, as defined in section 6402 of title 22, is inadmissible.

(H) Significant traffickers in persons

(i) In general

Any alien who commits or conspires to commit human trafficking offenses in the United States or outside the United States, or who the consular officer, the Secretary of Homeland Security, the Secretary of State, or the Attorney General knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons, as defined in the section 7102 of title 22, is inadmissible.

(ii) Beneficiaries of trafficking

Except as provided in clause (iii), any alien who the consular officer or the Attorney General knows or has reason to believe is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.

(iii) Exception for certain sons and daughters

Clause (ii) shall not apply to a son or daughter who was a child at the time he or she received the benefit described in such clause.

(I) Money laundering

Any alien—

(i) who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage, in an offense which is described in section 1956 or 1957 of title 18 (relating to laundering of monetary instruments); or

(ii) who a consular officer or the Attorney General knows is, or has been, a knowing aider, abettor, assister, conspirator, or colluder with others in an offense which is described in such section;

is inadmissible.

* * * * *

(6) Illegal entrants and immigration violators

(A) Aliens present without admission or parole

(i) In general

An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

(ii) Exception for certain battered women and children

Clause (i) shall not apply to an alien who demonstrates that—

(I) the alien is a VAWA self-petitioner;

(II)(a) the alien has been battered or subjected to extreme cruelty by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, or (b) the alien's child has been battered or subjected to extreme cruelty by a spouse or parent of the alien (without the active participation of the alien in the battery or cruelty) or by a member of the spouse's or parent's family residing in the same household as the alien when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty, and

(III) there was a substantial connection between the battery or cruelty described in subclause (I) or (II) and the alien's unlawful entry into the United States.

(B) Failure to attend removal proceeding

Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

(C) Misrepresentation

(i) In general

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

(ii) Falsely claiming citizenship

(I) In general

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this chapter (including section 1324a of this title) or any other Federal or State law is inadmissible.

(II) Exception

In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

(iii) Waiver authorized

For provision authorizing waiver of clause (i), see subsection (i) of this section.

(D) Stowaways

Any alien who is a stowaway is inadmissible.

(E) Smugglers

(i) In general

Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

(ii) Special rule in the case of family reunification

Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990),

was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 1153(a)(2) of this title (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(iii) Waiver authorized

For provision authorizing waiver of clause (i), see subsection (d)(11) of this section.

(F) Subject of civil penalty

(i) In general

An alien who is the subject of a final order for violation of section 1324c of this title is inadmissible.

(ii) Waiver authorized

For provision authorizing waiver of clause (i), see subsection (d)(12) of this section.

(G) Student visa abusers

An alien who obtains the status of a nonimmigrant under section 1101(a)(15)(F)(i) of this title and who violates a term or condition of such status under section 1184(*l*)[2] of this title is inadmissible until the alien has

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[2] See References in Text note below.

been outside the United States for a continuous period of 5 years after the date of the violation.

(7) Documentation requirements

(A) Immigrants

(i) In general

Except as otherwise specifically provided in this chapter, any immigrant at the time of application for admission—

(I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 1181(a) of this title, or

(II) whose visa has been issued without compliance with the provisions of section 1153 of this title,

is inadmissible.

(ii) Waiver authorized

For provision authorizing waiver of clause (i), see subsection (k) of this section.

(B) Nonimmigrants

(i) In general

Any nonimmigrant who—

(I) is not in possession of a passport valid for a minimum of six months from the date of the expiration of the initial period of the alien's admission or contemplated initial period of stay authorizing the alien to return to the country from which the alien came or to proceed to and enter some other country during such period, or

(II) is not in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission,

is inadmissible.

(ii) General waiver authorized

For provision authorizing waiver of clause (i), see subsection (d)(4) of this section.

(iii) Guam and Northern Mariana Islands visa waiver

For provision authorizing waiver of clause (i) in the case of visitors to Guam or the Commonwealth of the Northern Mariana Islands, see subsection (*l*).

(iv) Visa waiver program

For authority to waive the requirement of clause (i) under a program, see section 1187 of this title.

* * * * *

(9) Aliens previously removed

(A) Certain aliens previously removed

(i) Arriving aliens

Any alien who has been ordered removed under section 1225(b)(1) of this title or at the end of proceedings under section 1229a of this title initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens

Any alien not described in clause (i) who—

(I) has been ordered removed under section 1229a of this title or any other provision of law, or

(II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception

Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place

outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

(B) Aliens unlawfully present

(i) In general

Any alien (other than an alien lawfully admitted for permanent residence) who—

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e)[3] of this title) prior to the commencement of proceedings under section 1225(b)(1) of this title or section 1229a of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States,

is inadmissible.

(ii) Construction of unlawful presence

For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United

[3] So in original. Probably should be a reference to section 1229c of this title.

States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

(iii) Exceptions

(I) Minors

No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

(II) Asylees

No period of time in which an alien has a bona fide application for asylum pending under section 1158 of this title shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

(III) Family unity

No period of time in which the alien is a beneficiary of family unity protection pursuant to section 301 of the Immigration Act of 1990 shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

(IV) Battered women and children

Clause (i) shall not apply to an alien who would be described in paragraph (6)(A)(ii) if

"violation of the terms of the Alien's nonimmigrant visa" were substituted for "unlawful entry into the United States" in subclause (III) of that paragraph.

(V) Victims of a severe form of trafficking in persons

Clause (i) shall not apply to an alien who demonstrates that the severe form of trafficking (as that term is defined in section 7102 of title 22) was at least one central reason for the alien's unlawful presence in the United States.

(iv) Tolling for good cause

In the case of an alien who—

(I) has been lawfully admitted or paroled into the United States,

(II) has filed a nonfrivolous application for a change or extension of status before the date of expiration of the period of stay authorized by the Attorney General, and

(III) has not been employed without authorization in the United States before or during the pendency of such application,

the calculation of the period of time specified in clause (i)(I) shall be tolled during the pendency of such application, but not to exceed 120 days.

(v) Waiver

The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United

States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

(C) Aliens unlawfully present after previous immigration violations

(i) In general

Any alien who—

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 1225(b)(1) of this title, section 1229a of this title, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception

Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.

(iii) Waiver

The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between—

(I) the alien's battering or subjection to extreme cruelty; and

(II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

* * * * *

2. 8 U.S.C. 1227 provides in pertinent part:

Deportable aliens

(a) Classes of deportable aliens

Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:

(1) Inadmissible at time of entry or of adjustment of status or violates status

(A) Inadmissible aliens

Any alien who at the time of entry or adjustment of status was within one or more of the classes of aliens inadmissible by the law existing at such time is deportable.

(B) Present in violation of law

Any alien who is present in the United States in violation of this chapter or any other law of the United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under section 1201(i) of this title, is deportable.

(C) Violated nonimmigrant status or condition of entry

(i) Nonimmigrant status violators

Any alien who was admitted as a nonimmigrant and who has failed to maintain the nonimmigrant status in which the alien was admitted or to which it was changed under section 1258 of this title, or to comply with the conditions of any such status, is deportable.

(ii) Violators of conditions of entry

Any alien whom the Secretary of Health and Human Services certifies has failed to comply with terms, conditions, and controls that were imposed under section 1182(g) of this title is deportable.

(D) Termination of conditional permanent residence

(i) In general

Any alien with permanent resident status on a conditional basis under section 1186a of this title (relating to conditional permanent resident status for certain alien spouses and sons and daughters) or under section 1186b of this

title (relating to conditional permanent resident status for certain alien entrepreneurs, spouses, and children) who has had such status terminated under such respective section is deportable.

(ii) Exception

Clause (i) shall not apply in the cases described in section 1186a(c)(4) of this title (relating to certain hardship waivers).

(E) Smuggling

(i) In general

Any alien who (prior to the date of entry, at the time of any entry, or within 5 years of the date of any entry) knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is deportable.

(ii) Special rule in the case of family reunification

Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 1153(a)(2) of this title (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no

other individual) to enter the United States in violation of law.

(iii) Waiver authorized

The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) in the case of any alien lawfully admitted for permanent residence if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(F) Repealed. Pub. L. 104-208, div. C, title VI, § 671(d)(1)(C), Sept. 30, 1996, 110 Stat. 3009-723

(G) Marriage fraud

An alien shall be considered to be deportable as having procured a visa or other documentation by fraud (within the meaning of section 1182(a)(6)(C)(i) of this title) and to be in the United States in violation of this chapter (within the meaning of subparagraph (B)) if—

(i) the alien obtains any admission into the United States with an immigrant visa or other documentation procured on the basis of a marriage entered into less than 2 years prior to such admission of the alien and which, within 2 years subsequent to any admission of the alien in the United States, shall be judicially annulled or terminated, unless the alien estab-

lishes to the satisfaction of the Attorney General that such marriage was not contracted for the purpose of evading any provisions of the immigration laws, or

(ii) it appears to the satisfaction of the Attorney General that the alien has failed or refused to fulfill the alien's marital agreement which in the opinion of the Attorney General was made for the purpose of procuring the alien's admission as an immigrant.

(H) Waiver authorized for certain misrepresentations

The provisions of this paragraph relating to the removal of aliens within the United States on the ground that they were inadmissible at the time of admission as aliens described in section 1182(a)(6)(C)(i) of this title, whether willful or innocent, may, in the discretion of the Attorney General, be waived for any alien (other than an alien described in paragraph (4)(D)) who—

(i)(I) is the spouse, parent, son, or daughter of a citizen of the United States or of an alien lawfully admitted to the United States for permanent residence; and

(II) was in possession of an immigrant visa or equivalent document and was otherwise admissible to the United States at the time of such admission except for those grounds of inadmissibility specified under paragraphs (5)(A) and (7)(A) of section 1182(a) of this title which were a direct result of that fraud or misrepresentation.

(ii) is a VAWA self-petitioner.

A waiver of removal for fraud or misrepresentation granted under this subparagraph shall also operate to waive removal based on the grounds of inadmissibility directly resulting from such fraud or misrepresentation.

(2) Criminal offenses

(A) General crimes

(i) Crimes of moral turpitude

Any alien who—

(I) is convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent resident status under section 1255(j) of this title) after the date of admission, and

(II) is convicted of a crime for which a sentence of one year or longer may be imposed,

is deportable.

(ii) Multiple criminal convictions

Any alien who at any time after admission is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable.

(iii) Aggravated felony

Any alien who is convicted of an aggravated felony at any time after admission is deportable.

(iv) High speed flight

Any alien who is convicted of a violation of section 758 of title 18 (relating to high speed flight from an immigration checkpoint) is deportable.

(v) Failure to register as a sex offender

Any alien who is convicted under section 2250 of title 18 is deportable.

(vi) Waiver authorized

Clauses (i), (ii), (iii), and (iv) shall not apply in the case of an alien with respect to a criminal conviction if the alien subsequent to the criminal conviction has been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States.

(B) Controlled substances

(i) Conviction

Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable.

(ii) Drug abusers and addicts

Any alien who is, or at any time after admission has been, a drug abuser or addict is deportable.

(C) Certain firearm offenses

Any alien who at any time after admission is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18) in violation of any law is deportable.

(D) Miscellaneous crimes

Any alien who at any time has been convicted (the judgment on such conviction becoming final) of, or has been so convicted of a conspiracy or attempt to violate—

(i) any offense under chapter 37 (relating to espionage), chapter 105 (relating to sabotage), or chapter 115 (relating to treason and sedition) of title 18 for which a term of imprisonment of five or more years may be imposed;

(ii) any offense under section 871 or 960 of title 18;

(iii) a violation of any provision of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) or the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.); or

(iv) a violation of section 1185 or 1328 of this title,

is deportable.

(E) Crimes of domestic violence, stalking, or violation of protection order, crimes against children and

(i) Domestic violence, stalking, and child abuse

Any alien who at any time after admission is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable. For purposes of this clause, the term "crime of domestic violence" means any crime of violence (as defined in section 16 of title 18) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government.

(ii) Violators of protection orders

Any alien who at any time after admission is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or

persons for whom the protection order was issued is deportable. For purposes of this clause, the term "protection order" means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a pendente lite order in another proceeding.

(F) Trafficking

Any alien described in section 1182(a)(2)(H) of this title is deportable.

* * * * *

(4) Security and related grounds

(A) In general

Any alien who has engaged, is engaged, or at any time after admission engages in—

(i) any activity to violate any law of the United States relating to espionage or sabotage or to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

(ii) any other criminal activity which endangers public safety or national security, or

(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means,

is deportable.

(B) Terrorist activities

Any alien who is described in subparagraph (B) or (F) of section 1182(a)(3) of this title is deportable.

(C) Foreign policy

(i) In general

An alien whose presence or activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is deportable.

(ii) Exceptions

The exceptions described in clauses (ii) and (iii) of section 1182(a)(3)(C) of this title shall apply to deportability under clause (i) in the same manner as they apply to inadmissibility under section 1182(a)(3)(C)(i) of this title.

(D) Participated in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing

Any alien described in clause (i), (ii), or (iii) of section 1182(a)(3)(E) of this title is deportable.

(E) Participated in the commission of severe violations of religious freedom

Any alien described in section 1182(a)(2)(G) of this title is deportable.

(F) Recruitment or use of child soldiers

Any alien who has engaged in the recruitment or use of child soldiers in violation of section 2442 of title 18 is deportable.

* * * * *

3. 8 U.S.C. 1229a provides in pertinent part:

Removal proceedings

(a) Proceeding

(1) In general

An immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien.

(2) Charges

An alien placed in proceedings under this section may be charged with any applicable ground of inadmissibility under section 1182(a) of this title or any applicable ground of deportability under section 1227(a) of this title.

(3) Exclusive procedures

Unless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States. Nothing in this section shall affect proceedings conducted pursuant to section 1228 of this title.

(b) Conduct of proceeding

(1) Authority of immigration judge

The immigration judge shall administer oaths, receive evidence, and interrogate, examine, and cross-examine the alien and any witnesses. The immigration judge may issue subpoenas for the attendance of witnesses and presentation of evidence. The immigration judge shall have authority (under regulations prescribed by the Attorney General) to sanction by civil money penalty any action (or inaction) in contempt of the judge's proper exercise of authority under this chapter.

(2) Form of proceeding

(A) In general

The proceeding may take place—

(i) in person,

(ii) where agreed to by the parties, in the absence of the alien,

(iii) through video conference, or

(iv) subject to subparagraph (B), through telephone conference.

(B) Consent required in certain cases

An evidentiary hearing on the merits may only be conducted through a telephone conference with the consent of the alien involved after the alien has been advised of the right to proceed in person or through video conference.

* * * * *

(c) Decision and burden of proof

(1) Decision

(A) In general

At the conclusion of the proceeding the immigration judge shall decide whether an alien is removable from the United States. The determination of the immigration judge shall be based only on the evidence produced at the hearing.

* * * * *

(2) Burden on alien

In the proceeding the alien has the burden of establishing—

(A) if the alien is an applicant for admission, that the alien is clearly and beyond doubt entitled to be admitted and is not inadmissible under section 1182 of this title; or

(B) by clear and convincing evidence, that the alien is lawfully present in the United States pursuant to a prior admission.

In meeting the burden of proof under subparagraph (B), the alien shall have access to the alien's visa or other entry document, if any, and any other records and documents, not considered by the Attorney General to be confidential, pertaining to the alien's admission or presence in the United States.

(3) Burden on service in cases of deportable aliens

(A) In general

In the proceeding the Service has the burden of establishing by clear and convincing evidence

that, in the case of an alien who has been admitted to the United States, the alien is deportable. No decision on deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence.

* * * * *

(4) Applications for relief from removal

(A) In general

An alien applying for relief or protection from removal has the burden of proof to establish that the alien—

(i) satisfies the applicable eligibility requirements; and

(ii) with respect to any form of relief that is granted in the exercise of discretion, that the alien merits a favorable exercise of discretion.

* * * * *

(e) Definitions

In this section and section 1229b of this title:

(1) Exceptional circumstances

The term "exceptional circumstances" refers to exceptional circumstances (such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances) beyond the control of the alien.

(2) Removable

The term "removable" means—

(A) in the case of an alien not admitted to the United States, that the alien is inadmissible under section 1182 of this title, or

(B) in the case of an alien admitted to the United States, that the alien is deportable under section 1227 of this title.

4. 8 U.S.C. 1229b provides in pertinent part:

Cancellation of removal; adjustment of status

(a) Cancellation of removal for certain permanent residents

The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien—

(1) has been an alien lawfully admitted for permanent residence for not less than 5 years,

(2) has resided in the United States continuously for 7 years after having been admitted in any status, and

(3) has not been convicted of any aggravated felony.

(b) Cancellation of removal and adjustment of status for certain nonpermanent residents

(1) In general

The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for

permanent residence, an alien who is inadmissible or deportable from the United States if the alien—

(A) has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application;

(B) has been a person of good moral character during such period;

(C) has not been convicted of an offense under section 1182(a)(2), 1227(a)(2), or 1227(a)(3) of this title, subject to paragraph (5); and

(D) establishes that removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

* * * * *

(c) Aliens ineligible for relief

The provisions of subsections (a) and (b)(1) of this section shall not apply to any of the following aliens:

(1) An alien who entered the United States as a crewman subsequent to June 30, 1964.

(2) An alien who was admitted to the United States as a nonimmigrant exchange alien as defined in section 1101(a)(15)(J) of this title, or has acquired the status of such a nonimmigrant exchange alien after admission, in order to receive graduate medical education or training, regardless of whether or not

the alien is subject to or has fulfilled the two-year foreign residence requirement of section 1182(e) of this title.

(3) An alien who—

(A) was admitted to the United States as a nonimmigrant exchange alien as defined in section 1101(a)(15)(J) of this title or has acquired the status of such a nonimmigrant exchange alien after admission other than to receive graduate medical education or training,

(B) is subject to the two-year foreign residence requirement of section 1182(e) of this title, and

(C) has not fulfilled that requirement or received a waiver thereof.

(4) An alien who is inadmissible under section 1182(a)(3) of this title or deportable under section 1227(a)(4) of this title.

(5) An alien who is described in section 1231(b)(3)(B)(i) of this title.

(6) An alien whose removal has previously been cancelled under this section or whose deportation was suspended under section 1254(a) of this title or who has been granted relief under section 1182(c) of this title, as such sections were in effect before September 30, 1996.

(d) Special rules relating to continuous residence or physical presence

(1) Termination of continuous period

For purposes of this section, any period of continuous residence or continuous physical presence in the United States shall be deemed to end (A) except in the case of an alien who applies for cancellation of removal under subsection (b)(2) of this section, when the alien is served a notice to appear under section 1229(a) of this title, or (B) when the alien has committed an offense referred to in section 1182(a)(2) of this title that renders the alien inadmissible to the United States under section 1182(a)(2) of this title or removable from the United States under section 1227(a)(2) or 1227(a)(4) of this title, whichever is earliest.

(2) Treatment of certain breaks in presence

An alien shall be considered to have failed to maintain continuous physical presence in the United States under subsections (b)(1) and (b)(2) of this section if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days.

(3) Continuity not required because of honorable service in Armed Forces and presence upon entry into service

The requirements of continuous residence or continuous physical presence in the United States under subsections (a) and (b) of this section shall not apply to an alien who—

(A) has served for a minimum period of 24 months in an active-duty status in the Armed

Forces of the United States and, if separated from such service, was separated under honorable conditions, and

(B) at the time of the alien's enlistment or induction was in the United States.

* * * * *