No. 13-70653

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Catherine Lopena TORRES,
Petitioner,

v.

William P. BARR, Attorney General,
Respondent.

ON PETITION FOR REVIEW OF AN ORDER
BY THE BOARD OF IMMIGRATION APPEALS

BRIEF OF *AMICI CURIAE* ORGANIZATIONS ASSISTING SURVIVORS OF DOMESTIC VIOLENCE IN SUPPORT OF PETITIONER'S PETITION FOR REHEARING EN BANC

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Amici state that no Amici have any parent corporation nor are publicly held. The National Immigrant Justice Center is a program of the Heartland Alliance for Human Needs and Human rights, a not-for-profit corporation. The Heartland Alliance has no parent corporation and no publicly-held corporation owns 10% or more of its stock.

DATED: September 20, 2019

/s Charles Roth
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AMICI CURIAE STATEMENT OF INTEREST

Amici curiae are nonprofit organizations that advocate for, and work extensively with, survivors of domestic violence. They write to explain why an overbroad interpretation of 8 U.S.C. § 1182(a)(7)(A) is incorrect under the statute and would vitiate protections for survivors of domestic violence codified at 8 U.S.C. § 1182(a)(6)(A)(ii).[1] Full statements of interest for each proposed Amici are included in the Addendum.

SUMMARY OF ARGUMENT OF AMICI

Amici respectfully urge the Court to grant rehearing en banc. The panel concurrence, joined by all three panel members, correctly explains that en banc rehearing is necessary to correct a misinterpretation previously adopted by the Court. *Torres v. Barr*, 925 F.3d 1360, 1363 (9th Cir. 2019). Congress exempted individuals in the Commonwealth of the Northern Mariana Islands (CNMI) from 8 U.S.C. § 1182(a)(6)(A); the Government reads a neighboring provision at § 1182(a)(7)(A) so broadly as to effectively nullify this act of Congressional grace.

The concurrence is correct as a textual matter, and in light of available legislative history. Pertinent statutory definitions in the Immigration and

[1] *Amici Curiae* states that: (1) no party's counsel authored this brief in whole or in part; (2) no party or party's counsel contributed money that was intended to fund preparing or submitting the brief, and (3) no person other than *Amici Curiae*, their members, and their counsel contributed money that was intended to fund preparing or submitting the brief. Both parties have consented to the filing of this brief.

Nationality Act (INA), as well as consistent statutory usage, show that § 1182(a)(7)(A) cannot mean what the Government urges for it. The Government's view would mean that the 1996 laws *sub silentio* expanded the reach of § 1182(a)(7)(A), though Congress made no substantial changes in that provision since its 1952 enactment, and made no mention of the change in the legislative history. Congress is presumed not to effectuate such a massive change to the immigration laws indirectly, or to alter the longstanding meaning of statutes without clear intent.

The effects of the Government's overbroad reading of § 1182(a)(7)(A) are not limited to the CNMI. Congress also exempted certain "self-petitioners" under the Violence Against Women Act (VAWA) from inadmissibility under § 1182(a)(6)(A). Just as the Government's view would undermine Congressional intent as to CNMI residents, it would render the VAWA exception at § 1182(a)(6)(A)(ii) a dead letter. This is further evidence that the Government misreads § 1182(a)(7)(A). It also tends to show the ongoing significance of the Court's adoption of the Government's erroneous argument.

Amici respectfully urges the Court to grant rehearing en banc to consider these important questions.

ARGUMENT

I. *Minto* misinterpreted 8 U.S.C. § 1182(a)(7)(A).

The panel concurrence in this case cogently explains that the Court's decision in *Minto v. Sessions*, 854 F.3d 619 (9th Cir. 2017), was wrongly decided. Amici agree with this analysis, but would add additional points.

A. Congress defines an "application for admission" to refer to an actual application for admission, and consistently uses the term in that sense.

The concurrence properly cited a published Board opinion which explains that "being an 'applicant for admission' under [8 U.S.C. § 1225(a)(1)] is distinguishable from 'applying ... for admission to the United States.'" *Torres*, 925 F.3d at 1364 (citing *Matter of Y-N-P-*, 26 I. & N. Dec. 10, 13 (B.I.A. 2012)). The analysis in the Board's published decision is correct. But the Court need not rely on that Board authority; this point is evident from the statutory text itself. Congress defined "application for admission" in the statute in terms inconsistent with *Minto*, and has used that phrase consistently throughout the statute.

The definitional section of the INA defines the term "application for admission" as "ha[ving] reference to the application for *admission into the United States* and not to the application for the issuance of an immigrant or nonimmigrant visa." 8 U.S.C. § 1101(a)(4) (emphasis added). The term "admission" is also defined by statute, to mean "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). While 8 U.S.C. § 1225(a)(1) "deems" noncitizens present without admission to be "applicants for admission," it does not deem their presence as an "application" or modify the statutory definition of either "admission" or "application for admission." Congress could certainly modify or deviate from either statutory definition, but absent some statement to that effect, Congress should be presumed to be using terms as defined in statute. *Suwannee Fruit & S.S. Co.*, 336 U.S. 198, 201 (1949) ("Statutory definitions control the meaning of statutory words… in the usual case.").

The INA consistently uses the term "applications for admission" to refer to lawful entry into the United States, as distinct from applications for visas or applications for status within the United States. For instance, when allocating the burden of proof, Congress provided: "[w]henever any person makes application for a visa or any other document required for entry, or *makes application for admission, or otherwise attempts to enter the United States*, the burden of proof shall be upon such person to establish that he is … not inadmissible under any provision of this chapter." 8 U.S.C. § 1361.

Another example is 8 U.S.C. § 1503(c), which allows individuals abroad who plausibly claim citizenship to obtain a document entitling them to return to the United States. A person in possession of that document "may *apply for admission* to the United States *at any port of entry*, and shall be subject to all the provisions

of this chapter relating to the conduct of proceedings involving aliens seeking admission to the United States." 8 U.S.C. § 1503(c) (emphasis added). Again, the application for admission is defined to occur at a port of entry. Likewise, 8 U.S.C. § 1229c(a)(4) bars voluntary departure for "an alien who is arriving in the United States." 8 U.S.C. §1229c(a)(4).[2] The following sentence provides that noncitizens thus barred from voluntary departure are not precluded "from withdrawing the *application for admission* in accordance with 8 U.S.C. §1225(a)(4)." 8 U.S.C. § 1229c(a)(4) (emphasis added). Other examples further confirm this. *See* 8 U.S.C. § 1184(b) ("Every alien … shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status under section 1101(a)(15) of this title."); 8 U.S.C. § 1326(a)(2) (prohibiting return of deported noncitizen unless he obtains advance consent to reapply for admission "prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory").

The Government asks the Court to construe "application for admission" to include noncitizens present inside the United States, but it can point to not one

[2] The regulations define the term "arriving alien" to include only noncitizens apprehended at ports of entry and those who are interdicted and brought to the United States. 8 C.F.R. § 1001.1(p).

instance where Congress has used the term "application for admission" in the manner it urges. Rather, Congress has used that phrase only in ways consistent with the relevant statutory definitions. *Cf. Ortiz-Bouchet v. U.S. Attorney General*, 714 F.3d 1353, 1356 (11th Cir. 2013) (per curiam); *Marques v. Lynch*, 834 F.3d 549, 561 (5th Cir. 2016). The Government asks the Court to interpret the phrase "application for admission" differently in § 1182(a)(7)(A) from all other places in the INA; the Court should require strong justification for overlooking the statutory definitions.

B. When Congress refers to a "time of application" it means to denote an actual point in time.

This reading of the statute is further confirmed by Congress' reference in § 1182(a)(7)(A) to "the time of application for admission." In every other context where Congress refers to the "time" of something, it means to denote a particular point in time. Section 1182(a)(7)(A) should not be interpreted any differently.

For instance, the public charge ground at 8 U.S.C. § 1182(a)(4) renders inadmissible "[a]ny alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at *the time of application for admission* or adjustment of status, is likely at any time to become a public charge is excludable.") (emphasis added).[3] This text distinguishes between

[3] When § 1182(a)(4) was enacted, immigration fell within the purview of the Attorney General; with the creation of the Department of Homeland Security,

applications for visas, seeking admission into the United States, and adjustment of status within the United States. Moreover, the sequential ordering of § 1182(a)(4) illustrates Congress' understanding of "application for admission"; the statute moves from applications abroad, to applications at the border, to applications within the United States. If noncitizens present in the United States and seeking adjustment of status were making applications for admission, the adjustment of status language would be superfluous.

Congress used similar language throughout the statute. *See* 8 U.S.C. § 1187(a)(3) (requiring individual seeking visa-waiver entry to have machine-readable passport "at the time of application for admission"); *see also* 8 U.S.C. § 1187(a)(12)(A)(ii)(III) (prohibiting visa-waiver entries for noncitizens who have visited a country "that is designated, at the time the alien applies for admission" as a country or area of concern).[4] Not one of these contexts lends itself to the Government's suggestion that "the time of application" is an open-ended period

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certain functions were transferred, including inspections at Ports of Entry. *See* 8 U.S.C. §§ 1103(a), (g).

[4] By contrast, the criminal inadmissibility grounds at U.S.C. § 1182(a)(2) are not limited by statute to any particular point in time. Thus, in *Matter of Valenzuela-Felix*, since the application for admission was ongoing, and the noncitizen's drug conviction was discovered before he was admitted, he was subject to the inadmissibility grounds. 26 I. & N. Dec. 53, 59 (B.I.A. 2012).

lasting months or years. And the Government can point to no place in the INA in which Congress used similar language like this to mean an ongoing period.

This is further confirmed by 8 U.S.C. § 1181(a). That statute closely tracks the inadmissibility rule of § 1182(a)(7)(A), providing that "no immigrant shall be admitted into the United States unless, *at the time of application for admission,* he (1) has a valid unexpired immigrant visa or was born subsequent to the issuance of such visa of the accompanying parent, and (2) presents a valid unexpired passport or other suitable travel document, or document of identity and nationality." The two provisions are *in pari materia*, pertaining to the same subject, and should be construed "as if they were one law." *United States v. Freeman*, 3 How. 556, 564 (1845); *United States v. Stewart*, 311 U. S. 60, 64 (1940). The plain text meaning of § 1181(a) is further confirmed by the exceptions to it. Section 1181(b) provides that a "returning resident," defined at 8 U.S.C. § 1101(a)(27)(A), may be admitted back into the United States without a passport, at the discretion of the Attorney General. Section 1181(c) permits refugees to enter the United States without the documents specified by § 1181(a), because a separate legal regime applies to them. 8 U.S.C. § 1157. In short, § 1181 applies only to actual entries from abroad; under

in pari materia principles, § 1182(a)(7)(A) should be interpreted consistently with § 1181(a), to apply to entries from abroad.

All this is strong evidence that Congress meant what it said when it wrote § 1182(a)(7)(A), as Petitioner explains. Pet. For Reh'g. at 7-8.

C. Deeming certain noncitizens as applicants for admission does not necessarily make their presence an application or their residence a "time of application."

In *Minto*, the Court found the noncitizen an applicant for admission, reasoned that the application should be treated as ongoing, and concluded on that basis that § 1182(a)(7)(A) rendered him inadmissible. 854 F. 3d at 624. But *Minto* did not consider the statutory definition of "application for admission" at 8 U.S.C. § 1101(a)(4), nor did *Minto* consider the plethora of statutory evidence for treating an "application for admission" as having a settled meaning under the immigration laws. In general, "[s]tatutory definitions control the meaning of statutory words." *Suwannee Fruit*, 336 U.S. at 201. Following the INA definitional section makes this an easy case.

While 8 U.S.C. § 1225(a)(1) "deems" noncitizens present without admission to be "applicants for admission," it does not define their presence as an "application" or treat their years-long residence as a "time of application for admission." Since § 1225(a) does not define those specific terms, nor "deem" them

satisfied, there is no inconsistency between § 1225(a)(1) and § 1101(a)(4) or § 1101(a)(13)(A). Each statutory rule can govern in its own sphere.

Unless the statutory definitions are inapplicable, § 1182(a)(7)(A) applies only to individuals seeking admission into the United States, and is inapplicable to ongoing presence within the United States.

D. A statute's meaning is presumed not to change after enactment.

The provisions at issue here are not new to the immigration statute. Section 1182(a)(7)(A)(i) is a word-for-word reenactment of a provision included in the initial enactment of the INA. See 8 U.S.C. § 1182(a)(20) (1952); Pub. L. No. 414, 66 Stat. 166, 183-84 (1952).[5] Likewise, the definitional section of the INA included 8 U.S.C. § 1101(a)(4) in its current form; that provision has never been amended. Pub. L. 414, 66 Stat. at 166.

The Government apparently argues that § 1182(a)(7)(A) should no longer mean what it meant when originally enacted in 1952, nor what it meant the day before the 1996 statutes went into effect. But statutes, once enacted, are presumed to keep their meaning. *See Fourco Glass Co. v. Transmirra Products Corp*., 353 U.S. 222, 227 (1957); *United States v. Ryder*, 110 U.S. 729, 740 (1884).

[5] The renumbering of § 1182(a)(7)(A) from § 1182(a)(20) is irrelevant: "it will not be inferred that Congress, in revising and consolidating the laws, intended to change their effect, unless such intention is clearly expressed." *Anderson v. Pacific Coast S.S. Co.*, 225 U.S. 187, 198-199 (1912).

At any rate, the 1996 laws did not alter § 1182(a)(7)(A). That section was literally unchanged, except for one conforming amendment to replace the word "excludability" with "inadmissibility." That one-word change in § 1182(a)(7)(A) was "nothing more than a change 'in phraseology,'" something that does not affect the statute's meaning. *Keene Corp. v. United States*, 508 U.S. 200, 209 (1993).

The meaning of § 1182(a)(7)(A) would remain the same even if Congress had repealed the definitional provision at § 1101(a)(4). *See United States v. Le Bris*, 121 U.S. 278, 280 (1887) (repeal of definitional section "does not of itself change the meaning of the term it defines"). But here, we do not even have that; the definitional section remains unaltered.

The Government has offered no evidence that Congress intended to alter the longstanding meaning of 8 U.S.C. § 1182(a)(7)(A). The as-enacted meaning of § 1182(a)(7)(A) is consistent with how the INA defines the relevant statutory terms, and tracks Congress's consistent usage elsewhere in the INA. Nothing rebuts the presumption that the statute's meaning remains unchanged.

E. Congress did not hide an elephant in the mousehole of § 1182(a)(7)(A).

The Government argues that by deeming certain individuals as applicants for admission in § 1225(a)(1), Congress turned § 1182(a)(7)(A) into the broadest inadmissibility ground in the INA. However, it is a canon of construction that, "Congress . . . does not alter the fundamental details of a regulatory scheme in

vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'n*, 531 U.S. 457, 468 (2001). The Government's approach contravenes normal interpretational rules, as well as the relevant legislative history.

The 1996 laws made no substantive changes to § 1182(a)(7)(A). Literally the only change made to the text of § 1182(a)(7)(A) was in an "Additional Conforming Amendment" to replace the words "is excludable" with "is inadmissible" everywhere they appeared in 8 U.S.C. § 1182(a). Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (hereinafter IIRIRA), Division C of Pub. L. No. 104-208, § 308(d)(1)(B), 110 Stat. 3009-617. Nor did the 1996 laws amend the section header to § 1182(a)(7)(A) ("Documentation requirements"), *cf. Trainmen v. Baltimore & Ohio R. Co.*, 331 U.S. 519, 529 (1947), or alter the definition of "application for admission" found at § 1101(a)(4). The inadmissibility ground of § 1182(a)(7)(A) had a settled meaning, defined in statute and consistent with usage in surrounding provisions.

The Government's argument is that Congress *sub silentio* dramatically effected a "radical reinterpretation" of that law, *see Hall v. Hall*, 138 S. Ct. 1118, 1129 (2018), when it added ancillary rule at § 1225(a)(1). Congress allegedly used the "deeming" provision of § 1225(a)(1) to undo the relevant statutory definitions, 8 U.S.C. §§ 1101(a)(4), 1101(a)(13)(A), as they apply to § 1182(a)(7)(A).

Given the pertinent definitions enshrined in statute, the Court would have to find "that Congress … had buried the ambiguity in which the pachyderm lurks beneath an incredibly deep mound of specificity," i.e., the statutory definition of "application for admission" and the consistent usage of that term throughout the immigration statute. *See Am. Bar Ass'n v. FTC*, 430 F.3d 457, 469 (D.C. Cir. 2005). Moreover, it would have to find that Congress did this through the "subtle device," *Whitman*, 531 U.S. at 468, of deeming individuals applicants for admission, where the agency sometimes treats applications as continuing.

Had Congress intended to transmogrify § 1182(a)(7)(A), one would expect some hint of this in the legislative history. But the only relevant legislative history is to the contrary. Prior to 1996, individuals who had unlawfully entered the United States were deportable for having "entered without inspection." 8 U.S.C. § 1251(a)(1)(B) (1995). Because deportation proceedings had stronger procedural protections than exclusion proceedings, there was some advantage to effectuating an entry, even an unlawful one. Congress sought to ensure that noncitizens "who have entered the United States without being legally admitted… bear the same burden of proof as an alien seeking to be admitted at a port of entry." H.R. Rep. No. 104-469, at 157 (1996). It amended the statute to treat individuals who entered without inspection as applicants for admission. 8 U.S.C. § 1225(a)(1).

When Congress deemed un-admitted individuals applicants for admission, it added 8 U.S.C. § 1182(a)(6)(A) (individuals present without having been admitted). The conference report – the strongest type of legislative history, *see Commissioner v. Acker*, 361 U.S. 87, 94 (1959) (Frankfurter, J., dissenting)—explains Congress's thinking. Congress explained that "[t]he current category of persons who are deportable because they have made an entry without inspection will, under the amendments made by section 301(c) of this bill [adding § 1225(a)(1)], instead be considered inadmissible under revised paragraph [§1182(a)(6)(A)]." H.R. Rep. No. 104-828, at 208 (1996) (Conf. Rep.).

And indeed, since the enactment of the 1996 laws, § 1182(a)(6)(A) has been the most commonly charged ground of inadmissibility. See TRAC Immigration, *Charges Asserted in Deportation Proceedings in the Immigration Courts: FY 2002 - FY 2011*, www.trac.syr.edu/immigration/reports/260/include/detailchg.html.

By contrast, there is no evidence to suggest that Congress understood § 1182(a)(7)(A) to supplant § 1182(a)(6)(A), or to be an overarching removability ground applicable to the undocumented population. The Government's proffered interpretation would mean that while Congress was talking about § 1182(a)(6)(A), and creating exceptions to it, in fact it was enacting sub silentio a more powerful and overarching inadmissibility ground.

II. Rendering § 1182(a)(6)(A) superfluous would undercut statutory protections for survivors of domestic violence.

When Congress enacted § 1182(a)(6)(A), it was concerned that the new statute would harm immigrant victims of spousal battery and domestic violence. It had enacted protections for victims of domestic violence only two years earlier. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, 108 Stat. 1796, 1953-55, § 40702 (Sep. 13, 1994). Congress therefore enacted § 1182(a)(6)(A)(ii), which exempts certain survivors of spousal battery and domestic violence from inadmissibility for being present without inspection.

The VAWA exception to § 212(a)(6)(A) inadmissibility provides:

> (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…, 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.

8 U.S.C. § 1182(a)(6)(A)(ii).[6] The term "VAWA self-petitioner" is statutorily defined. 8 U.S.C. § 1101(a)(51). An uncodified effective date provision for § 1182(a)(6)(A)(ii) makes clauses (II) and (III) (requiring a substantial connection

[6] Congress simultaneously enacted other protections for VAWA applicants, such as barring immigration authorities from making an adverse inadmissibility or deportability determination based on information from domestic abusers. IIRIRA § 384, 110 Stat. 3009–652, codified at 8 U.S.C. § 1367.

between the battery and the unlawful entry) inapplicable to self-petitioners who "first arrived in the United States before the title III–A effective date." IIRIRA § 301(c)(2), 110 Stat. 3009–579.

Under *Minto*, Congress's careful work to exempt VAWA self-petitioners was in vain. Under *Minto*'s logic, any undocumented self-petitioners whom Congress exempted from the reach of § 1182(a)(6)(A) would necessarily be included within § 1182(a)(7)(A). That a battered spouse was brought against her will into the United States would count for nothing, as § 1182(a)(7)(A) does not contain any exceptions for VAWA self-petitioners.

This is problematic for the same reasons that it is problematic as to individuals in the CNMI exempted from application of § 1182(a)(6)(A). In both cases, Congress was concerned that indiscriminate application of § 1182(a)(6)(A) would be inequitable and would undermine other Congressional goals. In both cases, Congress adopted an exception or limitation. And in both cases, Congress's statute is rendered a nullity by the Government's overly expansive view of § 1182(a)(7)(A).

III. *Minto* will cause continuing mischief and merits en banc rehearing.

Amici cannot speak directly to how many residents of CNMI are directly impacted by *Minto*; many immigration cases are heard by video-teleconference in

far-flung immigration courts. *See* 8 C.F.R. § 1003.23(d). Whatever the precise number, the impact of *Minto* on individuals like Ms. Torres is substantial.

But the mischief of this rule is not limited to CNMI; as explained above, the interpretation of § 1182(a)(7)(A) affects other populations. Most notably, this rule will affect many thousands of battered immigrant spouses who are otherwise eligible for protections from inadmissibility under § 1182(a)(6)(A).[7]

In fiscal year 2018, the last year for which data is publicly available, USCIS received 12,804 self-petitions under the Violence Against Women Act. USCIS, *Number of Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, Violence Against Women Act (VAWA) Self-Petitioner, Fiscal Years 2010-2019 (Fiscal Year 2019, Quarter 2) By Case Status, Fiscal Year, and Quarter*, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I360_VAWA_performancedata_fy2019_qtr2.pdf. Of this number, in the experience of Amici, a substantial percentage could qualify for the exception to inadmissibility at § 1182(a)(6)(A)(ii), either due

[7] To be clear, *Minto*'s interpretation subjects *all* undocumented residents of the United States to an additional ground of inadmissibility. But the effect of an additional inadmissibility ground is modest in some cases. For instance, for individuals inadmissible under § 1182(a)(6)(A), eligibility for many common relief applications would be unaffected. See 8 U.S.C. § 1229b(b)(1) (Cancellation of Removal); 8 U.S.C. § 1158(a) (asylum); 8 U.S.C. § 1255(a) (Adjustment of Status). The people most clearly prejudiced by the misinterpretation of § 1182(a)(7)(A) are individuals shielded from inadmissibility under § 1182(a)(6)(A), such as CNMI residents and VAWA self-petitioners.

to a substantial connection between undocumented status and the abuse, *see* 8 U.S.C. § 1182(a)(6)(A)(ii)(C), or because Congress excuses them from the substantial connection requirement due to their lengthy residence. IIRIRA § 301(c)(2), 110 Stat. 3009–579.

Until recently, most self-petitioners have not needed to invoke the exception because USCIS has exercised its discretion not to begin removal proceedings against individuals applying for VAWA protection. However, USCIS prosecutorial discretion practices have shifted. Under current agency practice, individuals may be placed into removal proceedings after applying for protection as victims of domestic violence. *See* United States Citizenship and Immigration Services, *Policy Memo, Updated guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens* 9 (June 28, 2018), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf. Amici is now aware of self-petitioners being placed into removal proceedings. This makes it more important than ever that the exception written into law be given effect in appropriate cases.

Under the *Minto* rule, however, the statutory exception at § 1182(a)(6)(A)(ii) will not help VAWA self-petitioners. The statute does not exempt VAWA self-petitioners from § 1182(a)(7)(A) or from other inadmissibility grounds; it only

exempts them from the ground that Congress expected to apply. If undocumented self-petitioners are inadmissible under § 1182(a)(7)(A) as well as § 1182(a)(6)(A), the exception is of no utility.

The effects of turning § 1182(a)(7)(A) from an unexceptionable documentation requirement into an all-purpose inadmissibility ground cannot be fully foreseen. But as it stands, it affects the rights of many thousands of vulnerable individuals whom Congress enacted laws to help. The Court should act now to reverse *Minto*.

CONCLUSION

For the foregoing reasons, Amici urge the Court to grant the petition for rehearing en banc.

Respectfully Submitted,

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ADDENDUM OF AMICI STATEMENTS OF INTEREST

The Asian Pacific Institute on Gender-Based Violence (formerly, Asian & Pacific Islander Institute on Domestic Violence) is a national resource center on domestic violence, sexual violence, human trafficking, and other forms of gender-based violence in the Asian and Pacific Islander and immigrant communities. The Institute serves a national network of advocates and community-based service programs that work with Asian and Pacific Islander and immigrant and refugee survivors, and provides analysis on critical issues facing victims in the Asian and Pacific Islander ("API") and immigrant and refugee communities, including training and technical assistance on implementation of the Violence Against Women Act, immigration law and practice, and how they impact API and immigrant survivors. The Institute promotes culturally relevant intervention and prevention, provides expert consultation, technical assistance and training; conducts and disseminates critical research; and informs public policy.

ASISTA Immigration Assistance (ASISTA) worked with Congress to create and expand routes to secure immigration status for survivors of domestic violence, sexual assault, and other crimes, which were incorporated in the 1994 Violence Against Women Act (VAWA) and its progeny. ASISTA serves as liaison for the field with Department of Homeland Security (DHS) personnel charged with implementing these laws, most notably Citizenship and Immigration Services

(CIS), Immigration and Customs Enforcement (ICE), and DHS's Office for Civil Rights and Civil Liberties. ASISTA also trains and provides technical support to local law enforcement officials, civil and criminal court judges, domestic violence and sexual assault advocates, and legal services, non-profit, pro bono, and private attorneys working with immigrant crime survivors. ASISTA has previously filed amicus briefs in the Second, Seventh, Eighth, and Ninth Circuits. *See Rosario v. Holder*, 627 F.3d 58 (2d Cir. 2010); *Sanchez v. Keisler*, 505 F.3d 641 (7th Cir. 2007); *Torres-Tristan v. Holder*, 656 F.3d 653 (7th Cir. 2011); *L.D.G. v. Holder*, 744 F.3d 1022 (7th Cir. 2014); *Lopez-Birrueta v. Holder*, 633 F.3d 1211 (9th Cir. 2011).

The National Coalition Against Domestic Violence ("NCADV") is a non-profit group that is the nation's oldest national grassroots domestic violence organization. NCADV seeks institutional change in order to create a society in which domestic violence is never tolerated or minimized, in which victims and survivors are respected, and in which service providers have the resources to serve all victims and survivors.

The National Immigrant Justice Center ("NIJC"), a program of the Heartland Alliance for Human Needs and Human Rights, is a not-for-profit organization that provides legal representation and consultation to immigrants, refugees and asylum-seekers of low-income backgrounds. Each year, NIJC represents hundreds of

individuals through its legal staff and network of nearly 1,500 pro bono attorneys. NIJC represents numerous noncitizens charged with inadmissibility for being present without admission, who may be affected by an expanded interpretation of 8 U.S.C. § 1182(a)(7)(A). At any one time, NIJC represents dozens of battered spouses in filing self-petitions under the Violence Against Women Act.

Tahirih Justice Center ("Tahirih") is the largest multi-city direct services and policy advocacy organization specializing in assisting immigrant women and girls who survive gender-based violence. Tahirih offers free legal and social services to women and girls fleeing all forms of gender-based violence, including human trafficking, forced labor, domestic violence, rape and sexual assault, and female genital cutting/mutilation. Since its beginning in 1997, Tahirih has assisted more than 20,000 individuals. Through direct services, policy advocacy, and training and education, Tahirih protects immigrant women and girls and promotes a world where they can enjoy equality and live in safety and dignity. Tahirih amicus briefs have been accepted in numerous federal courts across the country.

CERTIFICATE OF COMPLIANCE

This brief complies with Federal Rule of Appellate Procedure 32(a)(7)(B) as it contains 4192 words, excluding those parts exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii). Additionally, this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface in Microsoft Word, using Times New Roman in 14 point font.

DATED: September 20, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2019, I electronically filed the foregoing BRIEF OF AMICI CURIAE ORGANIZATIONS ASSISTING SURVIVORS OF DOMESTIC VIOLENCE IN SUPPORT OF PETITIONER'S PETITION FOR REHEARING EN BANC with the Clerk of the Court for the U.S. Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that counsel of record for Petitioner and Respondent in this case are registered CM/ECF users and will therefore be served by the appellate CM/ECF system.

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