SUPREME COURT OF THE UNITED STATES

No. 92–344

CHRIS SALE, ACTING COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, ET AL., PETITIONERS
v. HAITIAN CENTERS COUNCIL, INC., ET AL.

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

[June 21, 1993]

JUSTICE STEVENS delivered the opinion of the Court.

The President has directed the Coast Guard to intercept vessels illegally transporting passengers from Haiti to the United States and to return those passengers to Haiti without first determining whether they may qualify as refugees. The question presented in this case is whether such forced repatriation, "authorized to be undertaken only beyond the territorial sea of the United States,"[1] violates §243(h)(1) of the Immigration and Nationality Act of 1952 (INA or Act).[2] We hold that neither

[1]This language appears in both Executive Order No. 12324, 3 CFR 181 (1981–1983 Comp.), issued by President Reagan, and Executive Order No. 12807, 57 Fed. Reg. 21133 (1992), issued by President Bush.

[2]Title 8 U. S. C. §1253(h) (1988 ed. and Supp. IV), as amended by §203(e) of the Refugee Act of 1980, Pub. L. 96–212, 94 Stat. 107. Section 243(h)(1) provides: "(h) Withholding of deportation or return. (1) The Attorney General shall not deport or return any alien (other than an alien described in section 1251(a)(4)(D) of this title) to a country if the Attorney General determines that such alien's life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social

§243(h) nor Article 33 of the United Nations Protocol Relating to the Status of Refugees[3] applies to action taken by the Coast Guard on the high seas.

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group, or political opinion."

Section 243(h)(2), 8 U. S. C. §1253(h)(2), provides, in part:

"(2) Paragraph (1) shall not apply to any alien if the Attorney General determines that—

. . . . .

"(D) there are reasonable grounds for regarding the alien as a danger to the security of the United States."

Before its amendment in 1965, §243(h), 66 Stat. 214, read as follows:

"The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to physical persecution on account of race, religion, or political opinion and for such period of time he deems to be necessary for such reason." 8 U. S. C. §1253(h) (1976 ed.); see also *INS* v. *Stevic*, 467 U. S. 407, 414, n. 6 (1984).

[3]Jan. 31, 1967, 19 U. S. T. 6223, T. I. A. S. No. 6577.

Aliens residing illegally in the United States are subject to deportation after a formal hearing.[4] Aliens arriving at the border, or those who are temporarily paroled into the country, are subject to an exclusion hearing, the less formal process by which they, too, may eventually be removed from the United States.[5] In either a deportation or exclusion proceeding the alien may seek asylum as a political refugee for whom removal to a particular country may threaten his life or freedom. Requests that the Attorney General grant asylum or withhold deportation to a particular country are typically, but not necessarily, advanced as parallel claims in either a deportation or an exclusion proceeding.[6] When an alien proves that he is a "refugee," the Attorney General has discretion to grant him asylum pursuant to §208 of the Act. If the proof shows that it is more likely than not that the alien's life or freedom would be threatened in a particular country because of his political or religious beliefs, under §243(h) the Attorney General must not send him to that country.[7] The INA offers these statutory protections only to aliens who reside in or

[4]8 U. S. C. §1252 (1988 ed. and Supp. IV).

[5]8 U. S. C. §1226. Although such aliens are located within the United States, the INA (in its use of the term exclusion) treats them as though they had never been admitted; §1226(a), for example, says that the special inquiry officer shall determine "whether an arriving alien . . . shall be allowed to enter or shall be excluded and deported." Aliens subject to either deportation or exclusion are eventually subjected to a physical act referred to as "deportation," but we shall refer, as immigration law generally refers, to the former as "deportables" and the latter as "excludables."

[6]See *INS* v. *Stevic*, 467 U. S., at 423, n. 18.

[7]*Id.*, at 424–425; 426, n. 20.

have arrived at the border of the United States. For 12 years, in one form or another, the interdiction program challenged here has prevented Haitians such as respondents from reaching our shores and invoking those protections.

On September 23, 1981, the United States and the Republic of Haiti entered into an agreement authorizing the United States Coast Guard to intercept vessels engaged in the illegal transportation of undocumented aliens to our shores. While the parties agreed to prosecute "illegal traffickers," the Haitian Government also guaranteed that its repatriated citizens would not be punished for their illegal departure.[8] The agreement also established that the United States Government would not return any passengers "whom the United States authorities determine[d] to qualify for refugee status." App. 382.

On September 29, 1981, President Reagan issued a proclamation in which he characterized "the continuing illegal migration by sea of large numbers of undocumented aliens into the southeastern United States" as "a serious national problem detrimental to the interests of the United States." Presidential Proclamation No. 4865, 3 CFR 50–51 (1981–1983 Comp.). He therefore suspended the entry of undocumented aliens from the high seas and ordered the Coast Guard to intercept vessels carrying such aliens and to return them to their point of origin. His executive order expressly "provided, however, that no person who is a refugee will be returned without

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[8]As a part of that agreement, "the Secretary of State obtained an assurance from the Haitian government that interdicted Haitians would `not be subject to prosecution for illegal departure.' See Agreement on Migrant(s)—Interdiction, Sept. 23, 1981, United States-Haiti, 33 U. S. T. 3559, 3560, T. I. A. S. No. 10241." See *Department of State* v. *Ray*, 502 U. S. ___, ___ (1991) (slip op., at 3–4).

his consent." Executive Order 12324, 3 CFR §2(c)(3), p. 181 (1981–1983 Comp.).[9]

In the ensuing decade, the Coast Guard interdicted approximately 25,000 Haitian migrants.[10] After interviews conducted on board Coast Guard cutters, aliens who were identified as economic migrants were "screened out" and promptly repatriated. Those who made a credible showing of political refugee status

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[9]That proviso reflected an opinion of the Office of Legal Counsel that Article 33 of the United Nations Convention Relating to the Status of Refugees imposed some procedural obligations on the United States with respect to refugees outside United States territory. That opinion was later withdrawn after consideration was given to the contrary views expressed by the legal advisor to the State Department. See App. 202–230.

[10]App. 231. In 1985 the District Court for the District of Columbia upheld the interdiction program, specifically finding that §243(h) provided relief only to Haitians in the United States. *Haitian Refugee Center, Inc.* v. *Gracey*, 600 F. Supp. 1396, 1406. On appeal from that holding, the Court of Appeals noted that "over 78 vessels carrying more than 1800 Haitians have been interdicted. The government states that it has interviewed all interdicted Haitians and none has presented a bona fide claim to refugee status. Accordingly, to date all interdictees have been returned to Haiti." *Haitian Refugee Center* v. *Gracey*, 257 U. S. App. D. C. 367, 370, 809 F. 2d 794, 797 (1987). The Court affirmed the judgment of the District Court on the ground that the plaintiffs in that case did not have standing, but in a separate opinion Judge Edwards agreed with the District Court on the merits. He concluded that neither the United Nations Protocol nor §253(h) was "intended to govern parties' conduct outside of their national borders. . . . The other best evidence of the meaning of the Protocol

were "screened in" and transported to the United States to file formal applications for asylum. App. 231.[11]

On September 30, 1991, a group of military leaders displaced the government of Jean Bertrand Aristide, the first democratically elected president in Haitian history. As the District Court stated in an uncontested finding of fact, since the military coup

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may be found in the United States' understanding of it at the time of accession. There can be no doubt that the Executive and the Senate decisions to adhere were made in the belief that the Protocol worked no substantive change in existing immigration law. At that time `[t]he relief authorized by §243(h) [8 U. S. C. § 1253(h)] was not . . . available to aliens at the border seeking refuge in the United States due to persecution.'" *Id.*, at 413–414, 809 F. 2d, at 840–841 (Edwards, J., concurring in part and dissenting in part) (footnotes omitted). See *INS* v. *Stevic*, 467 U. S., at 415.

[11]A "refugee" as defined in 8 U. S. C. §1101(a)(42)(A), is entitled to apply for a discretionary grant of asylum pursuant to 8 U. S. C. §1158. The term "refugee" includes "any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion . . . ."

Section 1158(a) provides: "The Attorney General shall establish a procedure for an alien *physically present in the United States or at a land border or port of entry*, irrespective of such alien's status, to apply for asylum, and the alien may be granted

"hundreds of Haitians have been killed, tortured, detained without a warrant, or subjected to violence and the destruction of their property because of their political beliefs. Thousands have been forced into hiding." App. to Pet. for Cert. 144a. Following the coup the Coast Guard suspended repatriations for a period of several weeks, and the United States imposed economic sanctions on Haiti.

On November 18, 1991, the Coast Guard announced that it would resume the program of interdiction and forced repatriation. The following day, the Haitian Refugee Center, Inc., representing a class of interdicted Haitians, filed a complaint in the United States District Court for the Southern District of Florida alleging that the Government had failed to establish and implement adequate procedures to protect Haitians who qualified for asylum. The District Court granted temporary relief that precluded any repatriations until February 4, 1992, when a reversal on appeal in the Court of Appeals for the Eleventh Circuit and a denial of certiorari by this Court effectively terminated that litigation. See *Haitian Refugee Center, Inc.* v. *Baker*, 949 F. 2d 1109 (1991) *(per curiam)*, cert. denied, 502 U. S. ___ (1992).

In the meantime the Haitian exodus expanded drama-tically. During the six months after October 1991, the Coast Guard interdicted over 34,000 Haitians. Because so many interdicted Haitians could not be safely processed on Coast Guard cutters, the

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asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title." (Emphasis added.) This standard for asylum is similar, but not quite as strict as the standard applicable to a withholding of deportation pursuant to §243(h)(1). See generally, *INS* v. *Cardoza-Fonseca*, 480 U. S. 421 (1987).

Department of Defense established temporary facilities at the United States Naval Base in Guantanamo, Cuba, to accommodate them during the screening process. Those temporary facilities, how-ever, had a capacity of only about 12,500 persons. In the first three weeks of May 1992, the Coast Guard inter-cepted 127 vessels (many of which were considered unseaworthy, overcrowded, and unsafe); those vessels carried 10,497 undocumented aliens. On May 22, 1992, the United States Navy determined that no additional migrants could safely be accommodated at Guantanamo. App. 231–233.

With both the facilities at Guantanamo and available Coast Guard cutters saturated, and with the number of Haitian emigrants in unseaworthy craft increasing (many had drowned as they attempted the trip to Florida), the Government could no longer both protect our borders *and* offer the Haitians even a modified screening process. It had to choose between allowing Haitians into the United States for the screening process or repatriating them without giving them any opportunity to establish their qualifications as refugees. In the judgment of the Presi-dent's advisors, the first choice not only would have defeated the original purpose of the program (controlling illegal immigration), but also would have impeded diplomatic efforts to restore democratic government in Haiti and would have posed a life-threatening danger to thousands of persons embarking on long voyages in dangerous craft.[12] The second choice would have advanced those policies but deprived the fleeing Haitians of any screening process at a time when a significant minority of them were being screened in. See App. 66.

On May 23, 1992, President Bush adopted the second choice.[13] After assuming office, President

[12]See App. 244–245.

[13]Executive Order No. 12,807 reads in relevant part as

Clinton decided not to modify that order; it remains in effect today. The wisdom of the policy choices made by Presidents Reagan, Bush, and Clinton is not a matter for our consideration. We must decide only whether Executive Order No. 12807, 57 Fed. Reg. 23133 (1992), which reflects and implements those choices, is consistent with §243(h) of the INA.

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follows:

"Interdiction of Illegal Aliens

"By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a)(1) of the Immigration and Nationality Act, as amended (8 U. S. C. 1182(f) and 1185(a)(1), and whereas:

"(1) The President has authority to suspend the entry of aliens coming by sea to the United States without necessary documentation, to establish reasonable rules and regulations regarding, and other limitations on, the entry or attempted entry of aliens into the United States, and to repatriate aliens interdicted beyond the territorial sea of the United States;

"(2) The international legal obligations of the United States under the United Nations Protocol Relating to the Status of Refugees (U. S. T.I.A.S. 6577; 19 U. S.T. 6223) to apply Article 33 of the United Nations Convention Relating to the Status of Refugees do not extend to persons located outside the territory of the United States;

"(3) Proclamation No. 4865 suspends the entry of all undocumented aliens into the United States by the high seas; and

"(4) There continues to be a serious problem of persons attempting to come to the United States by sea without necessary documentation and otherwise illegally;

"I, GEORGE BUSH, President of the United States of

Respondents filed this lawsuit in the United States District Court for the Eastern District of New York on March 18, 1992—before the promulgation of Executive Order No. 12807. The plaintiffs include organizations that represent interdicted Haitians as well as Haitians who were then being detained at Guantanamo. They sued the Commissioner of the

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America, hereby order as follows:

. . . . .

"Sec. 2. (a) The Secretary of the Department in which the Coast Guard is operating, in consultation, where appropriate, with the Secretary of Defense, the Attorney General, and the Secretary of State, shall issue appropriate instructions to the Coast Guard in order to enforce the suspension of the entry of undocumented aliens by sea and the interdiction of any defined vessel carrying such aliens.

. . . . .

"(c) Those instructions to the Coast Guard shall include appropriate directives providing for the Coast Guard:

"(1) To stop and board defined vessels, when there is reason to believe that such vessels are engaged in the irregular transportation or persons or violations of United States law or the law of a country with which the United States has an arrangement authorizing such action.

"(2) To make inquiries of those on board, examine documents and take such actions as are necessary to carry out this order.

"(3) To return the vessel and its passengers to the country from which it came, or to another country, when there is reason to believe that an offense is being committed against the United States immigration laws, or appropriate laws of a foreign country with which we have an arrangement to assist; provided, however, that the Attorney General, in his

Immigration and Naturalization Service, the Attorney General, the Secretary of State, the Commandant of the Coast Guard, and the Commander of the Guantanamo Naval Base, complaining that the screening procedures provided on Coast Guard cutters and at Guantanamo did not adequately protect their statutory and treaty rights to apply for refugee status and avoid repatriation to Haiti.

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unreviewable discretion, may decide that a person who is a refugee will not be returned without his consent.

"(d) These actions, pursuant to this section, are authorized to be undertaken only beyond the territorial sea of the United States.

. . . . .

"Sec. 5. This order shall be effective immediately.

/s/ George Bush

THE WHITE HOUSE

May 24, 1992." 57 Fed. Reg. 12133–23134.

Although the Executive Order itself does not mention Haiti, the press release issued contemporaneously explained:

"President Bush has issued an executive order which will permit the U. S. Coast Guard to begin returning Haitians picked up at sea directly to Haiti. This action follows a large surge in Haitian boat people seeking to enter the United States and is necessary to protect the lives of the Haitians, whose boats are not equipped for the 600–mile sea journey.

"The large number of Haitian migrants has led to a dangerous and unmanageable situation. Both the temporary processing facility at the U. S. Naval base Guantanamo and the Coast Guard cutters on patrol are filled to capacity. The President's action will also allow continued orderly processing of more than 12,000 Haitians presently at Guantanamo.

"Through broadcasts on the Voice of America and

They alleged that the September 1991 coup had "triggered a continuing widely publicized reign of terror in Haiti"; that over 1,500 Haitians were believed to "have been killed or subjected to violence and destruction of their property because of their political beliefs and affiliations"; and that thousands of Haitian refugees "have set out in small boats that are often overloaded, unseaworthy, lacking basic safety equipment, and operated by inexperienced persons, braving the hazards of a prolonged journey over high seas in search of safety and freedom." App. 24. In April, the District Court granted the plaintiffs a preliminary injunction requiring defendants to give Haitians on Guantanamo access to counsel for the screening process. We stayed that order on April 22, 1992, 503 U. S. ___, and, while the defendants' appeal from it was pending, the President issued the Executive Order now under attack. Plaintiffs then applied for a temporary restraining order to enjoin implementation of the Executive Order. They contended that it violated §243(h) of the Act and Article 33 of the United Nations Protocol Relating to the Status of Refugees. The District Court

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public statements in the Haitian media we continue to urge Haitians not to attempt the dangerous sea journey to the United States. Last week alone eighteen Haitians perished when their vessel capsized off the Cuban coast.

"Under current circumstances, the safety of Haitians is best assured by remaining in their country. We urge any Haitians who fear persecution to avail themselves of our refugee processing service at our Embassy in Port-au-Prince. The Embassy has been processing refugee claims since February. We utilize this special procedure in only four countries in the world. We are prepared to increase the American embassy staff in Haiti for refugee processing if necessary." App. 327.

denied the application because it concluded that §243(h) is "unavailable as a source of relief for Haitian aliens in international waters," and that such a statutory provision was necessary because the Protocol's provisions are not "self-executing." App. to Pet. for Cert. 166a–168a.[14]

The Court of Appeals reversed. *Haitian Centers Council, Inc.* v. *McNary,* 969 F. 2d 1350 (CA2 1992). After concluding that the decision of the Eleventh Circuit in *Haitian Refugee Center, Inc.* v. *Baker*, 953 F. 2d 1498 (1992), did not bar its consideration of the issue, the Court held that §243(h)(1) does not apply only to aliens within the United States. The Court found its conclusion mandated by both the broad definition of the term "alien" in §101(a)(3)[15] and the plain language of §243(h), from which the 1980 amendment had removed the words "within the United States."[16] The Court reasoned that the text of

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[14]This decision was not based on agreement with the executive's policy. The District Court wrote: "On its face, Article 33 imposes a mandatory duty upon contracting states such as the United States not to return refugees to countries in which they face political persecution. Notwithstanding the explicit language of the Protocol and dicta in Supreme Court cases such as *INS* v. *Cardoza Fonseca*, 480 U. S. 421 (1987) and *INS* v. *Stevic*, 467 U. S. 407 (1984), the controlling precedent in the Second Circuit is *Bertrand* v. *Sava* which indicates that the Protocols' provisions are not self-executing. *See* 684 F. 2d 204, 218 (2d Cir. 1982).

[15]Section 101(a)(3), 8 U. S. C. §1101(a)(3), provides: "The term `alien' means any person not a citizen or national of the United States."

[16]"Before 1980, §243(h) distinguished between two groups of aliens: those `within the United States', and all others. After 1980, §243(h)(1) no longer recognized that distinction, although §243(h)(2)(C)

the statute defeated the Eleventh Circuit's reliance on the placement of §243(h)(1) in Part V of the INA (titled "Deportation; Adjustment of Status") as evidence that it applied only to aliens in the United States.[17] Moreover, the Court of Appeals rejected the Government's suggestion that since §243(h) restricted actions of the Attorney General only, it did not limit the President's power to order the Coast

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preserves it for the limited purposes of the `serious nonpolitical crime' exception. The government's reading would require us to rewrite §243(h)(1) into its pre-1980 status, but we may not add terms or provisions where congress has omitted them, *see Gregory* v. *Ashcroft*, [501 U. S. ___, ___] (1991); *West Virginia Univ. Hosps., Inc.* v. *Casey*, [499 U. S. ___, ___] (1991), and this restraint is even more compelling when congress has specifically removed a term from a statute: `Few principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded.' *Nachman Corp.* v. *Pension Benefit Guaranty Corp.*, 446 U. S. 359, 392–93 . . . (1980) (Stewart, J., dissenting) (quoted with approval in *INS* v. *Cardoza-Fonseca*, 480 U. S. at 442–43 . . .). `To supply omissions transcends the judicial function.' *Iselin* v. *United States*, 270 U. S. 245, 250 . . . (1926) (Brandeis, J.)." 969 F. 2d, at 1359.

[17]"The statute's location in Part V reflects its original placement there before 1980—when §243(h) applied by its terms only to `deportation'. Since 1980, however, §243(h)(1) has applied to more than just `deportation'—it applies to `return' as well (the former is necessarily limited to aliens `in the United States', the latter applies to all aliens). Thus, §243, which applies to all aliens, regardless of whereabouts, has broader application than most other portions of Part V, each of which is limited by its terms to aliens

Guard to repatriate undocumented aliens intercepted on the high seas.

Nor did the Court of Appeals accept the Government's reliance on Article 33 of the United Nations Convention Relating to the Status of Refugees.[18] It recognized that the 1980 amendment to the INA had been intended to conform our statutory law to the provisions of the Convention,[19] but it read Article 33.1's prohibition against return, like the statute's, "plainly" to cover "*all* refugees, regardless of location." 969 F. 2d, at 1362. This reading was supported by the "object and purpose" not only of that Article but also of the Convention as a whole.[20] While the Court of Appeals recognized that

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`in' or `within' the United States; but the fact that §243 is surrounded by sections more limited in application has no bearing on the proper reading of §243 itself." *Id.,* at 1360.

[18]July 28, 1951, 19 U. S. T. 6259, T. I. A. S. No. 6577.

[19]See *INS* v. *Cardoza-Fonseca*, 480 U. S. 421, 436–437 (1987). Although the United States is not a signatory to the Convention itself, in 1968 it acceded to the United Nation Protocol Relating to the Status of Refugees, which bound the parties to comply with Articles 2 through 34 of the Convention as to persons who had become refugees because of events taking place after January 1, 1951. See *INS* v. *Stevic*, 467 U. S., at 416. Because the Convention established Article 33, and the Protocol merely incorporated it, we shall refer throughout this opinion to the Convention, even though it is the Protocol that applies here.

[20]"One of the considerations stated in the Preamble to the Convention is that the United Nations has `endeavored to assure refugees the widest possible exercise of . . . fundamental rights and freedoms.' The government's offered reading of Article 33.1, however, would narrow the exercise of those freedoms, since refugees in transit, but not present in

the negotiating history of the Convention disclosed that the representatives of at least six countries[21] construed the Article more narrowly, it thought that those views might have represented a dissenting position and that, in any event, it would "turn statutory construction on its head" to allow ambiguous legislative history to outweigh the Convention's plain text. *Id.*, at 1366.[22]

The Second Circuit's decision conflicted with the Eleventh Circuit's decision in *Haitian Refugee Center* v. *Baker*, 953 F. 2d 1498 (1992), and with the opinion expressed by Judge Edwards in *Haitian Refugee Center* v. *Gracey*, 257 U. S. App. D. C. 367, 410–414, 809 F. 2d 794, 837–841 (1987) (Edwards, J., concurring in part and dissenting in part). Because of the manifest importance of the issue, we granted certiorari, 506 U. S. ___ (1992).[23]

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a sovereign area, could freely be returned to their persecutors. This would hardly provide refugees with `the widest possible exercise' of fundamental human rights, and would indeed render Article 33.1 `a cruel hoax.'" 969 F. 2d, at 1363.

[21]The Netherlands, Belgium, The Federal Republic of Germany, Italy, Sweden, and Switzerland. See *id.*, at 1365.

[22]Judge Newman concurred separately, *id.*, at 1368–1369, and Judge Walker dissented, noting that the 1980 amendment eliminating the phrase "within the United States" evidenced only an intent to extend the coverage of §243(h) to exclusion proceedings because the Court had previously interpreted those words as limiting the section's coverage to deportation proceedings. *Id.*, at 1375–1377. See *Leng May Ma* v. *Barber*, 357 U. S. 185, 187–189 (1958); see also *Plyler* v. *Doe*, 457 U. S. 202, 212–213, n. 12 (1982).

[23]On November 30, 1992, we denied the respondents' motion to suspend briefing. 506 U. S. ___.

Both parties argue that the plain language of §243(h)(1) is dispositive. It reads as follows:

> "The Attorney General shall not deport or return any alien (other than an alien described in section 1251(a)(4)(D) of this title) to a country if the Attorney General determines that such alien's life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U. S. C. §1253(h)(1) (1988 ed., Supp. IV).

Respondents emphasize the words "any alien" and "return"; neither term is limited to aliens within the United States. Respondents also contend that the 1980 amendment deleting the words "within the United States" from the prior text of §243(h), see n. 2, *supra*, obviously gave the statute an extraterritorial effect. This change, they further argue, was required in order to conform the statute to the text of Article 33.1 of the Convention, which they find as unambiguous as the present statutory text.

Petitioners' response is that a fair reading of the INA as a whole demonstrates that §243(h) does not apply to actions taken by the President or Coast Guard outside the United States; that the legislative history of the 1980 amendment supports their reading; and that both the text and the negotiating history of Article 33 of the Convention indicate that it was not intended to have any extraterri-torial effect.

We shall first review the text and structure of the statute and its 1980 amendment, and then consider the text and negotiating history of the Convention.

A. The Text and Structure of the INA

Although §243(h)(1) refers only to the Attorney

General, the Court of Appeals found it "difficult to believe that the proscription of §243(h)(1)—returning an alien to his persecutors—was forbidden if done by the attorney general but permitted if done by some other arm of the executive branch." 969 F. 2d, at 1360. Congress "understood" that the Attorney General is the "President's agent for dealing with immigration matters," and would intend any reference to her to restrict similar actions of any government official. *Ibid.* As evidence of this understanding, the court cited 8 U. S. C. §1103(a). That section, however, conveys to us a different message. It provides, in part:

> "The Attorney General shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens, *except insofar as this chapter or such laws relate to the powers, functions, and duties conferred upon the President, the Secretary of State, the officers of the Department of State, or diplomatic or consular officers* . . . ." (Emphasis added.)

Other provisions of the Act expressly confer certain responsibilities on the Secretary of State,[24] the President,[25] and, indeed, on certain other officers as well.[26] The 1981 and 1992 Executive Orders expressly relied on statutory provisions that confer authority on the President to suspend the entry of "any class of aliens" or to "impose on the entry of aliens any

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[24]See 8 U. S. C. §§1104, 1105, 1153, 1201, and 1202 (1988 ed. and Supp. IV).

[25]See 8 U. S. C. §§1157(a), (b), and (d); §1182(f); §§1185(a) and (b); and §1324a(d) (1988 ed. and Supp. IV).

[26]See §§1161(a), (b), and (c) (Secretaries of Agriculture and Labor); §1188 (Secretary of Labor); §1421 (federal courts).

restrictions he may deem to be appropriate."[27] We cannot say that the interdiction program created by the President, which the Coast Guard was ordered to enforce, usurped authority that Congress had delegated to, or implicated responsibilities that it had imposed on, the Attorney General alone.[28]

The reference to the Attorney General in the statutory text is significant not only because that

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[27]Title 8 U. S. C. §1182(f) provides: "Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrant or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate."

[28]It is true that Executive Order 12807, 57 Fed. Reg. 23133, 23134 (1992), grants the Attorney General certain authority under the interdiction program ("The Secretary of the Department in which the Coast Guard is operating, in consultation, where appropriate, with the . . . Attorney General . . . shall issue appropriate instructions to the Coast Guard," and "the Attorney General, in his unreviewable discretion, may decide that a person who is a refugee will not be returned without his consent"). Under the first phrase, however, any authority the Attorney General retains is subsidiary to that of the Coast Guard's leaders, who give the appropriate commands, and of the Coast Guard itself, which carries them out. As for the second phrase, under neither President Bush nor President Clinton has the Attorney General chosen to exercise those discretionary powers. Even if she had, she would have been carrying out an executive, rather than a legislative command, and therefore would not necessarily have been bound by §243(h)(1). Respondents challenge a program of

term cannot reasonably be construed to describe either the President or the Coast Guard, but also because it suggests that it applies only to the Attorney General's normal responsibilities under the INA. The most relevant of those responsibilities for our purposes are her conduct of the deportation and exclusion hearings in which requests for asylum or for withholding of deportation under §243(h) are ordinarily advanced. Since there is no provision in the statute for the conduct of such proceedings outside the United States, and since Part V and other provisions of the INA[29] obviously contemplate that such proceedings would be held in the country, we cannot reasonably construe §243(h) to limit the Attorney General's actions in geographic areas where she has not been authorized to conduct such proceedings. Part V of the INA contains no reference to a possible extraterritorial application.

Even if Part V of the Act were not limited to strictly domestic procedures, the presumption that Acts of Congress do not ordinarily apply outside our borders would support an interpretation of §243(h) as applying only within United States territory. See, *e.g.*, *EEOC* v. *Arabian American Oil Co.*, 499 U. S. ___ (1991) (quoting *Foley Bros., Inc.* v. *Filardo*, 336 U. S. 281, 285 (1949)); *Lujan* v. *Defenders of Wildlife*, 504 U. S. ___, ___–___, and n. 4 (1992) (STEVENS, J., concurring in judgment); see also *Argentine Republic* v. *Amerada Hess Shipping Corp.*, 488 U. S. 428, 440 (1989) ("When it desires to do so, Congress knows how to place the high seas within the jurisdictional reach of a statute"). The Court of Appeals held that the presumption against extraterritoriality had "no relevance in the present context" because there was no risk that §243(h), which can be enforced only in

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interdiction and repatriation established by the President and enforced by the Coast Guard.

[29]See, *e.g.*, §1158(a), quoted in n. 11, *supra*.

United States courts against the United States Attorney General, would conflict with the laws of other nations. 969 F. 2d, at 1358. We have recently held, however, that the presumption has a foundation broader than the desire to avoid conflict with the laws of other nations. *Smith* v. *United States*, 507 U. S. ___, n. 5 (1993) (slip op., at 7).

Respondents' expansive interpretation of the word "return" raises another problem: it would make the word "deport" redundant. If "return" referred solely to the destination to which the alien is to be removed, it alone would have been sufficient to encompass aliens involved in both deportation and exclusion proceedings. And if Congress had meant to refer to all aliens who might be sent back to potential oppressors, regardless of their location, the word "deport" would have been unnecessary. By using both words, the statute implies an exclusively territorial application, in the context of both kinds of domestic immigration proceedings. The use of both words reflects the traditional division between the two kinds of aliens and the two kinds of hearings. We can reasonably conclude that Congress used the two words "deport or return" only to make §243(h)'s protection available in both deportation and exclusion proceedings. Indeed, the history of the 1980 amendment confirms that conclusion.

B. The History of the Refugee Act of 1980

As enacted in 1952, §243(h) authorized the Attorney General to withhold deportation of aliens "within the United States."[30] Six years later we considered the question whether it applied to an alien who had been paroled into the country while her admissibility was being determined. We held that even though she was physically present within our

[30]66 Stat. 214; see also n. 2, *supra*.

borders, she was not "within the United States" as those words were used in §243(h). *Leng May Ma* v. *Barber*, 357 U. S. 185, 186 (1958).[31] We explained the important distinction between "deportation" or "expulsion," on the one hand, and "exclusion," on the other:

> "It is important to note at the outset that our immigration laws have long made a distinction between those aliens who have come to our shores seeking admission, such as petitioner, and those who are within the United States after an entry, irrespective of its legality. In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely `on the threshold of initial entry.' *Shaughnessy* v. *United States ex rel. Mezei*, 345 U. S. 206, 212 (1953). See *Kwong Hai Chew* v. *Colding*, 344 U. S. 590, 596 (1953). The distinction was carefully preserved in Title II of the Immigration and Nationality Act." *Id.*, at 187.

Under the INA, both then and now, those seeking "admission" and trying to avoid "exclusion" were already within our territory (or at its border), but the law treated them as though they had never entered the United States at all; they were within United States territory but not "within the United States." Those who had been admitted (or found their way in) but sought to avoid "expulsion" had the added benefit of "deportation proceedings"; they were both within United States territory *and* "within the United States." *Ibid.* Although the phrase "within the United States" presumed the alien's actual presence in the United States, it had more to do with

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[31] "We conclude that petitioner's parole did not alter her status as an excluded alien or otherwise bring her `within the United States' in the meaning of §243(h)." 357 U. S., at 186.

an alien's legal status than with his location.

The 1980 amendment erased the long-maintained distinction between deportable and excludable aliens for purposes of §243(h). By adding the word "return" and removing the words "within the United States" from §243(h), Congress extended the statute's protection to both types of aliens, but it did nothing to change the presumption that both types of aliens would continue to be found only within United States territory. The removal of the phrase "within the United States" cured the most obvious drawback of §243(h): as interpreted in *Leng May Ma*, its protection was available only to aliens subject to deportation proceedings.

Of course, in addition to this most obvious purpose, it is possible that the 1980 amendment *also* removed any territorial limitation of the statute, and Congress might have intended a double-barreled result.[32] That possibility, however, is not a substitute for the affirmative evidence of intended extraterritorial application that our cases require. Moreover, in our review of the history of the amendment, we have found no support whatsoever for that latter, alternative, purpose.

The addition of the phrase "or return" and the deletion of the phrase "within the United States" are the only relevant changes made by the 1980 amendment to §243(h)(1), and they are fully explained by the intent to apply §243(h) to exclusion as well as to deportation proceedings. That intent is plainly identified in the legislative history of the amendment.[33] There is no change in the 1980

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[32]Even respondents acknowledge that §243(h) did not apply extraterritorially before its amendment. See Brief for Respondents 9, 12.

[33]See H. R. Rep. No. 96–608, p. 30 (1979) (the changes "require . . . the Attorney General to withhold deportation of aliens who qualify as refugees and who

amendment, however, that could only be explained by an assumption that Congress also intended to provide for the statute's extraterritorial application. It would have been extraordinary for Congress to make such an important change in the law without any mention of that possible effect. Not a scintilla of evidence of such an intent can be found in the legislative history.

In sum, all available evidence about the meaning of §243(h)—the government official at whom it is directed, its location in the Act, its failure to suggest any extraterritorial application, the 1980 amendment that gave it a dual reference to "deport or return," and the relevance of that dual structure to immigration law in general—leads unerringly to the conclusion that it applies in only one context: the domestic procedures by which the Attorney General determines whether deportable and excludable aliens may remain in the United States.

Although the protection afforded by §243(h) did not apply in exclusion proceedings before 1980, other provisions of the Act did authorize relief for aliens at the border seeking protection as refugees in the United States. See *INS* v. *Stevic*, 467 U. S., at 415–416. When the United States acceded to the Protocol in 1968, therefore, the INA already offered *some* protection to both classes of refugees. It offered *no* such protection to any alien who was beyond the territorial waters of the United States, though, and we would not expect the Government to assume a burden as to those aliens without some acknowledgment of its dramatically broadened scope. Both Congress and the Executive Branch gave extensive consideration to the Protocol before ratifying it in

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are in exclusion as well as deportation, proceedings"); see also S. Rep. No. 96–256, p. 17 (1979).

1968; in all of their published consideration of it there appears no mention of the possibility that the United States was assuming any extraterritorial obligations.[34] Nevertheless, because the history of the 1980 Act does disclose a general intent to conform our law to Article 33 of the Convention, it might be argued that the extraterritorial obligations imposed by Article 33 were so clear that Congress, in acceding to the Protocol, and then in amending the statute to harmonize the two, meant to give the latter a correspondingly extraterritorial effect. Or, just as the statute might have imposed an extraterritorial obligation that the Convention does not (the argument we have just rejected), the Convention might have established an extraterritorial obligation which the statute does not; under the Supremacy

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[34]"The President and the Senate believed that the Protocol was largely consistent with existing law. There are many statements to that effect in the legislative history of the accession to the Protocol. *E.g.*, S. Exec. Rep. No. 14, 90th Cong., 2d Sess., 4 (1968) (`refugees in the United States have long enjoyed the protection and the rights which the protocol calls for'); *id.*, at 6,7 (`the United States already meets the standards of the Protocol'); see also, *id.*, at 2; S. Exec. K, 90th Cong., 2d Sess., III, VII (1968); 114 Cong. Rec. 29391 (1968) (remarks of Sen. Mansfield); *id.*, at 27757 (remarks of Sen. Proxmire). And it was `absolutely clear' that the Protocol would not `requir[e] the United States to admit new categories or numbers of aliens.' S. Exec. Rep. No. 14, *supra*, at 19. It was also believed that apparent differences between the Protocol and existing statutory law could be reconciled by the Attorney General in administration and did not require any modification of statutory language. See *e.g.*, S. Exec. K, *supra*, at VIII." *INS* v. *Stevic*, 407 U. S., at 417–418.

Clause, that broader treaty obligation might then provide the controlling rule of law.[35] With those possibilities in mind we shall consider both the text and negotiating history of the Convention itself.

Like the text and the history of §243(h), the text and negotiating history of Article 33 of the United Nations Convention are both completely silent with respect to the Article's possible application to actions taken by a country outside its own borders. Respondents argue that the Protocol's broad remedial goals require that a nation be prevented from repatriating refugees to their potential oppressors whether or not the refugees are within that nation's borders. In spite of the moral weight of that argument, both the text and negotiating history of Article 33 affirmatively indicate that it was not intended to have extraterritorial effect.

A. The Text of the Convention

Two aspects of Article 33's text are persuasive. The first is the explicit reference in Article 33.2 to the country in which the alien is located; the second is the parallel use of the terms "expel or return," the latter term explained by the French word "refouler."

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[35]U. S. Const., Art. VI, cl. 2 provides: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; . . . " In *Murray* v. *The Charming Betsy*, 2 Cranch 64, 117–118 (1804), Chief Justice Marshall wrote that "an act of congress ought never to be construed to violate the law of nations if any other possible construction remains . . . ." See also *Weinberger* v. *Rossi*, 456 U. S. 25, 32 (1982); *Clark* v. *Allen*, 331 U. S. 503, 508–511 (1947); *Cook* v. *United States*, 288 U. S. 102, 118–120 (1933).

The full text of Article 33 reads as follows:

> "*Article 33.—Prohibition of expulsion or return (`refoulement')*
>
> "1. No Contracting State shall expel or return (`*refouler*') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
>
> "2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of *the country in which he is*, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country." Convention Relating to the Status of Refugees, July 28, 1951, 19 U. S. T. 6259, 6276, T. I. A. S. No. 6577 (emphasis added).

Under the second paragraph of Article 33 an alien may not claim the benefit of the first paragraph if he poses a danger to the country in which he is located. If the first paragraph did apply on the high seas, no nation could invoke the second paragraph's exception with respect to an alien there: an alien intercepted on the high seas is in no country at all. If Article 33.1 applied extraterritorially, therefore, Article 33.2 would create an absurd anomaly: dangerous aliens on the high seas would be entitled to the benefits of 33.1 while those residing in the country that sought to expel them would not. It is more reasonable to assume that the coverage of 33.2 was limited to those already in the country because it was understood that 33.1 obligated the signatory state only with respect to aliens within its territory.[36]

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[36]Although the parallel provision in §243(h)(2)(D), 8 U. S. C. §243(h)(2)(D), that was added to the INA in

Article 33.1 uses the words "expel or return (`refouler')" as an obvious parallel to the words "deport or return" in §243(h)(1). There is no dispute that "expel" has the same meaning as "deport"; it refers to the deportation or expulsion of an alien who is already present in the host country. The dual reference identified and explained in our opinion in *Leng May Ma* v. *Barber*, suggests that the term "return (`refouler')" refers to the exclusion of aliens who are merely "`on the threshold of initial entry.'" 357 U. S., at 187 (quoting *Shaughnessy* v. *United States ex rel. Mezei*, 345 U. S. 206, 212 (1953)).

This suggestion—that "return" has a legal meaning narrower than its common meaning—is reinforced by the parenthetical reference to "*refouler*", a French word that is *not* an exact synonym for the English word "return." Indeed, neither of two respected English-French Dictionaries mentions "*refouler*" as one of many possible French translations of "return."[37]

1980 does not contain the "country in which he is" language, the general understanding that it was intended to conform the statute to the Protocol leads us to give it that reading, particularly since its text is otherwise so similar to Article 33(2). It provides that §243(h)(1) "shall not apply" to an alien if the Attorney General determines that "there are reasonable grounds for regarding the alien as a danger to the security of the United States." Thus the statutory term "security of the United States" replaces the Protocol's term "security of the country in which he is." The parallel surely implies that for statutory purposes "the United States" is "the country in which he is."

[37]The New Cassell's French Dictionary 440 (1973), gives this translation: "return (ɪ) [rítəːn], *v.i.* Revenir (to come back); retourner (to go back); rentrer (to come in again); répondre, répliquer (to answer). *To return to the subject*, revenir au sujet, (*fam*.) revenir

Conversely, the English translations of "*refouler*" do not include the word "return."[38] They do, however, include words like "repulse," "repel," "drive back," and even "expel." To the extent that they are relevant, these translations imply that "return" means a defensive act of resistance or exclusion at a border rather than an act of transporting someone to a particular destination. In the context of the

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à ses moutons.—-*v.t.* Rendre (to give back); renvoyer (to send back); rembourser (to repay); rapporter (interest); répondre à; rendre compte (to render an account of); élire (candidates). *He was returned*, il fut élu; *the money returns interest*, ĺargent rapporte intérêt; *to return good for evil*, rendre le bien pour le mal.—-*n.* Retour (coming back, going back), *m.*; rentrée (coming back in), *f.*; renvoi (sending back), *m.*; remise en place (putting back), *f.*; profit, gain (profit), *m.*; restitution (restitution), *f.*; remboursement (reimbursement), *m.*; élection (election), *f.*; rapport, compte rendu, relevé, état (report); (*Comm.* montant des opérations, montant des remises; bilan (of a bank), *m.*; (*pl.*) produit, *m. By return of post,* par retour du courrier; *in return for,* en retour de; *nil return,* état néant, *m.*; *on my return*, au retour, comme je revenais chez moi; *on sale or return*, en dépôt, en commission; *return address*, addrese de l'expéditeur, *f.*; *return home,* retour au foyer, *m.; return journey,* retour, *m.; return match,* revanche, *f.; return of casualties*, état des pertes, *m.*; *small profits (and) quick returns*, petits profits, vente rapide; *the official returns*, les relevés officiels, *m.pl.; to make some return for*, payer de retour."

Although there are additional translations in the Larousse Modern French-English Dictionary 545 (1978), "refouler" is not among them.

[38]"refouler [rəfúle], *v.t.* To drive back, to back (train etc.); to repel; to compress; to repress, to suppress,

Convention, to "return" means to "repulse" rather than to "reinstate."[39]

The text of Article 33 thus fits with Judge Edwards' understanding "that `expulsion' would refer to a `refugee already admitted into a country' and that `return' would refer to a `refugee already within the territory but not yet resident there.' Thus, the Protocol was not intended to govern parties' conduct outside of their national borders." *Haitian Refugee Center* v. *Gracey*, 257 U. S. App. D. C., at 413, 809

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to inhibit; to expel (aliens); to refuse entry; to stem (the tide); to tamp; to tread (grapes etc.) again; to full (stuffs) again; to ram home (the charge in a gun). *Refouler la marée*, to stem, to go against the tide.—*v.i.* To ebb, to flow back. *La marée refoule*, the tide is ebbing." Cassell's, at 627.

"refouler [-le] v. tr. (l). To stem (la marée). ‖ NAUT. To stem (un courant). ‖ TECHN. To drive in (une cheville); to deliver (l'eau); to full (une étoffe); to compress (un gaz); to hammer, to fuller (du métal). ‖ MILIT. To repulse (une attaque); to drive back, to repel (l'ennemi); to ram home (un projectile). ‖ PHILOS. To repress (un instinct). ‖ CH. DE F. To back (un train). ‖ FIG. To choke back (un sanglot).
—-v. intr. To flow back (foule); to ebb, to be on the ebb (marée). ‖ MÉD. *Refoulé*, inhibited." Larousse, at 607.

[39]Under Article 33, after all, a nation is not prevented from sending a threatened refugee back only to his homeland, or even to the country that he has most recently departed; in some cases Article 33 would even prevent a nation from sending a refugee to a country where he had never been. Because the word "return," in its common meaning, would make no sense in that situation (one cannot return, or be returned, to a place one has never been), we think it means something closer to "exclude" than "send back."

F. 2d, at 840 (footnotes omitted). From the time of the Convention, commentators have consistently agreed with this view.[40]

The drafters of the Convention and the parties to the Protocol—like the drafters of §243(h)—may not have contemplated that any nation would gather fleeing refugees and return them to the one country they had desperately sought to escape; such actions

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[40]See, *e.g.*, N. Robinson, Convention Relating to the Status of Refugees: Its History, Contents and Interpretation 162–163 (1953) ("The *Study on Statelessness* [,U. N. Dept. of Social Affairs 60 (1949),] defined `expulsion' as `the juridical decision taken by the judicial or administrative authorities whereby an individual is ordered to leave the territory of the country' and `reconduction' (which is the equivalent of `refoulement' and was changed by the Ad Hoc Committee to the word `return') as `the mere physical act of ejecting from the national territory a person residing therein who has gained entry or is residing regularly or irregularly.' . . . Art. 33 concerns refugees who have gained entry into the territory of a Contracting State, legally or illegally, but not to refugees who seek entrance into [the] territory"); 2 A. Grahl-Madsen, The Status of Refugees in International Law 94 (1972) ("[*Non-refoulement*] may only be invoked in respect of persons who are already present —lawfully or unlawfully—in the territory of a Contracting State. Article 33 only prohibits the expulsion or return (*refoulement*) of refugees to territories where they are likely to suffer persecution; it does not obligate the Contracting State to admit any person who has not already set foot on their respective territories"). A more recent work describes the evolution of *non-refoulement* into the international (and possibly extraterritorial) duty of non-return relied on by respondents, but it also admits that in 1951 *non-refoulement* had a narrower

may even violate the spirit of Article 33; but a treaty cannot impose uncontemplated extraterritorial obligations on those who ratify it through no more than its general humanitarian intent. Because the text of Article 33 cannot reasonably be read to say anything at all about a nation's actions toward aliens outside its own territory, it does not prohibit such actions.[41]

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meaning, and did not encompass extraterritorial obligations. Moreover, it describes both "expel" and "return" as terms referring to one nation's transportation of an alien out of its own territory and into another. See G. Goodwin-Gill, The Refugee in International Law 74–76 (1983).

Even the United Nations High Commissioner for Refugees has implicitly acknowledged that the Convention has no extraterritorial application. While conceding that the Convention does not mandate any specific procedure by which to determine whether an alien qualifies as a refugee, the "basic requirements" his office has established impose an exclusively territorial burden, and announce that any alien protected by the Convention (and by its promise of *non-refoulement*) will be found either "`at the border or in the territory of a Contracting State.'" Office of United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status 46 (Geneva, Sept. 1979) (quoting Official Records of the General Assembly, Thirty-second Session, Supplement No. 12 (A/32/12/Add.1), paragraph 53(6)(e)). Those basic requirements also establish the right of an applicant for refugee status "`to remain *in the country* pending a decision on his initial request.'" (emphasis added). Handbook on Refugee Status, at 460.

[41]The Convention's failure to prevent the extraterritorial reconduction of aliens has been generally acknowledged (and regretted). See Aga

B. The Negotiating History of the Convention

In early drafts of the Convention, what finally emerged as Article 33 was numbered 28. At a negotiating conference of plenipotentiaries held in Geneva, Switzerland on July 11, 1951, the Swiss delegate explained his understanding that the words "expel" and "return" covered only refugees who had entered the host country. He stated:

> "Mr. ZUTTER (Switzerland) said that the Swiss Federal Government saw no reason why article 28 should not be adopted as it stood; for the article was a necessary one. He thought, however, that its wording left room for various interpretations, particularly as to the meaning to be attached to the words `expel' and `return'. In the Swiss Government's view, the term "expulsion" applied to a refugee who had already been admitted to the territory of a country. The term

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Khan, Legal Problems Relating to Refugees and Displaced Persons, in Hague Academy of Int'l Law, 149 Recueil des Cours, 287, 318 (1976) ("Does the *non-refoulement* rule . . . apply . . . only to those already within the territory of the Contracting State? . . . There is thus a serious gap in refugee law as established by the 1951 Convention and other related instruments and it is high time that this gap should be filled"); Robinson, Convention Relating to the Status of Refugees, at 163 ("[I]f a refugee has succeeded in eluding the frontier guards, he is safe; if he has not, it is his hard luck. It cannot be said that this is a satisfactory solution of the problem of asylum"); Goodwin-Gill, The Refugee in International Law, at 87 ("A categorical refusal of disembarkation cannot be equated with breach of the principle of *non-refoulement*, even though it may result in serious consequences for asylum-seekers").

> `*refoulement*', on the other hand, had a vaguer meaning; *it could not, however, be applied to a refugee who had not yet entered the territory of a country*. The word `return', used in the English text, gave that idea exactly. Yet article 28 implied the existence of two categories of refugee: refugees who were liable to be expelled, and those who were liable to be returned. In any case, the States represented at the Conference should take a definite position with regard to the meaning to be attached to the word `return'. The Swiss Government considered that in the present instance *the word applied solely to refugees who had already entered a country, but were not yet resident there*. According to that interpretation, States were not compelled to allow large groups of persons claiming refugee status to cross its frontiers. He would be glad to know whether the States represented at the Conference accepted his interpretations of the two terms in question. If they did, Switzerland would be willing to accept article 28, which was one of the articles in respect of which States could not, under article 36 of the draft Convention, enter a reservation." (Emphases added.)[42]

No one expressed disagreement with the position of the Swiss delegate on that day or at the session two weeks later when Article 28 was again discussed. At that session, the delegate of the Netherlands recalled the Swiss delegate's earlier position:

> "Baron van BOETZELAER (Netherlands) recalled that at the first reading the Swiss representative had expressed the opinion that the word `expulsion' related to a refugee already admitted

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[42]Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Summary Record of the Sixteenth Meeting, U. N. Doc. A/CONF.2/SR.16, p. 6 (July 11, 1951).

into a country, whereas the word `return' (`*refoulement*') related to a refugee *already within the territory but not yet resident there*. According to that interpretation, article 28 would not have involved any obligations in the possible case of mass migrations across frontiers or of attempted mass migrations.

"He wished to revert to that point, because the Netherlands Government attached very great importance to the scope of the provision now contained in article 33. The Netherlands could not accept any legal obligations in respect of large groups of refugees seeking access to its territory.

"At the first reading the representatives of Belgium, the Federal Republic of Germany, Italy, the Netherlands and Sweden had supported the Swiss interpretation. From conversations he had since had with other representatives, he had gathered that the general consensus of opinion was in favour of the Swiss interpretation.

"In order to dispel any possible ambiguity and to reassure his Government, he wished to have it placed on record that the Conference was in agreement with the interpretation that the possibility of mass migrations across frontiers or of attempted mass migrations was not covered by article 33.

"There being no objection, the PRESIDENT *ruled* that the interpretation given by the Netherlands representative should be placed on record.

"Mr. HOARE (United Kingdom) remarked that the Style Committee had considered that the word `return' was the nearest equivalent in English to the French term `*refoulement*'. He assumed that the word `return' as used in the English text had no wider meaning.

"The PRESIDENT suggested that in accordance with the practice followed in previous

> Conventions, the French word `*refoulement*' (`*refouler*' in verbal uses) should be included in brackets and between inverted commas after the English word `return' wherever the latter occurred in the text." (Emphasis added.)[43]

Although the significance of the President's comment that the remarks should be "placed on record" is not entirely clear, this much cannot be denied: at one time there was a "general consensus," and in July of 1951 several delegates understood the right of *non-refoulement* to apply only to aliens physically present in the host country.[44] There is no record of any later disagreement with that position. Moreover, the term "*refouler*" was included in the English version of the text to avoid the expressed concern about an inappropriately broad reading of the English word "return."

Therefore, even if we believed that Executive Order 12807 violated the intent of some signatory states to protect all aliens, wherever they might be found, from being transported to potential oppressors, we must acknowledge that other signatory states carefully—and successfully—sought to avoid just that implication. The negotiating history, which suggests that the Convention's limited reach resulted from a deliberate bargain, is not dispositive, but it solidly supports our reluctance to interpret Article 33 to impose obligations on the contracting parties that are broader than the text commands. We do not read that text to apply to aliens interdicted on the high seas.

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[43]Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Summary Record of the Thirty-fifth Meeting, U. N. Doc. A/CONF.2/SR.35, at 21–22 (July 25, 1951).

[44]The Swiss delegate's statement strongly suggests, moreover, that at least one nation's accession to the Convention was *conditioned* on this understanding.

Respondents contend that the dangers faced by Haitians who are unwillingly repatriated demonstrate that the judgment of the Court of Appeals fulfilled the central purpose of the Convention and the Refugee Act of 1980. While we must, of course, be guided by the high purpose of both the treaty and the statute, we are not persuaded that either one places any limit on the President's authority to repatriate aliens interdicted beyond the territorial seas of the United States.

It is perfectly clear that 8 U. S. C. §1182(f), see n. 27, *supra*, grants the President ample power to establish a naval blockade that would simply deny illegal Haitian migrants the ability to disembark on our shores. Whether the President's chosen method of preventing the "attempted mass migration" of thousands of Haitians—to use the Dutch delegate's phrase—poses a greater risk of harm to Haitians who might otherwise face a long and dangerous return voyage, is irrelevant to the scope of his authority to take action that neither the Convention nor the statute clearly prohibits. As we have already noted, Acts of Congress normally do not have extraterritorial application unless such an intent is clearly manifested. That presumption has special force when we are construing treaty and statutory provisions that may involve foreign and military affairs for which the President has unique responsibility. Cf. *United States* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304 (1936). We therefore find ourselves in agreement with the conclusion expressed in Judge Edwards' concurring opinion in *Gracey*, 257 U. S. App. D. C., at 414, 809 F. 2d, at 841:

> "This case presents a painfully common situation in which desperate people, convinced that they can no longer remain in their homeland, take desperate measures to escape. Although the human crisis is compelling, there is no

solution to be found in a judicial remedy."

The judgment of the Court of Appeals is reversed.

It is so ordered.