



Donald C. Hudson Memorial Moot Court Competition

2024 Record on Appeal

In removal proceedings under section 240 of the Immigration and Nationality ActFile No. T-012-345-687*In the Matter of:* Peregrin Took

Respondent: Peregrin Took currently residing at:
225 Main Street, City of Bree, Arnor 98765 (555) 903-5768
(Number, street, city, state, and ZIP code) (Area code and phone number)

- ☐ 1. You are an arriving alien.
☐ 2. You are an alien present in the United States who has not been admitted or paroled
☒ 3. You have been admitted to the United States, but are deportable for the reasons stated below:

The Department of Homeland Security alleges that you:

On or about JANUARY 3, 2020, Respondent, PEREGRIN TOOK, arrived in the United States from the Kingdom of Gondor (Gondor) through a port of entry, namely, the Arnor International Airport.

On or about FEBRUARY 7, 2020, Respondent, PEREGRIN TOOK, was granted asylum based on a credible fear of political persecution due to his membership in the minority community known as the Shirefolk.

At all times relevant to this proceeding, Respondent, PEREGRIN TOOK, has resided in the City of Bree, Arnor, United States of America.

On or about MARCH 17, 2023, Respondent, PEREGRIN TOOK, pled guilty to the offense of possession of 100 grams or more but less than 500 grams of marijuana, in violation of Chapter 720 of the Arnor Revised Statutes, Section 24-1(a)(3) (2023). Respondent, PEREGRIN TOOK, received a sentence of three years' probation in accordance with Arnor state law.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

8 U.S.C. § 1227(a)(2)(B)(i), which provides, in relevant part: "Any alien who at any time after admission has been convicted of a violation of *** any law or regulation of a state *** relating to a controlled substance *** is deportable."

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: City of Bree Immigration Court, 354 Precious Road, City of Bree, Arnor 98765, Hearing Room C on April 17, 2023 at 9:00 AM to show why you should not be removed from the United States based on the charge(s) set forth above.

Date: March 31, 2023Signature of Issuing Officer: /s Samwise Gamgee

United States Department of Justice
Executive Office for Immigration Review
City of Bree Immigration Court

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<i>Matter of</i> PEREGRIN TOOK,	)	
Respondent.	)	No. T-012-345-678
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REPORT OF PROCEEDINGS had in the above-entitled cause,
before HUGO BOFFIN, Immigration Judge of said court on the 17th
day of April, 2023.

PRESENT:

MR. THORIN OAKENSHIELD
Appearing on behalf of the United States Department
of Homeland Security;

MR. THOMAS BOMBADIL
Appearing on behalf of the Respondent.

THE COURT: Good morning, the next case up this morning is Matter of Peregrin "Pippin" Took. For the record, the Department's notice to appear was filed in the City of Bree, Arnor Immigration Court. All parties and the court are present in person Will the parties please state your appearances for the record?

MR. OAKENSHIELD: Good morning, Judge, Thorin Oakenshield, O-A-K-E-N-S-H-I-E-L-D, appearing on behalf of the Department of Homeland Security.

MR. BOMBADIL: Good morning, Thomas Bombadil, B-O-M-B-A-D-I-L, on behalf of the Respondent, Pippin Took.

THE COURT: Thank you both. My understanding is that this is a first appearance?

MR. OAKENSHIELD: That's correct, Judge, the Department filed the NTA in March and we are alleging that Mr. Took is removable on the basis of his recent state criminal conviction.

THE COURT: I see. And what was the nature of that conviction?

MR. BOMBADIL: It was a minor drug conviction, Judge. Mr. Took entered a guilty plea to the possession of 360 grams of a substance containing cannabis. The Arnor statutory citation for that offense is 720 ARS 5/24-1(a)(3). He received a sentence of three years' probation.

THE COURT: Thank you, counsel. And do you plan to contest Mr. Took's removability?

MR. BOMBADIL: Actually, Judge, we planned to move to adjust Mr. Took's status to lawful permanent resident status under 8 U.S.C. 1159(b), but I understand the Government objects to that.

MR. OAKENSHIELD: That's correct. Until his criminal conviction, Mr. Took was lawfully present in the United States as an asylee. We plan to move to revoke his asylum status.

THE COURT: Okay, well we need to take these issues in order. I will consider the Department's petition to revoke Mr. Took's asylum status first, and then, I will address the removability question. Do either of you object to that?

MR. OAKENSHIELD: No, Judge. We agree that would make the most sense.

MR. BOMBADIL: No objection, Judge.

MR. OAKENSHIELD: Does the court need a written petition to revoke asylum status?

THE COURT: My guess is the arguments aren't complicated, so if Mr. Took's counsel does not object, we can proceed straight to argument.

MR. BOMBADIL: All I would ask is for the statutory basis on which the Government plans to seek revocation of asylum and a short court date to prepare arguments.

THE COURT: Mr. Oakenshield, what's the basis for revocation?

MR. OAKENSHIELD: We would be proceeding under 8 U.S.C. 1158(c)(2)(B), which cross-references to conditions in Section 1158(b)(2). In the Department's view, Mr. Took now has a final judgment of a "particularly serious crime" against him. He is therefore no longer eligible for asylum status under Section 1158(b)(2)(A)(ii).

THE COURT: Counsel, is that sufficient for you to prepare your arguments?

MR. BOMBADIL: It is, Judge. And we plan to present brief testimony from Mr. Took at the hearing to create the record for any defenses to DHS's petitions to revoke asylum and remove Mr. Took.

THE COURT: You will have that opportunity. Do we need a long date or can we move forward fairly quickly on this?

MR. BOMBADIL: I can't imagine needing more than a month, Judge.

MR. OAKENSHIELD: That would be fine for the Department as well.

THE COURT: I'd actually like to keep this moving more quickly than that. Can I see the parties again in two weeks?

MR. OAKENSHIELD: Sounds good.

MR. BOMBADIL: That will work for us

THE COURT: See everyone then.

(Whereupon, proceedings were adjourned in this case)

United States Department of Justice
Executive Office for Immigration Review
City of Bree Immigration Court

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Matter of PEREGRIN TOOK,)
Respondent.) No. T-012-345-678
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REPORT OF PROCEEDINGS had in the above-entitled cause,
before HUGO BOFFIN, Immigration Judge of said court on the 1st day
of May, 2023.

PRESENT:

MR. THORIN OAKENSHIELD
Appearing on behalf of the United States Department
of Homeland Security;

MR. THOMAS BOMBADIL
Appearing on behalf of the Respondent

THE COURT: We have Matter of Peregrin Took up this morning?

Mr. OAKENSHIELD: Thorin Oakenshield, appearing on behalf of the Department of Homeland Security. We were hoping to resolve the Department's petition to revoke Respondent's asylum today.

MR. BOMBADIL: That was the hope, Judge. But I am not quite ready to present Mr. Took's testimony about the circumstances of his arrival and presence in the United States today.

THE COURT: Ok, yes, I remember this case. For the record, all parties and the Court are present at the City of Bree Immigration Adjudication Center. And, to be honest, Mr. Oakenshield, the court would not be prepared to rule on the Department's petition today anyway. My docket is swamped and there's just no time to take testimony. Can I get a short date for the parties?

MR. OAKENSHIELD: Yes, Judge. I'm ready to argue and next week is open for me.

MR. BOMBADIL: I could be ready by next week too, Judge.

THE COURT: Great. Tuesday is wide open, so let's see everyone back then.

(Whereupon, proceedings were adjourned in this case)

United States Department of Justice
Executive Office for Immigration Review
City of Bree Immigration Court

Matter of PEREGRIN TOOK,
Respondent.

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No. T-012-345-678

REPORT OF PROCEEDINGS had in the above-entitled cause,
before HUGO BOFFIN, Immigration Judge of said court on the 9th day
of May, 2023.

PRESENT:

MR. THORIN OAKENSHIELD

Appearing on behalf of the United States Department
of Homeland Security;

MR. THOMAS BOMBADIL

Appearing on behalf of the Respondent

THE COURT: Good morning, we'll call Matter of Peregrin Took. For the record the parties and the court are appearing in person in the City of Bree. And before anyone says anything, I have received notice that this case is being transferred from call to redistribute the case load amongst immigration judges. So all I have to offer you is a week date.

MR. OAKENSHIELD: For the record, Thorin Oakenshield on behalf of the Department of Homeland Security. A week from now works for the Department.

MR. BOMBADIL: Tom Bombadil for Mr. Took. And that works for us too. I could use a bit more time to prepare Mr. Took's testimony anyway.

THE COURT: Okay then. You will appear again in a week. Just so you know, the judge may appear remotely but we have the technology here to allow the parties to continue to appear in this building in person. Good luck, Mr. Took.

(Whereupon, proceedings were adjourned in this case)

United States Department of Justice
Executive Office for Immigration Review
City of Bree Immigration Court

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<i>Matter of</i> PEREGRIN TOOK,	)	
Respondent.	)	No. T-012-345-678
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REPORT OF PROCEEDINGS had in the above-entitled cause,
before BILBO BAGGINS, Immigration Judge of said court on the 17th
day of May, 2023.

PRESENT:

MR. THORIN OAKENSHIELD
Appearing on behalf of the United States Department
of Homeland Security;

MR. THOMAS BOMBADIL
Appearing on behalf of the Respondent

THE COURT: Okay, looking at my call sheet, it looks like we have Matter of Peregrin Took up next.

MR. OAKENSHIELD: Good morning, Judge. Thorin Oakenshield for the Department. We should be up today for argument on the Department's petition to revoke Respondent's asylum.

THE COURT: Yes, I see that. Well, before we proceed further, I would state for the record the court is appearing by videoconference from its physical location in the Honolulu Immigration Court. Where are the parties appearing from?

MR. OAKENSHIELD: The Department is appearing in person at the City of Bree Immigration Adjudication Center.

MR. BOMBADIL: Good morning, Judge. Thomas Bombadil on behalf of Mr. Took. I am, along with my client, am also appearing in person in the City of Bree.

THE COURT: Thank you both. Unfortunately, we're not going to be able to move this case along today, you've caught me on my retirement day.

MR. OAKENSHIELD: Well congratulations, Judge.

MR. BOMBADIL: Yes, congrats. Any plans?

THE COURT: Nothing in particular. All I know is that I need a very long holiday and I do not expect to return; in fact, I mean not to.

MR. BOMBADIL: Well that sounds very relaxing.

THE COURT: I hope so. I've had enough of my adventures in this court. Anyway, this case will be transferred to a new judge for consideration of the merits of the parties' arguments. I can give the parties a date in about a month?

MR. OAKENSHIELD: That works for the Department.

MR. BOMBADIL: For Mr. Took, too.

THE COURT: Great. See you then. Well, I guess I won't see you then, but someone will.

(Whereupon, proceedings were adjourned in this case)

United States Department of Justice
Executive Office for Immigration Review
City of Bree Immigration Court

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Matter of PEREGRIN TOOK,)
Respondent.) No. T-012-345-678
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REPORT OF PROCEEDINGS had in the above-entitled cause,
before FRODO BAGGINS, Immigration Judge of said court on the 14th
day of June, 2023.

PRESENT:

MR. THORIN OAKENSHIELD
Appearing on behalf of the United States Department
of Homeland Security;

MR. THOMAS BOMBADIL
Appearing on behalf of the Respondent

THE COURT: Good morning, everybody, we have Matter of Peregrin Took up this morning. I understand this case has really been there and back again in terms of judicial assignments. Hopefully we can make it stick this time. What are we here to do today?

MR. OAKENSHIELD: Good morning, Judge. Thorin Oakenshield for the Department of Homeland Security. We planned to have a hearing on the Department's motion to revoke Respondent's asylum.

THE COURT: Okay, and was that going to be an evidentiary hearing?

MR. BOMBADIL: Good morning, Judge. Thomas Bombadil for Mr. Took. We don't plan to object to the legal basis for revoking Mr. Took's asylum, but I did want an opportunity to present brief testimony to support my motion for adjustment of status and to preserve any defenses against his removability.

THE COURT: That will be fine. Are the parties ready to go on that today?

MR. BOMBADIL: I am.

MR. OAKENSHIELD: The Department does not plan to cross-examine, so we're prepared today as well.

THE COURT: All right, well let's get this going. For the record, though, the court is appearing by videoconference from the Immigration Court in Charlotte, North Carolina. I see the NTA was filed in the City of Bree. Is that where the parties are located?

MR. OAKENSHIELD: Yes.

MR. BOMBADIL: Yes, Judge. Mr. Took is here with me as well.

THE COURT: He's not in custody?

MR. BOMBADIL: No, Judge, he got a sentence of probation.

THE COURT: I see. Well, proceed with your examination of your client, counsel.

PEREGRIN TOOK,

called as a witness herein by the Respondent, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION:

BY MR. BOMBADIL:

Q: Good morning, Mr. Took.

A: Good morning.

Q: I'm going to ask you a few questions, starting with some background information about how you came to the United States.

A: Okay.

Q: In what country were you born?

A: I was born in the Kingdom of Gondor. It's west of here.

Q: And what did you do in Gondor?

A: Not to be too egotistical, but I was a pretty popular musician there. I sing.

Q: I see. And where in Gondor did you live?

A: Well, I was born in a small farming town. I'm Shirefolk by birth, you see. But I moved to a big city called Minas Tirath in my 20s.

Q: And when was that?

A: Oh, some time in the early 2000s, probably 2004?

Q: And did you sing on your own?

A: Well, I was technically a solo performer, but I was part of a salon known as the Fellowship.

Q: So, a group of artists?

A: Yes, a very selective one. They are great at helping place performers in high paying, high demand positions.

Q: And where did you end up performing?

A: I eventually received an offer to perform at the royal court.

Q: That's a good place to ask, what form of government did Gondor have?

A: Well, now it's kind of unclear, but we used to be a parliamentary monarchy. So we had elections for parliament, which is divided into a House of Commons and a House of Lords, but our hereditary kings and queens retained quite a bit of power.

Q: And when you went to court, were you able to stay there?

A: Yes, for several years. Probably until early 2018.

Q: What happened then?

A: An up-and-coming representative in the House of Commons, the otherwise less powerful chamber, a man named Denathor, seized power. He disbanded both houses of parliament and declared himself king.

Q: Sounds drastic. Did he make any other changes?

A: Yes. He had no love for my people, the Shirefolk, so he discharged all of us from public service.

Q: What happened then?

A: Well, Shirefolk have always been looked down upon, especially in Minas Tirath. But we had the protection of the king, so we were generally safe. Once Denathor took power, people felt free to harass us. It started small, with people calling us "hobbits," which is a derogatory term for Shirefolk, or pushing us around in the street.

Q: Did the discrimination become more official?

A: It did. People started filing false criminal charges against many of my friends and family. We were accused of things like trespassing into private pools, disrupting second breakfasts, or stealing peoples' favorite jewelry.

Q: Was any of that true?

A: Not as far as I knew.

Q: And did anything happen as a result of those charges?

A: Well, the king rounded up a bunch of Shirefolk in Fangorn Forest and detained them in makeshift jails for weeks. But

eventually he was forced to drop a lot of the charges because no one could testify about things that didn't happen. But that didn't matter to some people, especially a gang of Orcs that had a strong presence in Minas Tirath.

Q: And did you ever encounter the orcs?

A: Yes. Just after Christmas in 2019, I was walking in Minas Tirath when a gang of Orcs drove up on motorcycles and surrounded me.

Q: I'm guessing they weren't there to celebrate with you?

A: No. They circled me for a few minutes, calling me "hobbit" and other offensive names. Then they got off their bikes and started hitting me with clubs that they carry.

Q: Did you ask for help?

A: Yes, several members of the king's police force were nearby. They just laughed and I heard one of them say, "silly hobbits."

Q: So, what did you do?

A: I packed up my stuff and left. I had to travel a few cities over before I could find an airport that was safe for Shirefolk. But I was able to book a flight on Eagle Airlines and came to the United States on January 3, 2020.

Q: And where did you go once you arrive here?

A: I lived, well I still live in the City of Bree. At least I do for now.

Q: How did you support yourself?

A: I found a really great group of performers, a lot like the Fellowship, that I could perform with. It's called the Prancing Pony Theater Troupe. I also teach Introduction to Vocal Performance and Gondorian Music Theory at the Green Dragon Community College.

Q: So you make a good living?

A: Good enough.

Q: And did you give back to your community?

A: I tried. I served as town councilman from November 2020 to November 2022. I had a reputation for securing spectacular, if slightly irresponsible, fireworks displays for the Fourth of July. I also worked at the community kitchen, where I managed a group of volunteers who maintained a vegetable garden and low-cost meal prep service.

Q: But you got into some trouble?

A: I did. Back in Gondor, pipe weed, or what we call Leaf, is legal recreationally. That was something even Denathor didn't take away. So, I've been smoking my whole life.

Q: And did you continue that practice?

A: Well, kind of. The marijuana available here is not as strong as pipe weed, so I don't smoke as often because it's too expensive.

Q: But you do smoke sometimes?

A: Yes. I had a pretty big batch at home.

Q: And you were arrested for that batch in 2023?

A: Yes, in January. I pled guilty to possessing 360 grams.

Q: And that seems like a lot.

A: I suppose it would be for someone from here, but to get the same effect as pipe weed, I would go through that amount pretty quickly.

Q: And you got probation.

A: Right.

Q: And you have no other criminal history?

A: Not here or in Gondor.

Q: I see. Well, I think that covers it. I don't have any other questions, Judge.

THE COURT: Thank you, counsel. And thank you, Mr. Took. That was very helpful context. That said, I'm not sure it's context that we can do much about.

MR. OAKENSHIELD: Unfortunatley, that's right judge. The Department has to enforce the law and that means revoking Mr. Took's asylum under 8 U.S.C. Section 1158(b)(2)(A)(ii).

THE COURT: I'm familiar with that statute, and the Department's position on that seems sound. Do you have any response counsel?

MR. BOMBADIL: At this time, Judge, we would concede that Mr. Took's cannabis conviction meets the statutory criteria for revocation of asylum. We would like to reserve any possible

discretionary avenues for relief and will certainly contest removability.

THE COURT: I understand the limited scope of your concession, counsel. Ok, then the Department's petition to revoke asylum will be granted. I think we need a removal hearing?

MR. OAKENSHIELD: That's right, Judge.

MR. BOMBADIL: Yes.

THE COURT: Okay, well my docket's pretty busy, but I can do August?

MR. OAKENSHIELD: Works for us, Judge.

MR. BOMBADIL: Us too.

THE COURT: Great. See everyone again on August 16th.

(Whereupon, proceedings were adjourned in this case)

United States Department of Justice
Executive Office for Immigration Review
City of Bree Immigration Court

Matter of PEREGRIN TOOK,
Respondent.

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No. T-012-345-678

REPORT OF PROCEEDINGS had in the above-entitled cause,
before FRODO BAGGINS, Immigration Judge of said court on the 16th
day of August, 2023.

PRESENT:

MR. THORIN OAKENSHIELD

Appearing on behalf of the United States Department
of Homeland Security;

MR. THOMAS BOMBADIL

Appearing on behalf of the Respondent

THE COURT: Matter of Took. We're here today for removal proceedings. My understanding is that the defense to removability is that Mr. Took should be adjusted to Lawful Permanent Resident, or "LPR," status?

MR. OAKENSHIELD: That's right, Judge. And, for the record, Thorin Oakenshield for the Department of Homeland Security. I'm appearing in person at the City of Bree Immigration Court.

MR. BOMBADIL: I agree that's an accurate summary, Judge. And this is Thomas Bombadil, appearing on behalf of Respondent, Peregrin Took. We are both in person at the City of Bree Immigration Court.

THE COURT: Thank you and good morning to everyone. I am appearing by video conference. I am on a train currently traveling in North Carolina. Incidentally, I may briefly pass through the City of Bree later. Anyway, let's get started. Mr. Oakenshield, what is the basis for Mr. Took's removability?

MR. OAKENSHIELD: His criminal conviction, Judge. He pled guilty to a state-law drug offense, namely, possessing 360 grams of marijuana. He qualifies for removal under 8 U.S.C. 1227(a)(2)(B)(i).

THE COURT: Mr. Bombadil, I have to imagine it's hard to dispute that?

MR. BOMBADIL: That's correct, Judge. I believe the record of the plea agreement is in the Immigration Court file.

THE COURT: It is. It was filed stamped in the City of Bree Immigration Court early in these proceedings.

MR. BOMBADIL: That's what I thought. So, I really can't contest removability under 1227(a)(2)(B)(i). I am arguing instead that Mr. Took should be adjusted to LPR status under Section 1159(b) because he was granted asylum.

THE COURT: Didn't I just terminate his asylum, though?

MR. OAKENSHIELD: You did, Judge. And that defeats Mr. Took's claim under recent Fourth Circuit case law, specifically, *Cela v. Garland*, 75 F.4th 355 (4th Cir. 2023).

MR. BOMBADIL: Well, we have case law too. The Fifth Circuit has held that it only matters that a noncitizen has, at some point in the past, been granted asylum. Future revocation doesn't matter. That case is *Siwe v. Holder*, 742 F.3d 603 (5th Cir. 2014).

MR. OAKENSHIELD: That actually brings up a preliminary issue that we need to address. We think Fourth Circuit case law controls because you are located in Charlotte, North Carolina, which is in the geographic jurisdiction of the Fourth Circuit.

MR. BOMBADIL: We would argue that you can choose between the relevant case law because the circuit law that controls is actually based on where the immigration proceedings began. I

would direct you, Judge, to the Board of Immigration Appeals' decision in *Matter of Garcia*, 28 I. & N. Dec. 693 (BIA 2023), which held as much just a few months ago. So the relevant circuit law would be the Twelfth Circuit, where Arnor is located, and that circuit has not addressed the LPR status issue yet.

THE COURT: Well this is a conundrum. I know I'm bound to apply the circuit law of the Court of Appeals with jurisdiction over the location of the Immigration Court. But, as I see it, we have two valid locations. Arnor, where the Department filed its notice to appear, and North Carolina, where I have been presiding over the proceedings. Mr. Oakenshield, do you have any case law to support your position?

MR. OAKENSHIELD: I do, Judge. In *Garcia*, which Mr. Bombadil cited to you, the BIA acknowledged that some courts have based appellate jurisdiction on physical location of the immigration judge. Now, that's a slightly different question than which law applies to these proceedings, but the BIA looked to that case law because the analysis was similar.

THE COURT: I see. Well, the Twelfth Circuit hasn't ruled on the issue. And, between the Fifth Circuit and Fourth Circuit, the Fourth Circuit seems to have best claim to the governing law because that's where I am. Do you, acknowledge,

Mr. Bombadil, that the Fourth Circuit has ruled against your client on this issue?

(Whereupon the proceedings were paused, for a brief recess)

THE COURT: My apologies, everyone. As I mentioned before, my train did pass through the City of Bree and, as it did so, my internet connection dropped. It looks to have improved now. I think I was asking, Mr. Bombadil, if you agree that the Fourth Circuit has ruled against your client on the adjustment issue?

MR. BOMBADIL: I do, Judge.

THE COURT: Well, that would seem to be the end of it. Applying the *Cela* case, I find this Court's past revocation of Mr. Took's asylum to be dispositive. He cannot adjust to LPR status. Any other arguments?

MR. BOMBADIL: Not at this time, Judge.

THE COURT: Well, since you've conceded the statutory basis for removability that the Department offered, I will order Mr. Took removable. I will enter a written order to that affect today.

(Whereupon, proceedings were adjourned in this case)

Matter of PEREGRIN TOOK,
Respondent.

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ORDER

Respondent is, therefore, ordered REMOVED.

JUDGE: /s Frodo Baggins
Immigration Judge
Charlotte Immigration Court
5701 Executive Center Drive, Suite 400
Charlotte, North Carolina 28212

Matter of Took, Respondent

Decided February 1, 2024

U.S. Department of Justice
Executive Board of Immigration Review
Board of Immigration Appeals

- (1) In the absence of case law from the Twelfth Circuit, this Court will apply decisions from the Fourth Circuit, the court with the closest jurisdictional nexus to this case.
- (2) Respondent was not eligible to request adjustment to Lawful Permanent Resident Status because the Immigration Judge had already terminated his asylum status at the time of his request.

FOR THE RESPONDENT: Thomas Bombadil, Esquire, City of Bree, Arnor

FOR THE DEPARTMENT OF HOMELAND SECURITY: Thorin Oakenshield, Assistant United States Attorney

BEFORE: Board Panel: LEGOLAS, EVENSTAR, and GALADRIEL Appellate Immigration Judges.

EVENSTAR, Appellate Immigration Judge:

The Respondent, Peregrin “Pippin” Took, is a native and citizen of the Kingdom of Gondor. He appeals from the Immigration Judge’s October 1, 2023, decision denying his request to adjust his status to Lawful Permanent Resident (LPR) status, 8 U.S.C. § 1159(b), and ordering him removed. The Immigration Judge held several hearings, during which he adequately determined the facts surrounding Respondent’s arrival in the United States and subsequent criminal conviction. We need not repeat those facts.

The Department of Homeland Security opposes Took’s appeal. The Department also raises a threshold issue about which United States Court of Appeals provides the law controlling our decision. Relying on our past precedent, as the Immigration Judge did, we conclude that case law from the Twelfth Circuit Court of Appeals would be controlling. But the Twelfth Circuit has not

addressed the merits of Respondent's claim under Section 1159(b). We find a recent decision from the Fourth Circuit persuasive and reject Respondent's argument that the Immigration Judge should have adjusted his status to LPR status. Because Respondent does not challenge his statutory basis for removal, we affirm.

ORDER: Respondent's appeal is DISMISSED.

FURTHER ORDER: Respondent is ordered REMOVED consistent with the final order of the Immigration Judge.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TWELFTH CIRCUIT**

Peregrin TOOK,	)	
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Petitioner,	)	Case File No. <u>24-1234</u>
	)	
v.	)	Immigration File No.
	)	<u>T-012-345-678</u>
Meriadoc BRANDYBUCK,	)	
Attorney General,	)	
	)	
Respondent.	)	

PETITION FOR REVIEW

The above-named Petitioner, Peregrin Took, hereby petitions for review by this Court of the final order of removal entered by the Board of Immigration Appeals, on February 1, 2024. A copy of the order is included in the attached record. To date, no court has upheld the validity of this order.

Jurisdiction is asserted pursuant to 8 U.S.C. § 1252(a)(1).

Venue is asserted pursuant to 8 U.S.C. 1252(b)(2), because the Immigration Judge completed proceedings in City of Bree, Arnor, within the jurisdiction of this judicial circuit.

This petition is timely filed pursuant to 8 U.S.C. § 1252(b)(1), as it is filed within 30 days of the final order of removal.

DATED: March 1, 2024

SIGNED: Thomas Bombadil
Counsel for Petitioner

No. 24-1234

IN THE
UNITED STATES COURT OF APPEALS
FOR THE TWELFTH CIRCUIT

PEREGRIN TOOK, Petitioner,

v.

MERIADOC BRANDYBUCK, in his official capacity as Attorney General of the
United States, Respondent.

On Petition for Review from the Board of Immigration Appeals
No. T 012 345 678

Decided and Filed: April 1, 2024

Before: SARUMAN, Chief Circuit Judge, and GANDALF and RADOCAST, Circuit
Judges.

SARUMAN, C.J., delivered the opinion of the court in which GANDALF, J.,
joined. RADOCAST, J., delivered a separate dissenting opinion.

OPINION

SARUMAN, *Chief Circuit Judge*. At issue in this appeal are two aspects of the
removal proceeding against petitioner Peregrin Took. First, we must resolve the
Attorney General's motion to transfer venue from this Court to the Fourth Circuit
Court of Appeals. Because we conclude venue is proper in this court, we must further

decide whether Peregrin,¹ a noncitizen who was granted asylum and whose asylum status has been terminated, is eligible for adjustment to lawful permanent resident (LPR) status under Section 1159(b) of the Immigration and Nationality Act of 1952 (Act). For the following reasons, we hold that venue is proper in this circuit and that Section 1159(b) allows Peregrin to apply for and be granted adjustment to LPR status even though his once-granted status as an asylee has been revoked.

BACKGROUND

The kingdom of Gondor, renowned for its misty mountains, is fast becoming a failed state. Following the assassination of King Arathorn II in 2010, conflict erupted between factions of the royal court. Amid the chaos, armies from neighboring countries captured the port of Osgiliath. Gondor's economy collapsed and citizens fled to the capital, Minas Tirath. With civil institutions crumbling, the warlord Stuart Denathor seized the throne and consolidated power.

For nearly fifteen years, Denathor has clung to authority as society fell into disarray. The Lonely Mountain Mining Company covered cities with smog, and a nationalist motorcycle gang, the Orcs, terrorized the countryside. Above all, Denathor inflamed hostility against a small minority community, the Shirefolk, which he targeted as a scapegoat for his failure to mitigate the political and economic convulsions wracking Gondor.

¹ The parties refer to Peregrin variably as "Peregrin" or "Took." Both are proper; we use Peregrin only to avoid any confusion with the relatively common verb that shares a spelling with his last name.

Peregrin, a Shirefolk, was born in 1980. As a young man, he left his farming village and traveled to Minas Tirath where he developed a reputation as a talented singer. Through a collective of performance artists called the Fellowship, he made connections in high society and became entertainment director for the royal court. When Denathor seized power, however, he immediately discharged all Shirefolk, including Peregrin, from public service.

Gondor became a hostile place. Scores of Shirefolk, including Peregrin, were detained in Fangorn Forest on a variety of unsubstantiated charges. One day, a band of Orcs, spurred on by the rumored criminal charges against the Shirefolk, cornered Peregrin on their motorcycles and beat him as police watched. Following hospitalization, Peregrin booked a ticket on Eagle Airlines and fled to the United States.

When Peregrin arrived, in 2020, he immediately declared his intent to seek asylum and ultimately was granted asylum status.² During the next three years, Peregrin lived an exemplary life. He settled in the City of Bree, located in the State of Arnor, which is geographically situated in Twelfth Circuit. There, Peregrin performed with the Prancing Pony Theater Troupe and taught at Green Dragon Community College. He also served as a town councilman, organizing fireworks and managing the community kitchen on the Fourth of July.

² The Attorney General does not dispute, and so we assume, that the initial grant of asylum was supported by adequate facts and a proper application of all statutes and rules governing asylum.

To be more accurate, Peregrin's life has been almost exemplary. In January 2023, police arrested Peregrin for possession of 360 grams of cannabis at his home in Bree. Peregrin entered an open plea of guilty in Arnor state court. During the plea hearing, in March 2023, he explained that he used cannabis to cope with trauma. He also presented letters from community members attesting to his good moral character and contrition. The trial court imposed probation.

In April 2023, the Department of Homeland Security (DHS) initiated removal proceeding against Peregrin. DHS alleged that Peregrin was removable for having been "convicted of a violation of *** any law or regulation of a State, *** relating to a controlled substance *** other than a single offense involving possession of one's own use of 30 grams or less of marijuana." *See* 8 U.S.C. § 1227. DHS also moved to terminate his asylum status based on his conviction of a "particularly serious crime." *See* 8 U.S.C. §§ 1158(b)(2)(A)(ii), (c)(2). That month, DHS sent Peregrin a notice to appear specifying that proceedings would occur at the immigration court in Bree. Soon after, Peregrin was detained and, at all relevant times, has been physically present in Bree.

Peregrin participated in several virtual hearings between April 2023 and June 2023. Three different immigration judges (IJs) presided at various times. The first IJ to hear Peregrin's case was physically present in Bree. That judge entered several continuances without ruling on the merits of either the revocation of Peregrin's asylum or his removability. The second IJ, located in Hawaii, also did not rule on the merits. Instead, he commented that he needed "a very long holiday, did not expect to

return, and in fact, meant not to.” That IJ transferred his entire docket, including Peregrin’s case, to another IJ located in North Carolina.

In June 2023, the IJ located in North Carolina granted DHS’s motion to terminate Peregrin’s asylum status. The cause proceeded to a removal hearing in August 2023. Peregrin filed a motion for withholding of removal and adjustment of status under 8 U.S.C. § 1159(b). During the parties’ arguments, the judge apologized for her poor internet connection and explained that she was on a train passing through Bree. On October 1, 2023, the IJ in North Carolina determined that Peregrin was subject to removal.

Peregrin appealed to the Board of Immigration Appeals (BIA), which affirmed the decision of the immigration judge in an order entered on February 1, 2024. The BIA concluded that the termination of Peregrin’s asylum status rendered him ineligible to adjust his status to lawful permanent resident, reasoning that Peregrin’s loss of asylum status meant that he had no status that could be adjusted. The BIA also rejected Peregrin’s claim for withholding of removal and ordered him removed. Peregrin then filed a petition for review in this Court. *See* 8 U.S.C. § 1252(a)(5).

While this appeal was pending, and before briefing, the Attorney General moved for a change of venue to the United States Court of Appeals for the Fourth Circuit, arguing that the North Carolina location of the office of the IJ who revoked asylum and ordered Peregrin removed made that court the proper venue for this appeal. We ordered the motion and Peregrin’s response taken with the case and now dispose of it along with the merits of Peregrin’s appeal.

DISCUSSION

Before proceeding to the merits, we must first resolve the Attorney General’s motion to transfer venue to the Fourth Circuit. The Attorney General argues venue is proper in the Fourth Circuit because that is the location in which the IJ was “located” and from where her final decision issued. Peregrin responds that venue is proper in this Court because the immigration-court proceedings commenced in Bree and he was in Bree throughout those proceedings.³ This issue is one of first impression in this Court and, after surveying the many and varied approaches taken throughout the Courts of Appeals and BIA, we agree with Peregrin that venue is proper in this Court because proceedings began in Bree by the filing of the Notice to Appear. We, therefore, deny the Attorney General’s motion to transfer venue and retain our jurisdiction over the case to address the merits.

Our task is primarily one of statutory interpretation. And, as with all questions of statutory interpretation, we start (and end, where we can) with the statute’s plain text. *E.g.*, *Tapia v. United States*, 564 U.S. 319, 326 (2011) (where meaning of the text is clear, our analysis “starts with the text” and “could end there as well”). The relevant statute is 8 U.S.C. § 1252(b)(2), which provides that “[t]he petition for review shall be filed in the court of appeals for the judicial circuit in which the immigration judge completed the proceedings.” As the First Circuit recently recognized, there is a “cacophony of viewpoints” on the proper meaning of “completed the proceedings.”

³ These are the parties’ primary contentions. They made other arguments in their briefs and any argument fairly included in the question of proper venue has been properly preserved.

Bazile v. Garland, 76 F.4th 5, 12 (1st Cir. 2023) (summarizing approaches); *see also* *Matter of Garcia*, 28 I. & N. Dec. 693, 698 n.5, 700-01 (BIA 2023) (same). Indeed, there is even disagreement about whether “completed the proceedings” is, standing on its own, the only operative language of Section 1252(b)(2). *See Herrera-Alcala v. Garland*, 39 F.4th 233, 241 (4th Cir. 2022) (emphasizing the relevant actor in the statute is the “immigration judge”). We could not sufficiently summarize the particulars of each approach here and, so, emphasize only those aspects of the analysis we find necessary to our decision.

We begin by summarizing the relevant steps of removal proceedings. Those proceedings begin, as here, with a Notice to Appear (NTA) or other charging document filed in an “administrative control” court. *Bazile*, 76 F.4th at 10 (citing 8 C.F.R. §§ 1003.14(a), 1103.31(f)). That court is responsible for maintaining all records in a given case, and all documents are filed and retained there. *Id.* The location of the administrative-control court and court where hearings take place may not be the same. *Id.* Indeed, over the life of the proceedings, different immigration judges may preside from different locations and by different modalities (in person, teleconference, videoconference, and so on). *Id.* at 11. After the final hearing on the merits, the presiding immigration judge may either render a decision from the bench or file a written order with the immigration court. *Id.*

From this summary, you could be forgiven for wondering where the proceedings are “completed.” Is it in the same place they are initiated? Is the where the bulk of them took place? Is it where the final order is entered? Does it matter if

the final order was entered orally or in writing? Why not where the noncitizen respondent is located or where the parties appeared? All these have a plausible claim to the designation of the location where the immigration judge “completed the proceedings.”

We agree with the First Circuit, that the only administrable option is to locate venue in the circuit where the proceedings are initiated by the filing of the Notice to Appear. *Id.* at 13. As the BIA has explained, it is bound to follow the law from the circuit in which the immigration court is located. *Matter of Garcia*, 28 I. & N. Dec. at 699. Because the identity and location of the immigration judge may change without notice and, critically, *after* the parties have briefed or argued their case, we would inject uncertainty into the process by tying venue to the physical location of the immigration judge. *Bazile*, 76 F.4th at 12. We also cannot tie the completion of the proceedings to the location of the immigration judge because the proceeding are not necessarily “complete[]” at the moment he or she issues the decision; and, what if the immigration judge’s location changes between the time of the hearing and rendering of decision as it did here? *See id.* Much better, we think, to find that the immigration judge “completes” the proceedings in the same place they were initiated—that is a plausible interpretation of the text of the statute and the one that provides the most order and predictability.

Having aligned our venue determination with that of the First Circuit, our analysis in this case becomes quite simple. DHS filed the NTA in Bree’s administrative control court and designated Bree as the hearing location on the

notice. Because proceedings began administratively in Bree any action the IJ took to complete the proceedings necessarily took place in Bree, no matter the IJ's physical location.

We acknowledge that the Fourth Circuit's approach has its own textual strength. In rejecting an argument that venue was proper in the location of the administrative review court, the Fourth Circuit correctly pointed out that the venue statute has been amended. *Herrera-Alcala*, 39 F.4th at 242. That prior version assigned venue to the place where "the administrative proceedings" were conducted; on the other hand, the current version of the statute focuses on where the immigration judge completed the proceedings. *Id.* According to the Fourth Circuit, Congress took our conclusion off the table by making the actor in the statute "the immigration judge." *Id.* We disagree—whether or not the immigration judge is the grammatical actor in the statute, any action the judge takes is taken as to the "proceedings," which are located where they were initiated.

We conclude by noting that several decisions in this area have discussed the varying levels of deference owed to decisions of the BIA or guidance and regulations promulgated by the Executive Office for Immigration Review. *See Yang You Lee v. Lynch*, 791 F.3d 1261, 1264-65 (10th Cir. 2015) (declining to defer to administrative regulations under *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944)); *Placncarte Saucedo v. Garland*, 23 F.4th 824, 832 (9th Cir. 2022) (giving *Skidmore* deference to those same regulations); *Bazile*, 76 F.4th 13 (giving *Skidmore* deference to BIA's interpretation of venue statute in *Matter of Garcia*). Though we have not needed them

to decide Peregrin’s appeal, the parties here have argued about administrative deference doctrines in their briefs and have preserved those arguments for further review. We emphasize, however, that this case is *not* about administrative deference and the parties have thus only discussed the relevant doctrines to the extent they persuasively apply to their textual analysis.

In sum, after surveying the relevant case law, we conclude that removal proceedings start *and* end in the immigration court where the Government filed the relevant charging document. Here that means the immigration judge completed the proceedings in Bree even though she presided over them from her remote location in North Carolina. Proper venue for Peregrin’s petition for review from the BIA lies in this Circuit. The Attorney General’s motion to transfer venue is denied and we proceed to the merits.

On the merits, we must decide whether Peregrin is eligible for adjustment to LPR status under Section 1159(b) even though his asylum, previously granted, has now been revoked. *See* 8 U.S.C. § 1159(b). As with the venue provision, the north star for our analysis is the text of the statute.⁴

⁴ In construing that statute, we do not defer to the Attorney General’s interpretation. *Loper Bright Enterprises v. Raimondo*, 603 U.S. ___, slip op. at 35 (June 28, 2024) (overruling *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)). We may look to an agency’s interpretation for guidance, affording it whatever weight is called for by its thoroughness, logical validity, longevity, and so forth. *See Skidmore*, 323 U.S. at 139-40. However, as with any other question of law, we ultimately rely on our “independent judgment” to interpret § 1159(b). *Loper Bright*, slip op. at 35. As before, the parties’ briefs discussed administrative deference doctrines but we emphasize, once more, that they are relevant here only to the extent they inform the parties’ textual analyses.

Adjustment to LPR status is available under Section 1159 to “any alien granted asylum who” satisfies five additional enumerated conditions. 8 U.S.C. § 1159(b).⁵ The question presented here is whether “any alien granted asylum” includes former asylees like Peregrin. Once again, we are not writing on a blank slate. Two of our sister circuits have addressed this question and given different answers. In *Siwe v. Holder*, 742 F.3d 603, 606-12 (5th Cir. 2014), the court held that an alien whose asylum status is terminated may still apply for adjustment to LPR status under Section 1159(b). It based that interpretation largely on the absence of an express requirement of current asylum status, especially in light of other provisions in Section 1159 that specifically turn on the alien’s present status as a refugee. *Id.* at 608-09. It also found that a contrary interpretation would effectively abrogate Section 1159(c), which gives the relevant official discretion to waive most barriers to admissibility when deciding whether to adjust an alien’s status under subsections (a) or (b). *Id.* at 609. But in *Cela v. Garland*, 75 F.4th 355 (4th Cir. 2023), a two-to-one majority held that only current asylees were eligible for adjustment. *Id.* at 365. The court reasoned that “the ordinary meaning of ‘status’ signals a present condition” and that the authority to “adjust” the alien’s status “suggests a requirement of an existing status.” *Id.* at 364-65.

⁵ Those five conditions are not at issue here. Because the IJ and BIA rejected Peregrin’s claim for adjustment to LPR status at the threshold step of considering his asylum status, we leave for remand any dispute about the five conditions enumerated in Section 1159(b).

The dissenting judge disagreed, explaining that the statute applied to those who had been “‘granted asylum,’ past tense” and that the status being adjusted was the alien’s “*non LPR status*.” *Id.* at 366 (Harris, J., dissenting in part) (emphasis in original). She also agreed with the Fifth Circuit that the contrary interpretation adopted by the majority was inconsistent with the statutory context. *Id.* at 367-68 (citing *Siwe*, 742 F.3d at 608-09). For example, stripping away the various dependent clauses, the statute reads, in standard subject-verb-object form: “The Secretary of Homeland Security or the Attorney General *** may adjust *** the status of any alien granted asylum ***.” This reveals to whom the provision is addressed (“The Secretary of Homeland Security or the Attorney General”), what those individuals are authorized to do (“may adjust the status”), and the class of people it can be done to (“any alien granted asylum”).

So is Peregrin a member of the class defined by Section 1159(b)? As defined by the statute, that class consists of “any” individual who satisfies two criteria: (1) the person is an “alien,” and (2) the person has been “granted asylum.” Both are true of Peregrin. As neither “a citizen or national of the United States,” by definition, he is an “alien.” 8 U.S.C. § 1101(a)(3). And, after he arrived in the United States in 2020, he was “granted asylum.” That his asylum was later revoked does not change the indisputable historical fact that he was “granted” it. See *Cela*, 75 F.4th at 366 (Harris, J., dissenting in part) (noting that Congress used the past tense). By the plain language of Section 1159(b), Peregrin remained eligible for a status adjustment.

This analysis is sufficient on its own, but there is still more textual support for our conclusion. As noted in *Siwe*, “conspicuously absent” from Section 1159(b) is any express requirement that the alien be an asylee at the time he or she applies for adjustment. *Siwe*, 742 F.3d at 608. This is especially notable because other parts of Section 1159 specifically turn on the alien’s present condition. *Id.* at 608-09. One of the five criteria for adjustment under Section 1159(b) is that the applicant “continues to be a refugee.” 8 U.S.C. § 1159(b)(3). Indeed, if only current asylees were eligible for adjustment, this requirement would be superfluous: asylum may be granted only to refugees and must be terminated if an asylee ceases to be a refugee. *See id.* § 1158(b)(1)(A), (c)(2)(A). Also, Section 1159(a), which governs adjustment to LPR status for aliens who were admitted as refugees (as opposed to those who, like Peregrin, were only granted asylum after they arrived), permits that adjustment only when the refugee’s “admission has not been terminated.” 8 U.S.C. § 1159(a)(1)(A). In view of these other provisions, the exclusion of an express continuing-asylee-status requirement in Section 1159(b) “can only be understood as a purposeful omission.” *Cela*, 75 F.4th at 367 (Harris, J., dissenting in part).

The Attorney General insists that, because Peregrin’s asylee status was revoked, he has no status that can be “adjust[ed]” under Section 1159(b). This interpretation assumes that an asylee has no other status under our immigration laws, and that is not so. Asylum is not acquired through a change from a previous status. Rather, the Secretary or the Attorney General “grant[s] asylum.” 8 U.S.C. § 1158(b)(1)(A). That grant leaves intact whatever status the asylee may have

possessed when asylum was granted. *See Bare v. Barr*, 975 F.3d 952, 967-72 (9th Cir. 2020) (holding that “a stowaway retains his or her status as a stowaway when granted asylum”). And that status is retained even after asylum is revoked. *Id.* at 972. It is unclear from the record what Peregrin’s status was when he was granted asylum, but it does not matter. Whatever status it might be is a “*non LPR status*,” and so, it “may be adjusted *** to *LPR status*.” *Cela*, 75 F.4th at 366 (Harris, J., dissenting in part).

Ironically, the final nail in the coffin for the Attorney General’s interpretation is that it would undermine his own authority. Peregrin’s conviction for the “particularly serious crime” of possessing cannabis required the Attorney General to terminate his asylum. *See* 8 U.S.C. § 1158(b)(2)(A)(ii), (c)(2)(B). That conviction also rendered him technically inadmissible (*see id.* § 1182(a)(2)(A)(ii)), and admissibility is a precondition for adjustment to LPR status under Section 1159(b). *Id.* § 1159(b)(5). Section 1159, however, gives the Attorney General discretion to waive most barriers to admissibility, including Peregrin’s, “for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.” 8 U.S.C. § 1159(c). It would make very little sense for Congress to vest the Attorney General with that discretion and then set up a statutory scheme that deprived him of an opportunity to use it. *See Cela*, 75 F.4th at 367-68 (Harris, J., dissenting in part). Congress carefully weighed the competing interests and made a considered decision to give the Attorney General discretion to waive bars to admissibility, thereby allowing asylees whose status is revoked to remain in the United States as lawful permanent residents. *See Siwe*, 742 F.3d at 609.

Section 1159(b) does not require the Attorney General to adjust Peregrin's status to that of a lawful permanent resident. But it does require him to entertain Peregrin's application for adjustment and decide whether a conviction for "pipe weed" possession justifies exiling a valued member of the Bree community to Gondor, a country where the prospect of him falling victim to ethnic violence is not a question of *if*, but *when*.

III. CONCLUSION

Venue is proper in this Court because proceedings started and ended in Bree, which is in this Circuit's geographic jurisdiction. On the merits, we hold that the termination of Peregrin's asylum status does not preclude his application for adjustment to LPR status. Peregrin's petition for review is granted and we vacate the BIA's decision ordering Peregrin removed.

VACATED and REMANDED for further proceedings consistent with this opinion.

RADOGAST, *Circuit Judge*, dissenting.

"Only the written word is the law[.]" *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 653 (2020). And here, as written, the law directed Peregrin to file his petition for review in the "the court of appeals for the judicial circuit in which the immigration judge *completed* the proceedings." 8 U.S.C. § 1252(b)(2) (emphasis added). Because the immigration judge who completed the proceedings was located the Fourth Circuit, I would grant the Attorney General's motion and transfer venue to that court. I would also affirm the BIA's decision ordering Peregrin removed

because the revocation of his status as an asylee bars him from seeking adjustment to the status of a lawful permanent resident.

As to venue, the majority concludes we are the proper court to consider Peregrin’s petition for review, making three mistakes on a winding route to the wrong place. First, the majority misses the only stop it needed to take—the text of the law as written. Second, the majority gets lost among a thicket of caselaw obscuring the ordinary meaning of the venue provision. Finally, the majority ends up rewriting the venue provision, concluding Peregrin properly filed his petition for review in the judicial circuit in which the proceedings *commenced*, rather than “completed.”

Courts begin and end with the text of the law because “only the words on the page constitute the law adopted by Congress and approved by the President.” *Bostock*, 590 U.S. at 654. Here, the text of the venue provision specifically directs where to petition for review of an order of removal.

“(b) Requirements for review of orders of removal

With respect to review of an order of removal [like Peregrin’s], the following requirements apply:

(2) Venue and forms

The petition for review shall be filed with the court of appeals for the judicial circuit in which the immigration judge completed the proceedings.” 8 U.S.C. § 1252(b)(2).

Peregrin sought appellate review of his order of removal and thus invoked this statute. It directs that the petition for review “shall be filed” with a court of appeals for a specific “judicial circuit.” Generally, we define judicial circuits by geography. 28

U.S.C. § 41 (specifying the Fourth Circuit is “constituted as follows ... Maryland, North Carolina, South Carolina, Virginia, West Virginia”). And from many possible geographic locations from which proper venue could arise, the statute specifically chooses the place where “the immigration judge completed the proceedings.”

For Peregrin, the IJ held office in North Carolina during the proceedings. Thus, under the venue provision, Peregrin needed to file his petition for review in the Fourth Circuit. See *Herrera-Alcala v. Garland*, 39 F.4th 233, 241 (4th Cir. 2022) (analyzing 8 U.S.C. § 1252(b)(2) similarly). That the majority finds more “administrable” some other option changes neither the plain text of the statute nor converts the majority into members of Congress capable of changing that plain text. As judges, we must apply the law as written even when we dislike the result. The majority points to a “cacophony of viewpoints” on the meaning of “completed proceedings” and surveils technical aspects of the filing processes and subsequent hearings. But all that obscures the ordinary meaning of a common phrase. Simply put, the statutory text focusing on where “the immigration judge completed the proceedings” ties venue for the proceedings on a petition for review to the office of the immigration judge.

And for good reason. Lower courts and the BIA usually apply the law of the court that will review their decisions. See *Rosendo-Ramirez v. I.N.S.*, 32 F.3d 1085, 1091 (7th Cir. 1994) (discussing older version of venue provision). Contrary to the majority’s contention, tying venue to a specific office and thus a particular court of appeals does not inject uncertainty into the process. Rather, doing so ensures that

the courts of appeals will continue to develop, and lower courts will continue to apply, a uniform body of law.

This top-down view applies with equal force when considering the ordinary meaning of the venue provision. The majority gets lost within an apparent paradox, pondering the meaning of “completed.” *Cf.* See Dominic Hyde, Sorites Paradox, Stanford Encyclopedia of Philosophy (August 12, 2013, 10:49 p.m.), <https://plato.stanford.edu/entries/sorites-paradox/>. The majority wonders how any action in the proceedings below could be considered “complete[]” when some other action—say, drafting an order or even docketing that order—could “plausibly” be the moment of completion, as we slice time and space ever more finely.

But in law, we successfully employ ordinary meaning all the time. For example, tomatoes are literally “the fruit of a vine,” though “in the common language of the people,” tomatoes are vegetables. *Nix v. Hedden*, 149 U.S. 304, 307 (1893). Likewise, the statutory term “vehicle” need not cover an aircraft. *McBoyle v. United States*, 283 U.S. 25, 26 (1931). Here, the proceedings were not “completed” on the train ride that happened to pass through Bree. Rather, under the ordinary meaning of the statute, the immigration judge completed their work through their office, even if working remotely.

The majority asserts its contrary analysis is “quite simple”: “removal proceedings start *and* end in the immigration court where the Government filed the relevant charging document.” That is, under the majority’s view, the venue provision directed Peregrin to file his petition for review in the “the court of appeals for the

judicial circuit in which the immigration judge [commenced or] completed the proceedings.” For the reasons I have given, the ordinary meaning of the venue provision precludes that reading.

And so do ordinary rules of interpretation. Generally, when construing statutes, we presume that omissions are intentional, and that we are without authority to add terms or provisions where Congress has omitted them. *Cervantes-Ascencio v. U.S. I.N.S.*, 326 F.3d 83, 86 (2d Cir. 2003). These presumptions hold here. The majority errs by writing the statute anew to tie venue to the judicial circuit in which the proceedings *commenced*, rather than where they were “completed.” We must apply the law as written, even if we can imagine more efficient or equitable results. Because the majority re-writes the venue provision, I cannot agree that we are the right court to consider Peregrin’s petition for review.

Assuming venue is proper in this Circuit, however, I also disagree with the majority on the merits. As the majority acknowledges, this case requires us to interpret Section 1159(b) of the Immigration and Nationality Act of 1952. Siding with Peregrin, the majority has concluded that Section 1159(b) allows the adjustment to LPR status of a person who was previously granted asylum but later had that asylum status revoked. I cannot agree.

I start where the majority did, with the words of the statute itself. *Siwe v. Holder*, 742 F.3d 603, 608 (5th Cir. 2014). Relevant here, Section 1159(b) provides:

The Secretary of Homeland Security or the Attorney General, in the Secretary’s or the Attorney General’s discretion and under such regulations as the Secretary or the Attorney General may prescribe,

may adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum * * * [.]

8 U.S.C. § 1159(b). Under the rules of statutory construction, and when read in context, the phrase “the status of any alien granted asylum” unambiguously requires a continuing and ongoing status as an alien granted asylum. *See Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 84 (2017) (“Past participles like ‘owed’ are routinely used as adjectives to describe the present state of a thing[.]”).

“The plainness or ambiguity of statutory language is determined not only by reference to the language itself, but as well by the specific context in which that language is used, and the broader context of the statute as a whole.” *Yates v. United States*, 574 U.S. 528, 537 (2015). The relevant portion of Section 1159(b) references a change or adjustment from one thing to another: adjusting the status of an alien granted asylum to the status of an alien lawfully admitted for permanent residence. 8 U.S.C. § 1159(b). It is within this context that the phrase “the status of any alien granted asylum” appears. *Id.* When read in context, the phrase means that the person’s asylum status must still be in effect when the person applies for adjustment because, otherwise, there would be nothing for the Secretary of Homeland Security or the Attorney General to adjust. *Cela*, 75 F.4th at 365. Any other interpretation of Section 1159(b) would violate the rules of statutory construction by rendering the word “status” unnecessary and superfluous. *See Espinal-Andrades v. Holder*, 777 F.3d 163, 168 (4th Cir. 2015) (quoting *Alaska Dep’t of Envtl. Conservation v. E.P.A.*, 540 U.S. 461, 489 n.13 (2004)) (it is a “cardinal principle” of statutory construction that no interpretation should render any word superfluous).

This interpretation of Section 1159(b) is not an outlier as the Fourth Circuit recently addressed the same issue and determined that the statute “unambiguously precludes an alien whose asylum status has been terminated from adjusting to lawful permanent resident status.” *Cela*, 75 F.4th at 365. In rejecting the petitioner’s contention that the word “granted” in the phrase “status of any alien granted asylum” did not require a continuing or ongoing status, the court explained that the word “status,” given its plain and ordinary meaning, indicated a “present condition.” *Cela*, 75 F.4th at 364 (citing *Mahmood v. Sessions*, 849 F.3d 187, 193 (4th Cir. 2017) and *Status*, *Black’s Law Dictionary* (5th ed. 1979)). The Court recognized that “without that meaning, the phrase ‘the status of’ in § 1159(b) does no work.” *Cela*, 75 F.4th at 364-365. Like the petitioner’s interpretation in *Cela*, the majority’s interpretation of Section 1159(b) would improperly relegate the word “status” to meaningless surplusage.

Reading the word “status” to mean any status the asylee may have possessed when asylum was granted, as the majority attempts to do, does not save its interpretation. In fact, it produces another violation of the rules of statutory construction. Specifically, it violates the rule against rewriting statutes. *E.g.*, *Guo XI v. INS*, 298 F.3d 832, 839 (9th Cir. 2002) (“a decision to rearrange or rewrite the statute falls within the legislative, not the judicial, prerogative”). The majority is correct that the “grant of asylum is the ‘acquisition of an additional status’ rather than ‘a change from one status to another status.’” *Bare v. Barr*, 975 F.3d 952, 971

(9th Cir. 2020). In *Barr*, for example, the court held that the granting of asylum did not change the petitioner’s status as a stowaway. *Bare*, 975 F.3d at 972.

But fatal to the majority’s analysis is that the plain and unambiguous language does not indicate an intent for all statuses to be eligible for adjustment. *See id.* (“Congress in § 1159 explicitly provided that not all asylees are eligible to adjust their status.”). Section 1159(b) addresses adjustments in the context of two specific statuses: (1) the status of an alien lawfully admitted for permanent residence and (2) the status of any alien granted asylum. 8 U.S.C. § 1159(b). Thus, an adjustment to a person’s additional status, e.g., as a stowaway, is not the intent of Section 1159(b). *See Mahmood v. Sessions*, 849 F.3d 187, 195 (4th Cir. 2017) (“because Mahmood adjusted his status from an alien granted asylum to a lawful permanent resident, he no longer has protections based on his *original* asylum status”); *Bare*, 975 F.3d at 972 (Congress did not provide that all asylees could adjust their status and barred some asylees from adjusting their status). We cannot rewrite the statute to say otherwise.

Lastly, the majority’s concern about the wisdom of Congress vesting the Attorney General with discretion under § 1159(c) and then limiting the use of that discretion in this situation is well-taken, but it is not this Court’s place to pass judgment on Congress’s wisdom; we apply the statute only as it is written. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 736 (2014). As written, the statute does not lead to an absurd result regarding the exercise of the Attorney General’s discretion because Congress can limit any authority it grants. *See Am. Forest Res. Council v. United States*, 77 F.4th 787, 797 (4th Cir. 2023) (“Congress can and often does cabin

the discretion it grants the President”). The majority’s search for any tool in our statutory construction toolkit to rule in Peregrin’s favor is, ultimately, futile; nothing the majority musters is sufficient to overcome the plain text of the statute.

I would grant the Attorney General’s motion to transfer venue to the Fourth Circuit. And, even if venue is proper in this Circuit, I would affirm the BIA’s decision ordering Peregrin removed. I respectfully dissent.

In the
Supreme Court of the United States

No. 24-0258

Meriadoc BRANDYBUCK, Attorney General,
Petitioner,

v.

Peregrin TOOK,
Respondent.

On petition for the writ of certiorari from the United States Court of Appeals for the Twelfth Circuit. The writ of certiorari is hereby GRANTED.

The parties are directed to restrict their briefing and argument to these issues:

1. Whether, under 8 U.S.C. § 1252(b), proper venue for Respondent's petition for review from the decision of the Board of Immigration Appeals is the United States Court of Appeals for the Twelfth Circuit or the United States Court of Appeals for the Fourth Circuit.
2. Whether a noncitizen who was granted asylum may apply for adjustment to lawful permanent resident status under 8 U.S.C. § 1159(b) after that noncitizen's asylum has been revoked.