



February 12, 2026

Via Electronic Filing

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Re: *Cardenas v. Attorney General United States*, No. 25-1522 (tentatively scheduled for the week of March 2)

Dear Ms. Dodszuweit:

This letter is filed pursuant to the Court's February 5 order.

I. An applicant for cancellation of removal need not show continuing abuse at the time of the application under 8 U.S.C. § 1229b(b)(2)(A)(i)(II).

The phrase “has been battered or subjected to extreme cruelty” encompasses, though it does not require, continuing abuse at the time of the application. Requiring continuing abuse contravenes the statute’s text, context, and purpose; it would force victims to remain in abusive relationships; it would enmesh courts in difficult determinations about when abuse “ends”; and it would do all this based on an interpretation no court has adopted and no party has advanced.

Grammar. “‘Has been’ is the present perfect tense, denoting ‘an act, state, or condition that is now completed or continues up to the present.’ It is used to refer either to time in the indefinite past, or past action that continues until the present.” *Mejia-Castanon v. Att’y Gen.*, 931 F.3d 224, 233 n.10 (3d Cir. 2019) (citation omitted); *Hewitt v. United States*, 606 U.S. 419, 428 (2025) (the present perfect “‘involves reference to both past and present’”).

Here, “has been” describes an applicant’s experience of abuse—completed or ongoing—that retains continuing legal relevance. The abuse may, but need not, have been completed before the application. *See* Bryan Garner, *Garner’s Modern American*



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Usage 802-03 (3d ed. 2009) (“Either of two qualities must be present for this tense to be appropriate: indefiniteness of past time *or* a continuation to the present.” (emphasis added)); *Barrett v. United States*, 423 U.S. 212, 216 (1976) (“has been” in that instance “denot[ed] an act that has been completed”). As the Supreme Court recently explained, “has been” can denote “a historical event [that] triggers the rule’s proper application.” *Hewitt*, 606 U.S. at 428.

Grammatically, the present perfect (“has been”) governs two past participles (“battered” and “subjected”) in passive voice. This construction foregrounds the victim’s experience of abuse rather than the abuser’s conduct. Moreover, both words describe past acts that give rise to an immutable status. Neither battery nor subjection to extreme cruelty becomes “merely a relic of history” when the abuse ends, because they cannot be “voided by a subsequent action.” *Cf. Hewitt*, 606 U.S. at 429, 431 (by contrast, a prison sentence that “has been imposed” would only cover “sentences with continued legal validity, not those that have been vacated”); *Turner v. Att’y Gen.*, 130 F.4th 1254, 1260, 1262 (11th Cir. 2025) (the statute “imposes a continuing requirement of separation” and does not cover “a moment-in-time” separation). Thus even past, completed abuse has ongoing relevance because the applicant is and remains a victim of abuse. Here, “has been” “describe[s] situations ‘involv[ing] a specific change of state’ that produces a ‘continuing result.’” *Hewitt*, 606 U.S. at 428. For example, a person who “has been vaccinated” for shingles retains that status, and it does not imply that they are presently stuck with needles.

Had Congress intended to limit relief to those suffering ongoing abuse, it could have used a different tense (*i.e.*, “is being battered”) or added “continuously,” as it did elsewhere. *See, e.g.*, 8 U.S.C. § 1229b(a)(2) (requiring that the alien “has resided in the United States continuously”). Congress instead chose the present perfect, which is temporally flexible: it anchors abuse before the present while leaving open whether the abuse has ended or endures.

The Government takes no position on this question, *see* Dkt. 63 at 1, but its response brief supports this reading by arguing that “has been battered or subjected to extreme cruelty” is “in the present perfect tense” and that “Congress uses this tense to ‘denot[e] an act that has been completed.’” Gov’t Br. 34-35; Gov’t Br. 35 (discussing “the past abuse”). If that’s true, the abuse need not continue to the present. Petitioner maintains that “the present perfect tense is not *limited* to acts that have been completed,” Reply 11 (emphasis added), but it indisputably can cover completed acts.



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Statutory Context. Other portions of this provision confirm the absence of any continuing abuse requirement. First, the statute specifies when “has been” refers to an ongoing condition by adding “immediately preceding the date of such application.” *See* 8 U.S.C. § 1229b(b)(2)(A)(ii) (“the alien has been physically present in the United States for a continuous period of no less than 3 years immediately preceding the date of such application”). By contrast, the provision at issue here lacks that qualifier.

Second, the same section contrasts “is” and “has been”. One provision reads “the alien is not inadmissible ..., is not deportable ..., and has not been convicted of an aggravated felony.” 8 U.S.C. § 1229b(b)(2)(A)(iv). This juxtaposes “is” (current status or actions) with “has been” (completed or ongoing acts with continuing relevance). *See Barrett*, 423 U.S. at 217 (Congress “used the present perfect tense ... in contrast to its use of the present tense” elsewhere in the statute).

Third, the parallel VAWA self-petition statute and regulations expressly encompass completed abuse. The self-petition statute, which applies if “the alien has been battered or has been the subject of extreme cruelty,” contemplates abusers who are dead by the time of the petition. *See* 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(aaa) (covering an applicant whose abuser “died within the past 2 years”). The self-petition regulations similarly contemplate that the “self-petitioner is not required to be living with the abuser when the petition is filed,” 8 C.F.R. § 204.2(e)(1)(v), but that the “qualifying abuse ... must have taken place while the self-petitioner was residing with the abuser,” *id.* § 204.2(e)(1)(vi).

Purpose. VAWA was intended to “remove immigration laws as a barrier that ke[eps] battered immigrant women and children locked in abusive relationships.” Battered Immigrant Women Protection Act of 2000, Pub. L. No. 106-386, § 1502(a)(1), 114 Stat. 1518; *see also* Gov’t Br. 39-40 (“[O]ne of Congress’ goals in enacting ... VAWA ‘was to free abused spouses ... from the fear that remaining in an abusive marriage is the only way to obtain lawful immigration status.’”). Requiring continuing abuse eviscerates this purpose: victims would have to remain in abusive relationships until they petition for relief. That is the opposite of everything Congress intended. *See Lopez-Birrueta v. Holder*, 633 F.3d 1211, 1215-16 (9th Cir. 2011) (VAWA is “intended to ameliorate the impact of harsh provisions of immigration law on abused [survivors],” and should be “interpreted and applied in an ameliorative fashion”).



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A continuing-abuse requirement would also enmesh courts in line-drawing about whether abuse “continues at least until the time that the alien applies for cancellation of removal.” Text Order, Dkt. 61. Does abuse “continue” if a victim leaves their home the day before the application? When does psychological, financial, or emotional abuse end? What about victims who are in immigration custody when they apply for relief and therefore are separated from their abuser? Congress wrote the statute to avoid such fraught inquiries.

Reflecting the settled understanding that continuing abuse is not required, this Court has repeatedly considered VAWA cases where abuse stopped before the application. *See, e.g., Johnson v. Att’y Gen.*, 602 F.3d 508, 509-10 (3d Cir. 2010); *Ezeani v. Att’y Gen.*, 2024 WL 4533122, at *1-2 (3d Cir. Oct. 21, 2024) (asking whether a petitioner “was battered or subjected to extreme cruelty”). No court has adopted a continuing-abuse requirement since VAWA’s enactment; if Congress had intended such a sea change, it had ample opportunity to amend VAWA. This Court should not interpret VAWA in a way that no court or litigant ever has.

II. The Court can, but should not, consider this issue without remand.

Although the Court’s futility exception to *Chenery* permits resolution of this issue on appeal, the parties agree that the Court need not and should not reach it.

This statutory interpretation issue satisfies the four-part *Chenery* futility test: it is (1) purely legal, (2) post-*Loper Bright*, does not implicate agency expertise, (3) review would be *de novo*, and (4) no fact-finding is necessary. *See Vurimindi v. Att’y Gen.*, 46 F.4th 134, 140 (3d Cir. 2022). Although the Court could decide this issue, three reasons counsel against reaching it. *First*, the appeal presents a separate, dispositive statutory interpretation question about the meaning of a parent who “is or was” a lawful permanent resident. *See* Dkt. 63 at 1 (this issue is not “a threshold question that needs answering”).¹ *Second*, no party advocated for a continuing-abuse requirement, the Court raised the issue *sua sponte*, and the Court has not received meaningful adversarial briefing because the Government takes no position on the issue. *Third*, this case is a poor vehicle because the parties dispute when the abuse ended. *Compare* Pet’r Br. 39-41 (arguing the abuse continued years later), *with* Gov’t Br. 51-54. At most, the Court could reserve this issue, “leav[ing] it to future courts to

¹ *See* Reply 10 (“‘[H]as been’ refers to the abuse—‘has been battered or subjected to extreme cruelty’—not to the status of the abuser.”).



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decide this question when the issue is properly before them.” *Washington v. Gilmore*, 124 F.4th 178, 186 (3d Cir. 2024).

Respectfully submitted,

/s/ Harmann Singh

Harmann Singh

Counsel for Petitioner

cc: Counsel of Record (via CM/ECF)