United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 14, 2026

Lyle W. Cayce
Clerk

No. 25-60322

Peniel Olibris,

Petitioner,

versus

Todd Wallace Blanche, *U.S. Attorney General*,

Respondent.

Petition for Review of an Order of
the Board of Immigration Appeals
Agency No. A207 742 673

Before King, Smith, and Ramirez, *Circuit Judges*.

Jerry E. Smith, *Circuit Judge*:

Peniel Olibris is a native and citizen of Haiti who was admitted to the United States as a lawful permanent resident in 2016. Olibris pleaded guilty of smuggling goods in violation of 18 U.S.C. § 554 and stipulated to exporting, without a license, fifty firearms to Haiti concealed in more than a dozen cars, "knowing that the exportation was contrary to United States law and regulation." The Department of Homeland Security ("DHS") issued Olibris a Notice to Appear before an immigration judge ("I.J."), charging that he was removable under 8 U.S.C. § 1227(a)(4)(A)(i), as an alien who, after admission, "engage[d] in any activity," *inter alia*, "to violate or evade any law prohibiting the export from the United States of goods."

The I.J. sustained both contested charges of removal, and a Board of Immigration Appeals ("BIA") panel affirmed the I.J.'s decision, expressly rejecting Olibris's contention that § 1227(a)(4)(A)(i) "should be read to include only explicit acts of espionage, national security, and public safety threats, and insurrection." The BIA carefully explained that Olibris's theory is inconsistent with the removal provision's plain language and "would require the impermissible addition of language" from the provision's other subsections, § 1227(a)(4)(A)(ii) and (iii). We agree with the BIA's cogent reasoning and deny Olibris's petition.

I.

"We generally have authority to review only the decision of the BIA." *Zhu v. Gonzales*, 493 F.3d 588, 593 (5th Cir. 2007) (citation omitted). "When the IJ's ruling affects the BIA's decision, however, we also review the decision of the IJ" *Id.* (citations omitted). "We review factual findings of the BIA and IJ for substantial evidence, and questions of law *de novo*." *Id.* at 594 (citation omitted).

II.

A.

Between 2019 and 2020, Olibris and an associate purchased seventy-seven firearms and shipped at least fifty of them to Haiti. Olibris "placed the firearms in boxes inside of cars" and "had the drivers take the cars from Colorado to Florida," where one of his associates "coordinated with the shipping company . . . to send the [thirteen] cars containing firearms to Haiti." Notably, Olibris "had not applied for, or obtained, the necessary license to export defense articles," "which then included 'nonautomatic and semi-automatic firearms to caliber .50 inclusive.'" Olibris purchased three semi-automatic firearms—later registered in Haiti—including a "Glock

9mm pistol"; a "Keltec 9mm pistol"; and a "Smith and Wesson 9mm pistol." The U.S. District Court for the District of Colorado sentenced Olibris to twelve months and one day, plus one year of supervised release.

B.

Olibris asserted, in his asylum application, that he was afraid of "Haitian people in general[,] especially those with social media" after news of his case had "gone viral" and that "gang members w[ould] kill [him] because they all kn[e]w that [he] was sending guns to Haiti." After suggesting that some people attempted to attack his family's house, Olibris claimed that "[e]veryone" in Haiti "[wa]s waiting" "to kill" him. Olibris later withdrew his claims for asylum and withholding of removal, positing that he wished to "proceed[] only on deferral under . . . [CAT]." Though Olibris testified that an armed person broke into his mother's Haiti home and that he sent his mother a firearm for protection, Olibris agreed that violence has "always [been] a problem" in Haiti and affirmed, in completing paperwork for firearm purchases, that he was making the purchase for his own use.

Olibris claimed that fourteen of the seventy-seven firearms he purchased were stolen from his Denver apartment and "indicated how he had to hide the guns in order to ensure that they were not stolen, had to have people at a certain place, because people would just go into customs and steal things out of vehicles." Yet Olibris claims that he knows with "[one] hundred percent" certainty that the firearms he sent went to their intended recipients, even though some other items disappeared from within the cars that he shipped. Olibris conceded that he "d[id not] know if all . . . [fifty firearms] were registered."

C.

The I.J. sustained the contested charges of removal, explaining that Olibris's withholding application "would not have been granted anyway" and detailing the "particularly serious" and "dangerous crime of trafficking" "at least [seventy-seven] weapons not intended for [his own] use, but rather to be shipped outside of the United States in a fraudulent manner, hiding and concealing the shipment."[1]

The I.J. stated that "[c]redibility is not required for a deferral of [CAT] removal application" and determined that Olibris "failed to demonstrate that it is more likely than not that he would be tortured should he be returned to Haiti," reasoning that threats from "unknown persons and random people" were speculative, and that Olibris had not established that the social media commenters were government actors or would consent or acquiesce to his torture. In denying the CAT deferral, the I.J. cited the continued safety of Olibris's relatives.

D.

Olibris appealed, challenging the removability finding; the denial of the CAT deferral; and the I.J.'s administrative notice of a publicly available news report from the British Broadcasting Corporation ("BBC").[2]

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[1] The I.J. described Olibris's lack of candor across "several aspects of his testimony." First, Olibris falsely "indicated that he did not make any profit from the shipments" but later "admitted . . . that he sold the weapons to supplement his income." Second, Olibris "was not forthcoming" "[w]hen discussing his criminal conviction"—"[h]e could not recall the exact amount of vehicles that were shipped and the only way he seemed to remember . . . was because of the [PSR.]" Third, Olibris "was also evasive . . . about his marriage to a U.S. citizen," "unable to answer simple questions as to when h[e] and his wife split up." Fourth, the I.J. "d[id] not believe that [Olibris] shipped all [fifty] guns to only family members." Indeed, Olibris's father acknowledged that Olibris "ignored the unlawfulness of his business endeavors." And DHS provided documents indicating that a "person shipping weapons to Haiti could make approximately or up to $10,000 for a weapon."

[2] The I.J. stated that "having the international community and . . . an interim government for Haiti restores hopes that order and democratic rule will be restored."

A BIA panel dismissed the appeal,[3] affirming that Olibris is removable under 8 U.S.C. § 1227(a)(4)(A)(i). The BIA elucidated that DHS, though not required to do so, "submitted evidence of . . . [Olibris]'s conviction for illegally exporting firearms under 18 U.S.C. § 554" and that Olibris "conceded that he unlawfully sent firearms from the United States to Haiti."[4] The BIA affirmed the I.J.'s denial of the CAT deferral claim, observing no clear error in the I.J.'s findings. In affirming the I.J.'s determinations, the BIA expressly disclaimed reliance on the BBC report and "conclude[d] that any error in admitting th[e] report was harmless" and that Olibris "received a fundamentally fair hearing."

III.

Olibris's *noscitur a sociis* contention is meritless.

Section 1227(a)(4) provides,

> (4) Security and related grounds
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> (A) In general
>
> Any alien who has engaged, is engaged, or at any time after admission engages in--
>
> (i) any activity to violate any law of the United States relating to espionage or sabotage or to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,
>
> (ii) any other criminal activity which endangers public safety or national security, or

[3] The BIA noted that Olibris "d[id] not challenge the [I.J.]'s determination that his conviction under 18 U.S.C. § 554 is a particularly serious crime that renders him ineligible for asylum and withholding of removal under the INA and CAT."

[4] The BIA did not decide the merits of the allegation that Olibris committed a crime involving moral turpitude because the BIA had already established Olibris's removability.

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

8 U.S.C. § 1227(a)(4). And 18 U.S.C. § 554(a) criminalizes "export[ation of] . . . any merchandise . . . contrary to any law or regulation of the United States."

Still, Olibris relies on the *noscitur a sociis* canon[5] to posit that § 1227(a)(4) provides removability only for those who are national security risks and does not apply to him because he allegedly has not engaged in behavior that presents such a risk. He avers that § 1227(a)(4)'s remaining subsections pertain to national security, namely terrorist activities; foreign policy; genocide; religious freedom violations; and recruitment of child soldiers. Olibris theorizes that a holistic reading demonstrates that his act of exporting firearms does not fall within § 1227(a)(4)(A)(i), suggesting that the BIA's interpretation could render one removable for illegally exporting a benign item such as a bag of chips.

But Olibris's § 554 criminal conviction for the "export[ation of] . . . any merchandise . . . contrary to any law or regulation of the United States" sufficiently satisfies the plain text of § 1227(a)(4)(i), which includes "any activity to violate any law of the United States . . . prohibiting the export from the United States of goods." 8 U.S.C. § 1227(a)(4)(i); 18 U.S.C. § 554.[6] We

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[5] *See Fischer v. United States*, 603 U.S. 480, 481, 487 (2024) ("[T]he canon of *noscitur a sociis* teaches that a word is given more precise content by the neighboring words with which it is associated." (citations and internal quotations omitted)).

[6] *U.S. Postal Serv. v. Konan*, 607 U.S. 391, 406 (2026) (noting that Congress "likely use[s] broad" language for a reason) (citation omitted). *See Hightower v. Tex. Hosp. Ass'n*, 65 F.3d 443, 450 (5th Cir. 1995) (per curiam) ("The starting point of statutory construction is the text of the statute and, if it is clear, that is also the end of the construction."); *see also*

expressly reject Olibris's invocation of the *noscitur a sociis* canon, which "is subordinate to the 'cardinal canon' that 'a legislature says in a statute what it means and means in a statute what it says there.'" *Konan*, 607 U.S. at 406. After all, *noscitur a sociis* "is merely an interpretive aid,"[7] not necessarily a roving license that improperly authorizes an enterprising litigant to combine language from a provision's other subsections in a manner inconsistent with the statute's plain text.[8] We agree with the BIA's sound reasoning rejecting Olibris's *noscitur a sociis* assertion, which "would require the impermissible addition of language" from the provision's other subsections, § 1227(a)(4)-(A)(ii) and (iii).[9]

IV.

Olibris has not carried "the burden of showing that the evidence is so compelling that no reasonable factfinder could reach a contrary conclusion." *See Chen v. Gonzales*, 470 F.3d 1131, 1134 (5th Cir. 2006) (citation omitted).

"Whether the petitioner has proven eligibility for withholding of

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Tula Rubio v. Lynch, 787 F.3d 288, 293 (5th Cir. 2015) ("[F]ar from being further limiting, the word 'any' is expansive.").

[7] *See Corley v. United States*, 556 U.S. 303, 325 (2009) (Alito, J., dissenting) (discussing the anti-superfluousness canon).

[8] *See Alexander v. Sandoval*, 532 U.S. 275, 288 (2001) ("We have never accorded dispositive weight to context shorn of text."); *see also id.* ("[I]n interpreting statutes generally, legal context matters only to the extent it clarifies text." (citation omitted)).

[9] Though our sister circuits have not expressly considered a petitioner's invocation of *noscitur a sociis* in a challenge to a removability finding under § 1227(a)(4)(A)(i), the Eleventh Circuit has often denied petitions for review challenging a removability finding under § 1227(a)(4)(A)(i) in analogous circumstances. *See, e.g.*, *Matheus v. U.S. Att'y Gen.*, 757 F. App'x 803, 805–07 (11th Cir. 2016) (per curiam) (denying a petition for review challenging a removability finding under § 1227(a)(4)(A)(i) based on a § 554 conviction for "attempt[ing] to export firearms and ammunition designated as defense articles contrary to law").

removal or CAT protection is a factual finding that we review under the substantial evidence standard." *Revencu v. Sessions*, 895 F.3d 396, 401 (5th Cir. 2018) (citation omitted). Under the "substantial evidence" test, we "revers[e] only when the evidence is so compelling that no reasonable fact finder could fail to find the petitioner statutorily eligible for relief."[10] "The applicant has the burden of showing that the evidence is so compelling that no reasonable factfinder could reach a contrary conclusion." *Id.* (citation omitted).

Olibris's torture claims are too generalized to compel a contrary conclusion. *See id.* In fact, Olibris claims that Haitian social media users "in general" and "[e]veryone in Haiti" "[w]as waiting" "to kill him." But he admitted that he "d[id not] know" any specific gang, group of people, or person who wants to harm him. Nor did Olibris identify the specific social media users who allegedly made threatening comments online, specify the extent of their ties to the government, indicate whether they remain angry about his conviction, whether they have the capability of inflicting harm, or that any purported harm rises to the extreme level of torture. These "evidentiary gaps . . . work against" Olibris, the one "seeking relief from a lawful removal order."[11] And the generalized-country-conditions evidence is insufficient to demonstrate that state actors will specifically torture him or that he suffers a

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[10] *Arif v. Mukasey*, 509 F.3d 677, 679 (5th Cir. 2007) (per curiam) (citation and internal quotation omitted); *see also id.* ("Under this deferential standard, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." (citation and internal quotation omitted)).

[11] *See Pereida v. Wilkinson*, 592 U.S. 224, 240 (2021) ("[J]ust as evidentiary gaps work against the government in criminal cases, they work against the alien seeking relief from a lawful removal order.").

greater risk of harm than an undifferentiated member of the public in Haiti.[12]

Olibris's torture claims are also too speculative. *First*, though Olibris suggested that his name *could* appear on a list of Haitian returnees or that Haitian police *might* detain him, he acknowledged that Haitian police never arrested him and admitted that he does not know whether there is any warrant for his arrest. *Second*, Olibris has either expressly denied, or failed to provide evidence, that his brother, partner, or parents have been questioned by police, targeted by government officials, physically harmed, or tortured.[13] *Third*, that some in his family have relocated "suggests that any danger of harm could be mitigated through relocation."[14] *Fourth*, his friend's statement "*I don't know what will happen* but don't come," fails to specify any concrete harm, and in any event, reinforces the speculative nature of Olibris's torture claims.

Substantial evidence supports the finding that Olibris failed to establish that Haitian officials will more likely than not consent or acquiesce to his torture. That Haiti may be experiencing a power vacuum or general instability does not categorically discharge a CAT petitioner's burden of proving an official's consent or acquiescence to torture.[15] Otherwise, an

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[12] *See Qorane v. Barr*, 919 F.3d 904, 911 (5th Cir. 2019) ("Generalized country evidence tells us little about the likelihood state actors will torture any particular person." (citation omitted)).

[13] *See Ramirez-Mejia v. Lynch*, 794 F.3d 485, 493–94 (5th Cir. 2015) (holding that evidence did not compel reversal where the petitioner failed to "contest[] the finding that her brother's wife and family members were not tortured, despite remaining in Honduras after her brother's murder").

[14] *See id.* at 494 ("[T]he fact that [petitioner's] brother's wife has not been harmed since moving to another part of Honduras suggests that any danger of harm could be mitigated through relocation.").

[15] *See Qorane*, 919 F.3d at 911 ("[Petitioner] says Ayr clan members qualify as such public official[s] because the Ayr militia was the only authority (and hence the *de facto*

enterprising petitioner could just impermissibly cite "difficult conditions at home" to jettison the requisite burden when such conditions are often why "many . . . have come to this country throughout our history." *Mullin v. Doe*, 146 S. Ct. 2121, 2139 (2026). Olibris's threadbare assertion that Haiti is a "completely failed state" with a "complete inability to project power" does not constitute acquiescence.[16] Olibris wrongly relies on *Argueta-Hernandez v. Garland*, where government officials stated with certainty that a gang "w[ould] kill" the individual seeking CAT protection, which is different from the circumstances here—Olibris has failed to make a corresponding claim with the requisite specificity or certainty. *Cf.* 87 F.4th 698, 714 (5th Cir. 2023). Contrary to Olibris's assertion, the BIA considered the appropriate evidence and faithfully applied the governing law.[17]

V.

Olibris has not demonstrated a reversible due process violation.

"To prevail on a claim regarding an alleged denial of due process rights, an alien must make an initial showing of substantial prejudice," which requires "a prima facie showing that the alleged violation affected the outcome of the proceedings." *Okpala v. Whitaker*, 908 F.3d 965, 971 (5th Cir.

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government) at the time of the donkey incident. [Petitioner] cites no case cloaking private actors in government garb under such circumstances. To the contrary, a power vacuum does not make private conduct public because warring clans do not exercise official power." (citation and internal quotations omitted)).

[16] *See id.* ("[Petitioner] suggests that the Somali government may be unable to protect him. But a government's inability to protect its citizens does not amount to acquiescence." (citation omitted)).

[17] *See Deep v. Barr*, 967 F.3d 498, 503 (5th Cir. 2020) (per curiam) ("[A]n agency is not required to write an exegesis on every contention. What is required is merely that it consider the issues raised, and announce its decision in terms sufficient to enable a reviewing court to perceive that it has heard and thought and not merely reacted." (citation and internal quotations omitted)).

2018) (citations omitted).

Assuming without deciding that an error occurred, any such error, either in admitting the BBC report or in sustaining both charges of removal,[18] was harmless. *See id.* Indeed, Olibris has failed to show that the outcome of the proceedings would have been different in the absence of the alleged errors.[19] For one, the BIA noted that "the BBC country report was not critical to the government acquiescence determination." Second, the precise sequence of the I.J.'s briefing schedule had no bearing on its underlying reasoning. Regardless, Olibris "would not be eligible for [the] requested relief even if the [alleged] error[s] had not been made." *See Rangel-Betancourt*, 820 F. App'x at 255–56.

PETITION DENIED.

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[18] Petitioner's Br. at 40 n. 128 (posting that the I.J. exhibited bias by "sustain[ing] both charges of removal" before issuing an order directing DHS to file a brief).

[19] *See Enrique-Gutierrez v. Holder*, 612 F.3d 400, 407 (5th Cir. 2010) ("Even if there is a reversible error in the BIA's analysis, affirmance may be warranted where there is no realistic probability that, absent the errors, the . . . BIA would have reached a different conclusion." (citation and internal quotation omitted)); *see also Rangel-Betancourt v. Barr*, 820 F. App'x 253, 255 (5th Cir. 2020) (per curiam) ("[A]n error is harmless if petitioner would not be eligible for [the] requested relief even if the error had not been made." (citing *Cantu-Delgadillo v. Holder*, 584 F.3d 682, 690 (5th Cir. 2009) (per curiam))).

KING, *Circuit Judge*, dissenting:

The majority tunnel visions onto a single clause of § 1227(a)(4)(A) and ignores the relevant statutory context. Properly read, the statute renders removable only those aliens who have engaged or are engaged in espionage, sabotage, or exportations that endanger public safety or national security. Because the Government has made no effort to show that the petitioner's exportations here had such an effect, I respectfully dissent.

Title 8, United States Code, § 1227(a)(4)(A) reads:

> (4) Security and related grounds
>
> (A) In general
>
> Any alien who has engaged, is engaged, or at any time after admission engages in—
>
> (i) any activity to violate any law of the United States relating to espionage or sabotage or to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,
>
> (ii) any other criminal activity which endangers public safety or national security, or
>
> (iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means,
>
> is deportable.

8 U.S.C. § 1227(a)(4)(A).

The Government contends Olibris is removable under § 1227(a)(4)(i) because he was convicted under 18 U.S.C. § 554, which criminalizes "export[ation of] . . . any merchandise . . . contrary to any law or regulation of the United States." 18 U.S.C. § 554(a). To be clear, the Government does not argue—or even attempt to show—that Olibris's exports endangered public safety or national security. Rather, it argues that, as a categorical matter, a conviction under § 554 renders an alien removable under § 1227(a)(4)(A), regardless of the circumstances of the exports or the goods exported. So, under the Government's theory, someone who exports a bag of potato chips in violation of a regulation may be deportable under the removability provision pertaining to "[s]ecurity and related grounds." § 1227(a)(4).

The majority does not hesitate to agree with the Government because of what it views as the "plain text" of § 1227(a)(4)(i). *Ante,* at 6. It gets there by conducting a truncated analysis of the statute, latching onto a single clause plucked out of its context. *See id.*

But "[c]ontext counts." *Bartenwerfer v. Buckley*, 143 S. Ct. 665, 673 (2023). We do not "construe the meaning of statutory terms in a vacuum." *Tyler v. Cain*, 533 U.S. 656, 662 (2001). Rather, "[a] statute must be read in 'the specific context in which that language is used, and the broader context of the statute as a whole.'" *Tex. Educ. Agency v. U.S. Dep't of Educ.*, 908 F.3d 127, 133 (5th Cir. 2018) (Smith, J.) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997)). And here, both the specific and broader statutory context show that the majority's reading is far too broad.

In a vacuum, § 1227(a)(4)(A)(i) may seem expansive. It makes deportable any alien who has engaged in "any activity to violate any law of the United States relating to espionage, sabotage, or to violate or evade *any* law prohibiting the export from the United States of goods, technology, or sensitive information." § 1227(a)(4)(A)(i) (emphasis added). And ordinarily, "the word 'any' has an expansive meaning, that is, one or some indiscriminately of whatever kind." *Tula Rubio v. Lynch*, 787 F.3d 288, 293 (5th Cir. 2015). But we read "any" "'as referring to all' of the type to which it refers" only when "Congress 'did not add any language limiting the breadth of [the] word.'" *Id.* (quoting *United States v. Gonzales*, 520 U.S. 1, 5 (1997)).

And here, the statute is surrounded by breadth-limiting language. The very subjection at issue also refers to "espionage," "sabotage," and "sensitive information," all of which inform our reading of the clause "any law prohibiting the export from the United States of goods"—as one relating to national security or public safety. *See Fischer v. United States*, 144 S. Ct. 2176, 2182 (2024) (describing the *noscitur a sociis* canon). The majority offers no explanation as to why Congress would have spoken of "espionage" and "sabotage" in the same breadth as "export" and "goods" if they were not meant to be read in tandem.

The next subsection then provides that an alien that engages in "any *other* criminal activity which endangers public safety or national security" is deportable. § 1227(a)(4)(A)(ii) (emphasis added). That "other"—conspicuously missing from either subsection (i) or subsection (iii)—demonstrates Congress's intent to apply subsection (i) only to activities that endanger public safety or national security.

Start with two possible interpretations of that word "other." On the one hand, it could mean that subsection (ii) applies to any criminal activity that endangers public safety or national security, and that criminal activity is "other" than—and thus different from—the ones mentioned in subsection (i). Under that reading, subsection (i) does not speak to national security or public safety concerns at all, which are instead captured by subsection (ii).

On the other hand, it could mean that subsection (ii) applies to *other* public-safety or national-security threatening conduct than ones already listed in subsection (i). Under that reading, subsection (ii) is a catchall; subsections (i) and (ii) together address conduct that endangers public safety and national security, and subsection (i) simply enumerates specific kinds of such conduct Congress sought to address.

The latter is the correct reading. Under the former reading, subsections (i) and (ii) are detached from each other—where subsection (i) speaks to espionage, sabotage, and general export violations and subsection (ii) speaks to public safety and national security. But that would render the "other" superfluous, "something we are loath to do." *Cooper Indus., Inc. v. Aviall Servs., Inc.*, 543 U.S. 157, 166 (2004). Worse, that reading would mean that espionage and sabotage do *not* endanger public safety or national security. That obviously cannot be true. We thus cannot divorce subsection (i) from subsection (ii), and they must be read together, with subsection (ii) acting as subsection (i)'s catchall. So read, subsection (i) deals with espionage, sabotage, and exportations that endanger public safety and national security, not any run-of-the-mill exportations.

In fact, ignoring that context has ramifications on other nouns in subsection (i) than just "export." For example, the most natural reading of "espionage" here would refer to the transmission of national-security or defense secrets. *See* 18 U.S.C. §§ 793–999. But, under the majority's reading, espionage—without any modifier cabining it to national security—could also include corporate espionage under 18 U.S.C. § 1832 where Pepsi steals the secret recipe for Coca-Cola. *See* 18 U.S.C. § 1832 (Theft of Trade Secrets); *Espionage*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("The activity of using spies to collect information about what another government *or company* is doing or plans to do." (emphasis added)). Even the Government does not contend that to be the case.

Zooming out one step confirms the view that § 1227(a)(4)(A)(i) is limited to exportations that endanger national security or public safety. Section 1227(a)(4) is entitled "[s]ecurity and other grounds," again demonstrating Congress's intent to focus on national security. § 1227(a)(4). And every subsection under it evinces the same intent. Section 1227(a)(4)(B) deals with terrorist activities. § 1227(a)(4)(B). The next subsection, (C), deals with aliens who may pose "potentially serious adverse foreign policy consequences for the United States." § 1227(a)(4)(C). The one after that deals with those aliens who "[p]articipated in Nazi prosecution, genocide, or the commission of any act of torture or extrajudicial killing." § 1227(a)(4)(D). Next, subsection (E) deals with those who "[p]articipated in the commission of severe violations of religious freedom." § 1227(a)(4)(E). And the last subsection, (F), deals with those who have engaged "in the recruitment or use of child soldiers[.]" § 1227(a)(4)(F). In the majority's view, however, an unlawful exporter of Lay's stands on equal footing as a terrorist, a Nazi, and a recruiter of child soldiers. One of these is not like the others.

Indeed, that § 1227(a)(4) deals with national security explains the lower burden on the government to invoke it. Section 1227(a)(4)(A) makes deportable any alien who merely engages in an *activity* to violate or evade certain laws or an *activity* whose *purpose* is to overthrow the United States government. *See* § 1227(a)(4)(A)(i)–(iii). It does not require that the activity itself be unlawful. By contrast, the other subsections of § 1227 require a conviction or an actual failure to comply with certain rules. *See, e.g.*, §§ 1227(a)(2), (3), (6). That peculiarly low bar of § 1227(a)(4) further shows congressional intent to provide a preventative means to address grave national-security and public-safety risks, not exportations of Lay's.

Zoom out once more, and we see that, under the majority's reading, an unlawful exporter of potato chips would be subject to the PATRIOT Act. Immediately preceding § 1227 is § 1226a, an addition from the PATRIOT Act, enacted in the wake of the September 11, 2001, attacks on American soil. *See* 8 U.S.C. § 1226a; *see also* Pub. L. No. 107-56, §§ 102, 412(a), 115 Stat.

272 (2001). Entitled "[m]andatory detention of suspected terrorists," § 1226a "encompasses certain threats to national security." *Jennings v. Rodriguez*, 583 U.S. 281, 305 (2018). To deal with such threats—like the September 11 attacks—it provides that "[t]he Attorney General *shall* take into custody any alien who is certified under paragraph (3)," § 1226a(a)(1) (emphasis added). Paragraph (3), in turn, provides:

> (3) Certification
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> The Attorney General may certify an alien under this paragraph if the Attorney General has reasonable grounds to believe that the alien—
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>> (A) is described in section 1182(a)(3)(A)(i), 1182(a)(3)(A)(iii), 1182(a)(3)(B), **1227(a)(4)(A)(i)**, 1227(a)(4)(A)(iii), or 1227(a)(4)(B) of this title; or
>>
>> (B) is engaged in any other activity that endangers the national security of the United States.

§ 1226a(a)(3) (emphasis added).

So, under the majority's reading, someone who is engaged in an activity in furtherance of shipping a bag of chips contrary to federal regulation—even if not convicted of the violation and even if the shipment had no effect on public safety or national security—may be certified by the Attorney General and be subject to mandatory detention under the PATRIOT Act. And once the chip-shipper is so detained, he may obtain judicial review "exclusively in habeas corpus proceedings . . . ." § 1226a(b)(1). The habeas remedy, of course, is notoriously difficult to obtain. *See McNeal v. LeBlanc*, 93 F.4th 840, 842 (5th Cir. 2024) (mem.) (Oldham, J., dissenting from denial of rehearing en banc) ("Perhaps owing to its extraordinary power, the habeas remedy of release carries with it a host of limitations from both common law and statutory law that can make it difficult to win."). Nothing in the statute shows that Congress intended such an absurd result.

The categorical rule that the majority announces today reaches far beyond intentional exports of firearms. Section 554 encompasses exportations of and attempts to export any kind of object; it is triggered whether someone violates a federal statute or agency regulation; and it criminalizes mere passive receipt of an item with only the knowledge, without the intent, that the item will be exported unlawfully. *See* 18 U.S.C. § 554(a). That expansive sweep is compounded by countless agency rules regulating relatively innocuous items. *See, e.g.*, 19 C.F.R. § 192.2 (used cars); 50 C.F.R. § 23.64 (artificially propagated plants); 50 C.F.R. § 23.70 (crocodilian skin, parts, and products); 50 C.F.R. § 23.15 (sturgeon caviar, giant clams, and cacti). Under the majority's regime, ordinary, lawfully present aliens will now routinely fall under § 1227(a)(4)'s and the PATRIOT Act's ambit, contrary to Congress's intent.

Make no mistake; none of this is to say that exportation of firearms cannot ever be the basis for removing aliens. Section 1227(a)(2)(C) provides just such a basis. *See* § 1227(a)(2)(C) ("Any alien who at any time after admission is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying . . . any weapon, part, or accessory which is a firearm or destructive device . . . in violation of any law is deportable."). Nor is it to say that exportation of firearms will never satisfy the national-security-risk or public-safety requirements of § 1227(a)(4). It is only to say that, if the Government wants to invoke § 1227(a)(4)(A), it must demonstrate the national security risk or danger to public safety.

It has not done so here. In fact, when Olibris was convicted under § 554, the Presentence Report specifically found that "there is no indication that [Olibris's] conduct threatened the security or foreign policy interest of the United States." And when asked about this at oral argument, the Government simply brushed it aside, responding that such a finding is not binding on this court even if the district court adopted those findings. True, but that flips the Government's burden on its head. In a removal proceeding, it is the Government that must "establish the grounds of removability by clear, unequivocal, and convincing evidence." *Santos-Sanchez v. Holder*, 744 F.3d 391, 393 (5th Cir. 2014). By doing no more than discounting Olibris's evidence and not bringing its own, the Government has failed to carry its burden.

* * *

At every level of zoom, we see that Congress intended § 1227(a)(4)(A)(i) to deal with espionage, sabotage, and exportations that endanger public safety or national security. And the Government has failed to carry its burden to show by clear, unequivocal, and convincing evidence that Olibris's conduct had such an effect. The majority concludes differently by ignoring the statute's context. So I respectfully dissent.